

LAW EVENT



Urge to facilitate better protection for the refugees

MAHDY HASSAN

EMPOWERMENT through the Law of the Common People (ELCOP) a research and advocacy NGO, commissioned by the National Human Rights Commission, Bangladesh organized a whole day training program on refugee laws and issues at National Planning Development Centre, Nilkhet, Dhaka in 1st September 2012 and two days long training program in Cox's Bazar in September 12 and 13. "The program aims to sensitize the participants on refugees' rights and international human rights mechanism for their protection," said Dr. Mizanur Rahman, Chairman, National Human Rights Commission Bangladesh in the inaugural session of the program held in 1st September 2012. The agenda of the training included basic understanding of human rights, correlation between human rights law and refugee law, understanding of persecution, asylum, correlation of refugee law and human rights law, refugees' rights within the Constitution and laws of Bangladesh, conceptual background of the internally displaced persons (IDPs) and stateless persons, international legal and institutional mechanism to protect IDPs, UNHCR's role in refugee protection, administration of justice in refugee camps in Bangladesh, identity crisis and legal status of Biharis in Bangladesh, accession to the Refugee Convention, and Bangladeshi refugees in India in 1971 and reasons for today. The total participants of the 3 days training program were 75 from RAB, Police, BJB, Cost Guard and lawyers.

Dr. Rahman said that we could not forget about our responsibility towards refugees. International Community is pressurizing us continuously. Moreover, we have to think about that if India would not accept us in 1971 what would have been our condition! Although, in 1971, India did not sign the Refugee convention, they accepted us considering the



universal humanity. Therefore, sometime law is immaterial. We have to think beyond law. We hope that after doing our respective job when we meet with refugees, our mind will be filled up with humanity. "We have to create a human rights culture situation in the country and for that we are working continuously for the protection and promotion of human rights" said Dr. Rahmat Ullah, Executive Director, ELCOP while addressing the closing and certificate awarding program of the training. He discussed about the concept of human rights in the training program. Recommending for accession to the Refugee Convention, Assistant Professor of Law, Jagannath University, SM Masum Billah, said that Bangladesh has been hosting refugees and extending assistance to them for a long time, however did not sign the relevant instruments. "Likely, the government does not want to go under any legal obligation, which is not a right standing," opined SM Masum Billah. He observed that Bangladesh has already become a party to major international human rights instruments, which obliged it to the protection of refugees' rights anyway. So, no logic sustains here not to be a party to the Refugee Convention. Underscoring the need for a

legal regime and institutional mechanism for refugee status determination (RSD) by the government of Bangladesh, he mentioned that this would facilitate an effective protection for the refugees and identification of illegal immigrants in the country. Referring to the Rohingyas from Myanmar, he said that due to absence of a registration mechanism, there is no authentic data on the Rohingyas and other foreigners staying in Bangladesh illegally. A significant number of the Rohingyas, got *de facto* citizenship here. Mr. Shafiqur Rahman Khan, Director, ELCOP discussed the origin and development of human rights and refugee law and their correlation.

On the last day in 15 September, there was a panel discussion on "Protection of Refugees: Role of the Host Country, UNHCR and the International Community. Ms. Olga Narymsky, Protection Officer and Istiaque Ahmed, Senior Protection Assistant, UNHCR took sessions over the issue. The recommendations of different presentations during the three days included: Bangladesh's accession to the Refugee Convention and its Protocol, adoption of comprehensive national legal framework on refugees, policy on the Rohingyas in Bangladesh, national authority for refugee issues, proper training for government officials and NGO workers dealing with refugees, better and humane treatment for recognized refugees, judicial and legal activism to set up a legal regime, involvement of NGOs and civil society in refugee operations, active role of international community for find out durable solution for the Rohingya problem including their repatriation, effective initiatives of the government of Myanmar and Bangladesh, and continued international support for care and maintenance of refugees in Bangladesh. Selim Md. Jahangir, SP, Cox's Bazar and Lt. Col. Khalequzzaman PSC awarded certificates on different occasions.

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LAW NEWS



Under-5 child mortality on significant decline

THE pace of reducing child deaths has accelerated sharply since 2000, according to new data released today by UNICEF, the World Health Organization, the World Bank and the UN Population Division. An annual report by the UN Inter-agency Group for Child Mortality Estimation (UN-IGME) shows that in 2011, an estimated 6.9 million children died before their fifth birthday, compared to around 12 million in 1990. Rates of child mortality have fallen in all regions of the world in the last two decades down by at least 50 per cent in Eastern Asia, Northern Africa, Latin America and the Caribbean, South-eastern Asia and Western Asia.

And progress is accelerating: Between 2000 and 2011, the annual rate of reduction in the global under-five mortality rate jumped to 3.2 per cent, up from 1.8 per cent in 1990-2000. Sub-Saharan Africa, the region with the greatest challenge in child survival, has doubled its rate of reduction, from 1.5 per cent per year in 1990-2010 to 3.1 per cent in 2000-2011. An estimated 19,000 children still died every day in 2011, and around 40 per cent in the first month of life most from preventable causes. And the gains in child survival, although significant, are still insufficient to achieve Millennium Development Goal 4 of reducing the global under-five mortality rate by two-thirds between 1990 and 2015. Only six of the world's 10 regions are on track to reach the target. Proven solutions need to be expanded to accelerate progress on child survival faster and farther.

Committing to Child Survival: A Promise Renewed is a global movement to accelerate action on maternal, newborn and child survival and build on progress since 1990. More than 100 governments have since June renewed their commitment to child survival.

Sub-Saharan Africa and Southern Asia face the greatest challenges in child survival, and currently account for more than 80 per cent of global under-five deaths. Their disparity with other regions is becoming more marked as regions such as Eastern Asia and Northern Africa have cut child deaths by more than two thirds since 1990.

Half of all under-five deaths occurred in five countries: India (24 per cent), Nigeria (11 per cent), Democratic Republic of the Congo (7 per cent), Pakistan (5 per cent) and China (4 per cent). India and Nigeria account for more than a third of all under-five deaths worldwide. Globally, the leading causes of death among children under five are pneumonia (18 per cent of all under-five deaths), preterm birth complications (14 per cent), diarrhoea (11 per cent), complications during birth (9 per cent) and malaria (7 per cent).

The UN-IGME 2012 report calls for systematic action to reduce neonatal mortality as the proportion of under-five deaths during the neonatal period is rising in every region and almost all countries. Highly cost-effective interventions are feasible even at the community level. Accelerating the reduction in under-five mortality is possible by expanding preventative and curative interventions that target the main causes of post-neonatal deaths and the most vulnerable children.

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RIGHTS MONITOR



Displacement and human rights

MOSTAFA MAHMUD NASER

SCIENTISTS and expert bodies such as IPCC confirm that the environmental degradations due to the effects of climate change are likely to trigger mass human displacement in Bangladesh. Consequently, the involuntary human movement implicates a bundle of universally recognised human rights and humanitarian norms and standards in a myriad of ways. Both civil and political rights and economic, social, and cultural rights are likely to be implicated by such displacement. Under international human rights law, generally a state bears human rights obligations towards all persons within its jurisdiction. Since most climate induced displacement in Bangladesh is likely to be internal within its territory, in line with the obligation under human rights treaties, the Government incurs obligation to take measures to protect fundamental human rights of the people displaced due to the impacts of climate change. The existing body of international human rights norms, principles and jurisprudence such as the UN Guiding Principles, IASC Operational Guidelines and Hyogo Framework can provide guidelines for framing such legal framework for protection of human rights of climate induced displaced persons.

Although Bangladesh with its limited resources is trying hard to cater the challenges posed by climate change on human life and livelihood, the scarcity of resources including human, financial, and technological constraint the efforts to mitigate the effects of climate change. The protective measures, such as building large infrastructure like embankments and rehabilitation centres for disaster affected people, sustainable adaptation programmes, innovative agriculture to ensure food security, large scale relocation and resettlement for those who are likely to lose land, home, and livelihood due to sea level rise and others environmental degradations, are yet to be effectively implemented. Given the size and range of impacts, and the large number of people affected, it is widely recognised that Bangladesh

requires substantial amount of financial resources for managing and protection of people who are already displaced or climate victims likely to be displaced in coming decades.

The international community invokes some extraterritorial human rights obligations under international human rights law, especially when a state is unwilling or unable to assume the responsibility to protect the human rights of its citizens. One of the purposes of the UN is to "achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion". A number of human rights instruments, including the International Covenant on Economic, Social and Cultural Rights (ICESCR), encourage such an international cooperation according to which states parties should support the governments, local communities and national agencies which are not in a position to ensure basic rights for their populations. Article 2(1) of ICESCR refers to an obligation on states to utilize available international assistance towards the fulfillment of the human rights of all people around the world. The Paragraph 14(f) of the UNFCCC Cancun Adaptation Framework also invites all states parties to take "measures to enhance understanding, coordination and cooperation with regard to climate change induced displacement, migration and planned relocation, where appropriate, at national, regional, and international levels".

In this context, it may also be appropriate to explore the potential of emerging concept of 'Responsibility to Protect' (R2P) to address the situation of climate induced displacement change to recognize a responsibility of the international community to take appropriate and effective measures to protect those displaced by climate change (and indeed those affected by climate change but not displaced by it); and to sustainably rebuild communities

displaced by climate change, by providing permanent and durable solutions. The R2P framework is in itself an innovative approach to address an apparent operational protection gap in international law and has been developed to reaffirm the United Nations high moral authority for the universal protection of human rights. The emerging doctrine of the R2P, which emphasizes that while the primary responsibility for the protection of a State's people lies with the State itself, the sovereign principle of non-intervention must yield to an international responsibility to protect where a population is suffering serious harm (whether due to internal war, insurgency, repression, or state failure) and the state is unwilling or unable to halt or avert it.

Although the R2P framework is not a legally binding norm, it may have potential to conceptualize the problem and can be applied only when the impacts of climate change degrade the situation in a particular country in such a way that the state fails to prevent harm to its population. In Bangladesh scenario, in many situations concerning climate change displacement, the government is simply unable to provide effective and extensive assistance to its citizens since the capacity of the national government is severely limited. In such situation, however, inaction by the international community leaving mass people who were compelled to leave their home due to adverse impacts of climate change and in destitute of any government support to suffer would indeed defy the pledge of universal human rights enunciated in UN Charter.

Thus, it is a human rights obligation for international community to extend international cooperation and transfer financial and technological resources to least developed countries including Bangladesh for human rights protection of people affected by climate change. With such assistance possibly Bangladesh will be able to offer durable solutions to the displacement caused by climate change.

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LAW WEEK

War crimes suspect Jamaat leader Subhan held

Members of an intelligence agency detained war crimes suspect Jamaat-e-Islami Nayeb-e-Ameer Maulana Muhammad Abdus Subhan along with his two companions at Bangabandhu Bridge toll plaza in Tangail on September 20. A DGFI member said they detained the Jamaat leader and his two accomplices when they were travelling by a jeep from Dhaka to Pabna. He said Maulana Subhan has been kept in the toll plaza for his security. - *The Daily Star online edition September 20 2012.*

SC stays HC's permission for Bazlul's candidacy

Independent candidate Bazlul Haque cannot contest the September 30 Gazipur-4 by-election, as the Supreme Court on September 19 stayed for eight weeks a High Court order that asked the Election Commission to allow him to run the race. The EC had cancelled his candidacy on grounds that he did not submit attested copies of his educational certificates and the paper showing support of one percent of voters of the constituency. Bazlul however denied the allegation and filed a writ petition with the HC, which asked the EC on September 18 to allow him to contest the election. - *The Daily Star September 20 2012.*

Info commission settled 52 complaints this year

Information Commission this year has settled a total of 52 complaints filed to the commission by information seekers on different issues till September 19. Twelve out of 14 complaints has been settled in the last two days in separate hearings at the commission's court while hearing date for the remaining two complaints has been fixed. Acting Chief Information Commissioner M A Taher chaired the hearing while Information Commissioner Prof Sadeka Halim was present among others. - *The Daily Star September 20 2012.*

Judge dismisses case against Suranjit

A Dhaka court on September 18 summarily dismissed a defamation case against minister without portfolio Suranjit Sengupta hours after it was filed against him on charge of making "derogatory" remark about lawyers and courts on September 16. The judge passed the order saying that there was no sufficient ground to take the case into cognisance. Advocate Sultan Mahmud, a lawyer of Dhaka District Judge's Court, filed the case alleging that Suranjit, who was talking about the lawyers and courts at a programme titled 'Law and Human Rights' organised by South Asian Lawyers' Forum at Jatiya Press Club on September 16, said money makes everything possible. Suranjit also said majority people are now deprived of rule of law. The news was published the following day in a Bangla daily. - *The Daily Star September 19 2012.*

HC directive sought to recover Tk 3,547cr

A writ petition has sought a High Court directive on the government to immediately recover Tk 3,547 crore taken by Hall-Mark Group and five other companies from the Sonali Bank through forgery. Supreme Court lawyer Eunus Ali Akond filed the petition on September 17 with the HC, seeking its order on the authorities concerned of the government to confiscate the assets of the companies on failure to refund the money. The petitioner prayed to the court to order the seizure of the passports of Hall-Mark Group's Managing Director Tanvir Mahmud and his wife, so that they cannot leave the country. He also urged the HC to ask the government to constitute a judicial commission to probe the irregularities in all the public and private banks. Earlier on September 11, three Supreme Court lawyers had filed another writ petition with the HC seeking its directive on the government to form a judicial commission to probe the loan scam involving the Sonali Bank and Hall-Mark Group. - *The Daily Star September 18 2012.*

HC puts injunction on journos

The High Court imposed a four-month injunction on journalist leaders from making defamatory or prejudicial statements against ATN Bangla Chairman Mahfuzur Rahman over the murder of journalist couple Sagar-Runi. The court passed the order on September 11 following an appeal filed by Mahfuzur seeking the injunction. The injunction was issued on Iqbal Sobhan Chowdhury, Ruhul Amin Gazi, Abdul Jalil Bhuyian, Omar Faruque, Shaban Mahmud, Shakhawat Hossain Badsha, Abdus Shahid, Muhammad Baker Hossain and Jatiya Press Club and Dhaka Reporters Unity leaders. Earlier, on February 11, Sagar Sarowar, a news editor at Maasranga, and his wife Meherun Runi, a senior reporter for ATN Bangla, were murdered in their West Rajabazar residence in the capital. - *The Daily Star September 16 2012.*

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