

FOR YOUR INFORMATION

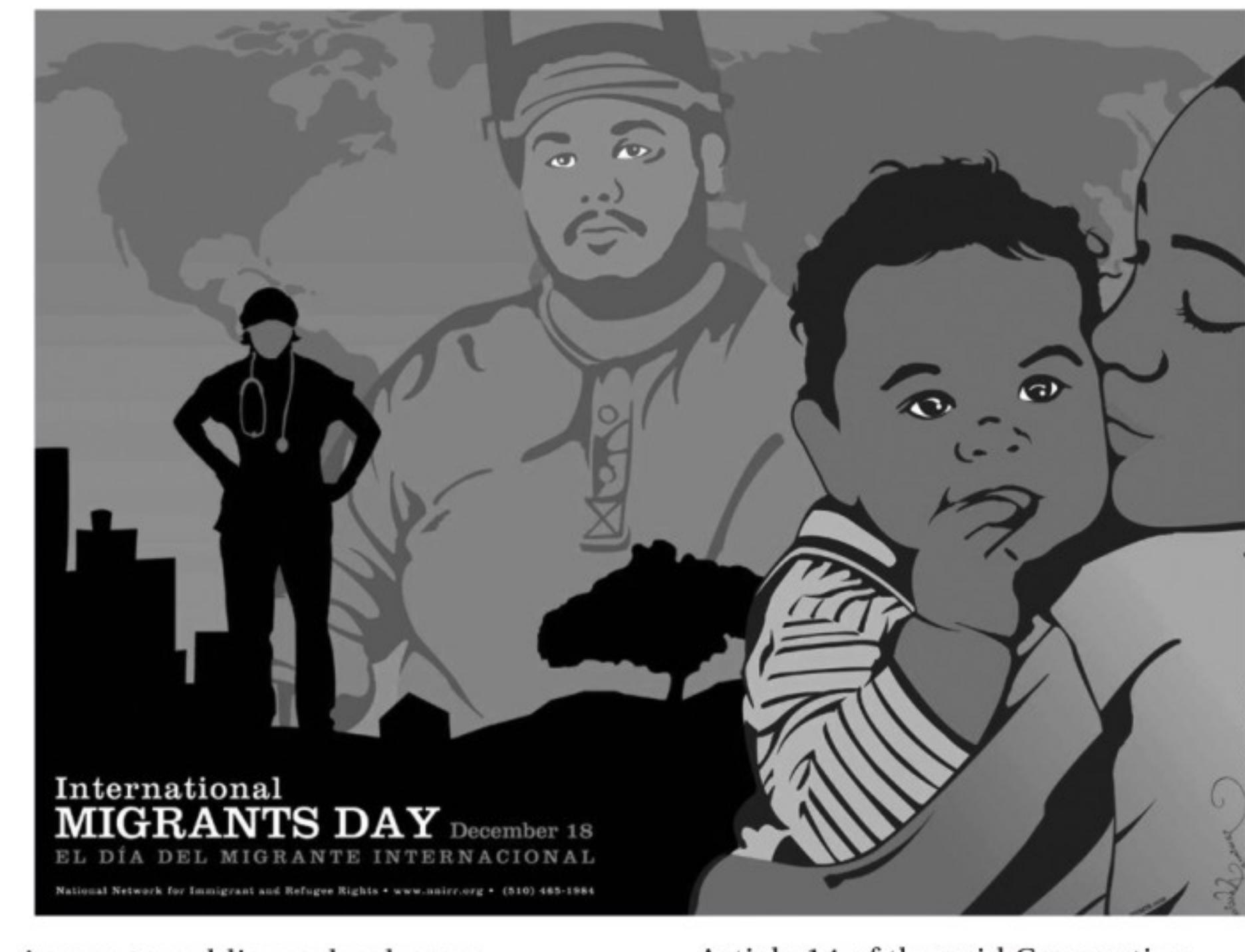


The human rights of migrants

NOOR JAHAN PUNAM

THE International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families is an outcome of a very lengthy process internationally. At present securing the human rights of the migrants is a necessity as the number of migrants lie between 185 million and 192 million which represents 3% of the world population [Source: United Nations Information Kit].

The main aim of the Convention is to promote respect for the migrants' or their families' human rights. The Convention does not make provisions for new heads of human rights for migrants or their families but seeks to guarantee equal treatment and same working conditions for migrants and nationals. This involves the provision that, 'No migrant worker or member of his or her family shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment' - Article 10. Further, in Article 11, it is stated that 'No migrant worker or member of his or her family shall be held in slavery or servitude' and also that, 'No migrant worker or member of his or her family shall be required to perform forced or compulsory labour'. In lieu with these, Article 25 provides that, 'Migrant workers shall enjoy treatment not less favourable than that which applies to nationals of the State of employment in respect of remuneration'. Article 54 elaborates on Article 25 by stating that, 'Without prejudice to the terms of their authorization of residence or their permission to work and the rights provided for in articles 25 and 27 of the present Convention, migrant workers shall enjoy equality of treatment with nationals of the State of employment in respect of: (a) Protection against dismissal; (b) Unemployment benefits; (c)



Access to public work schemes

intended to combat unemployment; (d) Access to alternative employment in the event of loss of work or termination of other remunerated activity, subject to article 52 of the present Convention.

The Convention also guarantees migrants' rights to freedom of thought, expression and religion along with access to information on their rights in Article 12, Article 13, Article 33 and article 37. The provision of rights to freedom of religion can be explained by quoting from the Convention where it states that, 'This right shall include freedom to have or to adopt a religion or belief of their choice and freedom either individually or in community with others and in public or private to manifest their religion or belief in worship, observance, practice and teaching'.

Article 14 of the said Convention provides that, 'No migrant worker or member of his or her family shall be subjected to arbitrary or unlawful interference with his or her privacy, family, correspondence or other communications, or to unlawful attacks on his or her honour and reputation. Each migrant worker and member of his or her family shall have the right to the protection of the law against such interference or attacks'.

Furthermore, the Convention ensures their right to legal equality which implies that migrants are subject to correct procedures has access to interpreting services and is not sentenced to disproportionate penalties such as expulsion. These rights are covered in Articles 16-20, 22. The Convention also sets out provision for

migrants' access to educational and social services such as medical care, vocational training, etc., in Articles 27-28, 30, 43-45, 54.

The Convention ensures that migrants' right to participate in trade union in Article 26 and Article 40 provides for their right to form association where it states that, 'Migrant workers and members of their families shall have the right to form associations and trade unions in the State of employment for the promotion and protection of their economic, social, cultural and other interests'.

The Convention also states that migrants should have the right to remain connected to their country of origin which includes ensuring that migrants can return to their country of origin if they wish to and that they are allowed to pay occasional visits and are encouraged to maintain cultural links plus guaranteeing migrants' political participation in the country of origin. These rights are protected by Articles 8, 31, 38, 41-42.

In addition to all the above provisions, the Convention states that all migrants regardless of whether they are documented or undocumented, are entitled to minimum degree of protection. However, the Convention does appreciate the fact that legal migrants have the legitimacy to claim more rights than the undocumented migrants but it emphasizes that those undocumented migrants must see that their human rights are respected just like any other human being.

We should appreciate the fact that the migrants in any country are human beings before being migrants thus; they are entitled to those rights which any other human being is entitled to, in this modern age.

The writer is working with the Law Desk.



Khaleda's plea turned down

The High Court on December 14 rejected BNP Chairperson Khaleda Zia's appeal to it to stop the proceedings against her in Shahid Zia Charitable Trust corruption case. Delivering the verdict on a petition, the court said trial of the case against Khaleda will proceed in the lower court in accordance with the law. On what grounds the HC rejected the petition could not be known as the copy of the verdict was not released. The attorney general, however, said the HC served the ruling on the grounds that the trial court would settle whether allegations brought against the opposition leader in the case are true. An HC bench of Justice Khandker Musa Khaled and Justice SH Nurul Huda Jaygirdar delivered the verdict after hearing arguments from counsels of the accused and the Anti-Corruption Commission, and Attorney General Mahbubey Alam. - *The Daily Star December 15 2011*.

SC asks govt to amend ship-breaking rules

The Supreme Court on December 14 directed the government to amend the recently framed ship breaking and recycling rules, as they do not ensure protection of workers and the environment. It asked the administration to publish a gazette notification on the amended rules and place it before the court by January 12. A five-member bench of the Appellate Division headed by Chief Justice Md Muzammel Hossain also fixed the day for passing further order on the issue. The SC directive came after Fida M Kamal, a counsel for Bangladesh Environmental Lawyers Association (Bela), had pointed out that the safety issue was missing in the rules. He said the rules had been formulated in light of Hong Kong International Convention that has not yet come into effect. - *The Daily Star December 15 2011*.

HC rejects petitions of Nizami, Mojahed

The High Court on December 14 rejected two separate petitions filed by Jamaat-e-Islami leaders Motiur Rahman Nizami and Ali Ahsan Mohammad Mojahed for quashing the proceedings against them in Barapukuria coalmine corruption case. Delivering a verdict on the petitions, the HC also vacated its earlier order that stayed the proceedings against the top Jamaat leaders. The HC bench of Justice Mohammad Anwarul Haque and Justice Md Mujibur Rahman Miah yesterday delivered the verdict after holding hearing on the petitions. Barrister Abdur Razzaq appeared for Nizami and Mojahed. - *The Daily Star December 15, 2011*.

Ghulam faces 52 charges

The prosecution of International Crimes Tribunal pressed 52 war crimes charges against former Jamaat-e-Islami chief Ghulam Azam. The charges include leading the mass murder of intellectuals on December 14, 1971 and the killing of 38 prisoners of Brahmanbaria jail. Ghulam Azam, considered by many a symbol of war crimes, was also held responsible by the prosecutors for all atrocities committed across the country from March 25 to December 16, 1971. Chief Prosecutor Ghulam Areeff Tipoo placed the charges before the International Crimes Tribunal and sought arrest warrant for the ex-Jamaat ameer. The tribunal received the charges through its registrar's office. Earlier on December 11, the prosecutors submitted formal charges of war crimes against top Jamaat leaders Motiur Rahman Nizami, Ali Ahsan Mohammad Mojahed and Muhammad Kamaruzzaman. - *The Daily Star December 13 2011*.

Order on SQ Chy's petitions Nov 30

The International Crimes Tribunal (ICT) on December 12, fixed December 19 for passing order on the petitions submitted by BNP leader Salauddin Quader Chowdhury on November 30. The three-member tribunal headed by its Chairman Justice Nizamul Huq set the date following the hearing on the petitions. The ICT also appointed Mohammad Badiuzzaman, a Supreme Court lawyer to represent Salauddin. In the petitions, Salauddin, who faces charges of crimes against humanity during the Liberation War in 1971, demanded a year's time to accumulate necessary documents and witnesses in his favour for the trial; live broadcast of his trial proceedings on the electronic media and a clear definition of 'crimes against humanity' in the rules of procedure. - *The Daily Star December 13 2011*.

HC asked report on fire safety at hospitals

The High Court on December 12 asked for a report on fire safety measures at hospitals, clinics and other health centres across the country. The director general of Directorate General of Health Services (DGHS) will have to submit the report by February 28. The court directive came in a suo moto move after a report was published in a Bangla daily on December 12 that most of the hospitals and clinics are at risk and most health centres do not have fire fighting equipment to douse fire. The HC bench of Justice AHM Shamsuddin Chowdhury Manik and Justice Jahangir Hossain Salim passed the directive. The directive came three days after a devastating fire swept through a super-specialty hospital, AMRI Hospital, in Dhakuria locality in Kolkata. A total of 92 people, including one Bangladeshi, were killed in the fire. - *The Daily Star December 13 2011*.

Dear reader,

You may send us your daily life legal problems including family, financial, land or any other issues. Legal experts will answer those.

Please send your mails, queries, and opinions to: Law Desk,

The Daily Star 64-65, Kazi Nazrul Islam Avenue, Dhaka-1215; Tel:

LAW NEWS



HRSS starts from 20 December

This year Human Rights Summer School (HRSS) is going to be held at PROSHIKA HRDC, Koitta, Manikgonj on 20-30 December 2011 with the participation of 48 selected law students of 13 universities of home and abroad. HRSS is a two weeks residential course on human rights jurisprudence conducted by law research institution Empowerment through Law of the Common People (ELCOP). This is the 12th year of Human Rights Summer School (HRSS), a unique endeavour of University Law Teachers and students of Bangladesh. Organized by ELCOP, HRSS has gained international character as of now, since its inception in 2000. This year the theme of HRSS is 'Human Rights and Environment'. The theme chosen this year is largely circumscribed by the fact that right to environment is being considered to be one of the foremost human rights for mankind's existence.

Over 48 university law students from different universities of India, Nepal and Bangladesh are undergoing in this intense human rights and art of advocacy course. Academicians, Jurists, Human Rights Activists would form the corpus of the teaching faculty. HRSS is peculiar in the sense that the students get scope to learn by brain storming, group reading, and community visit etc. They get the opportunity of coming in contact with the legal giants of the country and overseas.

Law, Justice and Parliamentary Affairs Minister Barrister Shafique Ahmed is expected to open the 12th HRSS while Professor Dr. Mizanur Rahman, Honorable Chairman, National Human Rights Commission of Bangladesh, and Prof. Dr. M. Shah Alam, Chairman, Law Commission Bangladesh and Ms Shaheen Anam, Executive Director, Manusher Jonno Foundation (MJF) would grace the occasion as Special Guests. Professor A K Azad Chowdhury, Chairman, University Grants Commission, would award certificate in the closing session as Chief Guests. HRSS's chief motto is 'lawyering for the poor is lawyering for justice'. ELCOP has so far produced over 500 'rebellious lawyers' who are educated to interpret law for the protection and promotion of human rights.

ELCOP press release.

This week Your Advocate is Barrister Tanjib-ul Alam Advocate, Supreme Court of Bangladesh. He is the head of the chamber of a renowned law firm, namely, 'Tanjib-ul Alam and Associates', which has expertise mainly in commercial law, corporate law, admiralty, employment and labor law, land law, banking law, constitutional law, telecom law, energy law, Alternative Dispute Resolution, Intellectual Property Rights and in conducting litigations before courts of different hierarchies.

Query

I attended a conference last week where various flipcharts were used by different professionals. I took pictures of a few flipcharts and I wish to write some Articles on this issue. I wish to use the pictures of those professionals in my article. I want to know if any issue would arise under copyright law at all. And if I actually use those pictures, what type of legal action may bring against me and for that what would be my defence? Is it necessary to take permission of author/ professionals under any circumstances? **Anonymous**

Response

From the perusal of your query, you seem to have two concerns, namely (a) using pictures of flipcharts that you have taken and (b) using the pictures of the professionals in your article. From your query it is not clear whether you want to use the "picture" of the charts or the "picture of those professionals" in your article. Which of these two actions you intend to take is not clear to me. In the second sentence of your query above you have stated that you have taken "pictures of a few flipcharts" then again in the next sentence you have stated that you "wish to use the pictures of those professionals" in your article. Your query does not reveal that you have taken picture of "those professionals" nor does it reveal that you intend to use the pictures of the flipcharts in your article.

Assuming that you want to use the "picture of those professionals" and that while taking their picture you took their permission, in my opinion, you will not be violating any copyright law as you will be publishing your own copyright work. However, it should be kept in mind that regardless of the copyright law, a person has the right to prevent you from publishing his

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as such you are the owner of the copyright of the picture itself.

However, your picture contains copyright work of someone else i.e. the professionals who prepared the flipcharts, then by taking a picture you have already copied the work. Since your picture contains charts, which is a copyright work of someone else, you are not allowed to publish it without the permission of the copyright owner. If you do so, you will be infringing the copyright of the authors of the flipcharts.

Assuming that you want to use the "picture of those professionals" and that while taking their picture you took their permission, in my opinion, you will not be violating any copyright law as you will be publishing your own copyright work. However, it should be kept in mind that regardless of the copyright law, a person has the right to prevent you from publishing his

picture if you have taken it without his permission even if such publication is not an infringement of copyright law.

When you "use" any data from the flipcharts that you have taken picture of, you will be copying the literary work of the author. Such copying of literary work may not constitute infringement of copyright if you can establish that you have used the information for educational purpose with due acknowledgement and without any business intention. In other words, there are certain defence available under the Copyright Act which will give you protection if are able to use them. These defence include, using the copyright work for educational purpose, not for business purposes, reverse engineering etc.

Good luck with your writing.

For detailed query contact: info@tanjibalam.com.