



LAWS FOR everyday life

LAW week



Right to housing

THE right to housing is one of the most widely violated human rights. Over one billion people are inadequately housed. The United Nations estimates that a further 100 million people worldwide are without a place to live. One third of humanity (more than two billion people) live without security of tenure, adequate legal safeguards against forced eviction and without access to clean and affordable drinking water in the home.

The right to housing goes further than the right not to be subjected to arbitrary or forced eviction. It also involves a duty on the State to take effective action to enable its people to meet their need for a safe and secure home where they can live with dignity. That is not achieved easily or overnight, but it is now internationally recognised that States must take appropriate steps to ensure the realisation of this right.

According to International Law, adequate housing should include at least the elements of - security of tenure, availability/access to services such as safe drinking water, energy for cooking, lighting, sanitation and waste facilities, adequate space and protection, access to employment and various social services, affordability, and accessibility of the disadvantaged, etc. Various UN resolutions and legal resources were adopted recognising the issue of housing rights for all citizens. The Universal Declaration of Human Rights, adopted in Dec 1998 (Article 25) enshrines specific rights of tenure and equal access to land for all people including women and those in poverty.

The last decade of the 20th century witnessed considerable advancements in human rights law and the seriousness accorded to human rights concerns by States and the international community. The prosecution of international war criminals and the development of an international criminal court, the vast expansion of attention and action on women's human rights and the growing realisation of the need to prevent impunity for human rights violations are just some of the more important steps forward.

There is now a UN Housing Rights Programme providing much needed institutional support to the expansion of housing rights protections throughout the developing world. Dozens of new housing rights laws are now in place that were not there a decade ago and popular awareness of housing rights as human rights has reached a high point.

The global housing rights situation of many hundreds of millions of people has certainly not improved at anywhere near the pace as laws and practices should have allowed. There can be no doubting that the oft-cited gap between law and practice - which affects so many

human rights is sadly alive and well when it comes to housing rights. This glaring disparity between the very positive legal norms in support of treating housing as a human right and the massive scale of housing deprivation throughout the world, though, must not be viewed as inevitable nor something which cannot be put right.

Some legal resources for housing rights

These international laws address housing rights and have been ratified by Bangladesh

INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS (1966)

Article 11(1) recognises the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing and to the continuous improvement of living conditions. It also states that the States Parties will take appropriate steps to ensure the realisation of this right.

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF RACIAL DISCRIMINATION (1965)

Article 5(e) (iii) guarantees the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights... (e) in particular... (iii) the right to housing.

INTERNATIONAL CONVENTION ON THE ELIMINATION OF ALL FORMS OF DISCRIMINATION AGAINST WOMEN (1979)

Article 14(2)(h) ensures to women the right... (h) to enjoy adequate living conditions, particularly in relation to housing, sanitation, electricity and water supply, transport and communications.

INTERNATIONAL CONVENTION ON THE RIGHTS OF THE CHILD (1989)

Article 27(3) states that States Parties must take appropriate measures to assist parents and others responsible for the child and provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

UNIVERSAL DECLARATION ON HUMAN RIGHTS (1948)

Article 25(1) states: Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in



circumstances beyond his control.

Many national Constitutions throughout the world specifically address housing issues, and some contain explicit references to the right to adequate housing. Others suggest more the general responsibility of the State to ensure adequate housing and living conditions to the population at large. Approximately 40 percent of the world's

Constitutions refer to housing or housing rights. There are, of course, no guarantees - legal or otherwise - that the mere inclusion of housing rights within a Constitution will inevitably lead to this right being implemented.

However, the establishment within Constitutions of both individual and family rights to adequate housing and the corresponding series of State obligations to create the legal, social and economic conditions necessary for the satisfaction by all of this right, represent important legal foundations for further actions towards ensuring this right.

The general manner by which most Constitutional provisions are worded, implies the necessity of adopting implementing legislation, designed to specify the bundle of entitlements for individuals and families, as well as the legal duties of the national, regional and municipal authorities. In many countries, if not most, it remains difficult at best to base legal complaints on housing rights before a court of law exclusively upon Constitutional provisions.

Moreover, many courts remain reluctant to entertain complaints dealing essentially with economic, social and cultural rights, let alone housing rights as such. Indeed, where such test-cases have been submitted by homeless or inadequately housed persons and groups, these have often resulted in failure.

Housing rights appear in the Bangladesh Constitutions-

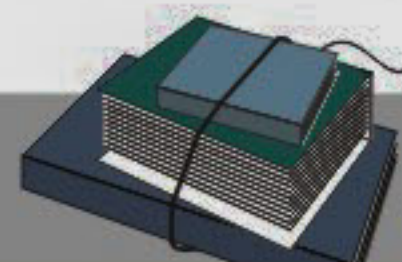
People's Republic of Bangladesh (1972), Article 15 It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing its citizens:

- a) The provision of the basic necessities of life, including food, clothing, shelter, education and medical care.

The inclusion of housing rights within national Constitutions alone will generally do little to alter existing economic, political and social processes currently impeding access for everyone to a place to live in peace and dignity. However, when legislatures have agreed to include housing rights clauses in the highest laws of the land, this signifies at the very least, a political commitment that everyone possesses not just a need for housing, but is entitled to it as a matter of rights.

-Compiled by Law Desk.

LAW lexicon



Domicile - The place where a person has his permanent home to which he intends to return.

Double jeopardy - Putting a person on trial more than once for the same crime. It is forbidden by the Fifth Amendment to the United States Constitution.

Due process of law - The right of all persons to receive the guarantees and safeguards of the law and the judicial process. It includes such constitutional requirements as adequate notice, assistance of counsel, and the rights to remain silent, to a speedy and public trial, to an impartial jury, and to confront and secure witnesses.

Elements of a crime - Specific factors that define a crime which the prosecution must prove beyond a reasonable doubt in order to obtain a conviction: (1) that a crime has actually occurred, (2) that the accused intended the crime to happen, and (3) a timely relationship between the first two factors.

Embezzlement - The fraudulent appropriation by a person to his own use or benefit of property or money entrusted to him by another.

Eminent Domain - The power of the government to take private property for public use through condemnation.

En Banc - All the judges of a court sitting together. Appellate courts can consist of a dozen or more judges, but often they hear cases in panels of three judges. If a case is heard or reheard by the full court, it is heard en banc.

Encyclopedia - A book or series of books arranged alphabetically by topics containing information on areas of law, including citations to support the information.

Enjoin - To order a person to perform, or to abstain and desist from performing a specified act or course of conduct. See injunction.

Entity - A person or legally recognized organization.

Entrapment - The act of inducing a person to commit a crime so that a criminal charge will be brought against him.

Entry - A statement of conclusion reached by the court and placed in the court record.

Environment - The conditions, influences, or forces which affect the desirability and value of property, as well as the effect on people's lives.

Environmental Protection Agency (EPA) - A federal agency created to permit coordinated and environment effective governmental action to preserve the quality of the environment.

Environmental Litigation - Action relating to environment issues. These litigations are filed in order to establish right relating to environment under statutory law and international environmental conventions. Some countries have separate environmental courts to deal with such cases. The recent trend of jurisprudence is that a kind of public interest environmental litigation has developed to promote and protect the environment. Right to environment has been regarded as a corollary of right to life.

Fortiori - The Latin phrase *argumentum a fortiori* denotes "argument from the stronger reason". For example, if it has been established that a person is deceased, then one can, with equal or greater certainty, argue that the person is not breathing.

Source: Jurist International.

RIGHTS monitor

Mixed messages on sex work undermine HIV prevention

CIVIL society is preparing to challenge a recent government decision in Bangladesh to exclude "prostitution" as a profession on new voter cards on the grounds it effectively blocks sex workers' access to HIV prevention and life-saving health care.

On 17 August the Bangladesh Election Commission (BEC) announced "prostitution" would be recognized for the first time as a profession on new voter ID cards. But pressure from conservative religious groups led the BEC to reverse its decision, according to Shahnaz Begum, president of Sex Workers

an impact [on the acceptance of sex workers], as voter ID cards are now essential in many aspects of citizen's life."

ID cards are necessary to open a bank account, apply for a passport, and to register property. While not required for health services, almost all other government forms require an ID card as proof of identity.

Limited legality

When the government tried to shut down two large brothels in Dhaka, the capital, a decade ago, 100 sex workers fought back and won. As a result, sex work is now legal for women over 18, pimps and brothel owners.

health care to sex workers at designated clinics around the country since 1978, but the Health Ministry reports that only 2,000 sex workers used these services in 2009 (0.5 percent of the 400,000 sex workers the NGO SWN estimates are working nationwide).

Begum said the government's mixed messages about sex work are hurting the fight against HIV because sex workers who seek medical treatment are often turned away on the grounds they are "bad women".

A consistent government stance on sex work would help prevent such discrimination, she added. "The legal framework for sex workers exists, but it is not implemented. The mixed public health messages from the government and Election Commission are undoubtedly harmful for reducing the spread of HIV."

NGO clinics

There are dozens of NGO-run drop-in centres nationwide that provide free HIV counselling, condoms and medicines, and a referral system for HIV testing to sex workers and their clients. IRIN spoke to 10 sex workers: All said they preferred to visit NGO clinics due to the conservative attitudes of public health staff.

In 2007, 67 percent of sex workers reported using a condom with their most recent client, according to the UN General Assembly Special Session (UNGASS) 2008 Progress Report.

According to the Joint UN Programme on HIV/AIDS (UNAIDS), in 2009 estimated HIV prevalence among Bangladesh's 160 million people was less than 0.1 percent. The rate for sex workers was about 1 percent, according to the Global Fund to Fight AIDS, Tuberculosis and Malaria.

However, the Global Fund warned that a highly mobile population, coupled with poverty and a low level of awareness about HIV, threaten to increase prevalence.

And until the law can protect sex workers and guarantee their access to health care, civil society leaders taking their case to court say that Bangladesh's status as a low HIV prevalence country may change.

"HIV is not spreading at an alarming rate, but I believe it would decrease further if the government gave [it] full recognition," said Begum.

Legal protection is one of the issues to be addressed at the first UNAIDS consultation in Asia on sex work and HIV to be held 12-15 October in Pattaya, Thailand.

Source: IRIN, the humanitarian news and analysis service of the UN Office for the Coordination of Humanitarian Affairs.



Network (SWN), a local NGO that works in half of the nation's 64 districts.

Election commissioner Sohul Hossain told IRIN the term "sex worker" was omitted in order to prevent commercial sex work, in line with Article 18(2) of Bangladesh's constitution, which states that "gambling and prostitution" should be "discouraged".

But activists are seizing upon Article 40 of the constitution, which gives citizens the right to "enter upon any lawful profession or occupation", arguing that women, therefore, can choose sex work as a profession.

This decision is "ripe for a public interest challenge", said Khaled Chowdhury, a lawyer at the Supreme Court. "Sex work is not illegal, but as moral and social issues are involved, it is not encouraged. The decision of the EC [Electoral Commission] may have

Khaleda asked to vacate in a month

The High Court declared valid the government notice asking BNP Chairperson Khaleda Zia to vacate her Shaheed Mainul Road residence in Dhaka Cantonment within a month. The court came up with this verdict after rejecting a writ petition filed by Khaleda Zia challenging the government notice. An HC bench comprised of Justice Nazmun Ara Sultana and Sheikh Hassan Arif also vacated its stay order on the notice. Details of the verdict could not be known immediately. Khaleda's principal counsel TH Khan said they are stunned by the HC judgement. "We will decide on filing an appeal with the Supreme Court against the judgement after consulting our leader," he said. - *The Daily Star*, October 14, 2010.

5 officials appear at High Court

Five government high officials, among six, appeared before a High Court (HC) bench in connection with a contempt of court petition. Bangladesh Environmental Lawyers Association (BELA) filed the contempt petition with the HC against them for providing no objection certificate (NOC) to two toxic ships violating a court order. The chairman of Chittagong Port Authority (CPA) could not be present at the court due to the unrest at the port. The court directed the CPA chairman to appear before it on October 28. The five officials, who appeared before the court, are Monwar Islam, director general of the Department of Environment (DOE), its Director (Chittagong Port) Md Zafar Alam, Director General of the Department of Shipping Rear Admiral Bazlur Rahman, its Chief Chemist Mosharrif Ashraf and Collector of Customs (Import) Golam Kibria. - *The Daily Star*, October 14, 2010.

Constitution to be reprinted soon

The government is going to reprint the constitution restoring the articles that were either amended or repealed during the first martial law regime. The Ministry of Law will conduct the printing as soon as possible in line with the Supreme Court's landmark verdict scrapping the Fifth Amendment to the Constitution. The decision came at a meeting of the parliamentary special committee for constitutional amendment. Similarly, changes that were incorporated into the Constitution through martial law proclamations and ratified by the Fifth Amendment will also be dropped from the country's supreme charter, a committee member told *The Daily Star*. - *The Daily Star*, October 13, 2010.

ACC bans use of phone by its officials for inquiry

The Anti-Corruption Commission (ACC) has imposed a ban on land phone or cellphone use by its officials during investigation. Against the backdrop of widespread allegation of extortion over phone using names of ACC, the anti-graft watchdog came up with the decision. "We have taken the decision so that no dishonest person can take privilege of a situation, and to save people from harassment and cheating," said ACC Chairman Ghulam Rahman. During investigation, an ACC official normally uses phone to make appointment with suspects or to communicate with them for their interview regarding a complaint. - *The Daily Star*, October 13, 2010.

Stop issuing NOC to import toxic scrap ships

The High Court (HC) directed the government authorities not to issue any no objection certificate (NOC) for importing scrap ships in the country without environmental and decontamination certificates. The court also recalled the recent interim order of another HC bench, which allowed importing ship without environment clearance certificate (ECC). An HC bench comprised of Justice Md Imman Ali and Justice Obaidul Hasan passed the order in response to a petition filed by Bangladesh Environmental Lawyers Association (BELA). The HC earlier directed the government not to allow any ship-breaking yard to run without ECCs. But none of the ship-breaking yards obtained any ECC from the Directorate of Environment (DOE). - *The Daily Star*, October 12, 2010.

Move on to include RTI in textbooks

Chief Information Commissioner (CIC) Muhammad Zamir has said efforts are underway to include right to information issues in the secondary, higher secondary and madrasa level textbooks. "We have to make common people aware of their constitutional rights to information to attain the objectives of Information Commission," he said. The commissioner was speaking at a discussion on the implementation of the Right to Information Act with the representatives of print media at the commission's conference room. The CIC said he has already discussed the matter of including some chapter on human rights issues in school, college and madrasa education syllabus with high level policy making bodies and individuals. - *The Daily Star*, October 12, 2010.

Save Lalbagh fort from grabbers

The High Court directed the government to take a set of steps to protect and preserve the Mughal-built Lalbagh Kella (fort) in Old Dhaka. As directed, the government has to demarcate the fort area through a survey and remove all private structures from there within three months. The Directorate of Land Records and Surveys will conduct the survey, the court said. The HC also ordered construction of a five-metre wide walkway around the historic fort following legal procedures. An HC bench comprised of Justice Syed Mahmud Hossain and Justice Gobinda Chandra Tagore issued the directive in response to a petition filed by Human Rights and Peace for Bangladesh. - *The Daily Star*, October 11, 2010.

High Court 'exonerates' EC Sohul

The High Court (HC) "exonerated" Election Commissioner Muhammed Sohul Hussain from a contempt of court charge, while observing that he was grossly contemptuous. An HC bench of Justice AHM Shamsuddin Chowdhury Manik and Justice Sheikh Md Zakir Hossain said the election commissioner was contemptuous of the court by making comments on a sub justice matter regarding the Jatiya Sangsad membership of Awami League leader MK Alamgir. The "exoneration" was granted because the accuser, MK Alamgir, himself had requested for the relief, it added. - *The Daily Star*, October 11, 2010.

Target borderland disputes

Bangladesh and India are going to hold bilateral talks in a bid to permanently resolve all border related issues in New Delhi on November 10-11. A highly placed source says the Awami League government is determined to resolve the decades-old disputes involving 3,000 acres of Bangladesh land inside India, 51 enclaves and 6.5 kilometres of un-demarcated border. Similarly, India has around 3,500 acres of land and 111 enclaves adversely possessed inside Bangladesh. Since assuming power the AL-led government has been persuading India to address these issues once and for all. Delhi has finally agreed to hold a meeting of the Joint Boundary Working Group (JBWG) of both the countries. - *The Daily Star*, October 10, 2010.

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