

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. _____ OF 2013
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

In the matter of:

JAFFAR ULLAH AND ANR ...Petitioner

Versus

UNION OF INDIA AND ORS ...Respondents

PAPER BOOK

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ADVOCATE FOR THE PETITIONER: JYOTI MENDIRATTA

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SYNOPSIS

1. The present writ petition is being filed in the public interest under Article 32 of the Constitution of India, relating to serious violations of the right to life, maternal health, the right to health, and the right to basic human dignity of women and families from Myanmar who have suffered persecution, violence, and displacement and now live in deplorable conditions in makeshift camps in Kalindi Kunj, New Delhi and Salheri Village, Mewat District, Haryana. Women deliver babies in squalid conditions with no hope of properly feeding, educating, or securing the lives of their children. In June 2013 a 4 month old baby died from a snake bite in the New Delhi camp. The petitioners are filing this petition in the public interest of the almost 150 Rohingya refugee families in these camps who do not have access to basic medical care, maternal health care, paediatric care, or reliable sources of clean water, nutritious food, or secure shelters.

1.A. The Petitioners have not approached this Court or any other Court for similar reliefs.

2. The Rohingya people are a Muslim people from Rakhine state, Myanmar. The Rohingya people have long been the

victims of government persecution in Myanmar. Before reaching India, children in the camps witnessed the murder, rape, and torture of their parents. Security forces raped many women currently living in the camp and the men have been conscripted into forced labour camps. An August 2012 article from Human Rights Watch details the atrocities committed against these people including, "killings, rape, and mass arrests." The Myanmarese government completely restricted humanitarian assistance to the Rohingya and does not recognize their Burmese citizenship.

3. India is a bastion of hope for these oppressed people. Where they have found peace and freedom from prosecution, the Rohingya people have also found themselves in squalor without access to basic services including medical facilities, drinking water, housing, schools for their children, or basic sanitation. One small child and an 18 year old girl have died from snake bites. Pregnant women do not have basic care or delivery assistance. Moreover, women do not have post-delivery care or access to contraception. This is especially crucial as women are especially susceptible to infection and death during the days and weeks post-delivery.

4. Recent fact-findings from November 2012, April 2013, and July 2013 document abhorrent living conditions at both the Delhi and Haryana camps.
5. A November 2012 fact-finding mission to the Delhi camp found that the living conditions are absolutely abhorrent. The camp houses 50 families. Without toilet facilities, camp residents bathe, wash their clothes, urinate, and defecate on the road bordering the camp. The children from the camp play amongst trash, waste, and filthy water. Without electricity, each family burns a fire in their shanties. The smoke from the fire is so acrid that it is impossible to open your eyes or take a deep breath in the homes.
6. The fact-finding by health activists in the Delhi camp uncovered the stories of two women, Manuwara and Munira who had just delivered children in the camp. Manuwara, a Rohingya woman from Myanmar has suffered grave violations of her right to health and human dignity. On 26 November 2012, she delivered her son on the floor of her temporary shelter with only a neighbor's assistance. Now, days after the delivery, she continues to experience intense pain, fever, and fatigue. She cannot walk. She does not have access to a doctor and cannot afford the

inevitable fees at both private and public hospitals. Manuwara did not have antenatal care.

7. Munira, another woman living in the camp has suffered similar violations of her right to health. Like Manuwara, she delivered on the floor of her makeshift home with assistance from a family member in late October 2012. She is unable to do any work and she has experienced constant fever, headache, and body pain since the birth. Her condition is aggravated by the fact that she is blind. Munira's first child died in the first camp she lived at in Allahabad. During her 8th month of pregnancy, Munira had a high fever and her husband had to pay Rs. 3000 to pay for private care.

8. An April 2013 fact-finding report on the Haryana camp focuses on maternal health and includes interviews from 12 women. This camp houses 73 families, including 35 women with at least one infant child. The report shows the poor living conditions in the camp, where women deliver. The women do not receive regular antenatal care, delivery care, or post-delivery care. The women have no access to contraception and they cannot protect themselves from risks associated with delivery in the camp, inadequate spacing between births, and unwanted

pregnancy. Rukya, who is just 28 has been pregnant six times. Her third child died in a Bangladeshi village after Rukya was forced to flee her home. She had a sixth child on 1 March 2013 and does not want to have additional children. Unfortunately, she does not have access to primary health services, information about contraception or government health care employees.

9. In 2013 activists returned to these refugee camps to determine if conditions have improved. A July 2013 follow up fact-finding to the Delhi camp found that the conditions have in fact deteriorated. During the rainy season, snakes come into the camp. In June 2013, a 4 month old baby died as a result of a snake bite. Parents cannot sleep at night because they have to shield their children from the snakes. The water pumped into the camp makes the children sick and families cannot afford the gas to boil the water. Like in Haryana, women deliver at home without skilled assistance. The team spoke with Rashida, age 19, who was pregnant for the second time. During her first pregnancy, Rashida experienced pain and went to a private hospital for treatment. The facility referred her to Shafdarjung Hospital and she paid Rs. 500 for the ambulance ride. When she reached the hospital, doctors told her that the fetus had died in her womb. The hospital

provided the surgery free of cost, but Rashida and her husband had to pay the nurse Rs. 500 for treatment. Her second pregnancy is advancing well, but she and her husband pay Rs. 400 or Rs. 500 for antenatal care every month. Rashida's husband makes about Rs. 3000/month. Rashida will deliver in the squalid camp without skilled assistance.

10. In Haryana, conditions remain extremely poor. Residents use fetid temporary toilets. Pregnant women in the camp do not universally have access to antenatal care. The children cannot attend local schools because they do not speak Hindi and women do not feel safe and face harassment from local people. Recently, the families have had to establish a night watch to ensure their safety. Most recently, the landowner has demanded that the refugee families vacate the site by mid-August 2013.

11. In *Human Rights Commission vs. State of Arunachal Pradesh and Anr.* (1996 SCC (1) 743) the Hon'ble Supreme Court held that fundamental rights and protections encompassed in Article 21 of the Constitution extend to refugees:

"We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws...Thus the State is bound to protect the life and liberty of every human-being, be he a citizen or otherwise."

12. In light of this Hon'ble Court's ruling, the Petitioners herein seek immediate health care, specialized care for pregnant and lactating women, full pediatric check ups for all children in the camp, and access to free medications and other basic health care services and infrastructure in accordance with their rights to life, health, and dignity under Article 21 of the Constitution of India. The petition humbly requests this Court to order the Respondents to provide nutrition and clean water to these communities to ensure the right to education for the Rohingya children.

Hence this Petition.

LIST OF DATES AND EVENTS

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| 10.4.79 | The Government of India ratifies the International |
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| | Covenant on Economic Social and Cultural Rights (ICESR), which guarantees the right to the highest attainable standard of health (article 12). |
| 1982 | The Government of Myanmar officially classifies the Rohingya minority from Rakhine state of Myanmar as "Stateless Bengali Muslims." |
| 11.12.1992 | India ratifies the Convention on the Rights of the Child (CRC), which guarantees children the right to the highest attainable standard of health. Article 24 obligates states parties to diminish child and infant mortality, to provide medical assistance, to end malnutrition, and to ensure prenatal and postnatal care for all women. |
| 9.7.93 | The Government of India ratifies the Convention on the Elimination of all forms of Discrimination against Women (CEDAW), guaranteeing the right to acceptable and accessible healthcare to women. |
| 09.01.1996 | In <i>Human Rights Commission vs. State of Arunachal Pradesh and Anr.</i> (1996 SCC (1) 743) the Hon'ble Supreme Court held that fundamental rights and protections encompassed in Article 21 of the Constitution of India apply to refugees and non-citizens. |

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| 16.5.96 | Paschim Banga Khet Mazdoor Samiti (1994) 4 SCC 37. This Hon'ble Court holds that the Government has an obligation to provide adequate medical facilities for the people. |
| 15.5.97 | State of Punjab v Mohinder Singh Chawla (1997) SCC 83. This Hon'ble Court holds that the right to health is included in Article 21, the Right to Life. |
| 20.1.99 | Apparel Export Promotion Council, 1 SCR 117, para 27. This Hon'ble Court holds that the judiciary has an obligation to give due regard to International Conventions and Norms. |
| 25.6.99 | CEDAW issues General Recommendation 24, Women and Health, defining acceptable healthcare services as an essential component of the right to health. |
| 29.3. 2000 | The United Nations Human Rights Commission issues General Comment 28, Equality of Rights between Men and Women and clarifies that coerced and forced sterilization violates the Right to be Free From Cruel Inhuman and Degrading Treatment (ICCPR, article 7). |
| 05.2012 | The Genocide Prevention Advisory Network, issues an alert regarding the Rohingya in Myanmar. |
| 06.2012 | Ethnic violence erupts in Myanmar. The Rohingya |

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| | <p>people are targeted. Entire villages are destroyed, the military police conduct mass arrests, rape women, torture men, destroy schools, and torture people in custody. The violence sparks a wave of Rohingya refugees who flee Myanmar.</p> |
| 06.2012 | <p>Manuwara, a resident of the Delhi Camp, leaves Myanmar because as a Rohingya she fears for her safety.</p> |
| 01.08.2012 | <p>Human Rights Watch documents mass atrocities committed against the Rohingya people in, Abuses Follow Horrific June Violence Between Arakan Buddhists and Rohingya.</p> |
| 20.10.12 | <p>Manira, another Delhi camp resident, delivers her baby on the floor of her shack in the camp with assistance of neighbors.</p> |
| 11.2012 | <p>A team of health activists conducts a fact-finding in the Kalindi Kunj camp, New Delhi and discovers deplorable conditions. Camp residents, including pregnant women, lactating women, and children do not have access to maternal health care, medical care, adequate nutrition, and hygiene.</p> |
| 4.2013 | <p>A team of health activists visits the camp in Mewat, Haryana to investigate maternal health care and access to contraceptives. The report</p> |

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| | <p>finds that women deliver in the camp and have no access to basic care.</p> |
| 7.2013 | <p>A team of activists visits the Kalindi Kunj camp to follow up on conditions. The residents continue to live in filth and children do not have access to health care or education.</p> |
| 7.2013 | <p>Health activists revisit the camp in Mewat to find that women continue to deliver without assistance and that the residents have been asked to leave the land.</p> |
| 17.7.2013 | <p>The Hindu reports that refugees in the Delhi camp see no future for themselves or their children in "Nobody's People"</p> |

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) NO. _____ OF 2013
(UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA)

In the matter of:

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| 1. JAFFAR ULLAH HAVING HIS RESIDENCE AT SALEHDI, NUH MEWAT HARYANA | Petitioner |
| 2. ABDUI KUDDOS HAVING HIS RESIDENCE AT KANCHAN KUNJ MADANAPUR KHADAR OKHLA NEW DELHI | Petitioner |

VERSUS

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| 1. UNION OF INDIA, THROUGH THE SECRETARY, MINISTRY OF HEALTH & FAMILY WELFARE, GOVT. OF INDIA, NIRMAN BHAWAN, C-WING, NEW DELHI, 110001 | Respondent No.1 |
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| <p>2. NCT OF DELHI, THROUGH PR. SECRETARY (HEALTH & FW) DEPARTMENT OF HEALTH & FAMILY WELFARE, GOVERNMENT OF NCT OF DELHI, ROOM NO:A-907, A WING, 9TH LEVEL, DELHI SECRETARIAT, I.P. ESTATE, NEW DELHI -110002</p> | Respondent No.2 |
| <p>3. NCT OF DELHI, THROUGH ITS SECRETARY (NCT OF DELHI) A-WING, DELHI SECRETARIAT, I.P.ESTATE DELHI 110002</p> | Respondent No. 3 |
| <p>4. STATE OF HARYANA, THROUGH PRINCIPAL SECRETARY DEPARTMENT OF HEALTH & FAMILY WELFARE, GOVERNMENT OF HARYANA, R. NO. 39-A, 7TH FLOOR, MINI SECRETARIAT BLDNG, SEC-1, CHANDIGARH - 160 017</p> | Respondent No. 4 |
| <p>5. STATE OF HARYANA, THROUGH ITS CHIEF SECRETARY 4TH FLOOR, HARYANA CIVIL SECRETARIAT, SECTOR-1, CHANDIGARH HARYANA</p> | Respondent No. 5 |

**WRIT PETITION UNDER ARTICLE 32 OF THE
CONSTITUTION OF INDIA SEEKING DIRECTIONS
AGAINST THE RESPONDENTS**

TO:

THE HON'BLE THE CHIEF JUSTICE AND HIS OTHER
COMPANION JUSTICES OF THE HON'BLE SUPREME
COURT OF INDIA

THE HUMBLE PETITION
OF THE PETITIONERS

MOST RESPECTFULLY SHOWETH THAT:

1. The present writ petition is being filed in the public interest under Article 32 of the Constitution of India, relating to serious violations of the right to life, maternal health, the right to health, and the right to basic human dignity of women and families from Myanmar who have suffered persecution, violence, and displacement and now live in deplorable conditions in makeshift camps in Kalindi Kunj, New Delhi and Salheri Village, Mewat District, Haryana. Women deliver in the camp without adequate care, snakes have infested the camp in Delhi and killed a small boy, and women feel threatened in the Haryana camp. The petition prays for urgent medical care and humanitarian improvements to ensure the area residents' fundamental right to life and health under Article 21 of the Constitution of India. The Petitioners also pray that all children are

enrolled in schools as per the Right to Education Act (2009). At the outset, it is imperative to state that this petition does not seek changes to the official refugee status of this community, the petitioners only seek humanitarian assistance to ensure their survival and wellbeing.

- 1.A. The Petitioners have not approached this Hon'ble Court or any other Court for similar reliefs.
2. Petitioner No. 1 is a Rohingya refugee from Myanmar who currently resides at the Mewat, Haryana refugee camp. The Petitioner worked as a Burmese, Arabic, and English primary school teacher in Myanmar. As a result of ethnic violence against the Rohingya people, the Petitioner No. 1 fled Myanmar in February 2011. He serves as the community leader for the camp and works as a translator for the United Nations High Commissioner on Refugees (UNHCR).
3. Petitioner No. 2 is a Rohingya refugee from Myanmar who currently resides at the Kalindi Kunj - New Delhi refugee camp. Petitioner No. 2 fled Myanmar as a result of ethnic violence against his people in December 2011. Petitioner No. 2 was a student in 10th standard before he left

Myanmar. He now works at Don Bosco school and as a translator for the UNHCR.

THE ROHINGYA IN MYANMAR

4. The Rohingya people number about 800,000, a sizable minority out of Myanmar's total population of about 60 million. However, because they are not considered full citizens, the Rohingya people are systematically and officially robbed of their basic civil, political, social, and cultural rights. As far back as 2004, Amnesty International reported, "[The Rohingya] are also subjected to various forms of extortion and arbitrary taxation; land confiscation; forced eviction and house destruction; and financial restrictions on marriage." Rohingya people cannot marry without special permission from the state, they cannot own land, they cannot travel, they cannot hold government positions, and they must sign a document pledging to have fewer than two children.

5. Many Rohingya children are officially prohibited from attending school, so they have an exclusively religious education in the Madrassa. In 2009, a senior Burmese official called the Rohingya "ugly as ogres" and said that they are alien to Burma. The Genocide Prevention Advisory

Network, an “international network of experts on the causes, consequences, and prevention, of genocide and other mass atrocities” has issued an alert regarding the Rohingya in Myanmar.

6. In 2012, decades of ethnic tension exploded into ethnic violence. The incident that sparked the violence remains contested, but the majority population set upon the Rohingya minority and completely razed entire villages. As of June 2012, at least 650 people were dead, 1,200 people were missing, and 80,000 people were displaced. Rape became the norm for most women. Men are routinely subjected to arbitrary arrest, torture, and forced labor. On July 12, 2012 Burmese President Thein Sein said the “only solution” to the sectarian strife was to expel the Rohingya to other countries or to camps overseen by the United Nations refugee agency.” Madrassa schools have been destroyed and the staff has been arrested and tortured. A true copy of “Abuses Follow Horrific June Violence Between Arakan Buddhists and Rohingya” issued by Human Rights Watch, dated August 1, 2012 is herein marked and annexed as **Annexure P-1**.

7. Ethnic violence spiked again in October 2012. The violence spurred a mass exodus of refugees, including many who

fled Myanmar by train or by boat. The Guardian reports, "There are many horror stories of the Rohingya who, no longer able to face the utter hopelessness of their lives, set forth on makeshift rafts into the sea. Too many such journeys have been abruptly ended by Thai and Malaysian naval patrols that force these rafts into deeper waters and then leave them to die." The Indian Navy routinely saves small boats of barely living Rohingya refugees who have drifted into its waters.

8. Other refugees walked to Bangladesh. Over 29,000 Rohingya refugees currently live in camps in Bangladesh. According to the United Nations High Commissioner for Refugees, the living conditions in Bangladesh's camps "do not meet minimum international standards." High rates of children and pregnant or lactating women suffer from acute malnutrition. Because the Government of Bangladesh has refused to register Rohingya refugees since 1992, an additional 200,000 Rohingya live in Bangladesh without official refugee status. As a result, they have no access to food rations from the World Food Programme. The refugees have no access to basic services like health care and education.

9. Other refugees have come from Bangladesh to India in search of a new life. Although their numbers remain small, the Rohingya in India face substantial challenges as a result of language issues, isolation, and their stateless/paperless status.

DEPLORABLE CONDITIONS IN REFUGEE CAMPS IN NEW DELHI AND HARYANA VIOLATE FUNDAMENTAL RIGHTS UNDER ARTICLE 21 OF THE CONSTITUTION

10. Over 300 Rohingya people, each with their own story of murder, torture, rape, arbitrary arrest, and extortion currently live in a makeshift refugee camp in Kalindi Kunj, New Delhi. While some of the refugees have been in India for about three years, other families arrived after the ethnic violence in 2012. In November 2012 and July 2013 health rights activists visited the refugee camp at Kalindi Kunj, New Delhi to document living conditions. A true copy of Rohingya Refugee Camp Fact Finding, Kalindi Kunj, New Delhi, dated November 2012 is herein marked and annexed as **Annexure P-2.**

The Haryana camp houses 73 families, including 35 women who have delivered babies in the last year. The residents do not have access to education, health care, or stable employment. In April 2013 and July 2013 health activists travelled to

Mewat, Haryana for a fact-finding on the camp conditions with a special focus on women's health and access to contraception. A true copy of Fact-Finding on Access to Contraception, Rohingya Refugee Camp, Mewat, dated April 2013 is herein marked and annexed as **Annexure P-3.**

NOVEMBER 2012 FINDINGS – NEW DELHI

11. The camp sits in a recessed piece of land about 6 feet (about 2 meters) below the road. The members of the fact-finding team who have conducted fieldwork in slums and villages throughout India were shocked by the conditions in the camp.

12. Housing: Each family lives in a tiny room with tarp or brick walls and improvised construction. The camp does not have electricity. The crude construction provides no protection from the elements. In the winter, the families heat their rooms with wood stoves. The acrid smoke does not have a proper exit vent, and therefore newborn infants, children, and pregnant women continuously damage their lungs, throats, and eyes by breathing in smoke. Members of the fact-finding team struggled to conduct interviews while the smoke caused constant eye watering and coughing. Most families do not have

blankets or mats to cover the ground and/or to keep warm on cold winter nights. A ditch behind each row of homes collects waste.

13. Nutrition: People from the camp reported that they do not have adequate food supplies. Charities bring food for the families from time to time, but the residents do not have a steady and reliable source of nutritious food. Some of the men in the camp are able to work as day laborers and their salaries go to purchasing food for their families, but the work is not guaranteed.

14. Sanitation and water: The camp has a single water pump. The pump is located at the entrance to the camp. Standing water surrounds the pump and half-dressed children play in the water. The families obtain drinking, bathing, and cooking water from the pump. The camp does not have toilet or bathing facilities. The "washroom" area is a patch of dirt on the road above the camp. There is no sanitation or privacy. The fact-finding team witnessed children and adults bathing in full view of the camp and passing traffic. It is not surprising that chronic diarrhea plagues the camp.

15. Children and education: They children cannot attend Indian school for a number of reasons: language, lost paperwork, no resources to get to school, parental ignorance about the school system, and limited access to benefit schemes. The children roam around the camp all day without adult supervision. With the help of some volunteers, the camp recently established a makeshift school. The school consists of a tarp strung up at the back of the camp. On the day the fact-finding team visited – the fourth day of the school's existence – the teacher had not come to the camp. During the summer, many children suffered from Dengue and they did not receive medical attention.

16. Children's psychological wellbeing: The fact-finding team was able to speak to many of the children about their experiences in Myanmar. One 11-year-old boy, Shafikallem, came to India after his father was arrested and murdered in jail. Another boy, Mohammed Yusef, age 14, told the fact-finding team that his family came to India after his sister was raped by the military police. The police also murdered his sister's husband. He told the fact-finding team that, "no one cares about our people."

17. Access to health care: Although several NGOs have pledged to provide basic medical care for the camp residents, everyone in the camp reported that doctors never visit the camp. In cases of extreme illness, residents will hire an auto for the trip to the private hospital or to a public facility. Jaffar, the translator and camp resident, told the fact-finding team that when people from the camp reach the hospital, they always pay a fee. The camp residents struggle to navigate India's public health system, and they are not sure which hospitals they can visit for care, what their entitlements are, and what process they should follow for obtaining medicines and supplies.

18. Maternal care: Two women had recently delivered in the camp, Manuwara, age 18 and Manira, age 28. Manuwara delivered her baby on 26 November 2012, a day before the fact-finding team visited the camp. She delivered her baby in her home at the refugee camp with the help of other women in the camp. During her pregnancy she received zero antenatal care. In the 24 hours since her delivery, she had received no medical care whatsoever. She is not breastfeeding. Although she cannot walk and is experiencing intense pain, Manuwara's husband cannot afford to take her to a hospital.

19. Manira has been blind since birth. Her first baby was born in a camp in Allahabad shortly after she reached India. Both Manira's father and first born died in the Allahabad camp. In Myanmar, Manira's husband lost property to the military police and was "subjected to atrocities." Manira did not want to elaborate on her husband's experiences. Another of Manira's relatives was murdered by the military police a year ago. During her pregnancy, one of the volunteers who works with the residents of the camp took her to a doctor because she was suffering from a fever. Her husband had to scrape together Rs. 3000 to pay for her treatment. She delivered her second baby in the camp with the help of her neighbors on 20 October 2012. Since the delivery, she has felt weak, nauseated, and suffered from stomach pain. She cannot do anything during the day and she rests in her tent with the new born.

20. On 9 July 2013 The Times of India reported on the squalid conditions at the Haryana camp. This article prompted health activists to conduct follow-up fact-findings. True copy of Rohingyas in NCR are safe but miserable, issued by the Times of India, dated 9 July 2013 is herein marked and annexed as **Annexure P-4**.

JULY 2013 FINDINGS – NEW DELHI

21. In July 2013, the fact-finding team returned to the camp to examine the living conditions and access to health care. The team discovered that the conditions have deteriorated. Most alarmingly, the team discovered that snakes come to the camp at night. In June 2013, a four month old baby died from a snake bite. Now parents cannot sleep at night because they have to guard their children from these snakes. A true copy of the Rohingya Delhi Camp Fact-Finding, dated July 2013 is herein marked and annexed as **Annexure P-5.**

22. Housing: Stagnant water and mud covered the pathways between shacks. single room homes with concrete floors and tarp roofs and walls. A few homes had partial brick walls.

23. Nutrition: The residents do not have access to a stable and nutritious food source. Pregnant women sustain themselves on plain rice and tea and new born infants subsist on dirty sugar water. Without adequate postnatal care, women do not have breastfeeding counselling or

access to information on how to ensure basic nutrition for their infants.

24. Sanitation and water: The camp has two water pumps for drinking and washing, but the water makes people sick. Residents cannot afford to boil the water.

25. Children and education: The camp residents have constructed a small school where about 30 children age 4 – 10 have basic Hindi, English, Maths, and General Knowledge courses. Camp residents report that the volunteer teacher only visits the camp sporadically and only stays for 30 minutes or an hour every day. The teacher cannot communicate effectively with the students; he does not speak Rohingya. One woman, Noor Fatima, attempted to take her three children, ages 4, 6, and 8, to the government school, but the school refused to admit them.

26. Access to health care and maternal health care: For emergency care, families have to travel 1-1.5 hours by auto at a cost of Rs. 200. Access to maternal health care: Pregnant women like Noor Aisha (age 22) cannot afford to purchase adequate food. In July 2013, Noor Aisha was pregnant for the fourth time. She lost her first and second

children just days after delivery. During her pregnancy, Noor Aisha experienced severe pain. A doctor came to the camp put her hands on Noor Aisha's belly and charged her Rs. 500 without providing additional care. Noor Aisha continued to experience severe pain, so she paid Rs. 200 to travel to Safdarjung Hospital for care. Because she had no identity documents, and had not previously visited the hospital for antennal care, the facility refused to treat her.

27. Another pregnant woman, Rashida, was pregnant for the second time when the fact-finding team visited. Her first pregnancy ended in a miscarriage. During her first pregnancy Rashida experienced intense pain. At Safdarjung Hosptial she learned that her fetus had died. She had to pay the nurse Rs. 500 for care after her miscarriage. Now Rashida pays up to Rs. 500 for each antenatal check up she receives.

28. The fact-finding team also spoke with Aisha, who was four months pregnant in July 2013. She had been experiencing intense stomach pain throughout her pregnancy. She received a Rs. 500 syrup from a doctor, but her condition has not improved. The team also found that "Aisha's husband suffers from psychological problems. He slips into unconsciousness and has fits of insanity

where he attempts to run into the surrounding jungle. To prevent his escapes, the family has had to lock him in the house and nail his clothing to the floor. These episodes last for two or three days and then he recovers on his own. The family believes that a doctor will not be able to cure him. It was unclear why they thought this. His condition means that he cannot always work and that he only earns money 4-5 days per month. When he can work, he makes about Rs 250/day."

29. Sahara, age 20, delivered in the camp in July 2013. Sahara is not lactating and has rashes on her breasts. She cannot breastfeed the new born and they are currently feeding the baby sugar water. Since her delivery, she received treatment in private facility because "government facilities trouble you for everything."

HARYANA FINDINGS APRIL 2013

30. In April 2013, women's health rights activists travelled to Mewat to interview women about maternal, reproductive, and women's health care. (See Annexure P-3) Women routinely deliver in the camp and lack access to primary health care, antenatal services, and information regarding family planning or contraception.

31. At least seven women have delivered in the camp in 2013. One woman from the camp assists with deliveries, but she has not had formal training. She reported that the camp has had just one life threatening delivery with complications. In this case, the camp midwife had to travel almost two hours to Gurgaon with the mother. In violation of their fundamental rights, none of these women received adequate antenatal care, skilled delivery assistance, or postnatal services.

32. The team interviewed 12 women who had recently delivered. Universally, the women did not receive antenatal care, skilled assistance at delivery, postnatal care, and they do not have any knowledge of temporary or permanent birth control methods. For example, Rehana Aktar, age 17, had her first baby in January 2013. She did not see a doctor or have any antenatal care during her pregnancy or postnatal care. She wants to postpone her next pregnancy but she is unaware of spacing methods. Another woman, Nurka, age 19 had delivered in late February 2013. She had a fever after her delivery, so her family took her to a private facility where she received medicine. Her family had to pay Rs. 240, or an entire day's wages, for this care.

33. One of the oldest women in the group, Rukya, age 28, illustrates the impacts of inadequate primary health care and access to contraceptives. Rukya has been pregnant six times. Her third child died in Bangladesh when her family was en route to India. She delivered her sixth baby in the camp around 1 March 2013. She does not want to have additional children, but she does not have access to contraceptive services or primary care.

JULY 2013 FINDINGS - HARYANA

34. In July 2013, health activists returned to Haryana to observe the living conditions at the camps. Alarmingly, the landowner of the camp has asked the refugees to leave the land by August 2013. The seventy families continue to live without proper sanitation, services for children, or health care. A true copy of Fact-Finding: Rohingya Refugee Camp, Mewat District, Haryana, dated July 2013, is herein marked and annexed as **Annexure P-6**.

35. Most pressingly, the owner of the Haryana camp land has asked the refugees to vacate the property in August 2013. The residents have no where to go, and because of

their past trauma, language barriers in India, and time invested in the community, they want to stay together.

36. Hygiene: Camp residents have constructed four temporary toilets. Because of winds and heavy rains, the toilets have been damaged, and all camp residents have to use the toilet in plain sight.

37. Education: None of the fifty children in the camp attend Indian schools. Instead, they get their education in a makeshift Madrassa the camp residents have constructed. The camp residents have been unable to send their children to the local schools because of the language barrier.

38. Health care: The residents get health care from the Government Medical College in Nuh. They have to pay for all services and the hospital does not provide medicines. The camp residents have to go to private chemists to purchase their medicines. The fact-finding team also spoke to women who had recently delivered. Because of their proximity to the camp, women in Mehwat who can afford treatment have sporadic antenatal care at the Medical

College. The women in the camp deliver at the camp with the help of dai.

39. Security: The Petitioner told the fact-finding team that the local community has become increasingly hostile toward the refugee community. The camp residents have formed a 24/7 security patrol to prevent thefts and to protect the women from harassment. The residents complained to the local police station. The police have not taken action; they have asked the refugees to catch the perpetrators.

40. Conclusions: The fact-finding team outlined the following major concerns: The refugees do not have a stable home and they have been asked to leave the land in August 2013. The camp does not have adequate toilet facilities. The camp residents cannot purchase the subsidized rations or access free medical care guaranteed to BPL card carriers. The women are not safe from harassment.

41. Another camp in Nangli, Mewat houses 10-15 families. This camp does not have a water source, toilet facilities or adequate health care, including maternal health care.

THE LIVING CONDITIONS IN THE KALINDI KUNJ AND MEWAT
REFUGEE CAMPS VIOLATE THE REFUGEES' FUNDAMENTAL
RIGHTS TO LIFE, HEALTH, AND EDUCATION

42. In India, most women perish in pregnancy related deaths as a result of haemorrhaging, limited access to hygienic institutional delivery, anaemia, and malnourishment. Women at the Kalindi Kunj and Haryana camps face insurmountable obstacles to health care at each of these critical junctures. The camp residents do not have access to water, food, education or basic health care. The Indian Constitution guarantees the Right to Equality and the Right to Life including the Right to Health. Despite this, India has the highest number of maternal mortality deaths in the world, accounting for 20 percent of the global burden. Whereas privileged women experience childbirth as a joyous occasion, marginalized women are robbed of their health, dignity, and lives when they give birth.

43. In *Human Rights Commission vs. State of Arunachal Pradesh and Anr.* (1996 SCC (1) 743) the Hon'ble Supreme Court held that fundamental rights and protections

encompassed in Article 21 of the Constitution extend to refugees:

"We are a country governed by the Rule of Law. Our Constitution confers certain rights on every human being and certain other rights on citizens. Every person is entitled to equality before the law and equal protection of the laws...Thus the State is bound to protect the life and liberty of every human-being, be he a citizen or otherwise."

44. Article 21 of the Constitution includes a fundamental right to health. The Supreme Court has held that the right "is a most imperative constitutional goal." *Consumer Education and Research Center v. Union of India*, (1995) 3 SCC 42; *Mahendra Pratap Singh v. State of Orissa*, AIR 1997 Ori 37.

45. In *Paschim Banga Khet Mazdoor Samiti*, the Hon'ble Supreme Court discussed the welfare obligations of the government in providing health care and unequivocally defined: "adequate medical facilities for the people [a]s an essential part of the obligations undertaken by the Government in a welfare state. The Government discharges this obligation by running hospitals and health

centres which provide medical care to the person seeking to avail those facilities" (1996) 4 SCC 37.

46. The Right to Education Act (2009) guarantees free and compulsory education for all children ages 6 – 14. Section 8 (c) states, "The appropriate Government shall – provide free and compulsory elementary education to every child...The term "compulsory education" means obligation of the Government to - (C) ensure that the child belonging to weaker section and the child belonging to disadvantaged group are not discriminated against and prevented from pursuing and completing elementary education on any grounds." The Act defines disadvantaged group as: "...such other group having disadvantage owing to social, cultural, economical, geographical, linguistic gender or such other factor, as may be specified..." (2(d))

The Rohingya are a disadvantaged group under every conceptualization of the definition and the children from both camps have a fundamental right to education under the RTE Act. (Annexure 1)

47. India has signed and ratified numerous covenants and treaties imposing obligations on the government to respect, protect, and fulfil the human rights of its citizens. The Supreme Court has consistently held that the judiciary

is “under an obligation to give due regard to International Conventions and Norms for construing domestic laws more so when there is no inconsistency between them and there is a void in domestic law.” *Apparel Export Promotion Council*, 1 SCR 117, para 27.

48. With regards to health, India is signatory to the International Covenant Economic Social Cultural Rights (ICESCR). Article 12, requires states to: “recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. The United Nations based Committee on Economic Social and Cultural Rights (CESCR) further clarifies the right to health, explaining that: “The right to health is not to be understood as a right to be *healthy*. The right to health contains both freedoms and entitlements.”

49. In Comment 14, the CESCR further states, “health is a fundamental human right indispensable for the exercise of other human rights. Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity.”

50. Along with the ICESCR, the Convention on the Elimination of all forms of Discrimination Against Women

(CEDAW) ensures the right to health for women (including reproductive and maternal health). General Recommendation 24 underscores states' obligations to women, the CEDAW Committee states that member nations have a duty to "respect, protect and fulfill women's right to health care."

51. Finally, Article 24 of the Convention on the Rights of Child (CRC) obligates state parties to (1) recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services. (2) States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures: (a) To diminish infant and child mortality; (b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care; (c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental

pollution; (d) To ensure appropriate pre-natal and post-natal health care for mothers; (e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents; (f) To develop preventive health care, guidance for parents and family planning education and services.

52. In clear violation of these international norms, this Hon'ble Court's orders, the Government of Delhi has not guaranteed the Rohingya refugees' fundamental rights to health and maternal health

GROUNDS

Hence the Petitioner moves before this Hon'ble Court by way of this petition on, inter alia, following grounds:

I. BECAUSE in *Human Rights Commission vs. State of Andhra Pradesh & Anr.* (1996 SCC (1) 743) this Hon'ble Court held that "Every person is entitled to equality before the law and equal protection of the laws...Thus the State is bound

to protect the life and liberty of every human-being, be he a citizen or otherwise."

II. BECAUSE Respondents have violated Article 21 of the Constitution including the right to health, the right to education, and the right to food.

III. BECAUSE the Right to Education Act (2009) guarantees the right to free and compulsory education for all children age 6 – 14.

IV. BECAUSE in *Consumer Education and Research Center v. Union of India* (1995) 2 SCC 42, this Hon'ble Court ruled that the health "is a most imperative constitutional goal."

V. BECAUSE in *Paschim Banga Khet Mazdoor Samiti* (1996) 4 SCC 37., this Hon'ble Court concluded that, "adequate medical facilities for the people [a]s an essential part of the obligations undertaken by the Government in a welfare state. The Government discharges this obligation by running hospitals and health centres which provide medical care to the person seeking to avail those facilities

VI. BECAUSE Women at the New Delhi and Haryana camps do not have adequate access to contraception and therefore

face the mental and physical risks associated with unwanted and unintended pregnancies.

VII. BECAUSE the International Covenant Economic Social Cultural Rights (ICESCR). Article 12, requires states to: "recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health."

VIII. BECAUSE the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) ensures the right to health for women (including reproductive and maternal health).

IX. BECAUSE the Convention on the Rights of Child (CRC), Article 24, requires the Respondents to guarantee the right to health for children.

X. BECAUSE Rohingya refugees in New Delhi and Haryana do not have access to adequate shelter, clean water or toilet facilities.

XI. BECAUSE Rohingya regfugees do not have access to health care, pediatric care, or maternal care, including access to contraceptive information and services, antenatal care, delivery care, or post-delivery care.

XII. BECAUSE the Rohingya refugees in Mewat will be forced from their homes and off their land.

XIII. BECAUSE the refugees in Haryana and Delhi face constant security threats from snakes, hostile neighbouring populations, and rampant sexual harassment.

XIV. BECAUSE Rohingya refugees, including pregnant and lactating women, in New Delhi and Haryana do not have access to adequate nutrition.

XV. BECAUSE children in the Rohingya refugee camps in New Delhi and Haryana do not attend public schools and have been rejected from attending school.

XVI. BECAUSE the Rohingya camp at Nangli, Mewat, Haryana does not have access to water, toilet facilities or adequate health care, including maternal health care.

The petitioner has not filed any other petition seeking same reliefs in this Hon'ble Court or any other High Court in the country.

40. The Petitioner has no other alternate equally efficacious remedy than to approach this Hon'ble Court.

PRAYER

In light of the facts and circumstances of this case, the Petitioner
| prays as under :

- a. Issue a writ of Mandamus or any other appropriate writ, order or direction to Respondents No 3 & 5 to grant the camp residents in Haryana and Delhi permission to stay on the land.

- b. Issue a writ of Mandamus or any other appropriate writ, order or direction to Respondents No. 2 & 4 to ensure that all pregnancies are registered, that all pregnant women receive antenatal care, that all women deliver with a skilled birth attendant, and receive post-delivery services, including access to contraception are available as per the National Rural Health Mission (NRHM) and its schemes.

- c. Issue a writ of Mandamus or any other appropriate writ, order or direction to Respondent No. 2 & 4 to ensure new born care including vaccinations and adequate nutrition for

all infants in the camps including bi-weekly visits from a paediatric physician.

- d. Issue a writ of Mandamus or any other appropriate writ, order or direction to Respondent No. 2 & 4 to issue directions to the Government Medical College, Nuh, Haryana and to the public health facilities in New Delhi to provide free treatment to camp residents.
- e. Issue a writ of Mandamus or any other appropriate writ, order or direction to Respondents No 3 & 5 to take appropriate steps to enrol all children in the nearest public schools as per the Right to Education Act (2009).
- f. Issue a writ of Mandamus or any other appropriate writ, order or direction to Respondents 3 & 5 to immediately provide potable water on a weekly basis to the camp residents in Delhi and Haryana.
- g. Issue a writ of Mandamus or any other appropriate writ, order or direction to Respondents No 2 & 4 to provide nutritional supplements to the residents through local Anganwadi centres and to send Anganwadi workers to the

camps to ensure that the camp residents have meaningful access to the local Aganwadi centres.

- h. Issue a writ of Mandamus or any other appropriate writ, order or direction to Respondents No 3 & 5 to provide porta-cabins and mobile sulabh sauchalaya toilets to ensure protection from the elements and hygienic waste facilities.
- i. For any other order/direction that this Hon'ble Court may deem fit.

AND FOR THIS ACT OF KINDNESS, THE PETITIONER AS
IN DUTY BOUND SHALL EVER BE GRATEFUL.

Petitioner

Through

(JYOTI MENDIRATTA)

Advocate for Petitioner

Drawn by:

Drawn on:

Place:

Filed on: