

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME

PROCEDURES SPECIALES DU
CONSEIL DES DROITS DE L'HOMME

UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

SPECIAL PROCEDURES OF THE
HUMAN RIGHTS COUNCIL

Mandates of the Special Rapporteur on the right to food; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and the Special Rapporteur on the human right to safe drinking water and sanitation.

REFERENCE: AL Food (2000-9) Assembly & Association (2010-1) Health (2002-7) G/SO 214 (107-9) G/SO 214 (106-10) G/SO 214 (78-15) Water (2008-1) BGD 5/2012

21 August 2012

Excellency,

We have the honour to address you in our capacities as Special Rapporteur on the right to food; Special Rapporteur on the rights to freedom of peaceful assembly and of association; Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the human rights of migrants; Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; and Special Rapporteur on the human right to safe drinking water and sanitation pursuant to Human Rights Council resolution 13/4, 15/21, 15/22, 16/5, 17/12, 16/33, and 16/2.

In this connection, we would like to draw the attention of your Excellency's Government to information we have received concerning the **recent order to ban three humanitarian aid organizations from supporting unregistered Rohingya asylum-seekers, refugees and migrants in and around unofficial camps in the Cox's Bazar district in south-eastern Bangladesh**. The situation of the Rohingya was the subject of a previous communication sent to your Excellency's Government on 8 April 2010 by the Special Rapporteur on the human rights of migrants, Special Rapporteur on the right to food, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and Special Rapporteur on the right of everyone to the highest attainable standard of physical and mental health. We regret that, to date, no reply has been received in the matter.

According to information received:

Three humanitarian aid organizations, Médecins Sans Frontières (MSF), Action Contre la Faim (ACF) and Muslim Aid UK, reportedly received letters on 2

August 2012 from the NGO Affairs Bureau attached to the Office of the Prime Minister, asking them to cease their operations in the Cox's Bazar district in south-eastern Bangladesh (except in the two official camps, housing some 30,000 registered Rohingya, run by the Government and supported by the United Nations High Commissioner for Refugees and other partners). It is alleged that the Government has accused the three aid organizations of encouraging Rohingya to flee to Bangladesh from Myanmar.

Tens of thousands of Rohingyas from Myanmar have sought refuge in Bangladesh. Reportedly, there are some 40,000 unregistered Rohingyas who have fled Myanmar in the past years, including more recently individuals escaping the fresh outbreak of violence and on-going arrests in Rakhine state in Myanmar. The majority of these Rohingya has settled in the Leda and Kutupalong unofficial camps in the Cox's Bazar district and relies heavily on humanitarian assistance provided by non-governmental organizations.

Near the Kutupalong unofficial camp, which allegedly hosts some 26,000 unregistered Rohingya, it is reported that MSF runs a clinic providing health and nutrition services. The MSF clinic reportedly provides comprehensive health care on a monthly basis to approximately 5,000 individuals (both Rohingyas and local Bangladeshis), half of whom are under five years old. MSF estimates that nearly 30 per cent children in Kutupalong are malnourished and are in need of urgent humanitarian assistance. Concerns have been raised that without the services provided by MSF, thousands risk losing access to lifesaving health care. ACF is said to run water and sanitation projects in Kutupalong and, without these projects, it is alleged that the already substandard hygiene and sanitation conditions will further deteriorate, raising fears of the spread of diseases and possibly leading to death, in particular of children.

Near the Leda unofficial camp, where some 13,000 unregistered Rohingya have found shelter, Muslim Aid UK reportedly runs a health clinic that not only provides services to the Rohingya but also to local communities. It is also reported that Muslim Aid UK also implements a variety of other programmes, ranging from education and vocational training to livelihood development for the unregistered Rohingya asylum-seekers, refugees and migrants as well as local people in the area of Teknaf (south of the Cox's Bazar district).

Concerns are expressed that the cessation of the aid organizations activities will not only seriously infringe on the human rights of the unregistered Rohingya asylum-seekers, refugees and migrants, but also have a significant impact on the large number of local people in the area who regularly access the services provided by the non-governmental organizations. Moreover, concerns are raised regarding the lack of legal status for the Rohingya asylum-seekers, refugees and migrants.

While we do not wish to prejudge the accuracy of these allegations, we would like to draw the attention of your Excellency's Government to the applicable international human rights norms and standards.

Article 25 of the Universal Declaration of Human Rights recognizes the right of everyone “to a standard of living adequate for the health and well-being of himself and of his family, including food.” Furthermore article 11.1 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) – which Bangladesh acceded to on 5 October 1998 – stipulates that States “recognize 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,” and requires them to “take appropriate steps to ensure the realization of this right”.

The Committee on Economic, Social and Cultural Rights, which monitors the implementation of the Covenant, has defined the core content of the right to food in its General Comment No. 12, along with the corresponding obligations of States to respect, protect and fulfil the right to food. The Committee considers that the core content of the right to adequate food implies, inter alia, economic and physical accessibility of food, which implies particularly that vulnerable or marginalized groups may need special attention and sometimes priority consideration with respect to accessibility of food. The Committee clarified that States have an immediate obligation to respect the right to food, which means that it and its agents must refrain from any actions that negatively affect the right to food and result in preventing existing access to adequate food. Furthermore, the Committee clarified that any discrimination in access to food, as well as to means and entitlements for its procurement, on the grounds of race, colour, sex, language, age, religion, political or other opinion, national or social origin, property, birth or other status with the purpose or effect of nullifying or impairing the equal enjoyment or exercise of economic, social and cultural rights constitutes a violation of ICESCR. Finally, whenever an individual or group is unable, for reasons beyond their control, to enjoy the right to adequate food by the means at their disposal, States have the obligation to fulfil (provide) that right directly.

The right to adequate food is recognized also in the Convention on the Rights of the Child – ratified by Bangladesh on 3 August 1990 – in articles 24.2(c) and 27.3. In the Convention, the right to adequate food is to be read in conjunction with the right to life, survival and development as stipulated in article 6. States parties to the Convention on the commit themselves to combat “disease and malnutrition, including within the framework of primary health care, through, inter alia, (...) the provision of adequate nutritious foods and clean drinking-water.”

The human right to safe drinking water and sanitation is also provided for by article 11.1 of the International Covenant on Economic, Social and Cultural Rights as well as other human rights treaties to which Bangladesh is party. Moreover, water and sanitation are inextricably linked to a range of other human rights, including the rights to life and to health. In fact, the Convention on the Rights of the Child, article 24.2.c, 2 on the right to the highest attainable standard of health, requires States “to pursue the full implementation of this right and, in particular, by taking appropriate measures: (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, (...) the provision of (...) clean drinking water (...)”. The Committee on the Rights of the Child in its general comment No. 7, has underlined that access to clean drinking water is particularly essential for young children’s health.

The Committee on Economic, Social and Cultural Rights has clarified the scope and content of the human right to water and to sanitation in general comment No 15. The Committee underlines that states must respect this right by refraining from interfering with access to water and sanitation. States must also take steps towards the realization of this right, including in terms of equality and non-discrimination in order to ensure that persons from marginalized groups or in situations of vulnerability are not excluded from access to services and facilities. The obligation to fulfil does not generally require States to provide services directly, however, when people do not have the means to provide for themselves, the State is required to provide access to water and sanitation services, for instance by ensuring access to public facilities in camps. In prohibiting discrimination based on nationality, the Committee on Economic, Social and Cultural Rights, general comment No. 20, further notes that the Covenant rights apply to everyone, including non-nationals, such as refugees, asylum-seekers, and migrant workers, regardless of legal status and documentation.

On 28 July 2010, the General Assembly adopted a resolution explicitly recognizing safe and clean drinking water and sanitation as a fundamental human right. The Government of Bangladesh voted in favour of this resolution. This resolution was reaffirmed on two instances by the UN Human Rights Council. Furthermore, the Bangladesh National Water Policy (1998) and the National Sanitation Strategy (2005) recognize water and sanitation as human rights. Bangladesh has also recognized that water and sanitation are human rights at the regional level when it signed the Delhi Declaration of the third South Asian Conference on Sanitation.

We would also like to refer your Excellency's Government to article 12 of the ICESCR, which requires States to "recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health." The Committee on Economic, Social and Cultural Rights has clarified the scope and content of the right to health in its General Comment No. 14, elaborating that the right to health requires States to respect, protect and fulfill the right to health of all. The obligation to respect the right to health obligates the State to refrain from denying or limiting equal access for all persons, including asylum seekers and illegal immigrants, to preventive, curative and palliative health services (para.34). The right to health also requires States to ensure health facilities, goods and services are available, accessible, acceptable and of good quality for all (para.12). States have a core obligation to ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups (para.43 (a)), as well as a special obligation to prevent any discrimination on internationally prohibited grounds in the provision of health care and health services, especially with respect to the core obligations of the right to health (para.19). Additionally, the General Comment No. 14 provides that States have a joint and individual responsibility to cooperate in providing disaster relief and humanitarian assistance in times of emergency, including assistance to refugees and internally displaced persons (para. 40).

Some concerns about the situation of Rohingya refugees, migrants and asylum seekers were also expressed in the report of the official mission to Bangladesh in December 2009 by the –then- independent expert on the question of human rights and extreme poverty, and the independent expert on the issue of human rights obligations

related to access to safe drinking water and sanitation (A/HRC/15/55). These concerns referred to overcrowded conditions in the camps and the deplorable living conditions for those living immediately outside them. At the time, issues related to lack of access to basic services, including sanitation, safe drinking water and health care were expressed, and already worsening conditions of unregistered refugees were also signalled. In the report, the independent experts called the Government and the international community to ensure that any assistance to the communities does not discriminate on the basis of nationality, but rather results in those who are most in need of assistance receiving it.

We would also like to refer to article 22 of the International Covenant on Civil and Political Rights, which provides that “[e]veryone shall have the right to freedom of association with others... ”.

In this context, we would like to further refer to Human Rights Council resolution 15/21, and in particular operative paragraph 1 that “[c]alls upon States to respect and fully protect the rights of all individuals to... associate freely... including persons espousing minority or dissenting views or beliefs, human rights defenders, trade unionists and others, including migrants, seeking to exercise or to promote these rights, and to take all necessary measures to ensure that any restrictions on the free exercise of the rights to freedom of... association are in accordance with their obligations under international human rights law.”

In this connection, we would like to refer your Excellency’s Government to the fundamental principles set forth in the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and in particular articles 1 and 2 which state that “everyone has the right individually or in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels” and that “each State has a prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms, inter alia, by adopting such steps as may be necessary to create all conditions necessary in the social, economic, political and other fields, as well as the legal guarantees required to ensure that all persons under its jurisdiction, individually and in association with others, are able to enjoy all those rights and freedoms in practice.”

We would further like to refer you to a recommendation outlined in the report of the former Special Representative on the situation of human rights defenders to the Human Rights Council in 2007, which indicated that “the progressive achievement of economic, social and cultural rights (ESCR) or the obligation of the State being dependent on the availability of resources should not be misunderstood as allowing States to adopt policies that violate these rights or negate the probability of their realization. The Special Representative recommends appropriate guarantees in national constitutions that give full legitimacy and recognition to activities for the promotion and protection of these rights.”

Although Bangladesh is not a party to the 1951 Convention relating to the Status of Refugees, it has obligations under the international human rights instruments it has ratified, including the International Covenant on Economic, Social and Cultural Rights,

and the Convention on the Rights of the Child, that benefit all those under Bangladeshi jurisdiction, including the Rohingya. The Committee on Economic, Social and Cultural Rights, the Committee on the Rights of the Child, and the Committee on the Elimination of Racial Discrimination have taken the view that non-nationals, such as asylum-seekers, refugees and migrants, under the jurisdiction of a State party to the instruments, regardless of their legal status and documentation, should be protected from discrimination in the enjoyment of economic, social and cultural rights.¹

While acknowledging that your Excellency's Government has undertaken concrete on-going efforts to address concerns related to the Rohingya and that Bangladesh has been a host to hundreds of thousands of Rohingyas for many years, it is our responsibility under the mandates provided to us by the Human Rights Council to seek to clarify all cases brought to our attention. Since we are expected to report on these cases to the Council, we would be grateful for the cooperation and observations of your Excellency's Government on the following matters:

1. Are the facts alleged in the above summary accurate? If not, please provide details of the inquiries carried out to refute these allegations.
2. What measures have been taken to ensure the continuation of vital humanitarian assistance to the unregistered Rohingya in the unofficial camps, particularly at Kutupalong and Leda sites, given that the cessation of such assistance may impair the enjoyment of economic, social and cultural rights?
3. What other measures have been put in place to ensure that the affected communities have access to adequate food, safe water and sanitation, and health care and services?
4. Please provide any other information or observations concerning the present case that you consider relevant.

We would appreciate a response within sixty days. We undertake to ensure that the response of your Excellency's Government will be taken into account in our assessment of the situation and in developing any recommendations that we may make for the consideration of your Excellency's Government pursuant to the terms of our respective mandates. Additionally, we undertake to ensure that the response of your Excellency's Government will be made available in a report to the Human Rights Council for its consideration.

Please accept, Excellency, the assurances of our highest consideration.

Olivier de Schutter
Special Rapporteur on the right to food

¹ See E/C.12/GC/20, para. 30 and HRI/GEN/1/Rev.9 (Vol. II), general recommendation XXX, para. 29.

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