



HUMAN RIGHTS monitor

RIGHTS corner



Collapse of Spectrum sweater industries and non-compliance of laws- A review

Global labour rights

SHEIKH MD. SALAUDDIN

THE whole nation was shocked by the collapse of a nine-storied building in the early hours of April 11, 2005 which was situated at the Palashbari union of Savar Police Station and used as the factory premises of Spectrum Sweater Industries Limited.

The rescue operation was carried out by Army. According to the Army, the rescuers had found a total of 69 dead bodies and 89 injured while 7 dead bodies could not be identified. The Police on the other hand claimed that it received 59 dead bodies. However, there are still workers who were reportedly missing and had not been rescued from the debris. Due to non-cooperation of the factory owners none of the authorities responsible for rescue operation could authoritatively determine the total number of persons who are still missing. The rescuers further ascertained that more people might have been rescued alive and the rescue operation could have been conducted faster had the owners provided the Rescue Team with the design of the building and the number of the people working on each floor. Since the building was surrounded by marshy land, a public canal and low paddy fields, the rescue team had extreme difficulty in setting up cranes around the building for removal of the heavy concrete slabs and parts of the roof of the collapsed building.

Probably the single most negligent act that has caused the collapse of the building is that the factory authority had obtained building approval from Dhaka Cantonment Board not for a nine storied building but only for a four storied building but had constructed the additional floors above the four stories in anticipation that the permission would be received.

The collapse of Spectrum Sweaters Industries Ltd. is a classic example of systematic failure of the authority including the government and the owner. The Concerned government authorities failed to discharge their statutory duties and responsibilities relating to building construction, labour safety and welfare. In consequence of such failure the owners of the factory were able to construct a nine-storied factory building in manifest violation of the applicable laws and regulations i.e. the Building Construction Act, 1952, the Factories Act 1965, the Savar Cantonment Act 1924, Savar Cantonment Building Bye-laws 1982 and the Environment Conservation Rules 1997.

The provisions of many other laws have been breached including the mother constitution i.e. Articles 11, 14, 15, 21, 27, 31 and 32 of the Constitution of the Peoples' Republic of Bangladesh, the Penal Code 1860, the Fatal Accidents Act 1855, the Workmen's Compensation Act 1923, the Employers Liability Act 1938, the Factories Rules 1979, the Bangladesh Environment Conservation Act 1995, Town Improvement Act 1953, the Building Construction Rules 1996 etc.

By name different Ministry have failed to discharge their respective duties regarding this horrific and tragic accident. They also failed to comply with their statutory obligations to take effective and timely measures to investigate acts and omissions resulting in the collapse of the said building and the resulting loss of life and grievous injury to the persons inside the building, specifically they failed to dig out the causes of the collapse, identify and apprehend the persons including the owners and those entrusted with the management of the factory in question. Also to seize all relevant documents and material exhibit in order to ensure that the evidence necessary to identify the causes and establish the liability, civil and criminal, of those responsible for the collapse of the building and the consequent deaths and grievous injuries to those within the building, provide appropriate and effective compensation to the injured victims, and the bereaved families of those workers who died in the incident; even the authorities have failed to

arrest the persons responsible for this heinous act. Besides the ministries and Spectrum Sweater Industries Ltd. including the Chairman, the Managing Director, Director of Spectrum Sweater Industries Ltd the following persons or authorities can be held responsible i.e. The Deputy Commissioner Dhaka, Chief Inspector of Factories, Department of Environment, Savar Cantonment Board, Bangladesh Fire Service and Civil Defence, Inspector General of Police, Superintendent of Police, Dhaka, Officer-in-Charge, Savar Police Station, Bangladesh Garments Manufacturers and Exporters Association (BGMEA).

The Officer-in-Charge of the Savar Police Station lodged Case No. 48/372 with the Savar Police Station against the owners of the industries under sections 304 (A) and 338 of the Penal Code of 1860. The First Information Report (FIR) mentioned that the building of the Spectrum Sweater Industries Ltd. was constructed on weak foundation and without following the rules. Referring to the general diary no. 642 dated 11 April, 2005 filed by the Authorised Officer-3 of the RAJUK, the FIR further noted that the building had no approval from the RAJUK.

Regarding the injured workers meeting the expenses

has been reported in the dailies that the management of the factory has declared a Lay off till 30 May, 2005 meaning further uncertainty to the workers/employees of the said factories.

It is worth mentioning here that the laws relating to compensation are very old and needs to be updated within no time. It should be amended taking into consideration the social condition, similar laws of neighbouring countries etc.

Immediately after the collapse of the said industries the Human Rights, women rights, Legal Aid, labour rights and environmental organizations and Activists showed their grave concern and demanded the following remedies to be fulfilled:

* The garment building collapse in Palashbari be treated as an instance of gross criminal negligence and owner should be prosecuted.

* To ensure that the investigation team in Palashbari is comprised of representatives from human rights, women rights, legal aid, environmental organizations and as well as architects and engineers for facilitating an impartial and fair investigation

* To elicit specific statement in relation to the garment factory collapse from the chief inspector of factories.

offenders to adequately rehabilitate and compensate the victims.

The Spectrum authority is also guilty of corporate manslaughter. Corporate manslaughter is a crime that can be committed by a company in relation to a work-related death. If the director or manager is found guilty, the company is guilty; if the director or manager is found innocent, the company is innocent.

The tragedy of Savar and other tragic incidents of fire in the garments industries have claimed around 315 invaluable lives in the last 15 years that clearly demonstrates gross violation of applicable legal provisions by the owners of garments factories regarding workplace and workers safety, welfare and security. There are also serious lacking of monitoring by the concerned authorities regarding the operation of the garment industries and also the compliance with applicable laws, legal provisions and the Judgment dated 31 May, 2001 in Writ Petition No. 6070 of 1997. In this writ petition, the Hon'ble High Court directed the government to take legal actions against all the faulty and unregistered garments factories and also directed the garments factories to provide sufficient number of Staircases and exit doors (at least two). The regulatory authorities were directed not to issue licenses where the factories do not comply with the Factories act and Fire service rules; the Bangladesh Bank was directed to make a circulation directing all the Banks not to allocate loans to the factories that do not have license or registration. But experience shows none of the above is complied with.

Regarding the collapse of Spectrum Sweater Industries it is necessary to appoint an independent commission comprising members from Human Rights, Legal aid, Women rights, labour rights groups, Retired Justices, Legal experts, Engineers, architects etc. to (i) investigate into the causes of building collapse, ownership of land, legality of the construction; and (ii) to assess and determine the amount of compensation to be payable by the responsible persons to the victims of the collapse in line with the Fatal Accident Act 1855, the Employers' Liability Act 1938 and the Workmen's Compensation Act 1923.

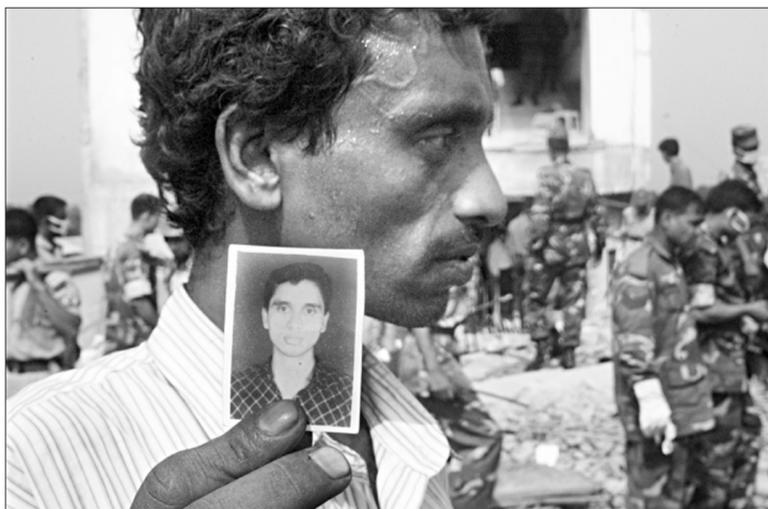
Beside this, the amount paid by BGMEA should be treated as "interim" and not a final settlement and the government and the owner must be made liable to ensure that the victims are reasonably compensated and rehabilitated in accordance with the provisions of the Fatal Accidents Act, 1855, the Workmen's Compensation Act, 1923, the Employers Liability Act, 1938 and other applicable laws and judicial decisions.

All the investigations conducted by the Deputy Commissioners office, RAJUK and BGMEA should be made public and also the owners must be compelled to produce a complete list of workers/employees of the Spectrum Sweater Industries Limited so that the people can know the fact that caused the disaster and actual number of victims.

Within a reasonable time the government's concerned authority must complete list of garment factories operating in the country and monitor their compliance with building construction laws, laws on establishment, operation and safety of factories and their workers, and also the judicial pronouncement of the higher court. The government must also equip the fire service department with modern and sufficient rescue equipment's and training to efficiently encounter disasters and minimize loss and sufferings.

Accidents in the garment factories, launch disasters and road accidents have been claiming thousands of lives every year but the authority is doing nothing. The collapse of Spectrum Sweater Industries Limited might be an awakening call for everybody. It is now high time to rethink and comply with the laws otherwise there could be another unimaginable manmade disaster is approaching and it is just a matter of time.

The author is an advocate, Supreme Court of Bangladesh and at present working for BLAST.



of the treatment, BGMEA through a newspaper advertisement stated that the owners of the factories have decided to pay compensation to the legal heirs of the deceased workers and for that the heirs should submit to the BGMEA Secretariat by a set of relevant papers including a copy of the FIR, inquest report, pictures attested by the local Chairman, certificate given by the local chairman and the appointment letter. It is apparent that the BGMEA has not sought any cooperation or supply of evidence of employment from Spectrum Sweaters Industries Limited and the burden of proof has been left entirely upon the victims, which is wholly unjust and unreasonable burden. Imposition of such a heavy evidential burden upon the bereaved families shows the lack of sympathy and genuineness. Accordingly it was reported in the newspapers that the legal heirs of 24 deceased workers received from the said respondent a sum of taka one lakh of which 21 thousand was claimed to be paid under the Workmen's Compensation Act, 1923. While the issues of compensating and rehabilitating of the victims remain unaddressed, it

* To make available comprehensive list of injured, dear and missing workers and account for the responsible person who was in charge of keeping the attendance card on the date of the accident.

* To identify and initiate legal action against the similar accident prone and faulty buildings and blacklist all the faulty factory owners and make the list public

* To ensure compensation for the victims and their families as stipulated under Fatal Accident Act 1855

* To ensure alternative stare case in every factory for safe entry and exit during emergency situation like fire and other fatal accidents.

Despite being statutorily required, the government and the owners have utterly failed to ensure safety at the working place thus undermining the legally recognized rights of the workers to safety and protection and till today the concerned authorities have failed to ascertain and disclose the actual reason for the collapse, the persons responsible, the legality of the construction, the ownership of land and the measures to be taken by the

FACT file

Court probes Sudan 'war crimes'

SOME two million people have fled their homes in Darfur, the UN says. The International Criminal Court has announced an inquiry into alleged war crimes in west Sudan's Darfur region. The Hague court's chief prosecutor, Luis Moreno Ocampo, said it was launching what will be the ICC's biggest investigation.

The BBC's Martin Lumb says this is the first time the court has used its right to pursue a case where a host state is thought unwilling or unable to do so. A special UN inquiry has given the ICC the names of 51 potential suspects. The UN says about 180,000 people have died in the two-year Darfur conflict. It says more than two million people have been forced to leave their homes in the region.

The announcement by Mr Ocampo comes two months after the situation in Darfur was referred to the ICC following a vote at the UN Security Council - the first time the council has referred a case to the ICC.

It is to be mentioned that International Criminal Court is first permanent court to try individuals for genocide, war crimes and other human rights violations. Rome Statute set up in July 1998, when 120 countries adopted the treaty came into force in April 2002 after ratification by 60 countries.

Uganda and DR Congo investigations began in 2004.

The ICC statement said the investigation would be based on thousands of documents received by the court and interviews with more than 50 independent experts. "The investigation will require sustained co-operation from national and international authorities," Mr Ocampo said in the statement. "It will form part of a collective effort, complementing African Union and other initiatives to end the violence in Darfur and to promote justice."

"Traditional African mechanisms can be an important tool to complement these efforts and achieve local reconciliation." The correspondent says that by launching the investigation now the court has rejected more cautious advice that the case should wait until the conflict is completely resolved.

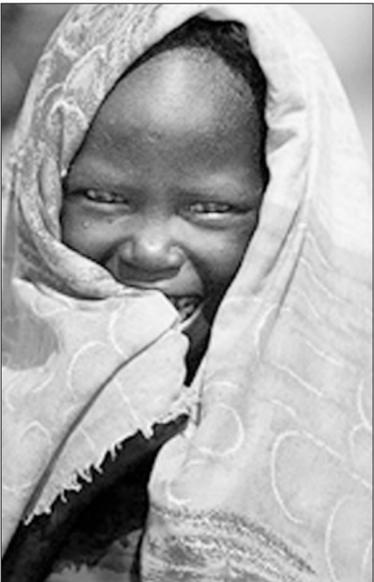
Other trials will be held later this year against alleged perpetrators of war crimes in two other African nations, Uganda and Congo. However, in these cases the governments themselves turned to The Hague for justice.

The Sudanese ambassador in the UK, Hassan Abdin, told the BBC his government would stick to a decision taken immediately after the Security Council resolution not to hand over its citizens for trial abroad. But he said Khartoum was willing to discuss with ICC prosecutors requests to try suspects inside the country.

The Security Council cited allegations of rape, murder and plunder in Darfur. The New York-based Human

Rights Watch group said the Sudanese authorities in Khartoum have not taken any meaningful steps to bring to account those responsible for the alleged crimes.

The referral to the court was made possible when the US - which opposes the ICC - backed away from using its veto power as the Council's permanent member. The US has expressed its concerns that the court could bring bogus charges against American nationals. Washington



has already signed nearly 100 bilateral treaties with countries that have agreed not to surrender US citizens to the ICC. However, 99 countries have ratified the court's founding treaty, including all of Washington's major allies in Europe.

Source: BBC News.

LAW week

Bidisha arrested after Ershad files theft case

Bidisha Ershad, sacked Jatiya Party (JP) presidium member and wife of JP Chairman HM Ershad, was arrested at their Baridhara house after the former president charged her with stealing a cellphone set and embezzlement.

The police took Bidisha to Gulshan Police Station from Ershad's President Park in the cosy Baridhara neighbourhood. Ershad accused her of cheating, embezzlement, theft, damaging furniture and making threats. The former president was staying at the house of JP Secretary General Ruhul Amin Hawlader near the police station when the arrest was made. Witnesses said he left the apartment at about 9:00am for the JP's Banani office and sent the party's International Affairs Secretary Golam Moshir to file the case. Sources close to Ershad said he is now preparing to end the four-year marriage with his second wife, Bidisha, who had been receiving treatment at ZH Siddik Medical College and Hospital at Gulshan, fled the clinic Friday night dodging the police stationed in and around it and stayed at the Baridhara house. Sources, however, said Ershad sued Bidisha under pressure from the government high-ups who earlier forced the JP chief to expel her from the party. *The Daily Star, June 5.*

Sumon's death in "Crossfire" Mother files murder case against ministers, Rab men

Mother of slain Jubo League leader Sumon filed a murder case with a Dhaka court against home and public works ministers, home secretary, three high-ups of Rapid Action Battalion (Rab) and a Jatityabadi Chhatra Dal (JCD) leader.

Prime Minister Khaleda Zia who holds the portfolio of home minister and Housing and Public Works Minister Mirza Abbas have been accused in the case filed by Amela Khatun with the court of Chief Metropolitan Magistrate, Dhaka. The other accused are Home Secretary Safar Raj Hossain, Rab Director General Abdul Aziz Sarkar, the commanding officer, second-in-command and seven to eight unknown members of Rab-3 and Rubel, vice president of Dhaka city JCD (South). After recording the statement of Amela,

Metropolitan Magistrate Syed Mujibul Haq ordered a judicial enquiry into the matter.

Sumon Ahmed, 21, was killed in a Rab-claimed "encounter" with the anticrime force in Hindupara under Khilgaon Police Station sometime between 9:00pm of May 30 and 5:00am of May 31, the complainant said. *Prothom Alo, June 7.*

Pvt universities require regulation

The private university sector requires regulation to some extent, but without interference in its institutional administration, said Law Minister Moudud Ahmed at a discussion. There should not be such control that may restrict the growth of this sector, neither should the government be involved directly with the streamlining of the private sector universities, he said.

Sekander Safia Foundation organised the discussion on "Quality of Education and Private Universities" at the National Press Club. The minister said that although most private universities run in appropriate manner, "there are some that do not have any characteristic of a university."

Privatisation does not necessarily mean unlimited freedom, he said, adding that private universities cannot be allowed to run as business concerns like private hospitals or clinics.

Referring to the proposed amendments to the Private University Act, the minister said that the education ministry should organise an open discussion with all the stakeholders before it is passed as a law.

Commodore (ret.) Ataur Rahman, chairman of the Forum of Private Universities, said the interference of the bureaucracy is creating obstacles to the growth of private university sector.

Dr Shamsheer Ali, vice-chancellor of South East University, said the private universities should be allowed to conduct distant education programme. *The Daily Star, June 8.*

Corresponding with the Law Desk

Please send your mails, queries, and opinions to: Law Desk, The Daily Star 19 Karwan Bazar, Dhaka-1215; telephone 8124944, 8124955, fax 8125155; e mail <dslawdesk@yahoo.co.uk, lawdesk@thedailystar.net

LAW news

UNHCR expands promotional activities on Refugee Law

UDATTA BIKASH

The Office of the United Nations High Commissioner for Refugees (UNHCR) in Bangladesh plans to expand its promotional and advocacy activities on Refugee Law and refugees' rights. With this view, the UN refugee agency has been expanding its relations and collaborations with different UN, government and non-government agencies, academic and research institutes.

It is learnt that UNHCR also intends to have a new partnership with the Ministry of Law, Justice and Parliamentary Affairs (MOLJPA). This may facilitate expansion of training and promotional activities on Refugee Law in the judiciary.

The Minister for Law, Justice and Parliamentary Affairs, Barrister Moudud Ahmed in a consultation on "The Need for National Law on Refugees" in Dhaka in December 2004 said that his ministry will take initiative to review the possibility of accession of the country to the 1951 Convention Relating to the Status of the Refugees and its 1967 Protocol and adoption of national legislation on refugees.

The consultation was organized jointly by Dhaka University-based research and advocacy group, Refugee and Migratory Movements Research Unit (RMMRU) and human rights organization, Odhikar with support from the UNHCR.

According to sources, the UNHCR Representative in Bangladesh, Mr. Beng Cha Lee has been following up the matter with the ministry.

There is already a consensus among the jurists, experts, academicians, and right activists that Bangladesh should adopt a national legislation on asylum and refugee issues and pro-actively consider the accession to the Convention and Protocol.

According to concerned official, in the mean time, few law schools and departments expressed their keen interest to introduce Refugee Law as an independent course and seek assistance from UNHCR. Among them, the Department of Law at the Southeast University in Dhaka is mentionable.

From last year, Refugee Law has been introduced in the Human Rights Summer School organized by the Dhaka-based NGO Empowerment through Law of the Common People (ELCOP).

Bangladesh Bar Council (BBC) has also been an implementing partner of UNHCR since 1997. Every year, they organize two training workshops (one in Dhaka and another outside) on Refugee Law mainly for young lawyers and one national seminar to mark the World Refugee Day (20 June). So far, about 600 lawyers have been trained up by the BBC.

Being commissioned by UNHCR, renowned scholar Dr. Borhan Uddin Khan conducted a study on the theme 'Refugee Law and Practice in Bangladesh.' It is now at the final stage, as sources informed. The Bengali translated version the book entitled 'Refugee Protection: A Guide to International Refugee Law' has been published by the Refugee and Migratory Movements Research Unit (RMMRU) with UNHCR's support. This is the first ever publication in Bengali.

The writer is a human rights researcher and advocate.