



RIGHTS corner



New UN special representative on sexual violence in conflict

Curbing sexual violence in conflict is 'mission irresistible' for new UN envoy

Secretary-General Ban Ki-moon's newly appointed Special Representative on Sexual Violence in Conflict promised on February 9, 2010 a more coherent and effective battle against the scourge, citing recent mass rapes in the Democratic Republic of Congo (DRC) and calling her new task "mission irresistible."

"Sexual violence against women is not cultural, it's criminal. It's not a women's issue, it's a human rights issue. It's for both men and women to make sure that women have the right to their body," Margot Wallström, a Swedish politician with a long history in defending women's rights, told a news briefing in New York, citing the need to end impunity as a priority area. "Women carry half the sky, so they have to be valued that way."

Ms. Wallström was introduced by Deputy Secretary-General Asha-Rose Migiro who said the new appointment was "a major step" towards protecting civilians subjected to sexual violence not only in conflict but also in post-conflict situations.

"Ending sexual violence in conflict situations remains a top priority for the Secretary-General who has called for increased



actions by the international community to prevent violence, to protect individuals, to punish perpetrators, and to provide redress to victims," she added.

The presentation came just a day after the UN Population Fund (UNFPA) reported that more than 8,000 women were raped in the DRC during fighting between warring factions last year. Under-Secretary-General for Peacekeeping Operations Alain Le Roy told the briefing that such abuse was occurring not just in the DRC. "In most of our missions we have this extremely serious question of sexual violence," he said.

In the DRC the UN is combating the scourge by developing a greater presence on the ground, escorting women going to market or fetching firewood or water, developing early warning systems, and working with local mayors.

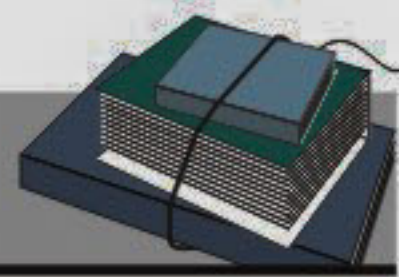
"At the same time, it is not enough," he added, noting that UN peacekeepers in all DRC numbered 20,000 soldiers while just the two war-torn eastern Kivu provinces, where most rapes occurred, had a population of 10 million people. "We cannot be behind... [every] tree."

Ms. Wallström said the DRC would be one of the first places she would visit, but cautioned that her main challenge would be living up to all the expectations put in her given the breadth of the mandate and its limited length of only two years. "We'll also have to create some success stories if you ask me," she added. "It is also obvious where the hotspots are, where everybody expects us to be present and to do as much as we can. Of course, the DRC is the obvious example..."

"I will never be able to live up to all these expectations," she said. But, she added, "of course I feel honoured and humbled and excited. It's a tough task and the mandate is short, two years, but it is mission irresistible to me at this moment."

Source: UN News Centre.

LAW lexicon



**Antitrust acts** - Federal and state statutes to protect trade and commerce from unlawful restraints, price discriminations, price fixing, and monopolies.

**Appeal** - A proceeding brought to a higher court to review a lower court decision.

**Appeal Bond** - A guaranty by the appealing party insuring that court costs will be paid.

**Appearance** - The act of coming into court as a party to a suit either in person or through an attorney.

**Appendix** - Supplementary materials added to the end of a document.

**Appellant** - The party appealing a decision or judgment.

**Appellate court** - A court having jurisdiction to hear appeals and review a trial court's procedure.

**Appellee** - The party against whom an appeal is taken.

**Arbitration** - The hearing of a dispute by an impartial third person or persons (chosen by the parties), whose award the parties agree to accept.

**Arbitrator** - A private, disinterested person chosen by the parties in arbitration to hear evidence concerning the dispute and to make an award based on the evidence.

**Arrest** - To take into custody by legal authority.

Source: Jurist International.

YOUR Advocate

This week your advocate is Barrister Omar Khan Joy of the Supreme Court of Bangladesh and Head of 'The Legal Counsel'. His professional interests include commercial law, corporate law, family law, land law, constitutional law, banking law, arbitration and intellectual property laws. Our civil and criminal law experts from reputed law chambers will provide the legal summary advice.

Reader's query

My father wants to make a trust of a property. What is the procedure of making a trust in Bangladesh? Should my father require any permission? From where?

H. Hasan, Rajshahi

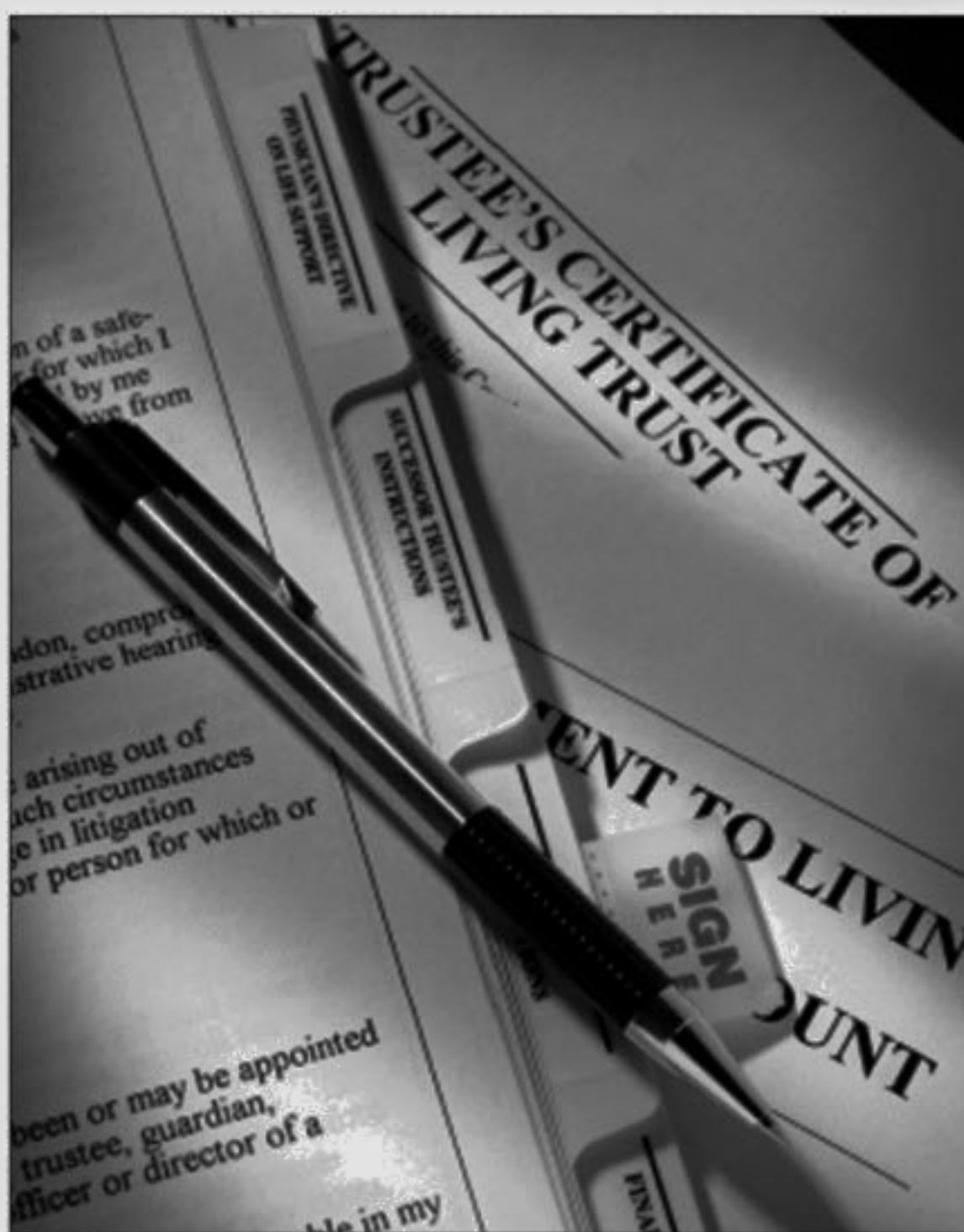
Response

Thanks for your query. I have understood that your father is willing to create a trust with regard to one of his properties. However, in your query you have neither specified the details and the nature of the property nor the purpose of creating the trust. The word 'trust' is very frequently used by many without the proper understanding of the exact implication of the same. Please bear in mind that the creation and the execution of trust may be very simple or may be very complex depending on the nature of the property and the purpose of the trust. The creation, discharge and all the related matters to a trust are governed by the Trusts Act-1882, which is one of the oldest Acts that we have inherited.

A 'trust' is an obligation imposed on one or more persons (trustees) with regard to the 'trust property' that has been transferred to the trustees by the creator of the trust. Your father will be known as the 'creator' or the 'author' of the trust. With a view to create a trust, as the author, he needs to specify the trust property and also needs to nominate a person or a group of persons to act as the trustees with regard to the trust. While selecting the trustees, it has to be kept in mind that only those who are capable of lawfully holding properties and competent to execute contracts can act as trustees. For example, a minor or an insane person cannot act as a trustee. Trustees have heavy, if not onerous, legal obligations that they have to strictly abide by. So, your father's preferred trustees shall also be notified about their legal obligations. Such trustees are not entitled to receive any charge/remuneration for their services rendered to the trust, unless your father makes provisions for the same in the instrument creating the trust.

Furthermore, there must be a clear and certain 'purpose' or 'purposes' of creating the trust. It cannot be made for uncertain or undefined purpose(s). Above and beyond, it goes without saying that the purpose of the trust has to be a lawful one. As for illustration, a trust may be created for the education of poor children of an area; for certain medical purposes; charitable purposes; maintenance of someone; establishing a scholarship or a school or even for the benefit of a single person or a specified group of individuals. The person or group of persons, who will be benefited from the trust, will be legally known as the 'beneficiaries' of the trust. The beneficiary of your father's trust may be even you and your family members or may be other people as exemplified above. Whoever the beneficiaries are, they need to be specified by your father in such a manner that the trustees can ascertain the beneficiaries with reasonable certainty. If the trust mentions such person(s) as beneficiaries, who cannot be ascertained, then the trust will fail for uncertainty. It is possible that your father creates a 'fixed trust' meaning that he makes the beneficiaries fixed or he may also create a 'discretionary trust' whereby allowing the trustees to use their discretions to select the beneficiaries from among a class of people.

In view of the above, your father is advised to draw up and execute a trust deed which must include, amongst others, specification of the trust property; particulars of the trustees and the beneficiaries. The trustees, however, have to give their consents to act as trustees. It is a common practice that they are made



signatories to the trust instrument to reflect their consents to act as the trustees.

As per the provisions of the Registration Act, the trust deed has to be registered, if the trust property is an immovable one (e.g. land). If, on the other hand, the property in issue is not fixed but movable, like, money or otherwise, then there is no legal compulsion to register the trust instrument. Irrespective of the nature of the trust property, the property has to be transferred to the trustees by your father following the appropriate legal formalities annexed to the transfer of that type of property.

So far as the second part of your query is concerned, please note that there is no requirement to take any permission from any authority for creating a trust. Permission/registration is, however, needed for the creation of a Waqf. Waqf means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognized by Muslim law as pious, religious or charitable purpose. Trust and Waqf are broadly similar concepts. Differences, however, exist in the purpose, administration and governing laws. I assume from your query that your father has decided for the creation of a trust and not a Waqf and consequently, I am not inclined to discuss further on Waqf.

You are strongly advised to consult an expert lawyer for drawing up the trust deed and also advised to counsel the trustees through the lawyers with regard to their obligations, rights and duties as trustees.

I hope that the above discussion will give you some understandings about the trust mechanism and will help to take the appropriate course of action.

For detailed query contact [omar@legalcounselbd.com](mailto:omar@legalcounselbd.com)

LAW watch

Addressing pornography by law

SULTAN MOHAMMAD WHOID

In recent year, there has been a significant increase of pornography in our society. It is a very vital issue for not only of our country but also for the whole universe. In the course of practicing pornography, some people are violating our social norms rapidly, but most of those do not realize about the degree of such evil works.

The industry of pornography has grown dramatically in the past several years. According to web information, in 1996 alone, Americans spent more than \$ 08 billion on X-rated video sales and rentals, live sex shows, adult cable show, computer pornography and adult magazine and another \$ 01 billion on Commercial telephone sex and rentals of hard core videos increased from 75 million in 1985 to 686 million in 1998. It is an example of increasing rate of pornography materials. So it is high time to keep an attention to protect pornography.

The word Pornography has many definitions but according to the Oxford dictionary- Pornography means explicit representation of sexual activity in literature, films, etc, intended to stimu-



late erotic rather than aesthetic or emotional feelings. Performers in pornography are referred to as pornographic actors (or actresses) or the more commonly known as "Porn star".

Over the past few decades, an immense industry for the production and consumption of pornography has grown, due to emergence of the VCR, the VCD, the DVD, adult magazine and the internet, as well as the emergence of more sexual portrayals and such pornography may use any of a variety of media printed literature, photos, sculpture, drawing, painting, animation, sound recording, film, video or video game etc.

But, in Bangladesh, there has been no specific law separately to control the exposure of pornographic materials, though it is

one of the most vital issues for the present universe. However, some provisions of different laws in Bangladesh have addressed the issue, like-

(a) The Cinematograph Act 1918 was enacted to prohibit of exhibition of unauthorized and unlicensed films, cassettes, cinematographs, video cassette recorder etc, which has not been certified as suitable for public exhibition by the authority constituted under the Censorship of Films Act 1963. On the other hand, the Censorship of Films Act 1963 was designed to provide for censorship of cinematograph films and for the decertification of certified films in the interest of law and order, or in the interest of local film industry, or in any other national interest, and matters incidental thereto or connected therewith. Here, the word in any other national interest concludes to maintain the fabric of the society and for which it can without any doubt, be said that no pornographic material can get permission for exhibition through the Censorship of Films Act 1963 and according to section 8(1) of this censorship law whoever exhibiting or abetting the exhibition of an uncertified film shall be punished with imprisonment for 3 years but shall not be less than one year or with fine up to taka ten thousand or with both.

(b) By the virtue of section 292, 293 and 294 of the Penal Code 1860 of Bangladesh, the exposes of pornographic or obscene materials is prohibited and section 292 of the Penal Code summarily says- whoever sells, distributes, publicly, exhibits, imports, exports, conveys, advertises, offer etc, or produce of has in his possession any obscene book, pamphlet, paper, drawing, painting, figure etc, shall be punished with imprisonment for three months or with fine or with both and under section 293- "whoever does offence to any persons under the age of twenty years, he shall be punished with six months imprisonment or with fine or with both".

(c) Restriction to expose or broadcast any pornographic or indecent materials through website or in any electronic media: the Totho O Jogajog Projukti Ain 2006 restricts to expose or broadcast any pornographic or indecent materials through website or by any other electronic means. Section 57 of this Act declare- "It shall be a crime, if any person willingly exhibit or transmit anything in any website or in any electronic media which is either false or indecent or either by viewing, reading or by hearing which split-up any person from moral principles, or instigates any person of being dishonest or by which it occurs defamation or it decrease the situation of law and order, or creates possibility of happening so, or it effect on the image of any individual or govt. or it strikes on the religious belief or it could do so, or by which information it creates indecent against any person or any association. And if any person does any such crime, he shall be punished for 10 year imprisonment or with fine up to 10 crore taka or both."

These days, the young generation is using digital cellular phones containing a large number of pornographic materials. But in our current laws (Totho O Jogajog Projukti Ain), this issue is almost is in vague expression. On the other hand, the provisions of punishment by the Cinematograph Act 1918 and the Penal Code 1860 on pornographic field is not sufficient and is as old that it should be updated to prevent further social evils.

The writer is an Advocate, Judge Court, Chittagong.

LAW week



Changes to clip ACC wings

The Anti-Corruption Commission in its response to the ACC Act amendment proposals forwarded by a cabinet committee made strict reservations on six out of the total 23 points, observing that those will mainly diminish its independence. If the amendments were made, the ACC would become a government executive branch-controlled body and its laws would be discriminatory and imbalanced, encouraging rampant corruption in government offices, the anti-graft watchdog observed. - *The Daily Star, February 11, 2010.*

5,000 buses run in city with illegal ticket booths

None of the public transport companies operating on routes in the capital has Dhaka City Corporation's approval for their ticket counters, alleged a ruling Awami League lawmaker in parliament. "The transport companies set [ticket] counters haphazardly causing sufferings to the pedestrians and worsening the traffic congestion. But Dhaka City Corporation remains silent to stop it," said lawmaker AKM Rahmatullah of Dhaka-10 constituency. The companies operate around 5,000 buses and minibuses on 149 routes in the capital, he informed. - *The Daily Star, February 11, 2010.*

PM pulls for law abiders

Prime Minister Sheikh Hasina has said Bangladeshi workers will now be sent to Kuwait through a selection committee and understanding between the two governments, so that the Gulf country could recruit law-abiding good workers. Hasina also came down heavily on those workers who were involved in misdeeds and flouted Kuwaiti laws and rules that damaged the prospect of the Bangladeshi labour market in the Gulf state. - *The Daily Star, February 10, 2010.*

Warrant to arrest Adflame director

A Dhaka court issued an arrest warrant against one of the directors of Adflame Pharmaceuticals who is charged with adulteration of paracetamol syrup 18 years ago. Judge Abdul Majid of the Drug Court cancelled bail of director Azfar Pasha and ordered to arrest him as his guarantors failed to produce him before the court. The court directed Officer-in-charge of Dhanmondi police station to submit report by March 14 on execution of arrest warrant against the director. - *The Daily Star, February 10, 2010.*

Licensed to break law

Car licence plates have become a symbol of utter disregard for law as the vehicle owners tamper with the plates by using varying typefaces and designs in violation of the rules that strictly prohibit such practices. In the wake of increasing numbers of fatal street accidents and vehicle thefts, traffic police officers say altering the plates makes it difficult to make out the registration numbers. They are concerned that vehicles involved in crimes or hit-and-run cases can be difficult to trace. - *The Daily Star, February 9, 2010.*

SC stays HC verdict for 6 weeks

The Supreme Court stayed for six weeks the High Court verdict that declared the existing warrant of precedence illegal. Md Muzammel Hossain, chamber judge of the Appellate Division, passed the order in response to Attorney General Mahbubey Alam's petition for a stay on the HC verdict. The chamber judge asked the government to file a regular leave-to-appeal petition within the six weeks. - *The Daily Star, February 9, 2010.*

New CJ asks lawyers to help poor justice

Chief Justice Mohammad Fazlul Karim proposed that the Supreme Court (SC) lawyers conduct a case for free every month for the poor and destitute litigants, who otherwise would have no access to justice. The willing members of the SC Bar Association (SCBA) will have the opportunity to pick cases from the SC registrar, and the Office of the Chief Justice will publish an annual list of the lawyers rendering this noble service, he said. - *The Daily Star, February 9, 2010.*

HC asks for traffic report

The High Court forward to end reckless driving in the country by directing the government to submit within a month a report on the progress in implementing traffic laws and rules through controlling automobile speeds. The HC move was prompted by the recent killing of kindergarten student Hamim Sheikh by reckless driving of a bus driver in the capital. In a suo moto role, the HC directed the government authorities to submit monthly reports to the court elaborating on the steps taken to install speed governor seals in all automobiles as per the court's earlier verdict. - *The Daily Star, February 8, 2010.*

Court ruling sparks mixed reactions

A recent High Court verdict brought the Warrant of Precedence into the centre of discussion as its longstanding practice would be changed if the government revises the current precedence following the court verdict. The HC verdict, which declared the existing Warrant of Precedence illegal and void, sparked mixed reaction among people in the judicial arena and administration. - *The Daily Star, February 8, 2010.*

Some HC judges warned over bail

The Appellate Division in a verdict cautioned a few High Court judges for granting bail to convicted fugitive Awami League leader HBM Iqbal, and for staying the order of his conviction ignoring "established principles of the law". The apex court also cancelled the orders of the HC judges and directed Iqbal to surrender before a trial court by February 28 in connection with a corruption case, in which he was convicted and sentenced to 13 years' imprisonment. - *The Daily Star, February 7, 2010.*

Empowered beyond jurisdiction

The Election Commission in its draft rules for administering city corporation polls has empowered executive magistrates beyond their jurisdiction to try some electoral offences in mobile courts. Executive magistrates presiding over mobile courts usually cannot sentence anybody to more than two years of imprisonment. But the EC's draft rules allow executive magistrates to even try those electoral offences for which an individual could be sentenced to a maximum of seven years in prison. - *The Daily Star, February 7, 2010.*

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