

Committee against Torture

Concluding observations on the initial report of Bangladesh*

1. The Committee against Torture considered the initial report of Bangladesh (CAT/C/BGD/1) at its 1769th and 1771st meetings, held on 30 and 31 July 2019 (CAT/C/SR.1769 and CAT/C/SR.1771), and adopted the following concluding observations at its 1781st and 1782nd meetings (CAT/C/SR.1781 and CAT/C/SR.1782) held on 8 August 2019.

A. Introduction

2. Bangladesh acceded to the Convention on 5 October 1998. According to article 19, paragraph 1, of the Convention, it was obligated to submit its initial report by 4 November 1999. From 2000-2018, Bangladesh was included in the list of States parties with overdue reports in the Committee's annual report, submitted to the States parties and the General Assembly. By a letter dated 10 December 2018, the Committee reminded the State party about its overdue initial report and about the possibility for the Committee to proceed with a review in the absence of such a report. On 16 January 2019, the State party informed the Committee that it would prepare and send its initial report. On 18 January 2019, the Chairperson of the Committee indicated on which dates its initial report would be considered. The constructive dialogue with the delegation of the State party took place on 30 and 31 July 2019. The State party's initial report was received on 23 July 2019.

3. The Committee regrets that the submission of the State party's initial report was 20 years late and was received only one week prior to the date of its consideration. It welcomes, however, the constructive dialogue with the State party's delegation and the oral and written replies provided to the Committee.

B. Positive aspects

4. The Committee welcomes the State party's accession to and ratification of the following international human rights instruments:

- (a) International Covenant on Economic, Social and Cultural Rights, in 1998;
- (b) Convention on the Prevention and Punishment of the Crime of Genocide, in 1998;
- (c) Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages of 1962, in 1998;
- (d) International Covenant on Civil and Political Rights, in 2000;

* Adopted by the Committee at its sixty-seventh session (22 July-9 August 2019).

- (e) Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, in 2000;
- (f) Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, in 2000;
- (g) Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, in 2000;
- (h) Convention on the Rights of Persons with Disabilities, in 2007;
- (i) Optional Protocol to the Convention on the Rights of Persons with Disabilities, in 2008;
- (j) Rome Statute of the International Criminal Court, in 2010;
- (k) International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, in 2011.

5. The Committee also welcomes the State party's initiatives to revise its legislation in areas of relevance to the Convention, including the adoption of:

- (a) The Prevention of Cruelty to Women and Children Act, in 2000;
- (b) The Legal Aid Services Act, in 2000;
- (c) The Domestic Violence (Prevention and Protection) Act, in 2010;
- (d) The Prevention and Suppression of Human Trafficking Act, in 2012;
- (e) The Torture and Custodial Death (Prevention) Act, in 2013;
- (f) The Persons with Disabilities Rights and Protection Act, in 2013;
- (g) Amendments to the Children Act providing for punitive measures against offenders for any kind of physical punishment of children, in 2013;
- (h) The Dowry Prohibition Act, in 2018.

6. The Committee welcomes the initiatives of the State party to amend its policies, programmes and administrative measures to give effect to the Convention, including:

- (a) The Creation of Committees on Prevention of Violence against Women and Children at the district, upazila and union level; the drawing up of the Multi-Sectoral Programme on Violence Against Women (MSPVAW) by the Ministry of Women and Children Affairs; and the issuance in Writ Petition No. 5916 of directives laying down safeguard measures against sexual harassment of women in educational institutions and workplaces, in 2008;
- (b) Creation of the National Human Rights Commission of Bangladesh, in 2009;
- (c) Issuance by the Supreme Court in Writ Petition No. 5684 of directives to stop all forms of corporal punishment in primary and secondary educational institutions, in 2010;
- (d) Issuance by the High Court Division (HCD) of the Supreme Court of Bangladesh of 15 directives on safeguard measures to be followed in the case of arrest without warrant, detention, remand and treatment of arrested persons by law enforcement agencies; and the subsequent issuance of guidelines by the Supreme Court to be followed by Magistrates and the police in respect of arrest, detention, investigation and treatment of accused persons, in 2016.

C. Principal subjects of concern and recommendations

Allegations of widespread use of torture and ill-treatment

7. While welcoming the State party's Constitutional provisions providing for protection of any person against torture or cruel, inhuman or degrading punishment or treatment; and the State party's adoption of the Torture and Custodial Death (Prevention) Act in 2013, the Committee is concerned at information it received alleging the widespread and routine

commission of torture and ill-treatment in the State party by law enforcement officials for the purpose of obtaining confessions or to solicit the payment of bribes. While noting information provided by the State party's delegation that a total of 17 cases have been filed against members of the law enforcement agencies under the Act, the Committee is concerned that further information about these cases is not publicly available and was not provided by the delegation, and at reports it has received that no case filed under the act has been completed since its enactment. Further, the Committee is concerned at reports that officials from the police and other authorities have repeatedly requested that the Act be amended or repealed to shield certain forces from liability under the act or to limit the scope of conduct prohibited by the Act. While appreciating the delegation's statement that no amendment will be brought, and that the government has a "zero tolerance" policy with regard to criminal conduct by the members of the law enforcement agencies, and noting comments made by the Prime Minister during "Police week 2019" that "no innocent person should fall victim to torture and harassment"; the Committee remains seriously concerned that law enforcement authorities request such exemption, and continue to consider it necessary and acceptable to engage in conduct amounting to torture and ill-treatment in the course of their work. Moreover, it is gravely concerned that the Torture and Custodial Death (Prevention) Act 2013 is not being effectively implemented in practice. The Committee wishes to remind the State party that article 2, paragraph 2, of the Convention states that "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture." (arts. 2, 4, 15 and 16).

8. The State party should:

(a) Publicly acknowledge at the highest levels of the government that combatting the routine commission of torture and ill-treatment by law enforcement officers is an urgent concern and state unambiguously that torture and ill-treatment will not be tolerated under any circumstances or against any person;

(b) Publicly affirm that the government has no intention to limit the applicability of the Torture and Custodial Death (Prevention) Act to any officials in the State party, that it understands the Act to apply to all such forces, including those not listed in the enumerated list of law-enforcement agencies, and that anyone committing acts of torture or otherwise complicit or acquiescent in torture will bear individual criminal responsibility for such acts before the law;

(c) Ensure that officials who commit acts of torture and ill-treatment are prosecuted and punished with penalties commensurate to the crime of torture, including those with superior or command responsibility;

(d) Ensure that law enforcement officials receive and apply in practice training in forensic, non-coercive investigation methods, and ensure all law enforcement officials are aware that it is unacceptable to engage in torture and ill-treatment to pressure criminal suspects to confess to crimes;

(e) Take measures to ensure that confessions obtained from criminal suspects through torture or ill-treatment are not accepted in practice as evidence of guilt;

(f) Systematically collect statistical data at the national level on the implementation of the Torture and Custodial Death (Prevention) Act, including information on the number of complaints, investigations, prosecutions, trials and the number of convictions in cases of torture or ill-treatment; the punishments meted out to perpetrators of torture and ill-treatment found guilty; and on measures of redress, particularly compensation and rehabilitation afforded to victims.

Inadequate investigation of complaints of torture

9. The Committee is seriously concerned at information it received that mechanisms established by the State party to receive and investigate complaints of torture and ill-treatment by officials are not leading in practice to meaningful accountability for perpetrators. The Committee is concerned at reports that police officers frequently refuse to register claims of torture or disappearance brought by victims or family members. The Committee is further concerned that victims of torture and their families who seek to

complain about or publicize incidents of torture reportedly are frequently subjected to harassment, threats and retaliation by the perpetrators. The Committee appreciates the delegation's statement that it is considering enacting victim and witness protection legislation and consulting with stakeholders to that end, but notes with concern reports that a draft proposal by the Law Commission on this issue has been under consideration for many years but has not been taken forward.

10. The Committee is further concerned at reports that there is no independent body authorized to carry out investigations into allegations or torture by officials, so investigations are carried out by officers from the same units or within the same official hierarchy as the alleged perpetrators, resulting in conflicts of interest. The Committee regrets that the delegation did not provide information on the outcome of investigations into the 77 complaints of torture that the government received from the Bangladesh National Human Rights Commission from 2012-2019 except for one raised directly by the Committee concerning photojournalist Shahidul Alam. The Committee regrets that the investigation concerning Mr. Alam was terminated after doctors at Bangabandhu Medical College Hospital reportedly determined that Mr. Alam had suffered no major injuries, notwithstanding his claim that he was subjected to both physical and psychological torture and ill-treatment while in the custody of members of the Detective Branch of the police on August 5, 2018.

11. While appreciating information provided by the delegation that disciplinary punishments "for various offenses" were handed down against members of the law enforcement agencies in 2017 by internal oversight bodies, the Committee is concerned that in these cases the most severe punishments were dismissal from service and demotion, which are not appropriately grave punishments for the offenses of torture and ill-treatment.

12. The Committee appreciates that the Torture and Custodial Death (Prevention) Act of 2013 permits complainants to apply directly to courts to seek a judicial inquiry into allegations of torture. While welcome, the Committee is concerned at reports that this procedure is not effective in practice as law enforcement authorities frequently do not complete investigations within the time limits set out in the Act and that relevant officials do not compel adherence to them. The Committee regrets that the delegation did not provide information about cases brought to its attention in which investigations into torture allegations reportedly had been ordered but had not been completed (case of Parvez, case of Bashir Uddin) or had resulted in trials that had been ongoing for years (case of Imtiaz Hossain) (arts. 2, 4, 10, 12, 13, 15 and 16).

13. The State party should ensure that its authorities carry out prompt, impartial, effective criminal investigations into all complaints of torture and ill-treatment. To this end, the Committee recommends that the State party:

(a) Establish an investigation mechanism to handle complaints regarding torture and ill-treatment by law enforcement officials that is independent of law enforcement agencies, including the police hierarchy;

(b) Expeditiously enact legislation ensuring effective victim and witness protection;

(c) Ensure that an oversight body monitors the progress of investigations into allegations of torture and ensures strict adherence to time limits for investigations and trials outlined in the Torture Act;

(d) Enhance the training of medical professionals and ensure that medical examinations ordered to assess torture allegations are carried out in accordance with the Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).

Unacknowledged Detention and Disappearances

14. The Committee is seriously concerned at numerous, consistent reports that the State party's officials have arbitrarily deprived persons of their liberty, subsequently killed many of them and failed to disclose their whereabouts or fate. Such conduct is defined in international human rights law as enforced disappearance, whether or not the victim is killed or reappears later. The Committee notes that the State party's delegation rejected the

proposition that ‘enforced disappearances occur in Bangladesh frequently,’ and that in the single case acknowledged by the delegation in which officials were criminally prosecuted for conduct amounting to an enforced disappearance, involving several individuals in Narayanganj, the law enforcement officials were convicted of the crimes of “abduction” and “murder.” The Committee also notes that the State party’s delegation asserted that allegations that its authorities had engaged in enforced disappearance should be presumed to be false in cases where the alleged victim had subsequently reappeared, as in the case of Hummam Quader Chowdhury.

15. The Committee notes that Mr. Chowdhury’s case was raised by the UN Working Group on Enforced and Involuntary Disappearances in 2017, along with those of Mir Ahmed Bin Quasem and Brigadier General Abdullahil Amaan Al Azmi, all of whom were reportedly detained by unknown authorities after they campaigned for the release of their fathers from custody following their conviction by the International Crimes Tribunal, Bangladesh. The Working Group had also expressed serious concern that the practice of enforced disappearance was occurring increasingly frequently in Bangladesh. The Committee regrets that the State party did not provide information regarding whether it had investigated the allegations that these men were held for lengthy periods in unacknowledged detention by law enforcement authorities, nor did it provide information concerning the status of ongoing investigations into other cases in which its authorities were alleged to have engaged in conduct meeting the definition of enforced disappearance, as in the death in custody of Ekramul Haque and the disappearance from police custody of Sheikh Mokhlesur Rahman (arts. 2, 4, 12, 13, 11 and 16).

16. **The Committee recommends that the State party:**

(a) Unambiguously affirm at the highest level of government that law enforcement authorities must immediately cease engaging in the practice of unacknowledged detention;

(b) Publish a list of all recognized places of detention and ensure that no one is held in secret or incommunicado detention anywhere in the territory of the State party;

(c) Ensure that any official found to have held an individual in unacknowledged detention is prosecuted and punished with penalties commensurate with the gravity of the crime, including in cases where the individual was subsequently released;

(d) Ensure that all allegations of unacknowledged detention, disappearance, and death in custody are promptly and thoroughly investigated by a body that is independent of the authorities alleged to have been responsible for the detention;

(e) Ensure that all places of deprivation of liberty in the State party are monitored by an independent authority with the power to carry out unannounced visits to places of detention, to speak confidentially with any individual in the facility; and that representatives of non-governmental organizations are also permitted to access all places of detention;

(f) Consider ratifying the Optional Protocol to the Convention against Torture;

(g) Because offenses such as “abduction” do not sufficiently communicate the serious nature of unacknowledged detention carried out by or with the complicity of State officials, prohibit ‘enforced disappearance’ as a distinct crime in legislation reflecting the definition set out in the International Convention for the Protection of All Persons from Enforced Disappearance, and consider ratifying the Convention.

Rapid Action Battalion

17. The Committee is gravely concerned at numerous reports received of cases in which members of the State party’s ‘Rapid Action Battalion’ (RAB), comprised of both members of the police and seconded military personnel, have been credibly alleged to have committed torture, arbitrary arrests, unacknowledged detention, disappearances and extrajudicial

killings of persons in their custody. The Committee is similarly concerned that with the singular exception of the Narayanganj case discussed above, members of this force have not been held criminally accountable for such violations. The Committee is concerned that section 13 of the Armed Police Battalion Act, which exculpates members of the force for actions “done or intended to be done in good faith,” has in practice given the impression that members of the force enjoy legal immunity from prosecution for torture or extrajudicial killing. The Committee notes with regret that the State party did not carry out an independent investigation into claims attributed to an anonymous senior RAB official in a 2017 broadcast by Swedish National Radio claiming that members of the force regularly abduct, torture, and kill individuals selected by superiors, and dispose of their bodies without leaving evidence or plant weapons to support claims that they were killed in self-defense. The Committee further regrets that information was not provided to it about the composition of the RAB’s Internal Enquiry Cell, about the measures taken against officers in cases where complaints against members of the force were verified by it. The Committee is also concerned at reports that personnel that have served with the RAB frequently have been deployed for service in United Nations Peace Missions (arts. 2, 4, 12, 13 and 16).

18. The Committee recommends that the State party:

(a) Commission an independent inquiry into allegations that members of the Rapid Action Battalion (RAB) have carried out torture, arbitrary arrests, unacknowledged detention, disappearances and extrajudicial killings as a matter of routine policy, and ensure that personnel conducting this inquiry receive effective protection from harassment or intimidation;

(b) Repeal the “good faith” clause in section 13 of the Armed Police Battalion (Amendment) Act 2003;

(c) Cease the practice of seconding military personnel to serve in the RAB, ensure that it is a purely civilian force and that members of the RAB, like other law enforcement officers, are subject to criminal prosecution and penalties, rather than merely internal disciplinary action, in cases where they allegedly committed torture, ill-treatment, disappearance, or extra-judicial killings;

(d) Establish an independent vetting procedure, with appropriate UN guidance, for all military and police personnel proposed for deployment in UN peace missions and ensure that no person or unit implicated in the commission of torture, extrajudicial killing, disappearances or other serious human rights violations is selected for service.

Remand Detention and Fundamental Legal Safeguards

19. The Committee is seriously concerned at reports that law enforcement authorities frequently do not provide persons deprived of their liberty with fundamental legal safeguards against torture that have been identified by the Committee as essential to fulfilling the obligation to prevent torture in article 2 of the Convention. Reports allege that individuals deprived of their liberty are not informed about the charges against them; not given prompt access to a qualified and independent lawyers from the very outset of the deprivation of liberty nor access to legal aid immediately after arrest and during all stages of detention, including during interrogations and hearings; not given immediate access to an independent medical examination within 24 hours of their arrival in a place of detention, free of charge and not in the presence of police officers, nor afforded the right to request and receive a medical examination conducted in confidentiality by an independent doctor of the detainee’s choice; nor provided the right to notify a family member or any other person of their own choice of their detention immediately after apprehension.

20. Further, the Committee is concerned at reports that the State party’s officials frequently fail to record all instances in which a person is deprived of his/her liberty in a register at the place of detention as well as in a central register of all persons deprived of their liberty; and at reports that persons deprived of their liberty frequently are not brought before a judge within the time frame prescribed by law.

21. The Committee is particularly concerned at reports that law enforcement authorities frequently request, and magistrates routinely authorize, the detention of criminal suspects in interrogative custody, known as remand detention, for up to 15 days without access to a lawyer, a procedure which is permitted under sections 54 and 167 of the Criminal Procedure Code. The Committee notes reports that more than 80 per cent of all persons detained in the State party are in remand custody. The Committee is further concerned at reports that despite the fact that the High Court Division of the Supreme Court of Bangladesh provided guidelines for law enforcement authorities and magistrates in the form of 15 directives in the *BLAST v. Bangladesh* case, these directives are not followed in practice. Furthermore, although the court called for the government to amend relevant sections of the Code of Criminal Procedure of 1898, the Penal Code of 1860 and the Evidence Act of 1872 to ensure compliance with its ruling, these changes have not been made (arts. 2, 4, 11, 12, 13, 15 and 16).

22. **The State party should:**

(a) **Amend sections 54 and 167 of the Code of Criminal Procedure the Penal Code, and the Evidence Act to reflect the ruling in *BLAST v. Bangladesh* and to ensure compliance with international human rights obligations;**

(b) **Ensure prompt and full implementation by law enforcement authorities and magistrates of the directives issued by the High Court and affirmed by the Court of Appeals in *BLAST v. Bangladesh*, including through training and greater oversight;**

(c) **Take effective measures to guarantee that all detained persons, including arrested persons and those in pre-trial or remand detention, are afforded in practice all the fundamental legal safeguards from the outset of their deprivation of liberty, in accordance with international standards as set out above. In particular, the State party should ensure adherence to the right of the arrested persons to be brought before a magistrate within 24 hours; ensure the respect of access to counsel immediately after arrest and thereafter; and ensure that family members are promptly informed about the time and place of a person's arrest and detention;**

(d) **Ensure the regular monitoring of the provision of fundamental legal safeguards to persons deprived of their liberty and ensure that any official who fails to provide them to persons deprived of their liberty in practice is subjected to disciplinary or other appropriate punishment;**

(e) **Ensure that pre-trial detention is regulated by means of legal criteria compliant with international standards and is subject to judicial supervision at all times in order to guarantee fundamental legal and procedural safeguards;**

(f) **Review regularly the legality of all persons held in pre-trial detention and release anyone who has been held in pre-trial detention for a time period exceeding the maximum penalty for the offence;**

(g) **Take measures to decrease resort by the authorities to pre-trial detention and increase the use of non-custodial measures, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules).**

Violence against indigenous, ethnic, and religious minorities and other vulnerable groups

23. The Committee is concerned at reports of intimidation, harassment and physical violence, including sexual violence, committed against members of indigenous, ethnic and religious minority communities, including by or with the cooperation of State officials. This includes the 6 November 2016 attack in Gobindaganj, Gaibandha District in which 3 members of the Santal indigenous community were killed and more than 50 injured; in relation to which the Police Bureau of Investigation submitted a report on 28 July 2019 stating that no police were involved in the burning of their homes and schools and looting of other property, despite television footage showing the contrary. The Committee also noted recent allegations that members of Hindu communities in Pirojpur have been subjected to violence and harassment including the burning of their homes and the case of Hindu activist and lawyer Palash Kumar Roy, who was detained for insulting the Prime Minister and then was allegedly attacked and set on fire while in police custody, resulting in his death, which

the State party's delegation indicated had been ruled a suicide. The Committee also noted the reported rape and sexual assault of two teenage women in the Chittagong Hill Tracts by members of the Army in January 2018 and the disappearance of Chittagong Hill Tracts-based indigenous rights activist Michael Chakma on 9 April 2019, which the delegation indicated was under investigation. The Committee is also concerned at reports of violence against LGBT individuals, by private individuals as well as by law enforcement officials, which is facilitated by the State party's criminalization of consensual same-sex sexual relations as "unnatural behavior" (arts. 2, 12, 13, 14 and 16).

24. The State party should:

(a) Ensure that independent investigations are carried out into reports of attacks and violence directed against indigenous, ethnic, religious and other vulnerable minorities, including those detailed above;

(b) Consider repealing legislation that criminalizes "hurting religious sentiments," such as the Digital Security Act of 2018, given that such provisions are reportedly frequently abused as a means to enlist the authorities in the harassment of minority populations and seen as legitimizing the commission of private violence against persons accused of committing this offense;

(c) Protect the safety and security of persons belonging to minority indigenous, ethnic and religious groups; ensure that they have access to an independent complaints mechanism;

(d) Provide redress, including compensation and rehabilitation, to the Santal community and members of other minorities and vulnerable groups who suffered physical violence, damage to and looting of their property; and implement in practice the Restoration of Vested Property Act, 2001 (Act No. 16) in order to ensure the return of "vested" property to their original owners;

(e) Repeal Section 377 of the Penal Code of Bangladesh criminalizing "unnatural behavior" which the State party considers to prohibit consensual same-sex sexual conduct;

(f) Collect and publish statistical information about attacks on violence against indigenous, ethnic, and religious minorities and other vulnerable groups including members of the LGBTI community;

(g) Prosecute and punish the perpetrators all acts of violence committed by police and non-State actors against members of vulnerable groups

National Human Rights Commission

25. Noting the CESCR concluding observations of 2018, the Committee is concerned that the National Human Rights Commission may not have a sufficiently broad mandate or may not make full use of its existing mandate to investigate directly all alleged cases of torture and ill-treatment, including those reportedly perpetrated by State actors such as police, military and security forces. It is also concerned about the selection and appointment process of the Commission members and that the Commission lacks sufficient human and financial resources to fulfil its mandate in accordance with the Principles Relating to the Status of National Institutions for the Promotion and Protection of Human Rights (the Paris Principles) (arts. 2, 12, 13 and 16).

26. The State party should:

(a) Amend the National Human Rights Commission Act of 2009, with a view to broaden the mandate of the National Human Rights Commission so that it can investigate directly all alleged acts of torture and ill-treatment reported to have been committed by State military, police and security forces; and ensure that it is broadly accessible;

(b) In the absence of a national preventive mechanism, ensure that the Commission is able to exercise its existing mandate to the fullest extent and has access to all places where persons are deprived of their liberty;

(c) Provide the Commission with sufficient financial and human resources to allow it to fulfil its mandate impartially and independently;

(d) Establish a clear, transparent, participatory and merit-based selection and appointment process, in accordance with the Paris Principles;

(e) Ensure that the Commission staff receives appropriate training on how to investigate allegations of torture and ill-treatment.

Independence of the Judiciary

27. The Committee is concerned that judges reportedly face threats and pressure in connection with their work. In particular, while noting the delegation's explanations, it is concerned at the allegations from former Chief Justice, Surendra Kumar Sinha, that he was subjected to pressure from high level officials in deliberations on the 16th amendment case, and harassed afterwards as a result, compelling him to resign and flee the country; in this connection the Committee also notes the statements by the head of delegation that Judge Sinha's resignation was not connected to the 16th amendment case, but to allegations of corruption. In view of the continued effort by the government to amend the Constitution to give Parliament the power to remove Justices of the Supreme Court, the Committee remains concerned about the independence of the judiciary. Moreover, daily pressure on the members of the judiciary reportedly results in judicial officials having to accept arrest without warrants, to extend custody without oversight, and other measures which undermine the fundamental legal safeguards that can protect a person from such abuses as ill-treatment and torture (art. 2).

28. **The State party should:**

(a) Strengthen the independence of the judiciary from the Ministry of Law, Justice and Parliamentary Affairs;

(b) Protect judicial officials from intimidation, harassment and improper interference, including from high-level government officials;

(c) Ensure that all judges and prosecutors receive adequate remuneration and guaranteed tenure until retirement or expiration of the term of office.

Reprisals, harassment and violence against human rights defenders and journalists

29. The Committee is concerned about reports that civil society activists, lawyers and journalists in Bangladesh who have criticized the conduct of the authorities or the government and brought to light allegations of torture, disappearance, extrajudicial killings and related impunity have faced harassment and violence, as well as retaliatory lawsuits from the authorities of the ruling party for such criticism and contempt of court allegations in which they have criticized unfair trials. The Committee is alarmed that some civil society activists, lawyers and journalists have reportedly been subjected to torture and ill-treatment while detained in connection with charges brought against them in connection with their work. The Committee is concerned that legislation recently enacted by the State party, including the Information and Communication Technology Act of 2006, and the Digital Security Act of 2018, has been used to carry out such harassment. The Committee expresses particular concern about the case Mr. Mahmudur Rahman, the acting editor of the Daily Amar Desh, who was held in remand detention for several years on the basis of dozens of sedition, defamation, contempt of court and related charges brought against him in connection with his work, and regrets that the delegation did not indicate whether allegations that he was subjected to torture in remand detention have been investigated, as required by the Convention

30. The Committee acknowledges with appreciation the statement given during the constructive dialogue by the Minister of Law, Justice and Parliamentary Affairs who headed the State party delegation, that the government wishes to make it "emphatically clear" that it will protect from reprisals members of civil society and non-governmental organizations who have cooperated with the Committee in the context of its consideration of the State party's initial report (arts. 2, 4, 11, 12, 13, 15 and 16).

31. **The State party should:**

(a) **Communicate at the highest level that civil society activists, lawyers and journalists who publicize information or allegations concerning human rights violations play a vital role in society and should not be subjected to retaliatory charges of contempt of court, defamation, or sedition for criticizing government leaders or their performance;**

(b) **Investigate all allegations of unlawful or arbitrary arrest, harassment, torture or ill-treatment or violence against human rights defenders including civil society actors, lawyers and journalists;**

(c) **Amend legislation including the Information Communication and Technology Act of 2006, the Digital Security Act of 2018, and the Foreign Donations (Voluntary Activities) Regulation Act of 2016 to eliminate provisions prohibiting making derogatory remarks about the Constitution and constitutional bodies, engaging in “anti-State activities,” “tarnishing the image of the nation,” and similar provisions that have provided a basis for arresting and prosecuting individuals who have publicized allegations of torture, disappearance, extra-judicial killing or ill-treatment or criticized the State party’s response to such allegations;**

(d) **Ensure that members of civil society and non-governmental organizations who have cooperated with the Committee in the context of its consideration of the State party’s initial report are protected from any reprisals or harassment, including charges of breaching the Information and Communications Technology Act, in keeping with the pledge given by the Minister of Law, Justice and Parliamentary Affairs.**

Conditions of detention

32. The Committee is seriously concerned:

(a) At reports that prison conditions in the State party are substantially below international standards and have even been described as constituting ill-treatment, or torture in extreme cases;

(b) At the severe overcrowding in prisons amounting to over 200 per cent and even more during election periods in prisons designed to hold 40,000 inmates, resulting to a large extent from the extensive use of detention on remand, and which forces prisoners to sleep in shifts, has made even the prison authorities consider establishing makeshift sheds within the jails, and has resulted in the holding of some 100 inmates in an abandoned warehouse in January 2019;

(c) About the very poor conditions of detention, which reportedly resulted in 74 deaths in 2018, as well as inadequate sanitary conditions, scarcity of food and drinking water, insufficient toilet and bathroom facilities and beds, inadequate light and ventilation; as well as the lack of recreational activities and mental stimulation;

(d) About the corruption in the prisons, including extortion of inmates and their relatives by prison guards so that they can enjoy elementary services; the “mate” system whereby the more senior prisoners control others, including their access to food and conditions of imprisonment; and who often mete out punishments on behalf of the prison authorities; and that prisoners face reprisals as soon as they complain;

(e) That only 12 out of 68 prisons in the State party have hospitals and that out of the 170 positions for medical doctors only a dozen are filled, reportedly since medical doctors fear for their health because of the poor sanitary and hygiene conditions;

(f) About the high number of deaths in custody which the authorities attribute to natural causes or suicide but some of which actually result from injuries caused by torture and excessive use of force by police, as well as poor conditions, negligence of the prison authorities and lack of access to treatment; that 11 persons died of illness in prisons between January and March 2019; and that almost all prisoners come into contact with communicable and non-communicable diseases and develop illnesses;

(g) That juvenile prisoners are held with adults; that female detainees may be held with male prisoners; and that prisons have not been adapted to inmates with disabilities (arts. 2, 11, 12, 13 and 16).

33. **The State party should:**

(a) **Urgently take all necessary measure to improve conditions of detention in all places of deprivation of liberty in order to bring them in line with international standards, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);**

(b) **Urgently take measures to decrease overcrowding in prisons by ensuring that persons held in pre-trial detention are not kept in custody for an unreasonable period of time and reducing substantially the number of persons held in remand or other type of pre-trial detention; by loosening bail requirements and accelerating the process of release on parole; providing for restorative justice and actively promoting alternatives to detention in keeping with the United Nations Standard Minimum Rules for Non-Custodial Measures (the Tokyo Rules);**

(c) **Urgently take measures to improve the material conditions in places of deprivation of liberty, including access to food of adequate quality and quantity, sanitary and hygiene conditions, bedding, lighting and ventilation, as well as recreational and other meaningful activities; including building new and refurbishing older prisons;**

(d) **Eradicate corruption in prisons, including the extortion of prisoners and their relatives; take steps to address the collusion of custodial staff with criminal gangs in the prison system; ensure the right of detainees to be treated with humanity and dignity; reduce violence, including inter-prisoner violence;**

(e) **Maintain the “zero tolerance” policy against custodial death due to the omission or commission on the part of law enforcement agencies, torture or any other forms of ill-treatment, as stated by the Minister of Law, Justice and Parliamentary Affairs during the constructive dialogue with the Committee and ensure prompt and independent investigations into all deaths in custody, regardless of their causes;**

(f) **Ensure adequate health care by hiring, as a matter of priority, additional medical doctors to fill all the vacant positions, including specialists as well as nurses who are available around the clock; ensure prompt referrals and delivery by ambulances for specialist care outside detention facilities; introduce health screening of inmates before admission to places of detention and of the entire inmate population; and take vigorous steps to prevent the infection of prison inmates who are healthy on arrival;**

(g) **Put in place systems to separate juveniles from adult prisoners; convicted prisoners from remand detainees; strictly separate female from male detainees and ensure that women are detained in gender-sensitive conditions; ensure that inmates with disabilities are held in humane conditions and that prisons are adapted to their needs;**

(h) **Allow independent monitoring bodies, including international bodies, specialized health bodies and non-governmental organisations, to carry out unannounced visits to and medical inspections of all places of detention and to meet in private with detained persons.**

Excessive use of force

34. The Committee is deeply concerned at persistent allegations of excessive use of force by members of the security forces, intelligence services and the police, including the practice of shooting persons at short range in the knee, leg or elbow called “kneecapping”, which often results in permanent disability including amputations. It is also concerned at reports of violence by authorities in connection with recent and past elections,

including attacks on protesters, seizing polling stations and use of intimidation and violence to suppress votes (arts. 2, 10, 12, 13 and 16).

35. **The State party should:**

(a) **Establish an effective complaints mechanism for victims of excessive use of force and ensure that they do not suffer reprisals for reporting acts of torture and ill-treatment by law enforcement and other public officials and ensure prompt, impartial, effective investigations are carried out into all such complaints;**

(b) **Provide training to all law enforcement officials on the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials and on the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.**

Arbitrary detention

36. The Committee is concerned by reports that in January and February 2018, authorities arrested almost 5,000 supporters of the opposition Bangladesh Nationalist Party (BNP), including ordinary persons suspected of being opposition sympathizers, ahead of the verdict in the corruption case against BNP leader Khaleda Begum Zia, and it is concerned about allegations of thousands of arrests of opposition supporters around the time of the elections, and that many of these persons remain detained. It is also concerned at allegations that individuals have been arbitrarily deprived of their liberty on suspicion of having ties to militant groups (arts. 2, 11, 12, 13 and 16).

37. **The State party should ensure that all detained persons, including political activists, protestors, and individuals arrested and detained as part of “crowd control” actions to prevent violence, are afforded, in practice, all fundamental legal safeguards from the very outset of detention (as set forth in paragraph 19), and be promptly presented before a judge. It should promptly and effectively investigate all complaints of torture by persons held in the preventive operations described above, and either prosecute or release persons detained, as warranted by the investigations.**

Violence against women

38. The Committee welcomes the State party’s stated commitment to combatting violence against women. However, it notes with concern reports that, in recent years, authorities have prosecuted and convicted perpetrators of rape in only a very small percentage of cases registered by them and at the reported increase in the number of claims of sexual assault of children received by the authorities in recent years. The Committee is concerned at reports that legal barriers deter women who are victims of sexual violence from filing rape claims with the authorities. It is further concerned that a recently-added legal provision in the State party allowing marriage of girls under 18 years of age in “special cases” could result in the already high rates of so-called “early marriage” in the country increasing further. The Committee is concerned that the State party’s laws criminalize termination of pregnancy except where the pregnant woman’s life is at risk, which can result in women experiencing severe physical and mental anguish and distress (arts. 2, 4, 12, 13, 14 and 16).

39. **The Committee recommends that the State party should:**

(a) **Ensure that all allegations of gender-based violence against women and girls, especially those involving actions or omissions by State authorities or other entities which engage the international responsibility of the State party under the Convention, are thoroughly and effectively investigated, that the alleged perpetrators are prosecuted and, if convicted, are punished appropriately and that the victims receive redress, including adequate compensation;**

(b) **Eliminate the 24-hour time limit to obtain a medical report and file rape claims under the Women and Children Repression Prevention Act of 2000 (amended in 2003);**

(c) Eliminate the legal exception to the prohibition of marriage of girls under 18 years of age in “special cases” and the exemption of marital rape of women over the age of 13 from the definition of rape in section 375 of the Penal Code;

(d) Ensure that domestic and gender-based violence services providing medical and legal services, safe emergency accommodation and shelters exist throughout the country and are accessible by all victims of these offenses, including non-citizens, who should have access to them;

(e) Review its legislation in order to allow for legal exception to the prohibition of abortion in specific circumstances in which the continuation of pregnancy is likely to result in severe pain and suffering, such as when the pregnancy is the result of rape or incest or in cases of fatal fetal impairment, ensure the provision of post-abortion health care for women irrespective of whether they have undergone an illegal or legal abortion and that neither patients nor their doctors face criminal sanctions or other threats for seeking or providing such care.

Trafficking

40. While appreciating that the State party adopted legislation criminalizing sex and labor trafficking in 2012, the Committee is concerned at credible allegations that the vast majority of trafficking victims choose not to pursue cases against their traffickers, often because of fear of retaliation and intimidation, as many do not trust that they will receive effective protection from the police. The Committee is also concerned at reports of more than 100 reported cases in which Rohingya have been subjected to forced labor and sex trafficking within Bangladesh, and that, in some cases, Bangladeshi border guard, military, and police officials have been involved in facilitating trafficking of Rohingya women and children. Moreover, to date the Bangladesh High Court has refused to entertain anti-trafficking cases filed by Rohingya, and the authorities have failed to open investigations (arts. 2, 4, 10, 11, 14 and 16).

41. **The State party should:**

(a) Register complaints for sex or labor trafficking of Rohingya within Bangladesh and ensure allegations involving official complicity are investigated and prosecuted;

(b) Allow foreign trafficking victims, including Rohingya, to access government services, including centers for women and child victims of violence, and legal aid and ensure that they are able to bring claims that they are victims of violations before the country’s courts;

(c) Create practical conditions and a climate in which trafficking victims can receive effective protection from retaliation if they choose to lodge complaints.

Refugees and non-refoulement

42. The Committee commends the Government of Bangladesh for respecting the principle of non-refoulement with respect to the more than one million Rohingya refugees from Myanmar currently resident on its territory and its recognition that they would be in danger of being subjected to torture and ill-treatment if returned. The Committee regrets that the State party did not provide information about its efforts to respect the principle of non-refoulement in legislation or in requested data about the countries to which it has returned people and the measures it has taken to ensure that no person is returned to a situation in which he or she face a risk of torture and ill-treatment (arts. 2, 3, 10, 12, 13, 14 and 16).

43. **The State party should:**

(a) Continue to respect the principle of non-refoulement with respect to all Rohingya refugees from Myanmar on its territory;

(b) Adopt a comprehensive law on asylum that is consistent with international human rights standards and norms and is in accordance with article 3 of the Convention;

(c) **Establish an individualized procedure through which any individual who raises concerns that he or she faced a real, personal risk of torture and ill-treatment if returned by the State party to another country can seek to remain in Bangladesh on the grounds that returning them would violate Bangladesh's non-refoulement obligation under the Convention;**

(d) **Provide training to all relevant officials in the State party on the principle of non-refoulement;**

(e) **Ensure that authorities put in place measures to identify and provide redress to all survivors of torture and ill-treatment, including non-nationals, and provide them with adequate access to health care and psychological services;**

(f) **Consider acceding to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol;**

(g) **Cooperate with the ongoing investigation by the Prosecutor of the International Criminal Court concerning the commission of crimes within its jurisdiction against the Rohingya involving torture. .**

Redress and rehabilitation

44. The Committee is concerned at the lack of information provided by the State party concerning redress that has been provided to victims of torture and ill-treatment and at reports that very little redress has been provided by the State in practice. It is further concerned that the Torture and Custodial Death (Prevention) Act provides for very low levels of compensation for victims, makes no provision for rehabilitation, and that compensation awards have not been made under the Act in practice as there have been no convictions under the Act. In this regard, the Committee appreciates the delegation's statement that the Government would consider increasing the amount of compensation for victims of torture set out in the Act. The Committee is also concerned that Bangladesh maintains a reservation to article 14 of the Convention. (art. 14).

45. **The State party should:**

(a) **Ensure that all victims of torture obtain redress and have an enforceable right to fair and adequate compensation, including the means for as full a rehabilitation as possible. In this regard, the Committee draws the attention of the State party to general comment No. 3 (2012) on the implementation of article 14 of the Convention;**

(b) **Ensure that all victims of torture and ill-treatment in the State party, including refugees resident on the territory of the State party, are able to promptly access appropriate psychosocial services, mental health care, and specialized rehabilitation services and ensure that access to these services is not conditional on the filing of formal complaints of torture or on the conviction of the perpetrator;**

(c) **Recognizing the seriousness of the offense, amend the Torture and Custodial Death (Prevention) Act to provide appropriate compensation for victims of torture and ill-treatment;**

(d) **Consider withdrawing the State party's reservation to article 14 of the Convention.**

Corporal Punishment in Law

46. While noting that article 35 (5) of the Constitution clearly stipulates that "No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.", the Committee is concerned that its laws permit the imposition of whipping as punishment, the use of iron bar fetters, and that section 35(6) of the Constitution states that its prohibition against torture does not apply to any legally prescribed punishment (arts. 1, 2, 4, 11 and 16).

47. **The State party should take the necessary legislative measures to eradicate and explicitly prohibit all forms of corporal punishment in all settings, as they amount to torture or cruel, inhuman or degrading treatment or punishment, in violation of the**

Convention. Notably, the State party should ensure the amendment of the Prisons Act of 1894.

Corporal punishment of children

48. While taking note of the directives issued in 2010 to stop all forms of corporal punishment in primary and secondary educational institutions, and the 2011 declaration by the High Court of Bangladesh that all types of corporal punishment in schools, including caning, beating, chaining and confinement, are “illegal and unconstitutional” and a form of ill-treatment, the Committee is concerned that the State party has not outlawed corporal punishment in all settings and that it continues to take place on a broad scale, including in schools (arts. 2 and 16).

49. **The State party should:**

(a) Introduce additional amendments in the Children Act, the Penal Code and other national legislation in order to explicitly and clearly prohibit corporal punishment in all settings;

(b) Take all the measures necessary to prevent corporal punishment, including in schools; investigate and take appropriate action against teachers who continue to apply corporal punishment in educational institutions;

(c) Conduct public information campaigns to raise awareness of the general population about the harmful effects of corporal punishment; and encourage non-violent forms of discipline as alternatives to corporal punishment.

Death penalty

50. The Committee is concerned at the numerous sentences handed down prescribing the death penalty. The Government delegation stated that it has been gradually replacing the death penalty with other forms of punishment like life imprisonment. However, it confirmed that while 1,119 death sentences were handed down, “only” 130 such sentences were confirmed by the High Court Division, and 239 such sentences were commuted, and a total of 17 were carried out between 2013-2017. The Committee is concerned because of the uncertainty these sentences cause to large numbers of prisoners who have received them, the poor conditions of detention provided for such prisoners, and reports that the State party is expanding crimes for which the death penalty may be pronounced, for example, through such laws as the Narcotic Control Act of 2018 (arts. 2, 11 and 16).

51. The Committee urges the State party to establish a moratorium on the death penalty; continue efforts to commute all death sentences to other punishments; improve the conditions of detention of prisoners on death row; carefully review the application of the Anti-Terrorism Act, of the Narcotics Control Act and other relevant laws that may entail the imposition of the death penalty in light of its international obligations; and consider ratifying the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

Follow-up procedure

52. The Committee requests the State party to provide, by 9 August 2020, information on follow-up to the Committee’s recommendations on ensuring the full implementation by law enforcement authorities and magistrates of the directives issued by the High Court; on monitoring all places of deprivation of liberty by an independent authority and representatives of non-governmental organizations, on establishing a complaints mechanism for persons detained arbitrarily, and on ensuring that members of civil society organizations who have cooperated with the Committee in the context of the consideration of the State party’s initial report are protected from any reprisals or harassment, in accordance with the pledge given to the Committee by the Minister of Law, Justice and Parliamentary Affairs (see paragraphs 22 (b), 16 (e), 35 (a), and 31 (d)). In that context, the State party is invited to inform the Committee about its plans for implementing, within the coming reporting period, some or all of the remaining recommendations in the concluding observations.

Other issues

53. The Committee invites the State party to consider making the declarations envisaged under articles 21 and 22 of the Convention and consider withdrawing its reservation made with regard to article 14 of the Convention.

54. The Committee invites the State party to ratify the Optional Protocol to the Convention and any core United Nations human rights treaties to which it is not yet party, and in particular the International Convention for the Protection of All Persons from Enforced Disappearance.

55. The Committee recommends that the State party grant access to the nine special procedures mandate holders who have requested visits and issue without delay an invitation to the United Nations Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Working Group on Arbitrary Detention; the Working Group on Enforced Disappearances; and the Special Rapporteur on the situation of Human Rights Defenders.

56. The State party is requested to disseminate widely the report submitted to the Committee and the present concluding observations, in appropriate languages, through official websites, the media and non-governmental organizations and to inform the Committee about its disseminating activities.

57. The Committee invites the State party to submit its next periodic report, which will be its second periodic report, by 9 August 2023. To that end, it invites the State party to agree, by 9 August 2020, to avail itself of the simplified reporting procedure in preparing that report. Under that procedure, the Committee will transmit to the State party a list of issues prior to reporting. The State party's replies to that list of issues will constitute its second periodic report under article 19 of the Convention.
