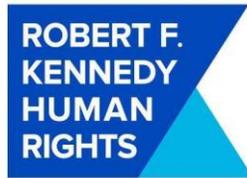




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**Civil Society Joint Alternative Follow-up Report one year after the UN
Committee against Torture's Concluding Observations
on the initial report of Bangladesh**

7 August 2020

Joint report by:

Advocates for Human Rights; Anti-Death Penalty Asia Network (ADPAN); Asian Federation Against Involuntary Disappearances (AFAD); Asian Legal Resource Centre (ALRC); International Federation for Human Rights (FIDH); Odhikar; Robert F. Kennedy Human Rights; and World Organisation Against Torture (OMCT)

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I. Introduction

This Alternative Report is published one year following the United Nations (UN) Committee against Torture's (CAT) adoption of its Concluding Observations on the initial report of Bangladesh at its 67th session on 8 August 2019.¹ At that time, the CAT requested the Bangladesh Government to submit a follow-up report by 9 August 2020 on measures it had taken to implement the Committee's recommendations.² The CAT specifically requested Bangladesh to report on progress made toward the following recommendations on:

1. Ensuring the full implementation by law enforcement authorities and magistrates of the directives issued by the High Court;
2. Monitoring all places of deprivation of liberty by an independent authority and representatives of NGOs;
3. Establishing a complaints mechanism for persons detained arbitrarily; and
4. 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.

More generally, the Bangladesh Government was also invited to provide information on its plans to implement the remaining recommendations from the Concluding Observations. This Alternative Report provides inputs from civil society organisations regarding the Bangladesh Government's follow-up on the CAT's recommendations made in the Concluding Observations.

Bangladesh ratified the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ("the Convention") on 5 October 1998. Since its accession to the Convention, Bangladesh did not submit its initial report for nearly twenty years. Its initial report was received on 23 July 2019, one week prior to the date of its consideration.³ The constructive dialogue with the State party delegation occurred on 30 and 31 July 2019.⁴

At the time of Bangladesh's initial review in 2019, many of the civil society organisations contributing to this Joint Alternative Follow-up Report submitted a Civil Society Joint Alternative Report on Bangladesh to raise serious concerns regarding the Bangladeshi Government's failure to implement the Convention.⁵ The information in this report follows from

¹ UN Committee against Torture, *Concluding Observations on the Initial Report of Bangladesh*, ¶ 1, UN Doc. CAT/C/BGD/CO/1 (Aug. 26, 2019), <https://undocs.org/CAT/C/BGD/CO/1>.

² *Id.* at ¶ 52.

³ *Id.* at ¶ 1.

⁴ *Id.*

⁵ Civil Society Joint Alternative Report on Bangladesh Submitted to the Committee against Torture, 67th CAT Session (22 July – 9 August 2019), https://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/BGD/INT_CAT_CSS_BGD_35328_E.pdf.

this prior participation in the CAT review process, and reflects the collective efforts of these organisations to continue to monitor, document, and report on human rights abuses in Bangladesh, including those that violate the Convention.

For each subject area addressed by the CAT in its Concluding Observations, this Joint Alternative Follow-up Report includes the Committee's findings and recommendations and provides updated information on the current situation and whether the Bangladesh Government has taken any actions toward the implementation of the Committee's recommendations.

II. Principal Subjects of Concern and Recommendations

A. Allegations of widespread use of torture and ill-treatment

The Committee made the following findings:

1. While welcoming the State party's constitutional provisions providing for the protection of any person against torture or cruel, inhuman or degrading punishment or treatment and the adoption of the Torture and Custodial Death (Prevention) Act in 2013, the Committee is concerned at information it has 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 the 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 [A]ct 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 [A]ct or to limit the scope of conduct prohibited by the Act. While appreciating the statement by the delegation that no amendment will be brought and that the Government has a "zero tolerance" policy with regard to criminal conduct by 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 remained seriously concerned that law enforcement authorities request such exemptions 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).⁶

The Committee made the following recommendations to the State party:

2. Publicly acknowledge at the highest levels of the Government that combating the routine commission of torture and ill-treatment by law enforcement officers is an urgent concern and

⁶ UN Committee against Torture, *Concluding Observations on the Initial Report of Bangladesh*, ¶ 7, UN Doc. CAT/C/BGD/CO/1 (Aug. 26, 2019), <https://undocs.org/CAT/C/BGD/CO/1>.

state unambiguously that torture and ill-treatment will not be tolerated under any circumstances or against any person.⁷

3. Publicly affirm that the Government has no intention of limiting 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;⁸

2. 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;⁹

3. 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;¹⁰

4. Take measures to ensure that confessions obtained from criminal suspects through torture or ill-treatment are not accepted in practice as evidence of guilt;¹¹

5. 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 and trials and on the number of convictions in cases of torture or ill-treatment, on the punishments meted out to perpetrators of torture and ill-treatment found guilty, and on measures of redress, particularly the compensation and rehabilitation afforded to victims.¹²

Civil society's findings on implementation of the recommendations:

6. Despite the Government of Bangladesh's repeated claims that it has "zero tolerance" for torture and extrajudicial killings, including during all three cycles of the Universal Periodic Review (UPR) of Bangladesh (3 February 2009, 29 April, 2013, and 14 May 2018), acts of

⁷ Id. at ¶ 8(a).

⁸ Id. at ¶ 8(b).

⁹ Id. at ¶ 8(c).

¹⁰ Id. at ¶ 8(d).

¹¹ Id. at ¶ 8(e).

¹² Id. at ¶ 8(f).

torture and extrajudicial killings have not stopped.¹³ State officials and members of the law enforcement agencies continue to enjoy widespread impunity, which is the greatest obstacle to ending torture and ill-treatment. The absence of action to address allegations of torture and ill-treatment reflects a consistent failure to implement voluntary pledges to protect human rights, such as those made to the UN Human Rights Council (HRC) in 2018,¹⁴ and the recommendations of other UN bodies, such as those made and accepted during three cycles of the UPR.

7. The use of torture and ill-treatment is an integral part of law enforcement in Bangladesh and a means of cracking down on the opponents of the ruling party, the Awami League. Despite the existence of the Torture and Custodial Death (Prevention) Act of 2013, which criminalises torture, in practice there remains no effective remedy for custodial torture, and the culture of impunity has worsened.¹⁵

8. The State party lacks the political will to end torture and to ensure that the perpetrators are brought to justice. The frequent use of torture by Bangladesh's law enforcement and intelligence agencies and security forces, including the Bangladesh Police, its Detective Branch (DB), Rapid Action Battalion (RAB), Counter Terrorism and Transnational Crimes Unit (CTTU), Directorate General of Forces Intelligence (DGFI), National Security Intelligence (NSI), Bangladesh Army, and Border Guards Bangladesh (BGB), has continued unabated.

9. Bangladesh has not ratified the Optional Protocol to the Convention against Torture (OPCAT), and has not established a National Preventive Mechanism (NPM) against Torture. The State party refrains from accepting the individual complaint procedures of the CAT and other Treaty Bodies, except for the Committee on the Rights of Persons with Disabilities and the Committee on the Elimination of Discrimination Against Women.

10. There are numerous allegations of torture and deaths due to torture in custody against the law enforcement agencies. According to data gathered by Odhikar, from January to June 2020 at least 11 persons were tortured to death in custody by members of different law enforcement agencies.¹⁶ It is likely that the actual number of persons tortured or tortured to death is higher

¹³ *Universal Periodic Review – Bangladesh*, United Nations Human Rights Council,

<https://www.ohchr.org/EN/HRBodies/UPR/Pages/BDIndex.aspx>.

¹⁴ Candidature of Bangladesh to the Human Rights Council, 2019-2021: Voluntary pledges and commitments pursuant to General Assembly resolution 60/251, U.N. Doc. A/73/90 (14 June 2018), https://www.un.org/en/ga/search/view_doc.asp?symbol=A/73/90.

¹⁵ World Organisation Against Torture and Odhikar, *Cycle of Fear Combating Impunity for Torture and Strengthening the Rule of Law in Bangladesh* (1 July 2019), https://www.omct.org/files/2019/07/25475/cycleoffear_bangladesh_report_omct.pdf.

¹⁶ Odhikar, *Three-month Human Rights Monitoring Report on Bangladesh, Reporting Period: April - June 2020* (6 July 2020), http://odhikar.org/wp-content/uploads/2020/07/Odhikar_Three-month-HRR_April-June-2020_Eng.pdf.

than that reported, as incidents are often unreported and victims do not speak out for fear of reprisals.

11. There are no publicly accessible official data from law enforcement and judicial authorities - or any other department of the government - regarding the number of cases filed against responsible members of law enforcement agencies under the Torture and Custodial Death (Prevention) Act of 2013 or convictions for torture and other forms of gross violation of human rights in Bangladesh. Generally, police do not accept or record complaints against any law enforcement officers or members of the security forces under the Act. Most of the known cases are filed under this Act as Complaints in the courts. The application of the Torture and Custodial Death (Prevention) Act has been limited to certain law enforcement agencies and officials and not to all government officials.¹⁷ Furthermore, any person committing acts of torture or otherwise complicit or acquiescent in torture bear individual criminal responsibility for such acts. The provision¹⁸ of the Code of Criminal Procedure of 1898 are to be followed for registering complaints, investigation, trial, and discharging the crimes under this Act.¹⁹ This has become a major impediment to prosecutions against public officials, including police officers, members of the RAB, BGB, and the Armed Forces. This is because section 197 of the Code prohibits prosecution against public officials without the Government's prior permission, if the offence is committed when acting in an official capacity.

12. Law enforcement officers continue to inflict torture on persons held in custody and in pretrial remand to extract confessional statements or to extort money. Magistrates continue to grant remand custody requests, even if it is likely the person will be tortured. None of the officials who committed acts of torture or ill-treatment, including those with superior or command responsibility, have been prosecuted and punished in accordance with the law.

13. No measures have been taken to stop forced confessions from criminal suspects through torture or ill-treatment, as this has long been practiced in policing and in the criminal justice system. In some instances, confessional statements are retracted in the Magistrate's court after remand. During the prosecution hearing, the accused complains to the Magistrate that he/she was severely beaten, given electric shocks and/or threatened by the police to confess before the Magistrate. If victims refuse to confess, police threaten them with further torture. For example, Ayesha Siddika Minni, accused of her husband Rifat Sharif's murder, was made to confess after the police threatened her at gunpoint. On 22 September 2019, Minni's father Mozammel Hossain alleged that Minni had faced horrifying torture in remand under police custody. According to

¹⁷ Torture and Custodial Death (Prevention) Act, 2013, arts. 4, 5.

¹⁸ Code of Criminal Procedure, 1898, <http://bdlaws.minlaw.gov.bd/act-75.html>.

¹⁹ According to article 9 of the Torture and Custodial Death (Prevention) Act, "Unless anything is laid down to the contrary, the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), shall be applicable for registering complaints, investigation, trial and discharging the crimes under this Act."

him, she has been suffering from depression since her torture, and suffers severe pain in her knees and other joints.²⁰

B. Inadequate investigation of complaints of torture

The Committee made the following findings:

14. The Committee is seriously concerned at information it has 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 publicise incidents of torture are reportedly frequently subjected to harassment, threats and retaliation by the perpetrators. . . .²¹

15. The Committee is further concerned at reports that there is no independent body authorised to carry out investigations into allegations of 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. . . .²²

16. While appreciating the information provided by the delegation that disciplinary punishments “for various offences” were handed down against members of the law enforcement agencies in 2017 by internal oversight bodies, the Committee is concerned that in those cases the most severe punishments were dismissal from service and demotion, which are not appropriately grave punishments for the offences of torture and ill-treatment.²³

17. The Committee appreciates that the Torture and Custodial Death (Prevention) Act of 2013 permits complainants to apply directly to the courts to seek a judicial inquiry into allegations of torture. While this is welcome, the Committee is concerned at reports that the procedure is not effective in practice, as law enforcement authorities frequently do not complete

²⁰*Police Pointed Gun at Minni, Tortured Her, Claims Father*, Dhaka Tribune (23 Sept. 2020), <https://www.dhakatribune.com/bangladesh/dhaka/2019/09/23/police-pointed-gun-at-minni-tortured-her-claims-father>. Ayesha Siddika Minni filed a petition to withdraw her confessional statement on 16 July 2019, and on 29 August she was freed on bail and into the custody of her father on condition that she must not speak to the media.

²¹ UN Committee against Torture, *Concluding Observations on the Initial Report of Bangladesh*, ¶ 9, UN Doc. CAT/C/BGD/CO/1 (26 Aug. 2019), <https://undocs.org/CAT/C/BGD/CO/1>.

²² *Id.* at ¶ 10.

²³ *Id.* at ¶ 11.

investigations within the time limits set out in the Act and relevant officials do not compel adherence to them. . . .²⁴

The Committee made the following recommendations to the State party:

18. 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;²⁵

19. Expeditiously enact legislation ensuring effective victim and witness protection;²⁶

20. Ensure that an oversight body monitors the progress of investigations into allegations of torture and ensures strict adherence to the time limits for investigations and trials outlined in the Torture Act;²⁷

21. 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 the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Istanbul Protocol).²⁸

Civil society's findings on implementation of the recommendations:

22. The Government of Bangladesh has not yet established a separate, independent investigation mechanism to handle complaints regarding torture and ill-treatment by law enforcement officials. Investigations into allegations of torture by law enforcement officials are carried out by the police, as there is no independent body authorised to conduct such investigations. As a result, investigations are conducted by officers from the same units or within the same official hierarchy as the alleged perpetrators and thus cannot be neutral.

23. Police stations routinely refuse to file complaints or information reports regarding torture or ill-treatment, and victims of torture and their families who seek to complain about incidents of torture are routinely subjected to threats and other acts of harassment, intimidation, and retaliation by the perpetrators. Thus, most torture victims or their families still do not file cases under the Torture and Custodial Death (Prevention) Act of 2013 due to fear of reprisals.

²⁴ Id. at ¶ 12.

²⁵ Id. at ¶ 13(a).

²⁶ Id. at ¶ 13(b).

²⁷ Id. at ¶ 13(c).

²⁸ Id. at ¶ 13(d).

24. At the time of writing this report, no one has been convicted under the Torture and Custodial Death (Prevention) Act of 2013, although some cases of custodial deaths are still pending before the courts.

25. Many of these cases have been pending for years. On 16 September 2014, Nazrul Islam was arrested from Chittagong Port area and later shot in his leg by the police to forcibly extract a confession. His leg had to be amputated. On 14 October 2014, his father filed a case with the Noakhali District and Sessions Judge Court, under the Torture and Custodial Death (Prevention) Act of 2013, against the police. A total of 17 police officers were named as accused.²⁹ A criminal appeal in this case is still pending before the High Court Division of the Supreme Court six years after the incident.

26. On 18 July 2017, police arrested and detained Shah Jalal, a vegetable vendor, from a street near Boalkhali of Khulna City. The police demanded 150,000 Taka (1,860 USD) to release him, which his family could not afford. Around 11:30pm, the police allegedly gouged out his eyes outside the police station.³⁰ However, the police claimed that local residents caught Shah Jalal stealing a woman's bag, that the residents lynched him and gouged out his eyes, and that the police rescued him. The police submitted a charge sheet against Shah Jalal for a mugging. On 4 November 2019, after several years of legal battles over the false charges against Jalal, Khulna Metropolitan Magistrate sentenced him to two-years' rigorous imprisonment and fined him 5,000 Taka (59 USD) for alleged mugging. Shah Jalal was sent to jail after the verdict,³¹ and was released on bail on 7 January 2020.³² Shah Jalal's mother moved the High Court against the lower court verdict, and the case is still pending. This is but one example of the torture, corruption, and harassment perpetrated by law enforcement and the dysfunctional criminal justice system.

27. Police who are accused of torture are not investigated, tried, and punished. Most of the time, they are "suspended," "closed,"³³ or transferred to another police station. The lack of trial and punishment only encourages a continuation of the violations.

²⁹See Odhikar, *Annual Human Rights Report 2014*, 74 (2014), <http://odhikar.org/annual-human-rights-report-2014-odhikar-report-on-bangladesh/>.

³⁰ Odhikar interview with Shah Jalal's wife Rahela Begum and his father Zakir Hossain (20 July 2017). See also Odhikar, *Human Rights Monitoring Report July 1-31, 2017*, 5 (1 Aug. 2017), http://www.odhikar.org/wp-content/uploads/2017/08/human-rights-monitoring-report-July-2017_Eng.pdf.

³¹*Eye Lost in Police Custody, Khulna Man Jailed for Mugging*, Dhaka Tribune (5 Nov. 2019), <https://www.dhakatribune.com/bangladesh/court/2019/11/04/eyes-lost-in-police-custody-khulna-man-jailed-for-mugging>.

³² Hedait Hossain Molla, *Eyes Gouged Out in Police Custody: Shahjalal Gets Bail 2 Months After Mugging Conviction*, Dhaka Tribune (8 Jan. 2020), <https://www.dhakatribune.com/bangladesh/court/2020/01/08/eyes-gouged-out-in-police-custody-shahjalal-gets-bail-2-months-after-mugging-conviction>.

³³ "Closed" refers to departmental action against police officers in Bangladesh to dismiss them from their post and return them to "police lines" or barracks.

28. There is no law ensuring effective victim and witness protection in Bangladesh. In 2006, a three-member Committee of the Bangladesh Law Commission headed by Justice Mostafa Kamal had recommended the enactment of a new law to protect victims and witnesses and guarantee their rights and privileges.³⁴ A Bill on the subject was drafted for the Parliament's consideration. Statistics of the Law Commission reveals that a second report (No. 108) was also submitted in 2011.³⁵ The Government of Bangladesh has not yet enacted the victim and witness protection law as recommended by the Committee.

29. There is no development in the creation of an oversight body that would monitor the progress of investigations into allegations of torture and ensure strict adherence to the time limits for investigations and trials outlined in the Torture and Custodial Death (Prevention) Act of 2013.

30. The Manual on Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, (the Istanbul Protocol) is one of the most effective tools for ending impunity related to torture through investigation and documentation of cases of torture. However, the Government of Bangladesh has not undertaken any initiatives to enhance the training of medical professionals and ensure that medical examinations ordered to assess torture allegations are carried out in accordance with the Istanbul Protocol.

C. Unacknowledged detention and disappearances

The Committee made the following findings:

31. 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 . . . 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 has subsequently reappeared, as in the case of Hummam Quader Chowdhury.³⁶

³⁴ Law Commission of Bangladesh, *Bangladesh Law Commission Report No. 74: Final Report on a Proposed Law Relating to Protection of Victims and Witnesses of Crimes Involving Grave Offences*, <http://www.lc.gov.bd/reports/74.pdf>.

³⁵ *Advocating for Law Reform: The Necessity for Enacting Witness Protection Law*, The Daily Star (11 Feb. 2020), <https://www.thedailystar.net/law-our-rights/news/the-necessity-enacting-witness-protection-law-1866439>.

³⁶ UN Committee against Torture, *Concluding Observations on the Initial Report of Bangladesh*, ¶ 14, UN Doc. CAT/C/BGD/CO/1 (Aug. 26, 2019), <https://undocs.org/CAT/C/BGD/CO/1>.

32. The Committee notes that Mr. Chowdhury's case was raised by the Working Group on Enforced and Involuntary Disappearances in 2017, along with those of Mir Ahmed Bin Quasem and 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 had been 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, such 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).³⁷

The Committee made the following recommendations to the State party:

33. Unambiguously affirm at the highest level of government that law enforcement authorities must immediately cease engaging in the practice of unacknowledged detention;³⁸

34. Publish a list of all recognised places of detention and ensure that no one is held in secret or incommunicado detention anywhere in the territory of the State party;³⁹

35. 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;⁴⁰

36. 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;⁴¹

37. 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 and speak confidentially with any individual in the facility, and that representatives of non-governmental organizations (NGOs) are also permitted to access all places of detention;⁴²

³⁷ Id. at ¶ 15.

³⁸ Id. at ¶ 16(a).

³⁹ Id. at ¶ 16(b).

⁴⁰ Id. at ¶ 16(c).

⁴¹ Id. at ¶ 16(d).

⁴² Id. at ¶ 16(e).

38. Consider ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment;⁴³

39. Because offences 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 the legislation, reflecting the definition set out in the International Convention for the Protection of All Persons from Enforced Disappearance, and consider ratifying the Convention.⁴⁴

Civil society’s findings on implementation of the recommendations:

40. Law enforcement agencies and state security forces continue to commit enforced disappearances with the acquiescence of the highest level of government, despite serious concerns raised by numerous UN human rights monitoring mechanisms, including the CAT, the Human Rights Committee, and the Working Group on Enforced or Involuntary Disappearances (WGEID). The WGEID has consistently expressed its concerns over the situation of enforced disappearances and urged the Government to stop the practice.⁴⁵ Furthermore, the WGEID reiterated its requests to visit Bangladesh, for which it still has not received a positive response.⁴⁶

41. Acts of enforced disappearance continued during the COVID-19 pandemic. The victims of enforced disappearance were mainly identified as opposition leaders, activists, and dissidents. For example, Shafiqul Islam Kajol, a photojournalist and editor of Pokkhakal Magazine, disappeared after leaving his house for work on 10 March 2020.⁴⁷ Prior to his disappearance, on 9 March 2020, Saifuzzaman Shikhar, a Member of Parliament with the Awami League from Magura-1 constituency, filed a case with Shere Bangla Nagar Police Station at Dhaka under the Digital Security Act, 2018 against the Chief Editor of the daily Manabzamin Matiur Rahman Chowdhury and its chief reporter Al-Amin, over a report published on 2 March in the daily Manabzamin. MP Shikhar also accused 32 others who shared the news on Facebook, including Shafiqul Islam Kajol.⁴⁸ Months after his disappearance, the Border Guard Bangladesh (BGB) claimed that they had detained Kajol while he was entering Bangladesh from India on 2 May

⁴³ Id. at ¶ 16(f).

⁴⁴ Id. at ¶ 16(g).

⁴⁵ *UN Expert Group Urges Bangladesh to Stop Enforced Disappearances*, UN Working Group on Enforced or Involuntary Disappearances (WGEID), (24 Feb.

2017), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21220&LangID=E>.

⁴⁶ UN Human Rights Council, *Report of the Working Group on Enforced or Involuntary Disappearances*, U.N. Doc. A/HRC/42/40 (30 July 2019) <https://undocs.org/A/HRC/42/40>.

⁴⁷ *Bangladesh: Reveal Whereabouts of Disappeared Journalist, End Repression*, Amnesty International (18 March 2020), <https://www.amnesty.org/en/latest/news/2020/03/bangladesh-must-reveal-whereabouts-of-disappeared-journalist-and-end-repression/>.

⁴⁸ *Bangladesh: CCTV Footage Shows Journalist Shafiqul Islam Kajol’s Last Known Whereabouts*, Amnesty International (21 March 2020), <https://www.amnesty.org/en/latest/news/2020/03/cctv-footage-shows-last-whereabouts-of-bangladishi-journalist-shafiqul-islam-kajol/>.

2020. Kajol was produced in the Jessore court on 3 May, showing him as arrested in a case under the Passport Act, 1920, and under Section 54 of the Code of Criminal Procedure, 1898.⁴⁹ Kajol remains arbitrarily detained, and the police have failed to complete the investigation of cases fabricated against him within 15 days, as prescribed under Regulation 261 of the Police Regulations of 1943.⁵⁰ Pretrial detention beyond 15 days without the completion of investigation is prohibited under the Regulations.⁵¹

42. On 6 June 2020, a 33-year-old businessman named Mehedi Morshed Palash was picked up by men claiming to be members of the RAB near the Kanchpur Bridge in Narayanganj, on his way back home with his wife. On 5 June, the couple left for their home in Sirajganj in a rented microbus with others. After reaching the Dhaka-bound lane on the eastern slope of Kanchpur Bridge in Narayanganj at around 3:00am on 6 June, four men in plainclothes stopped their microbus, claiming to be members of the RAB. All of them had firearms in their hands. They took Palash out and put him in a SUV (Dhaka Metro D 13-7095), which was parked further away. After the incident, the family contacted Kanchpur Highway Police Outpost, Sonargaon Police Station, Bandar Police Station, Siddhirganj Police Station, RAB-10, RAB-11, and the Office of the Superintendent of Police in Narayanganj. However, Palash was not found. On 18 June, a General Diary, numbered 604, was lodged with Narayanganj Sadar Police Station in regard to this incident. Three weeks after his disappearance, Mehedi Morshed Palash was shown as arrested in a sabotage case on 24 June, and handed over to Dakshinkhan Police Station in Dhaka by RAB-1.⁵²

43. Another case demonstrates how law enforcement agencies continue to use enforced disappearances against persons released on bail. On the night of 26 July 2016, the Detective Branch (DB) of Police picked up Borhan Uddin from his home on suspicion of being a militant. He was detained in jail for two years and nine months, before finally being released on bail on 8 April 2019. As he was being released, a group of people in plain clothes picked him up from the prison gate and took him away. Then, 22 days later, on 28 April 2019, he was shown as arrested by DB Police in a criminal case. In this case, he was granted bail by the High Court and released on 10 February 2020, but was again picked up from the gate of the Sirajganj District Jail around 8:00pm by a group of men who forced him into a microbus.⁵³ When the family repeatedly

⁴⁹See Odhikar, *Three-Month Human Rights Monitoring Report on Bangladesh, Reporting Period April – June 2020* (6 July 2020), http://odhikar.org/wp-content/uploads/2020/07/Odhikar_Three-month-HRR_April-June-2020_Eng.pdf.

⁵⁰BANGLADESH: *Arbitrarily Detained Journalist Is at Risk of Infection with COVID-19 after Returning from an Enforced Disappearance*, Asian Human Rights Commission (19 June 2020), <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-011-2020/>.

⁵¹BANGLADESH: *Unhindered Access to Justice is Key to Sustainable Development*, Asian Human Rights Commission (4 July 2020), <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-013-2020/>.

⁵²Report sent by local human rights defender associated with Odhikar from Sirajganj.

⁵³*The Mother Demanded to Find the Missing Child in Sirajganj*, The Daily Jugantor, (16 Feb. 2020), <https://www.jugantor.com/todays-paper/bangla-face/278887>.

contacted law enforcement agencies in search of Borhan, officials denied knowledge of his arrest. His mother, Rasheda Khatun, explained at a press conference on 15 February 2020 that she was still unable to find information on the whereabouts of her son. On 16 February 2020, RAB members handed Borhan Uddin over to Sirajganj Sadar Police Station, and the police showed him arrested in another criminal case and sent him to jail through the court.⁵⁴

44. The Bangladeshi authorities still engage in the practice of unacknowledged detention. None of the allegations of unacknowledged detention, disappearance, and death in custody have been promptly and thoroughly investigated by an independent body.⁵⁵

45. The Government of Bangladesh has not published a list of all recognised places of detention and ensured that no one is held in secret or incommunicado detention anywhere in the territory of Bangladesh. There are still allegations of holding people in secret or incommunicado detention.

46. The Government of Bangladesh has failed to ensure all places of detention in the country are monitored by an independent authority with the power to carry out unannounced visits and speak confidentially with any individuals in the facility. Representatives of non-governmental organisations (NGOs) are not permitted to access all places of detention. A few government-sponsored non-governmental organisations (GONGOs) are listed with the National Human Rights Commission of Bangladesh (NHRC) and are authorized to visit some places of detention, mainly police stations and prisons. However, such organisations rarely visit police stations and prisons.

47. The Government of Bangladesh has not yet ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment despite the government's acceptance of this recommendation during the Universal Periodic Review (UPR).

48. The Government of Bangladesh has not taken any measures to incorporate “enforced disappearance” as a criminal offence and to incorporate the serious nature of unacknowledged detention carried out by, or with the complicity or acquiescence of, State officials in any legislation. The Bangladesh Government has not ratified the International Convention for the Protection of All Persons from Enforced Disappearance.

⁵⁴ Information sent by local human rights defenders associated with *Odhikar* from Sirajganj.

⁵⁵ *BANGLADESH: Seized State Power and Institutional Collapse Key Behind Continued Enforced Disappearances*, Written Statement to the 42nd Regular Session of the UN Human Rights Council, Asian Legal Resource Centre (29 August 2019), <http://alrc.asia/bangladesh-seised-state-power-and-institutional-collapse-key-behind-continued-enforced-disappearances/>.

D. Rapid Action Battalion

The Committee made the following findings:

49. The Committee is gravely concerned at numerous reports received of cases in which members of the State party's Rapid Action Battalion, 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 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 further regrets that information was not provided to it about the composition of the internal enquiry cell of the Battalion and about the measures taken against officers in cases where complaints against members of the force were verified by the cell. The Committee is also concerned at reports that personnel that have served with the Rapid Action Battalion have frequently been deployed for service with United Nations peace missions (arts. 2, 4, 12, 13 and 16).⁵⁶

The Committee made the following recommendations to the State party:

50. Commission an independent inquiry into allegations that members of the Rapid Action Battalion have carried out torture, arbitrary arrests, unacknowledged detention, disappearances and extrajudicial killings as a matter of routine policy, and ensure that the personnel conducting the inquiry receive effective protection from harassment or intimidation;⁵⁷

51. Repeal the "good faith" clause in section 13 of the Armed Police Battalion (Amendment) Act 2003;⁵⁸

52. Cease the practice of seconding military personnel to serve in the Battalion and ensure that it is a purely civilian force and that members of the Battalion, like other law enforcement officers, are subject to criminal prosecution and penalties, rather than merely internal disciplinary action, in cases where they have allegedly committed torture, ill-treatment, disappearance or extrajudicial killings;⁵⁹

⁵⁶ UN Committee against Torture, *Concluding Observations on the Initial Report of Bangladesh*, ¶ 17, UN Doc. CAT/C/BGD/CO/1 (Aug. 26, 2019), <https://undocs.org/CAT/C/BGD/CO/1>.

⁵⁷ *Id.* at ¶ 18(a).

⁵⁸ *Id.* at ¶ 18(b).

⁵⁹ *Id.* at ¶ 18(c).

53. Establish an independent vetting procedure, with appropriate guidance from the United Nations, for all military and police personnel proposed for deployment on United Nations 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.⁶⁰

Civil society’s findings on implementation of the recommendations:

54. Members of the Rapid Action Battalion (RAB) are often involved in committing serious human rights violations, including torture, arbitrary arrests, unacknowledged detention, enforced disappearances, and extrajudicial killings. None of the cases or allegations of the RAB carrying out such human rights violations have been investigated by an independent inquiry commission.

55. The “good faith” clause in section 13 of the Armed Police Battalion (Amendment) Act 2003 has not been repealed.

56. There have been no efforts taken to stop the practice of seconding military personnel to serve in the RAB and to ensure that it is a civilian force and that members of the RAB, like other law enforcement officers, are subject to criminal prosecution and penalties (as opposed to merely internal disciplinary action), in cases where they have allegedly committed torture, ill-treatment, disappearances, or extrajudicial killings.

57. The Government of Bangladesh has not established an independent vetting procedure, with appropriate guidance from the UN, for all military and police personnel proposed for the deployment on UN peace-keeping missions and in order to ensure that no person or unit implicated in the commission of torture, extrajudicial killings, enforced disappearances, or other serious human rights violations, is selected for such service.

E. Remand detention and fundamental legal safeguards

The Committee made the following findings:

58. The Committee is seriously concerned at reports that the law enforcement authorities frequently do not provide persons deprived of their liberty with the 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. . . .⁶¹

⁶⁰ Id. at ¶ 18(d).

⁶¹ UN Committee against Torture, *Concluding Observations on the Initial Report of Bangladesh*, ¶ 19, UN Doc. CAT/C/BGD/CO/1 (Aug. 26, 2019), <https://undocs.org/CAT/C/BGD/CO/1>.

59. 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 or her liberty in a register at the place of detention and in a central register of all persons deprived of their liberty. It is also concerned at reports that persons deprived of their liberty are frequently not brought before a judge within the time frame prescribed by law.⁶²

60. The Committee is particularly concerned at reports that the 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 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 case of *Bangladesh Legal Aid and Services Trust v. Bangladesh*, the directives are not followed in practice. (arts. 2, 4, 11, 12, 13, 15 and 16). . . .⁶³

The Committee made the following recommendations to the State party:

61. Amend sections 54 and 167 of the Code of Criminal Procedure, the Penal Code, and the Evidence Act to reflect the ruling in the case of *Bangladesh Legal Aid and Services Trust v. Bangladesh* and to ensure compliance with international human rights obligations;⁶⁴

62. 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 Appeal in the case of *Bangladesh Legal Aid and Services Trust v. Bangladesh*, including through providing training and greater oversight;⁶⁵

63. Take effective measures to guarantee that all detained persons, including arrested persons and those in pretrial 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 arrested persons to be brought before a magistrate within 24 hours; ensure respect for the right to have 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;⁶⁶

⁶² Id. at ¶ 20.

⁶³ Id. at ¶ 21.

⁶⁴ Id. at ¶ 22(a).

⁶⁵ Id. at ¶ 22(b).

⁶⁶ Id. at ¶ 22(c).

64. 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;⁶⁷

65. Ensure that pretrial 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;⁶⁸

66. Regularly review the legality of all persons held in pretrial detention and release anyone who has been held in pretrial detention for a time period exceeding the maximum penalty for the offence;⁶⁹

67. Take measures to decrease resort by the authorities to pretrial 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).⁷⁰

Civil society’s findings on implementation of the recommendations:

68. Although the Supreme Court ordered the Government to amend the 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 in the case of *Bangladesh Legal Aid and Services Trust and others vs. Bangladesh and others*⁷¹ and to ensure compliance with international human rights obligations, those changes have not been made. After hearing this case in 2003, the High Court Division of the Supreme Court of Bangladesh issued 15 directives to safeguard against abuse of the powers of arrest and interrogation in custodial detention. The Appellate Division upheld the directives and added four more directives in 2016.⁷² However, the directives are yet to be implemented.

69. In Bangladesh, the police generally abuse power under sections 54 and 167 of the Code of Criminal Procedure. Section 54 empowers police to arrest anyone on suspicion without a warrant, and Section 167 permits police to take an accused into custody on remand. The plea for

⁶⁷ Id. at ¶ 22(d).

⁶⁸ Id. at ¶ 22(e).

⁶⁹ Id. at ¶ 22(f).

⁷⁰ Id. at ¶ 22(g).

⁷¹ *Bangladesh Legal Aid and Services Trust (BLAST) v. Bangladesh*, Supreme Court of Bangladesh, High Court Division, Writ Petition No. 3806 of 1998 (2003), https://www.lawyersnjurists.com/lawyer_ci/case/bangladesh-legal-aid-and-services-trust-blast-and-others-vs-bangladesh-and-others-55-dlr-2003-363.

⁷² *Bangladesh Legal Aid and Services Trust (BLAST) v. Bangladesh*, Supreme Court of Bangladesh, Appellate Division, Civil Appeal No. 53 of 2004 (24 May 2016), <http://www.humanrights.asia/wp-content/uploads/2020/07/Bangladesh-Supreme-Court-Verdict-on-Civil-Appeal-No.-53-of-2004.pdf>.

remand is generally accepted, the accused is subjected to torture to extract a “confession.” According to existing law, an officer after arresting someone without warrant has to take the person arrested before a Magistrate without any unnecessary delay. No police officer shall detain a person arrested without warrant for a period longer than 24 hours, exclusive of the time necessary for the journey from the place of arrest to the Magistrate’s Court, without any special order of a Magistrate under Section 167. However, such mandatory provisions are often violated. A Magistrate is authorised to grant remand under Section 167 of the Code of Criminal Procedure, by noting the specific reasons, if the police officer reasonably fails to complete the investigation of the relevant case within 24 hours. Time in police remand can be up to 15 days, which has long been criticised by human rights defenders.

70. The rights to access to counsel immediately after arrest and thereafter and to ensure family members are promptly informed about the time and place of a person’s arrest and detention are still widely violated, and the directives of the Supreme Court related to these protections have not been implemented.

71. Pretrial detentions in Bangladesh are excessive and lengthy. Denial of bail is one of the main reasons for pretrial detention, as well as the delay in carrying out investigations and submitting charge sheets, and delays in prosecution. As of 12 July 2020, 81.33% of the prison population was made up of pretrial detainees.⁷³

72. As pretrial detention is a measure of last resort, it shall be used only in accordance with international standards and norms. However, there is no information on whether pretrial detention is regulated by means of legal criteria compliant with international standards.

73. The Bangladesh Government has not taken any measures to decrease the excessive use of pretrial detention by the authorities and to increase the use of non-custodial measures in accordance with the UN Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules).

74. The Government released 2,884 convicted prisoners who were serving short sentences, to reduce the risk of the spread of COVID-19.⁷⁴

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

⁷³ Bangladesh Jail, accessed 12 July 2020, <https://prison.com.bd/home>.

⁷⁴ M Moneruzzaman, *Jail Authorities Start to Release 2,884 Inmates*, New Age Bangladesh (5 May 2020) <https://www.newagebd.net/article/105722/jail-authorities-start-to-release-2884-inmates>.

The Committee made the following findings:

75. 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 attack in Gobindaganj, Gaibandha District, on 6 November 2016, 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 officers had been involved in the burning of 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 had been subjected to violence and harassment, including the burning of their homes. It also noted the case of Hindu activist and lawyer Palash Kumar Roy, who was detained for insulting the Prime Minister and was then 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 on 9 April 2019 of the indigenous rights activist Michael Chakma, who was based in the Chittagong Hills, which the delegation indicated was under investigation. The Committee is also concerned at reports of violence against lesbian, gay, bisexual and transgender individuals by private individuals and by law enforcement officials, which is facilitated by the State party's criminalization of consensual same-sex sexual relations as "unnatural behaviour" (arts. 2, 12, 13, 14 and 16).⁷⁵

The Committee made the following recommendations to the State party:

76. 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;⁷⁶

77. 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 offence;⁷⁷

⁷⁵ UN Committee against Torture, *Concluding Observations on the Initial Report of Bangladesh*, ¶ 23, UN Doc. CAT/C/BGD/CO/1 (Aug. 26, 2019), <https://undocs.org/CAT/C/BGD/CO/1>.

⁷⁶ *Id.* at ¶ 24(a).

⁷⁷ *Id.* at ¶ 24(b).

78. Protect the safety and security of persons belonging to minority indigenous, ethnic and religious groups and ensure that they have access to an independent complaints mechanism;⁷⁸

79. Provide redress, including compensation and rehabilitation, to the Santal community and members of other minorities and vulnerable groups who have suffered physical violence and 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 its original owners;⁷⁹

80. Repeal Section 377 of the Penal Code of Bangladesh that criminalises “unnatural behaviour” which the State party uses to prohibit consensual same-sex sexual conduct;⁸⁰

81. Collect and publish statistical information about attacks on and violence against indigenous, ethnic and religious minorities and other vulnerable groups, including members of the lesbian, gay, bisexual and transgender community;⁸¹

82. Prosecute and punish the perpetrators of all acts of violence committed by the police and non-State actors against members of vulnerable groups.⁸²

Civil society’s findings on implementation of the recommendations:

83. The Bangladesh Government has failed to protect its citizens belonging to minority communities, and it consistently failed to ensure independent investigations into incidents of attacks and violence directed against minority groups. Violence against ethnic, religious, and linguistic minority people and attacks on the places of worship and homes are common. Furthermore, sectarian violence driven by political conflict – a problem particularly for religious minorities – continues to take place, with perpetrators enjoying apparent impunity. Such incidents could not be stopped, due to the politicisation of these occurrences and the lack of prosecution.

84. Bangladesh has not demonstrated any intention to repeal Section 28 of the Digital Security Act (DSA) of 2018, which criminalises publishing or broadcasting information online that “hurt[s] religious sentiments” and carries heavy fines and/or prison sentences of up to seven years. Such provisions are frequently abused as a means to harass minority community people.

⁷⁸ Id. at ¶ 24(c).

⁷⁹ Id. at ¶ 24(d).

⁸⁰ Id. at ¶ 24(e).

⁸¹ Id. at ¶ 24(f).

⁸² Id. at ¶ 24(g).

85. There is no specific information about any form of compensation or rehabilitation being given to members of minorities and vulnerable groups who have suffered physical violence and damage to and looting of their property. For example, the Santals, a minority ethnic community in Bangladesh, have for years demanded the return of land that was confiscated from them in 1962. The Government had promised to allow the return of the Santals to their ancestral land. However, this has not happened and no form of compensation or rehabilitation has been given to the Santals.

86. On 23 December 2019, a Senior Judicial Magistrate Court in Gobindaganjasked the Criminal Investigation Department (CID) of police to probe the case filed over the killing of three Santal people, torching and looting their houses in Gobindaganj on 6 November 2016.⁸³

87. Minority groups in Bangladesh demanded that the Government amend the Restoration of Vested Property Act of 2001, to ensure the rights of the religious minority groups, highlighting the recovery of endowed properties that had been encroached by land grabbers and the Government. However, the Government is reluctant to implement in practice the Act of 2001 (Act No. 16) and ensure the return of “vested” property to Bangladeshi owners.

88. Section 377 of the Penal Code of Bangladesh that criminalises “unnatural behaviour” still exists. The Government has demonstrated no intention to repeal this provision.

89. The rate of prosecution and punishment of perpetrators of all acts of violence committed by the police and non-State actors against members of vulnerable groups is negligible. In Bangladesh, there are rare instances of police filing cases against police in the police stations. Even when complaint cases are filed in courts (as opposed to being filed directly at the police station), it is still the police that investigate. As a result, there are few instances of police being investigated, prosecuted, and punished for crimes. In most cases, disciplinary actions are taken against policemen on the basis of allegations. However, those who have received such punishment are usually lower ranking officers, ranging from Constable to Inspector. Higher level commanders are not held responsible for such violence.

G. National Human Rights Commission

The Committee made the following findings:

90. Noting the concluding observations of the Committee on Economic, Social and Cultural Rights of 2018 (E/C.12/BGD/CO/1), 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

⁸³*CID Ordered to Probe Killings, Arson Attack at Santal Village*, United News of Bangladesh (23 Dec. 2019), <https://unb.com.bd/category/bangladesh/cid-ordered-to-probe-killings-arson-attack-at-santal-village/39138>.

existing mandate to investigate directly all alleged cases of torture and ill-treatment, including those reportedly perpetrated by State actors such as the police and the 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).⁸⁴

The Committee made the following recommendations to the State party:

91. Amend the National Human Rights Commission Act of 2009, with a view to broadening 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;⁸⁵

92. 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;⁸⁶

93. Provide the Commission with sufficient financial and human resources to allow it to fulfil its mandate impartially and independently;⁸⁷

94. Establish a clear, transparent, participatory and merit-based selection and appointment process, in accordance with the Paris Principles;⁸⁸

95. Ensure that the Commission staff receive appropriate training on how to investigate allegations of torture and ill-treatment.⁸⁹

Civil society's findings on implementation of the recommendations:

96. The rules for the formation of the National Human Rights Commission found in the National Human Rights Commission Act 2009, are not satisfactory for the formation of an independent national human rights institution. As a result, the Awami League-backed Government has formed a National Human Rights Commission led by people loyal to it, and

⁸⁴ UN Committee against Torture, *Concluding Observations on the Initial Report of Bangladesh*, ¶ 25, UN Doc. CAT/C/BGD/CO/1 (Aug. 26, 2019), <https://undocs.org/CAT/C/BGD/CO/1>.

⁸⁵ *Id.* at ¶ 26(a).

⁸⁶ *Id.* at ¶ 26(b).

⁸⁷ *Id.* at ¶ 26(c).

⁸⁸ *Id.* at ¶ 26(d).

⁸⁹ *Id.* at ¶ 26(e).

turned the body into a government-controlled and subservient institution.⁹⁰ Despite widespread incidents of human rights violations, including extrajudicial killings, enforced disappearances, torture, and violations of freedom of expression, even amid the COVID-19 pandemic, the NHRC remained indifferent and/or silent. The new Commission formed in September 2019 with five new NHRC members, including former Senior Government Secretary Nasima Begum as the Chairperson and former Secretary Dr. Kamal Uddin Ahmed as a full-time member, has been accused of being subservient to the Government, as in the past.⁹¹ On 24 June 2020, a bench of the High Court Division of the Supreme Court, while passing a judgment on a Writ Petition filed in 2013, commented that, “The National Human Rights Commission has shown extreme incompetence in fulfilling its responsibilities to prevent human rights violations, and the Commission is sleeping with eyes wide open.”⁹²

97. Despite the high number of reported cases of torture, extrajudicial killings, and enforced disappearance, the Commission continues to claim that the NHRC Act⁹³ only grants it the power to ask for reports from the authorities but not the power to independently investigate cases. However, human rights defenders and civil society organisations disagree with this interpretation and have urged the Commission to exercise the full range of its powers and functions. The NHRC has the power to investigate, except in cases involving security forces or law enforcement agencies, and has no authority to sanction any legal action. Thus, it is considered a mere recommendatory body.

98. The Bangladesh Government has not demonstrated any intention to amend the National Human Rights Commission Act of 2009, with a view to broadening the mandate of the NHRC so

⁹⁰ On 30 December 2018, the parliamentary elections were held with unprecedented rigging and farce. However, the NHRC Chairman Kazi Reazul Haque said in a press conference on 1 January 2019, that there was no incident of human rights violations during the eleventh Parliamentary elections. He further stated that the election was free, fair, and neutral. *There Were No Human Rights Violations During the Election*, The Daily Jugantor (2 Jan. 2019), <https://www.jugantor.com/todays-paper/last-page/128568>. On 30 December 2018, election day, leaders and activists of Subarnachar Awami League gang raped a BNP activist’s wife due to her voting for a BNP nominated candidate in Noakhali’s Subarnachar. *The Raped Woman from Subarnachar Returned Home After 18 Days*, DaillyNayadiganta (18 Jan. 2019), <http://www.dailynayadiganta.com/first-page/381463>. The NHRC formed an inquiry committee in this regard. In a report of the committee, the NHRC Chairman said that the Commission’s inquiry committee did not find any proof that the incident of rape and serious injuries in Subarnachar had any connection with the 11th Parliament elections. *The Human Rights Commission Did Not Find Any Connection between the Rape Incident in Subarnachar and the Vote*, ProthomAlo (13 Jan. 2019), <https://www.prothomalo.com/bangladesh/article/1574390>.

⁹¹ The NHRC seemed to be non-cooperative with human rights organisations, which are critical of the Government and vocal against human rights abuses by the state. The NHRC does not invite Odhikar to participate in meetings or interactive dialogues organised by the NHRC. Odhikar contacted the NHRC several times for an appointment and asked it to provide information for the report, but the NHRC did not respond. On 10 June 2020, Odhikar sent a letter to the Chairperson of the NHRC requesting information regarding the recommendations made by the CAT regarding the NHRC. As of publication, the NHRC had not responded to Odhikar.

⁹² *National Human Rights Commission Is Sleeping with Eyes Open: High Court*, The Business Standard (24 June 2020), <https://tbsnews.net/bangladesh/court/national-human-rights-commission-sleeping-eyes-open-high-court-97513#.XvMuoz33YM.facebook>.

⁹³ National Human Rights Commission Act, 2009, art. 18.

that it can investigate directly all alleged acts of torture and ill-treatment reported to have been committed by State security forces.

99. As per Section 12 of the NHRC Act 2009, the Commission is entrusted with a comprehensive mandate that includes: conducting investigation or inquiry by receiving petitions or exercising *suo moto* power; inspection of prisons, correctional centres, and other places of confinement; making recommendations, reviewing laws, and examining new legislation to assess their compliance with international standards and norms. However, the Commission, in the absence of a national preventive mechanism, continues to fail to exercise its existing mandate to the fullest extent.

100. The National Human Rights Commission continues to claim that it is not given sufficient financial and human resources to allow it to fulfil its mandate impartially and independently. To protect the independence of the Commission, Section 25 of the NHRC Act 2009 requires the Government to allocate a specific amount of money for the NHRC in each fiscal year, without requiring prior approval from the Government to spend such allocated money for the approved and specified purpose. However, the budget of the Commission is not provided through a separate budget line item. The NHRC's annual expenses are not included in the national budget, but are directly granted from the Government, which is a serious flaw and in direct defiance of General Observation 1.10, which specifies that funding should be set out in a separate line item in the national budget.⁹⁴ The Commission has no authority to fix its annual expenses, but must work within the funds allocated to it, which fall short of its requirements.

101. The selection and appointment processes for members⁹⁵ are still directly handled by the Government. In September 2019, the Government appointed the new NHRC members through the same selection process that lacked transparency and had restricted civil society participation. There is no space for civil society participation in the selection committee. The Government has not established a clear, transparent, participatory and merit-based selection and appointment process, in accordance with the Paris Principles.⁹⁶

⁹⁴ General Observations of the SCA, 2013, Section 1.10,

https://www.nhri.ohchr.org/EN/AboutUs/Governance/Documents/ICC_SCA_General_Observations.pdf.

⁹⁵ The NHRCB is, by law, considered a statutory independent body but the President appoints the Chairperson based on the recommendation of a Selection Committee and, as per the NHRC Act 2009, this Selection Committee consists of seven members including the Speaker of the Parliament, the Law Minister, the Home Minister, the Chairman of the Law Commission, the Cabinet Secretary and two members of Parliament, one from the Treasury and the other from the Opposition (however, in the present scenario, the loyal opposition is also part of the Government), who are mostly government officers. National Human Rights Commission Act, 2009, art. 7, http://www.nhrc.portal.gov.bd/sites/default/files/files/nhrc.portal.gov.bd/law/de62d323_fe91_45f0_9513_a0d36ab77fdf/NHRC_Act_2009_1_.pdf.

⁹⁶ GANHRI Sub-Committee on Accreditation, GANHRI,

<https://www.nhri.ohchr.org/EN/AboutUs/GANHRIAccreditation/Pages/default.aspx>.

H. Independence of the judiciary

The Committee made the following findings:

102. The Committee is concerned that judges reportedly face threats and pressure in connection with their work. In particular, while noting the explanations given by the delegation, it is concerned at the allegations by the 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 that connection the Committee also notes the statements by the head of the 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 the parliament the power to remove Justices of the Supreme Court, the Committee remains concerned about the independence of the judiciary. Moreover, daily pressure on members of the judiciary reportedly results in judicial officials having to accept arrests without warrants, extend custody without oversight and accept other measures which undermine the fundamental legal safeguards that can protect a person from such abuses as ill-treatment and torture (art. 2).⁹⁷

The Committee made the following recommendations to the State party:

103. Strengthen the independence of the judiciary from the Ministry of Law, Justice and Parliamentary Affairs;⁹⁸

104. Protect judicial officials from intimidation, harassment and improper interference, including from high-level government officials;⁹⁹

105. Ensure that all judges and prosecutors receive adequate remuneration and guaranteed tenure until retirement or expiration of their term of office.¹⁰⁰

Civil society's findings on implementation of the recommendations:

106. Since assuming power in 2009, the Awami League has continued to exert considerable influence over the judiciary, resulting in a judicial system that lacks independence and impartiality. The legislature and the executive branch have immense powers to influence the judicial system, as the ruling party generally elects the President, who appoints the judges of the

⁹⁷ UN Committee against Torture, *Concluding Observations on the Initial Report of Bangladesh*, ¶ 27, UN Doc. CAT/C/BGD/CO/1 (Aug. 26, 2019), <https://undocs.org/CAT/C/BGD/CO/1>.

⁹⁸ Id. at ¶ 28(a).

⁹⁹ Id. at ¶ 28(b).

¹⁰⁰ Id. at ¶ 28(c).

Supreme Court, in consultation with the Prime Minister and sometimes in consultation with the Chief Justice. According to Article 116 of the Constitution, “The control [. . .] and discipline of persons employed in the judicial service and magistrates exercising judicial function shall vest in the President and shall be exercised by him in consultation with the Supreme Court.” This effectively grants the executive power and control over the lower judiciary and magistrates.

107. In 2017, the Ministry of Law, Justice and Parliamentary Affairs published the Gazette of the Discipline Rules of Employment of Judges of the Subordinate Courts. The rules stipulate that disciplinary matters of the officers of the subordinate judiciary shall be governed by the appropriate authorities. The rules of employment of the judges of the subordinate courts have been drafted mainly keeping control in the hands of the Government.

I. Reprisals, harassment and violence against human rights defenders and journalists

The Committee made the following findings:

108. 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 of 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 charges of sedition, defamation, contempt of court and related issues brought against him in connection with his work. It 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.¹⁰¹

109. The Committee acknowledges with appreciation the statement made 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

¹⁰¹ UN Committee against Torture, *Concluding Observations on the Initial Report of Bangladesh*, ¶ 29, UN Doc. CAT/C/BGD/CO/1 (Aug. 26, 2019), <https://undocs.org/CAT/C/BGD/CO/1>.

protect from reprisals members of civil society and NGOs 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).¹⁰²

The Committee made the following recommendations to the State party:

110. 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;¹⁰³

111. Investigate all allegations of unlawful or arbitrary arrest, harassment, torture, ill-treatment or violence against human rights defenders, including civil society actors, lawyers and journalists;¹⁰⁴

112. Amend the 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 derogatory remarks being made 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, extrajudicial killings or ill-treatment, or criticized the State party's response to such allegations;¹⁰⁵

113. Ensure that members of civil society and NGOs 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.¹⁰⁶

Civil society's findings on implementation of the recommendations:

114. Acts of reprisals, harassment, and violence against human rights defenders and journalists by state actors and ruling party activists have continued to occur, even during the COVID-19 pandemic. Cases have been filed against journalists under the repressive Digital Security Act of 2018, for writing against inactions of the Government or high-level members of the ruling party

¹⁰² Id. at ¶ 30.

¹⁰³ Id. at ¶ 31(a).

¹⁰⁴ Id. at ¶ 31(b).

¹⁰⁵ Id. at ¶ 31(c).

¹⁰⁶ Id. at ¶ 31(d).

and/or their family members. Journalists have been attacked, assaulted, threatened, and sued while performing their professional duty. According to Odhikar documentation, between January and June 2020, 40 journalists were injured, 18 were assaulted, 12 were attacked, and eight were threatened. Journalists have also become victims of enforced disappearances and torture for writing and posting against the inactions of the Government on different issues, including COVID-19. Shafiqul Islam Kajol, a Bangladeshi photojournalist and newspaper editor, disappeared on 10 March 2020, a day after defamation charges were filed against him by an influential ruling party lawmaker. An international campaign by human rights defenders commenced and he was eventually found in detention on 3 May 2020. His disappearance is symbolic of Bangladesh's ongoing crackdown on free speech under the Digital Security Act.¹⁰⁷

115. The Government of Bangladesh has not demonstrated any efforts to amend legislation, including the Digital Security Act of 2018 and the Foreign Donations (Voluntary Activities) Regulation Act of 2016, which prohibit derogatory remarks being made about the Constitution and constitutional bodies, and criminalize “anti-State activities,” and “tarnishing the image of the nation.” The Government has neither repealed nor amended similar legislative provisions that have provided a basis for arresting and prosecuting or persecuting individuals who have publicised allegations of torture or ill-treatment, enforced disappearance, extrajudicial killings, or criticised the Government's response to such allegations. The Government removed some sections (Section 54, 55, 56 57 and 66) of the Information and Communication Technology (ICT) Act of 2006 and such sections were incorporated in the more repressive Digital Security Act of 2018. The contents of the controversial Section 57 of the ICT Act have been divided and included in Sections 25, 28, 29, and 31 of the Digital Security Act.

116. The Government continued its crackdown on freedom of opinion and expression during the COVID-19, targeting journalists, human rights defenders, writers, bloggers, academics, and ordinary people for comments made about the COVID-19 pandemic, and silencing those who expressed concern over the Government's mishandling of the COVID-19. The Government has enforced the repressive Digital Security Act of 2018 to muzzle freedom of expression; silence, intimidate journalists and rights activists; and to sue individuals who are critical of the Government's response to the pandemic. From January 2020 to June 2020, the authorities detained 94 people under the DSA, mostly for criticising the Government in Facebook posts. Among them, 47 were detained for raising questions about the Government's mismanagement of the COVID-19 situation and related corruption.¹⁰⁸ For instance, on 6 May 2020, RAB-3¹⁰⁹ filed a

¹⁰⁷ Arafatul Islam, *Press Freedom: What Happened to Missing Bangladeshi Journalist Shafiqul Kajol?*, Deutsche Welle (21 Apr. 2020), <https://www.dw.com/en/press-freedom-what-happened-to-missing-bangladeshi-journalist-shafiqul-kajol/a-53199732>.

¹⁰⁸ *BANGLADESH: Surge of Arbitrary Detention under Digital Security Act Leads to Deepening Crisis*, Asian Human Rights Commission (13 July 2020), <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-014-2020/>.

¹⁰⁹ The Rapid Action Battalion. The number “3” denotes the zone or area covered by a particular RAB contingent. Zone 3 is the Tikatoli/Mughbazaar area, a heavily populated zone.

case against 11 people under the Digital Security Act for allegedly spreading rumours and carrying out anti-government activities, posting anti-government messages on Facebook, providing false information about COVID-19, and publishing cartoons of various leaders.¹¹⁰ The 11 people who have been charged include: cartoonist Ahmed Kabir Kishore; Swedish-Bangladeshi journalist Tasneem Khalil; and blogger Asif Mohiuddin.¹¹¹ Four of the 11 were arrested and sent to jail by court order.¹¹² The RAB stated in the First Information Report that the men had been deliberately posting rumours against the Father of the Nation, the Liberation War, and the COVID-19 pandemic to harm the nation's image and to create confusion among the public through social media.¹¹³ The Government has also blocked access to several online news outlets, including Al Jazeera and PoribortonDotCom.¹¹⁴

117. Abul Asad, Editor of the pro-opposition newspaper Daily Sangram, has been detained since 13 December 2019.¹¹⁵ The police arrested the 77-year-old editor from his newspaper office, which had been vandalised by a ruling party organisation named MuktiJoddha Moncho. On 12 December 2019, the Daily Sangram published a story to mark the anniversary of the execution of Abdul Quader Mollah, a political leader who was hanged in 2013 following a controversial trial for “war crimes” committed during Bangladesh's war with Pakistan in 1971, and hailing him as a “martyr.” On 13 December 2019, members of the ruling party attacked the newspaper office causing physical injuries to journalists and its editor and damage to the computers as well as other materials of the office.¹¹⁶ Editor Abul Asad was picked up by the attackers and later was handed over to the police. While Abul Asad was in detention the police recorded two cases were filed with the police under the Digital Security Act of 2018 and Section 124A of the Penal Code-1860 (sedition). The police brought Abul Asad under police remand, and he has been denied bail.¹¹⁷ Abul Asad still remains detained in the Kashimpur Jail (High Security Prison)-4, at Gazipur. There has been no action taken against any of the ruling party members who attacked the news outlet's office.

¹¹⁰Zyma Islam and Muntakim Saad, *Digital Security Act: 11 Sued, Two Sent to Jail*, The Daily Star (7 May 2020), <https://www.thedailystar.net/frontpage/news/digital-security-act-11-sued-two-sent-jail-1900228>.

¹¹¹BANGLADESH: *Stifling Expression Using Digital Security Act Must Not Be the Norm to Address COVID-19 Pandemic*, Asian Human Rights Commission and CIVICUS (11 May 2020), <http://www.humanrights.asia/news/ahrc-news/AHRC-JST-002-2020/>.

¹¹²Zyma Islam and Muntakim Saad, *Case Against 11 Under DSA: Charges Appear to Be Puzzling*, The Daily Star (9 May 2020), <https://www.thedailystar.net/frontpage/news/case-against-11-under-dsa-charges-appear-be-puzzling-1900915>.

¹¹³ Id.

¹¹⁴BANGLADESH: *Muzzling Press Freedom Triggering Risks on Livelihood of Information Technology Professionals*, Asian Human Rights Commission (24 Jan. 2020), <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-001-2020/>.

¹¹⁵Faisal Mahmud, *Bangladesh Editor Arrested after Report on Executed Jamaat Leader*, Al Jazeera (14 Dec. 2019), <https://www.aljazeera.com/news/2019/12/bangladesh-editor-arrested-report-executed-jamaat-leader-191214133841704.html>.

¹¹⁶*MuktiJoddha Moncho Vandalises Sangram Office*, The Daily Observer (13 Dec. 2019), <https://www.observerbd.com/details.php?id=233332>.

¹¹⁷*Sangram Editor Denied Bail*, The Business Standard (18 Dec. 2019), <https://tbsnews.net/bangladesh/court/sangram-editor-denied-bail>.

118. Persecution and harassment of members of civil society and NGOs continues, despite the Committee's recommendation to ensure protection of the members of civil society and NGOs who have cooperated with the Committee in the context of its consideration of Bangladesh's initial report from any reprisals or harassment, including charges of breaching the Information and Communications Technology Act 2006. Furthermore, the Government withheld its approval for foreign funding to NGOs working in areas the NGO Affairs Bureau deemed sensitive, such as human rights, labour rights, indigenous rights, or humanitarian assistance to Rohingya refugees.¹¹⁸ For example, the Government's crackdown on Odhikar¹¹⁹ that began in 2013, continues. The NGO Affairs Bureau (NGOAB) under the Prime Minister's Office has not renewed Odhikar's registration to date, which was submitted in 2014. In order to halt all of Odhikar's human rights activities, the NGOAB has stopped fund clearance for all of the organisation's projects for the last six years and completely barred approval of any new project. Furthermore, human rights defenders associated with Odhikar have been subjected to various forms of harassment, including surveillance, due to their public positions on human rights violations. The case filed under the Information and Communication Technology Act 2006 against the Secretary and Director of Odhikaris still pending.

J. Conditions of detention

The Committee made the following findings:

119. 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;¹²⁰
- b) At the severe overcrowding in prisons, amounting to over 200 per cent occupancy 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, which forces prisoners to sleep in shifts, has made even the prison authorities consider establishing

¹¹⁸U.S. Department of State, *Bangladesh 2019 Human Rights Report* (Feb. 2020), <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/bangladesh/>.

¹¹⁹ Odhikar in collaboration with the Asian Legal Resource Centre (ALRC), Asian Federation Against Involuntary Disappearances (AFAD), Asian Forum for Human Rights and Development (FORUM-ASIA), FIDH - International Federation for Human Rights, Robert F. Kennedy Human Rights, and the World Organisation Against Torture (OMCT) submitted a joint alternative report to the Committee and cooperated with the Committee in the context of its consideration of the State party's initial report.

¹²⁰ UN Committee against Torture, *Concluding Observations on the Initial Report of Bangladesh*, ¶ 32(a), UN Doc. CAT/C/BGD/CO/1 (Aug. 26, 2019), <https://undocs.org/CAT/C/BGD/CO/1>.

makeshift sheds within the jails and has resulted in the holding of some 100 inmates in an abandoned warehouse in January 2019;¹²¹

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, and the lack of recreational activities and mental stimulation;¹²²

d) About the corruption in the prisons, including the 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 often mete out punishments on behalf of the prison authorities, and the fact that prisoners face reprisals as soon as they complain;¹²³

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 doctors fear for their health because of the poor sanitary and hygiene conditions;¹²⁴

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 the police, as well as poor conditions, the negligence of the prison authorities and the lack of access to treatment. It is also seriously concerned 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;¹²⁵

g) That juvenile prisoners are held with adults, that female detainees may be held with male prisoners and that prisons have not been adapted for inmates with disabilities (arts. 2, 11, 12, 13 and 16).¹²⁶

The Committee made the following recommendations to the State party:

120. Urgently take all necessary measures to improve conditions of detention in all places of deprivation of liberty in order to bring them into line with international standards, including the

¹²¹ Id. at ¶ 32(b).

¹²² Id. at ¶ 32(c).

¹²³ Id. at ¶ 32(d).

¹²⁴ Id. at ¶ 32(e).

¹²⁵ Id. at ¶ 32(f).

¹²⁶ Id. at ¶ 32(g).

United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) and the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules);¹²⁷

121. Urgently take measures to decrease overcrowding in prisons by ensuring that persons held in pretrial detention are not kept in custody for an unreasonable period of time and substantially reduce the number of persons held on remand, or in other types of pretrial 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);¹²⁸

122. Urgently take measures to improve the material conditions in places of deprivation of liberty, including access to food of adequate quality and quantity, better sanitary and hygiene conditions, bedding, lighting and ventilation, as well as recreational and other meaningful activities, and build new and refurbish older prisons;¹²⁹

123. 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 and reduce violence, including inter-prisoner violence;¹³⁰

124. Maintain the “zero tolerance” policy against custodial death owing to omission or commission on the part of law enforcement agencies and against 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;¹³¹

125. Ensure adequate health care by hiring, as a matter of priority, additional medical doctors to fill all the vacant positions, including specialists, and 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;¹³²

¹²⁷ Id. at ¶ 33(a).

¹²⁸ Id. at ¶ 33(b).

¹²⁹ Id. at ¶ 33(c).

¹³⁰ Id. at ¶ 33(d).

¹³¹ Id. at ¶ 33(e).

¹³² Id. at ¶ 33(f).

126. Put in place systems to separate juveniles from adult prisoners and convicted prisoners from remand detainees, strictly separate female from male detainees and ensure that women are detained in gender-sensitive conditions, and ensure that inmates with disabilities are held in humane conditions and that prisons are adapted to their needs;¹³³

127. Allow independent monitoring bodies, including international bodies, specialized health bodies and NGOs, to carry out unannounced visits to and medical inspections of all places of detention, and to meet in private with detained persons.¹³⁴

Civil society’s findings on implementation of the recommendations:

128. Prison conditions in Bangladesh remain substandard, and there are allegations that many people are being held in prisons without evidence or proof of the commission of any offence. Prisoners are subjected to torture and various forms of degrading treatment by prison authorities. Almost all the prison officials and employees have also been accused of irregularities and corruption. Prisons remain severely overcrowded. The total capacity of 13 central jails and 55 district jails across the country is 41,314. However, as of 30 June 2020, there were 71,682 prisoners in the country’s prisons.¹³⁵ The situation has further deteriorated due to the COVID-19, as several prisoners contracted COVID-19 due to overcrowding and lack of proper hygiene and sanitation in prisons. As of 10 May 2020, at least 23 inmates in different jails across the country had contracted COVID-19. In addition, 64 prison guards and officials, and 249 inmates have been quarantined for showing COVID-19-like symptoms and coming in contact with COVID-19 patients.¹³⁶ As a result, the rest of the inmates are at high risk of infection. The High Court Division of the Supreme Court, while hearing a Writ Petition filed on 17 May 2020, asked for a report on the situation in prisons across the country amid the COVID-19 pandemic. The High Court Division bench of Justice M Enayetur Rahim issued the order after a virtual hearing on 2 June 2020, saying the prison authorities are responsible for ensuring health and security of prisoners.¹³⁷

129. There is a lack of medical treatment and a huge shortage of physicians in the prisons. As a result, most prisoners are being deprived of the right to health. Meanwhile, amid the COVID-19 pandemic, 400 prison patients suffering from complex diseases were taken to different

¹³³ Id. at ¶ 33(g).

¹³⁴ Id. at ¶ 33(h).

¹³⁵ Bangladesh Jail, <https://prison.com.bd/>.

¹³⁶ *23 Prison Guards, 2 Inmates Test Covid-19 Positive*, The Daily Star (11 May 2020),

<https://www.thedailystar.net/coronavirus-live-update-23-prison-guards-2-inmates-test-covid-19-positive-1901596>.

¹³⁷ Mizanur Rahman, *HC Wants Report on How Prisons Are Handling the Coronavirus Crisis*, Dhaka Tribune (2 June 2020), <https://www.dhakatribune.com/bangladesh/2020/06/02/hc-wants-report-on-prisons-concerning-coronavirus>.

hospitals in Dhaka for treatment and follow-up, but the concerned hospitals did not accept them.¹³⁸

130. Many prisoners became ill and died as a result of overcrowding, lack of medical facility, inadequate sanitary conditions, scarcity of food and drinking water, insufficient toilet and bathroom facilities and beds, inadequate light and ventilation, and the lack of recreational activities and mental stimulation. According to Odhikar documentation, in 2019, a total of 60 persons died in jail. Among them, it was reported that 56 died due to “illnesses,” one was killed, two committed suicide and one died by fire. In the first six month of 2020, 33 inmates died in jail, reportedly due to “illnesses” and negligence of prison authorities.

131. No measures have been taken by the Government to improve conditions of detention in all places of deprivation of liberty in order to bring them into line with international standards.

132. The Ministry of Home Affairs receives innumerable reports of corruption and irregularities from different prisons. Irregularities and corruption in prisons cannot be stopped as a section of top officials condone illegal activities, according to a government investigation report. In November 2019, the Ministry of Home Affairs formed a two-member probe body headed by Additional Secretary (jail wing) Syed Belal Hossain to investigate irregularities and corruption in the jails. The investigation report found Deputy Inspectors General (DIG) at the Department of Prisons never investigated allegations of irregularities and corruption in the jails.¹³⁹

133. The investigation team found various irregularities including corruption in the jail canteen, “buying and selling” of prisoners, admission of healthy prisoners to hospital in exchange for money, and bribery to meet prisoners and to arrange bail. These irregularities have continued under the charge of the superintendent of jail. Top officials do not inquire about irregularities.¹⁴⁰

134. Several prison authorities have been charged for corruption-related crimes. Dhaka Metropolitan Sessions Judge Court on 20 October 2019 ordered Deputy Inspector General (DIG) of prisons Bazlur Rashid be sent to jail, in a case filed for amassing wealth beyond known sources of income. Earlier, the ACC interrogated Bazlur at its office, and later arrested him in a

¹³⁸ Sirajul Islam, *Prison Authorities Are in Trouble with 400 Complicated Patients*, The Daily Jugantor (7 May 2020), <https://www.jugantor.com/todays-paper/last-page/304930/>.

¹³⁹ Rozina Islam, *Corruption in Jails Condoned by “Top Officials,”* ProthomAlo (18 Feb. 2020), <https://en.prothomalo.com/bangladesh/Corruption-in-jails-condoned-by-top-officials>.

¹⁴⁰ Id.

case filed under Section 27(1) of the Anti-Corruption Commission Act for purchasing a flat in Siddheswari, Dhaka, with money amassed through illegal means. Rashid was denied bail.¹⁴¹

135. On 28 July 2019, a Dhaka court ordered Sylhet Deputy Inspector General (DIG) of Prisons Partha Gopal Banik be sent to jail in a money laundering case filed against him by the Anti-Corruption Commission (ACC). Judge KM Imrul Kayes passed the order after rejecting his bail petition when police produced him before the court. Earlier in the day, ACC Assistant Director Salauddin Ahmed filed the case against Partha with the Commission's Dhaka office. DIG Partha was allegedly involved in corruption and other irregularities while serving as DIG (Prisons) of Chittagong Range. He was arrested after a drive conducted at his residence, which resulted in the seizure of 8 million Taka (94,628 USD), the source of which could not be determined.¹⁴²

136. According to reports, most of the top officials of the prison department go into retirement with properties and assets worth billions of Taka. The main income of the prison officials come from Prisoner's Cash (PC) Canteens, where goods are sold to the prisoners at an exorbitant price. Moreover, snacks and food items produced at the Kashimpur Central Jail [Party-II] are mostly of inferior quality and standard, and prison authorities sell food items such as breads, buns, biscuits, and cakes without the approval of the Bangladesh Standard Testing Institution (BSTI).¹⁴³

137. The Government has not taken action to enforce its stated "zero tolerance" policy against custodial death and against torture or any other forms of ill-treatment by law enforcement agencies. Custodial deaths due to torture continue, and the Government has not ensured prompt and independent investigations into all deaths in custody, regardless of their causes.

138. In January 2019, Abu Bakar Siddique Babu, 45, a floor in-charge of Bangladesh Film Development Corporation, who was accused of raping and publicising video footage of the rape on social media, died in the custody of the Tejgaon Industrial Area Police Station in Dhaka. According to police, Babu was detained on 18 January 2020 after two cases were filed against him – one for rape and the other under the Digital Security Act. Police claimed that Babu committed suicide by hanging from the grill with his shawl in the early morning of 19 January. Babu's wife alleged that her husband had been arrested on false charges and that he had been tortured to death in police custody. Police did not inform his family members of his arrest.¹⁴⁴

¹⁴¹ *DIG Prisons Rashid Arrested over Bribery Links, Sent to Jail*, Dhaka Tribune (20 Oct. 2019), <https://www.dhakatribune.com/bangladesh/corruption/2019/10/20/acc-arrests-dig-prisons-rashid-over-corruption-charges>.

¹⁴² Md Sanaul Islam Tipu, *DIG Prisons Partha Sent to Jail*, Dhaka Tribune (29 July 2019), <https://www.dhakatribune.com/bangladesh/nation/2019/07/29/dig-partha-sent-to-jail>.

¹⁴³ Faridul Alam Farid, *Massive Corruption Inside Bangladesh Prison*, Weekly Blitz (4 Nov. 2018), <https://www.weeklyblitz.net/news/massive-corruption-inside-bangladesh-prison/>.

¹⁴⁴ *Rape Accused Dies in Police Custody*, The Business Standard (20 Jan. 2020), <https://tbsnews.net/bangladesh/rape-accused-dies-police-custody-37711>.

139. Many inmates have continued to die, amid a shortage of doctors, nurses, and ambulances, and poor medical facilities in prisons in Bangladesh. Across the country, there is only one doctor for every 10,000 inmates, exacerbating the risks of COVID-19 outbreaks in the prisons.¹⁴⁵ Although there is a 172-bed hospital inside Dhaka Central Jail, there are not enough medical facilities. The hospital is run by a physician, a nurse, and a pharmacist. There is no specialist doctor. Furthermore, two of the jail hospital's three oxygen cylinders were damaged. An X-ray machine was brought in, but it has not been installed yet and there is no technician to operate it.¹⁴⁶ For years, the jail authorities have been asking the Home Ministry to fill the 141 vacant doctors posts in prisons but almost nothing fruitful has happened. On 29 January 2020, the High Court Division of the Supreme Court ordered the authorities concerned to appoint 117 doctors immediately for the vacant posts at prison hospitals across Bangladesh, after hearing a Writ Petition in this regard. The Court also asked the Director General of the Directorate General of Health Services (DGHS) to implement the order.¹⁴⁷ Following the earlier High Court order, Inspector General of Prisons Brigadier General AKM Mostafa Kamal Pasha submitted a report to the High Court on 5 November 2019, saying that there were only 10 physicians for the total 68 prisons across the country, where 131 posts were vacant. The Government appointed a total of 20 doctors on deputation for the jails in 2018. However, only four among them joined.¹⁴⁸

140. The Government did not allow independent monitoring bodies, including international bodies, specialised health bodies, and NGOs, to carry out unannounced visits and medical inspections of any places of detention, and to meet in private with detained persons. The government has only allowed limited visits to prisons from governmental inspectors and NGO observers who were aligned with the ruling party or the Government. However, no reports on these inspections were released.¹⁴⁹

K. Excessive use of force

The Committee made the following findings:

141. 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

¹⁴⁵ Abdullah Alif, *Are Bangladesh's Cramped Prisons Safe from Coronavirus?*, Dhaka Tribune (15 Mar. 2020), <https://www.dhakatribune.com/bangladesh/2020/03/15/are-bangladesh-s-cramped-prisons-safe-from-coronavirus>.

¹⁴⁶ Sirajul Islam, *Prison Authorities Are in Trouble with 400 Complicated Patients*, The Daily Jugantor (6 May 2020), <https://www.jugantor.com/todays-paper/last-page/304930/>.

¹⁴⁷ *HC Orders DGHS to Appoint 117 Doctors for Prison Hospitals*, Dhaka Tribune (29 Jan. 2020), <https://www.dhakatribune.com/bangladesh/court/2020/01/29/hc-orders-to-appoint-117-doctors-for-prison-hospitals>.

¹⁴⁸ *Report: Only One Prison Doctor for 7 Jails*, Dhaka Tribune (6 Nov. 2019), <https://www.dhakatribune.com/bangladesh/nation/2019/11/06/report-only-one-prison-doctor-for-approx-7-jails>.

¹⁴⁹ U.S. Department of State, *Bangladesh 2019 Human Rights Report* (Feb. 2020), <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/bangladesh/>.

shooting persons at short range in the knee, leg or elbow called “kneecapping”, which often results in permanent disability, including amputation. It is also concerned at reports of violence by the authorities in connection with recent and past elections, including attacks on protesters, seizing polling stations and the use of intimidation and violence to suppress votes (arts. 2, 10, 12, 13 and 16).¹⁵⁰

The Committee made the following recommendations to the State party:

142. 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;¹⁵¹

143. 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.¹⁵²

Civil society’s findings on implementation of the recommendations:

144. Allegations of excessive use of force by members of the security forces and the police, including the practice of shooting people in protest rallies, continue in Bangladesh without prompt, impartial, and effective investigations into the incidents. In Bangladesh, the use of firearms is governed by outdated laws that do not conform to international law and standards. According to the Code of Criminal Procedure of 1898, the use of firearms is permitted only for the purpose of dispersing unlawful assemblies (Sections 127 and 128), and to effect an arrest in certain circumstances (Section 46).

145. Law enforcement officers continue to attack or shoot at people exercising their constitutionally protected “right to assemble and to participate in public meetings and processions peacefully and without arms, subject to any reasonable restrictions imposed by law in the interests of public order or health.”

146. Punishment of members of law enforcement agencies and security forces for excessive use of force is still limited to mere departmental action, such as temporary suspension, demotion or closure, rather than criminal prosecution.

¹⁵⁰ UN Committee against Torture, *Concluding Observations on the Initial Report of Bangladesh*, ¶ 34, UN Doc. CAT/C/BGD/CO/1 (Aug. 26, 2019), <https://undocs.org/CAT/C/BGD/CO/1>.

¹⁵¹ Id. at ¶ 35(a).

¹⁵² Id. at ¶ 35(b).

147. Bangladesh has failed to adopt domestic legislation restricting police use of force and firearms in accordance with international law and guidelines, including 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” and the “UN Code of Conduct for Law Enforcement Officials.”

148. On 23 October 2019, teachers of the primary schools from all over the country peacefully gathered in Dhaka under the primary teachers’ association “Primary School Teachers Union” demanding an increase in pay scale and eliminating discrimination. When the teachers approached the Central Shahid Minar,¹⁵³ police charged with batons and dispersed them. Several teachers were injured in the incident. The injured were taken to Dhaka Medical College Hospital for treatment.¹⁵⁴

149. On 30 December 2019, members of the coalition of political parties Left Democratic Alliance staged a protest rally towards the Prime Minister’s Office in Dhaka, demanding re-election under a caretaker Government, due to the alleged vote rigging in the 11th parliamentary elections. When the procession reached the Matsya Bhaban area of Dhaka (near the Supreme Court), police attacked the protestors. At least 45 leaders and activists of the Left Democratic Alliance, including Saiful Haque, General Secretary of the Revolutionary Workers Party and Jonayed Saki, Coordinator of Gonosonghati Andolon, who organised the mass mobilisation, movement, were injured.¹⁵⁵

150. On 22 February 2020, police charged with batons at a procession in Dhaka brought out by the opposition Bangladesh Nationalist Party (BNP), demanding the release of BNP Chairperson Khaleda Zia. At least 10 BNP leaders and activists, including its senior joint secretary general Ruhul Kabir Rizvi, were injured in the attack. Just a day before hearing on a bail petition of Khaleda Zia at a High Court Division bench, some leaders and activists of the party and its associate bodies brought out a procession from Section-6 of Mirpur in Dhaka.¹⁵⁶

¹⁵³ Memorials to the martyrs of the Language Movement in 1952.

¹⁵⁴ See Odhikar, *Annual Human Rights Report 2019: Bangladesh* (8 Feb. 2020), http://odhikar.org/wp-content/uploads/2020/02/Annual-HR-Report-2019_Eng.pdf.

¹⁵⁵ Id.

¹⁵⁶ *BNP’s Rizvi, 8 Others Injured as Cops Charge Baton*, ProthomAlo (22 Feb. 2020), <https://en.prothomalo.com/bangladesh/BNP%E2%80%99s-Rizvi-8-others-injured-as-cops-charge-baton>.

L. Arbitrary detention

The Committee made the following findings:

151. The Committee is concerned at reports that in January and February 2018, the authorities arrested almost 5,000 supporters of the opposition Bangladesh Nationalist Party, including ordinary persons suspected of being opposition sympathizers, ahead of the verdict in the corruption case against the leader of the party, Khaleda Begum Zia. It is also concerned about allegations of thousands of arrests of opposition supporters around the time of the elections and that many of these persons remain in detention. It is further 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).¹⁵⁷

The Committee made the following recommendations to the State party:

152. The State party should ensure that all detained persons, including political activists, protesters 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 . . . and are 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 the persons detained, as warranted by the investigations.¹⁵⁸

Civil society’s findings on implementation of the recommendations:

153. The victims of arbitrary detention include university teachers, journalists, a cartoonist, bloggers, online activists, and individuals below the age of 18. The arrests and detentions are often related to criticism of the Government. For example, on June 20, 2020, police arrested a 15-year-old for making a Facebook post allegedly defaming Prime Minister Sheikh Hasina and criticising the Government’s handling of the pandemic.¹⁵⁹ Political activists, dissenters, journalists, and writers have been facing criminal cases and arbitrary detentions under the Digital Security Act of 2018, particularly in response to their comments on the COVID-19 outbreak.¹⁶⁰

154. There are a number of draconian criminal laws still in place that contribute to the widespread use of arbitrary arrest and detention. Under the Special Power Act of 1974, persons

¹⁵⁷ UN Committee against Torture, *Concluding Observations on the Initial Report of Bangladesh*, ¶ 36, UN Doc. CAT/C/BGD/CO/1 (Aug. 26, 2019), <https://undocs.org/CAT/C/BGD/CO/1>.

¹⁵⁸ *Id.* at ¶ 37.

¹⁵⁹ *DSA Violations: Ninth Grader Lands in Juvenile Centre*, The Daily Star (22 June 2020), <https://www.thedailystar.net/dsa-violations-ninth-grader-lands-in-juvenile-centre-1918693>.

¹⁶⁰ *BANGLADESH: Surge of Arbitrary Detention under Digital Security Act Leads to Deepening Crisis*, Asian Human Rights Commission (13 July 2020), <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-014-2020/>.

can be “preventively detained” to prevent them from committing “any prejudicial act,” that the executive authority deems detrimental to the interests of the State, even if the individuals have not yet committed such an act. It has been common for persons arrested under Section 54 of the Code of Criminal Procedure to be later charged under the Special Powers Act of 1974.

155. On 14 October 2019, Chittagong Metropolitan unit Jatiyatabadi Chhatra Dal (JCD) president Gazi Siraj Ullah was arrested from the jail gate by the Detective Branch of Police when he was leaving Chittagong Central Jail on bail. It is to be noted that there are hundreds of political cases filed against Siraj Ullah. He had been released from jail after being granted bail in 37 of these cases.¹⁶¹

M. Violence against women

The Committee made the following findings:

156. The Committee welcomes the State party’s stated commitment to combating violence against women. However, it notes with concern reports that in recent years the authorities have prosecuted and convicted perpetrators of rape in only a very small percentage of the cases registered by them and also 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 the 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 the 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).¹⁶²

The Committee made the following recommendations to the State party:

157. 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;¹⁶³

¹⁶¹ Odhikar, *Annual Human Rights Report 2019: Bangladesh*, 33 (8 Feb. 2020), https://www.fidh.org/IMG/pdf/annual-hr-report-2019_eng.pdf.

¹⁶² UN Committee against Torture, *Concluding Observations on the Initial Report of Bangladesh*, ¶ 38, UN Doc. CAT/C/BGD/CO/1 (Aug. 26, 2019), <https://undocs.org/CAT/C/BGD/CO/1>.

¹⁶³ Id. at ¶ 39(a).

158. 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);¹⁶⁴

159. 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;¹⁶⁵

160. Ensure that domestic and gender-based services providing medical and legal services, safe emergency accommodation and shelters for victims of violence against women exist throughout the country and are accessible by all victims of such offences, including non-citizens, who should have access to them;¹⁶⁶

161. Review its legislation in order to allow for legal exceptions 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 foetal impairment, ensure the provision of post-abortion health care for women, irrespective of whether they have undergone an illegal or legal abortion, and ensure that neither patients nor their doctors face criminal sanctions or other threats for seeking or providing such care.¹⁶⁷

Civil society’s findings on implementation of the recommendations:

162. Violence against women in Bangladesh is widespread, and it continues to rise amid the COVID-19 pandemic. Domestic abuse against women is routine and forms of gender-based discrimination are widely prevalent. Rape, dowry demands, and related violence and sexual harassment continue at an alarming rate. Women’s freedoms of movement and association, as guaranteed in the Constitution and in international human rights law, are being violated on a daily basis, as they face sexual harassment, insecurity, and social barriers.

163. Rape has become rampant. It is alleged that victims of rape were prevented from being taken to the hospital for treatment, witnesses in rape cases had been attacked, and ruling party activists had “settled” incidents of rape through mediation. In many of these incidents, the police were aware of what was happening. According to Odhikar, from January to June 2020, 570

¹⁶⁴ Id. at ¶ 39(b).

¹⁶⁵ Id. at ¶ 39(c).

¹⁶⁶ Id. at ¶ 39(d).

¹⁶⁷ Id. at ¶ 39(e).

women and girls were raped, 71 women were sexually harassed, and 73 women became victims of dowry related violence.¹⁶⁸

164. According to the statistics of Bangladesh Supreme Court, as of December 2019, about 166,000 rape cases were pending in 95 Tribunals created across the country under the Prevention of Women and Children Repression Act of 2000 (amended 2003).¹⁶⁹ Of these cases, the trial of about 40,000 cases had been running for more than five years. Besides, in many cases, the lawyers of the accused, in association with the staff of the tribunal, did not allow witnesses to appear in court. Lawyers of the plaintiff were also known to form secret deals with the lawyers of the accused.¹⁷⁰ As a result, rape victims have been denied justice – even by their own lawyers.

165. Allegations of gender-based violence against women and girls, especially those involving actions or omissions by Bangladeshi authorities or other entities, have not been thoroughly and effectively investigated. The number of trials and convictions of alleged perpetrators is negligible. Victims hardly receive any redress, including adequate compensation, as the authorities are reluctant to investigate these violations of human rights.

166. The 24-hour time limit to obtain a medical report and file rape claims under the Prevention of Repression against Women and Children Act of 2000 (amended in 2003) is still in force.¹⁷¹

167. The Parliament passed the Child Marriage Restraint Act in 2017, adding a provision that allows marriage of underage girls (and boys) in undefined “special circumstances.” Under Section 19 of the Act, if any marriage takes place in line with the directives of a court and consent of the parents or guardians, and is in the “best interest” of an underage female, such marriage will not be considered an offence. No age limit is specified in the law for solemnising marriages under such “special circumstances.” Bangladesh has one of the highest rates of child marriages in the world, and this law continues to legalise this practice.

¹⁶⁸ See Odhikar, *Three-Month Human Rights Monitoring Report on Bangladesh, Reporting Period April – June 2020* (6 July 2020), http://odhikar.org/wp-content/uploads/2020/07/Odhikar_Three-month-HRR_April-June-2020_Eng.pdf.

¹⁶⁹ Odhikar, *Three-month Human Rights Monitoring Report on Bangladesh, Reporting Period: January – March 2020*, 33 (1 May 2020), http://odhikar.org/wp-content/uploads/2020/05/Odhikar_Three-Month_HRR_January-March_2020_Eng.pdf.

¹⁷⁰ Hasib bin Shahid, *Concerns over Rape Trials under Existing Law*, *The Daily Jugantor* (14 March 2020), <https://www.jugantor.com/todays-paper/news/288780>.

¹⁷¹ According to section 32 (1) of the Women and Children Repression Prevention Act of 2000, Medical examination of a victim of a crime committed under this Act may be carried out in a government hospital or in a private hospital recognized by the Government for this purpose. Sub-section (2): If a victim of an offense committed under this Act is brought to any of the aforesaid hospitals referred to in sub-section (1) for treatment, the doctor on duty at that hospital shall complete her medical examination expeditiously and issue a certificate to the person concerned and inform the local police station of the occurrence of such offense. Women and Children Repression Prevention Act of 2000, <http://bdlaws.minlaw.gov.bd/act-835/section-32548.html>.

168. Bangladesh accepted the UPR recommendations to amend the 2017 Child Marriage Restraint Act to maintain the legal minimum age at 18 years and move towards the real and effective elimination of child marriage, restricting to the maximum the application of exceptions. However, the Government has not taken any measures to implement these recommendations.

169. Under Section 375 of the Penal Code of 1860, rape is committed when a man has sexual intercourse with a woman, against her will or without her consent, or when her consent has been obtained by putting her in fear of death, or of harm. Rape also occurs in a situation where a man obtains a woman's consent knowing that he is not her husband, and her consent is given because she believes that he is lawfully married to her. Marital rape is still not defined or criminalised in law. Sexual intercourse by a man with his own wife, is not rape as long as the wife is not below the age of 13 years.

170. In Bangladesh, abortion is only allowed when the woman's life is in danger. A rape victim does not have the right to abort, unless her life is in danger. The Constitution of Bangladesh protects the rights to life, body, privacy, and liberty. It is obvious that giving birth to a child and accepting motherhood is a vital part of the right to life and liberty. Section 312 of the Penal Code, provides that "whoever voluntarily causes a pregnant woman to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment for a term which may extend to three years, or with fine, or both." Section 313 provides that whoever causes miscarriage without a woman's consent shall be punished with imprisonment for life, or for a term which may extend to ten years, and also with fine.

171. The existing laws do not ensure the provision of post-abortion health care for women, irrespective of whether they have undergone an illegal or legal abortion. However, abortions are carried out under the name of "menstrual regulation" to ensure that neither patients nor their doctors face criminal sanctions or other threats for seeking or providing such care.

N. Refugees and non-refoulement

The Committee made the following findings:

172. The Committee commends the Government of Bangladesh for respecting the principle of non-refoulement with respect to the more than 1 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 the data requested by the Committee 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 faces a risk of torture and ill-treatment (arts. 2, 3, 10, 12, 13, 14 and 16).¹⁷²

The Committee made the following recommendations to the State party:

173. Continue to respect the principle of non-refoulement with respect to all Rohingya refugees from Myanmar on its territory;¹⁷³

174. 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;¹⁷⁴

175. Establish an individualized procedure through which any individual who raises concerns that he or she faces 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 the country's non-refoulement obligation under the Convention;¹⁷⁵

176. Provide training to all relevant officials in the State party on the principle of non-refoulement;¹⁷⁶

177. Ensure that the 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;¹⁷⁷

178. Consider acceding to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol;¹⁷⁸

179. Cooperate with the ongoing investigation by the Prosecutor of the International Criminal Court concerning the commission of crimes involving torture against the Rohingya within its jurisdiction.¹⁷⁹

Civil society's findings on implementation of the recommendations:

¹⁷² UN Committee against Torture, *Concluding Observations on the Initial Report of Bangladesh*, ¶ 42, UN Doc. CAT/C/BGD/CO/1 (Aug. 26, 2019), <https://undocs.org/CAT/C/BGD/CO/1>.

¹⁷³ Id. at ¶ 43(a).

¹⁷⁴ Id. at ¶ 43(b).

¹⁷⁵ Id. at ¶ 43(c).

¹⁷⁶ Id. at ¶ 43(d).

¹⁷⁷ Id. at ¶ 43(e).

¹⁷⁸ Id. at ¶ 43(f).

¹⁷⁹ Id. at ¶ 43(g).

180. The principle of non-refoulement with respect to all Rohingya refugees from Myanmar in Bangladesh is often violated by Bangladeshi security forces. Rohingya have continued to attempt to cross the border into Bangladesh in the wake of continued crackdown by Myanmar's security forces in Rakhine State.¹⁸⁰ However, on several occasions, the Border Guard Bangladesh (BGB) opened fire to stop the entry of Rohingya refugees from Myanmar and pushed them back. On 12 April 2020, at around 5:30 am, a group of 50 Rohingya tried to cross into Bangladesh through Tumburu border near pillar no. 32 and 33. BGB members fired blanks to disperse them.¹⁸¹

181. On 15 April 2020, more than 390 Rohingya refugees were rescued from a ship adrift in the Bay of Bengal. The survivors, who departed Bangladesh, spent nearly two months at sea. The Governments of Bangladesh and Malaysia have said they will not allow the disembarkation of Rohingya arriving on ships. On 22 April 2020, Bangladesh Foreign Minister Abdul Momen told the media: "I am opposed to allowing these Rohingya into the country because Bangladesh is always being asked to take care of the responsibility of other countries. [...] We can no longer allow [in] any Rohingya."¹⁸²

182. Meanwhile, Rohingya refugees are at serious risk of contracting COVID-19. The first COVID-19 patient was detected in Rohingya refugee camps on 14 April 2020. According to the World Health Organisation, as of 30 June 2020, a total of 50 Rohingya refugees have been infected with COVID-19. Five of them died. A 150-bed isolation centre and a specialised hospital have been set up in Ukhaia by UNHCR, BRAC, and Relief International for the treatment of Coronavirus infected Rohingyas.¹⁸³

183. Bangladesh has not acceded to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. There is no law that regulates the administration of refugee affairs in Bangladesh or guarantees the rights of refugees.

184. The International Criminal Court's Office of the Prosecutor expressed sincere gratitude to the Bangladesh authorities for the crucial support provided during its delegation's visit to Bangladesh in early 2020. During the course of the visit, the ICC team met and engaged with key stakeholders from different government ministries and institutions. They had positive

¹⁸⁰*The Myanmar Government Has Issued a Directive to Comply with the Genocide Charter*, ProthomAlo (9 Apr. 2020), <https://www.prothomalo.com/bangladesh/article/1649814/>.

¹⁸¹*BGB Fires Blanks to Stop Rohingya Refugees at Bandarban Border*, The Daily Star (13 Apr. 2020), <https://www.thedailystar.net/country/news/bgb-fires-blanks-stop-rohingya-refugees-bandarban-border-1892461>.

¹⁸²*Bangladesh: Prevent Push-Backs of Rohingya Refugees, Investigate and Prosecute Human Trafficking*, Fortify Rights (30 Apr. 2020), <https://www.fortifyrights.org/bgd-inv-2020-04-30/>.

¹⁸³See Odhikar, *Three-Month Human Rights Monitoring Report on Bangladesh, Reporting Period April – June 2020* (6 July 2020), http://odhikar.org/wp-content/uploads/2020/07/Odhikar_Three-month-HRR_April-June-2020_Eng.pdf.

interactions with civil society organisations, international organisations, as well as the diplomatic community in Bangladesh.¹⁸⁴

O. Redress and rehabilitation

The Committee made the following findings:

185. The Committee is concerned at the lack of information provided by the State party concerning the 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 and 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 that regard, the Committee appreciates the statement by the delegation that the Government will 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).¹⁸⁵

The Committee made the following recommendations to the State party:

186. 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 that 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;¹⁸⁶

187. 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 such services is not conditional on the filing of formal complaints of torture or on the conviction of the perpetrator;¹⁸⁷

188. Recognizing the seriousness of the offence, amend the Torture and Custodial Death (Prevention) Act to provide appropriate compensation for victims of torture and ill-treatment;¹⁸⁸

¹⁸⁴Statement of the Office of the Prosecutor of the International Criminal Court as Delivered at the Press Conference in Dhaka, Bangladesh, Office of the Prosecutor of the International Criminal Court (4 Feb. 2020), <https://www.icc-cpi.int/Pages/item.aspx?name=20200204-otp-statement>.

¹⁸⁵ UN Committee against Torture, *Concluding Observations on the Initial Report of Bangladesh*, ¶ 44, UN Doc. CAT/C/BGD/CO/1 (Aug. 26, 2019), <https://undocs.org/CAT/C/BGD/CO/1>.

¹⁸⁶ Id. at ¶ 45(a).

¹⁸⁷ Id. at ¶ 45(b).

¹⁸⁸ Id. at ¶ 45(c).

189. Consider withdrawing the State party's reservation to article 14 of the Convention.¹⁸⁹

Civil society's findings on implementation of the recommendations:

190. The major challenges for effective prohibition, criminalisation, prevention, investigation, prosecution, redress, and rehabilitation pertaining to the use of torture are lack of political will to implement laws, torturous law-enforcement system, corruption in law enforcement agencies, impunity, ineffective criminal justice system, and non-existence of the rule of law in Bangladesh.¹⁹⁰

191. Victims of torture mostly come from the poor segments of the population and the political opposition. These victims do not receive redress, their right to fair and adequate compensation is not fulfilled, and their access to justice is systematically denied.¹⁹¹ Redress in the forms of meaningful "restitution, compensation, rehabilitation, satisfaction, and guarantees of non-repetition" has not been implemented in Bangladesh.¹⁹² The Torture and Custodial Death (Prevention) Act provides a very low level of compensation for victims, and there is no provision for rehabilitation or restitution for victims of torture. According to Section 15 of the Act of 2013, if a person is convicted, monetary compensation is available to victims or aggrieved persons or their families: 25,000 Taka (295 USD) for the offence of torture and 200,000 Taka (2,358 USD) for death as a result of torture, to be paid by the convicted person. To date, none of the victims of torture or their families have been given such compensation, as there have been no convictions under the Act. The Government has not taken any initiative to amend the Act and make it more effective, particularly for providing appropriate reparation for victims of torture and ill-treatment.

¹⁸⁹ Id. at ¶ 45(d).

¹⁹⁰ Written Statement to the 43rd Regular Session of the UN Human Rights Council, *BANGLADESH: Torturous Law-Enforcement System with Impunity and Rewards to Perpetrators Impede Protection of rights*, Asian Legal Resource Centre (24 Feb. 2020), <http://alrc.asia/bangladesh-torturous-law-enforcement-system-with-impunity-and-rewards-to-perpetrators-impede-protection-of-rights/>.

¹⁹¹ Written Statement to the 44th Regular Session of the UN Human Rights Council, *BANGLADESH: Access to Justice Amidst COVID-19 for Pro-Opposition Litigants Are Dealt with Draconian Laws and Discrimination*, Asian Legal Resource Centre (30 June 2020), <http://alrc.asia/bangladesh-access-to-justice-amidst-covid-19-for-pro-opposition-litigants-are-dealt-with-draconian-laws-and-discrimination/>.

¹⁹² UN Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (2005).

P. Corporal punishment in law

The Committee made the following findings:

192. 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 the legislation in Bangladesh permits the imposition of whipping as a punishment and 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).¹⁹³

The Committee made the following recommendations to the State party:

193. 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 1894.¹⁹⁴

Civil society’s findings on implementation of the recommendations:

194. Corporal or physical punishment continues to exist in Bangladeshi laws. Section 53 of the Prisons Act of 1894 allows whipping of prisoners in the case of serious offence committed in the prisons. According to Section 53(2) of the Prisons Act, “Whipping shall be inflicted with a light rattan not less than half an inch in diameter on the buttocks, and in case of prisoners under the age of sixteen it shall be inflicted, in the way of school discipline, with a lighter rattan.” Article 35 (6) of the Constitution of Bangladesh states that its prohibition against torture does not apply to any legally prescribed punishment, which is contrary to international human rights laws, including the ICCPR and Convention.

195. The Government has neither taken any necessary legislative measures nor amended existing laws to eradicate and explicitly prohibit all forms of corporal punishment, as they amount to torture or cruel, inhuman or degrading treatment or punishment, in violation of the Convention. Moreover, there is no initiative by the Government to amend the Prisons Act of 1894.

¹⁹³ UN Committee against Torture, *Concluding Observations on the Initial Report of Bangladesh*, ¶ 46, UN Doc. CAT/C/BGD/CO/1 (Aug. 26, 2019), <https://undocs.org/CAT/C/BGD/CO/1>.

¹⁹⁴ Id. at ¶ 47.

Q. Corporal punishment of children

The Committee made the following findings:

196. 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).¹⁹⁵

The Committee made the following recommendations to the State party:

197. 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;¹⁹⁶

198. Take all the measures necessary to prevent corporal punishment, including in schools, and investigate and take appropriate action against teachers who continue to apply corporal punishment in educational institutions;¹⁹⁷

199. Conduct public information campaigns to raise awareness among the general population of the harmful effects of corporal punishment and encourage non-violent forms of discipline as alternatives to corporal punishment.¹⁹⁸

Civil society’s findings on implementation of the recommendations:

200. Children in Bangladesh remain subjected to many forms of violence, including corporal punishment in various settings – at home, in all institutions, in workplaces, etc. Despite the ban on corporal punishment in Bangladesh, such practice continues in public and private schools and other educational institutions as a form of discipline.

201. Bangladesh, as a state party to the UN Convention on the Rights of the Child (CRC), is under an obligation to protect children from being subjected to any kind of torture, punishment, and any cruel or inhuman or humiliating behaviour (Article 37) and physical violence (Article

¹⁹⁵ UN Committee against Torture, *Concluding Observations on the Initial Report of Bangladesh*, ¶ 48, UN Doc. CAT/C/BGD/CO/1 (Aug. 26, 2019), <https://undocs.org/CAT/C/BGD/CO/1>.

¹⁹⁶ Id. at ¶ 49(a).

¹⁹⁷ Id. at ¶ 49(b).

¹⁹⁸ Id. at ¶ 49(c).

19). The provisions state that the educational discipline system requires teaching to be consistent with the child's dignity and in harmony with the CRC (Article 28.2).

202. Though the Children Act 2013 does not have any particular provisions prohibiting corporal punishment in schools or madrasas, Section 70 of the Act prohibits any hit, abuse, torture or negligence to children to prevent physical harm, with the possibility of fines and up to five years of imprisonment for violators. Corporal punishment for students has been prohibited by the Ministry of Education since 2010.¹⁹⁹ In January 2011, the High Court Division of the Supreme Court declared all types of corporal punishment in schools “illegal and unconstitutional,” and contrary to the Government’s international human rights treaty obligations.²⁰⁰

R. Death penalty

The Committee made the following findings:

203. The Committee is concerned at the numerous sentences handed down prescribing the death penalty. The delegation stated that the Government has been gradually replacing the death penalty with other forms of punishment such as life imprisonment. However, it confirmed that between 2013 and 2017, while 1,119 death sentences were handed down, “only” 130 such sentences were confirmed by the High Court Division, 239 such sentences were commuted and a total of 17 were carried out. The Committee is concerned because of the uncertainty these sentences cause to the 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 Narcotics Control Act of 2018 (arts. 2, 11 and 16).²⁰¹

The Committee made the following recommendations to the State party:

204. The Committee urges the State party to establish a moratorium on the death penalty; continue its 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, the Narcotics Control Act and other relevant laws that may entail the imposition of the death penalty in the light of its international obligations; and consider ratifying the Second Optional

¹⁹⁹Miti Sanjana, *What Law Says about Corporal Punishment?*, Bangla Tribune (12 Feb. 2019), <https://en.banglatribune.com/opinion/opinion/28375/What-law-says-about-corporal-punishment>.

²⁰⁰Fahad Bin Siddique, *Punishment in Educational Institutions*, The Daily Star (18 Dec. 2018), <https://www.thedailystar.net/law-our-rights/news/punishment-educational-institutions-1674997>.

²⁰¹ UN Committee against Torture, *Concluding Observations on the Initial Report of Bangladesh*, ¶ 50, UN Doc. CAT/C/BGD/CO/1 (Aug. 26, 2019), <https://undocs.org/CAT/C/BGD/CO/1>.

Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.²⁰²

Civil society’s findings on implementation of the recommendations:

205. The provision of the death penalty remains in force in various criminal laws of Bangladesh.²⁰³ A large number of accused persons are being sentenced to death each year in the lower courts. The accused, who were sentenced to death, are kept in solitary confinement for many years. Many of them, fearful of being executed at any time, become mentally and physically ill. Some of the accused are forced to make confessions through torture during police remand and based on such confessions, the court imposes the maximum punishment on the accused. In May 2020, the Bangladesh Government nominated retired chief justice A.B.M. Khairul Haque, who is reputed for his pro-death penalty stance, as a judge at the International Criminal Court (ICC). The nomination has drawn criticism from human rights groups.²⁰⁴

206. Bangladesh acceded to the International Covenant on Civil and Political Rights (ICCPR) in 2000. The ICCPR expressly states in Article 6(2) that in retentionist countries a death sentence may be imposed only for the “most serious crimes.” The Human Rights Committee has stated that “the expression ‘most serious crimes’ must be read restrictively to mean that the death penalty should be a quite exceptional measure.”²⁰⁵ However, in Bangladesh the death penalty can be imposed for economic crimes, such as selling goods on the black market, smuggling, and forging currency.²⁰⁶ Bangladesh has never imposed an official moratorium on the death penalty.

207. Odhikar has documented 79 persons were sentenced to death between January and March 2020. The courts in Bangladesh remained closed from 29 March to 30 May 2020 due to COVID-19.²⁰⁷ Although the government offices reopened on 31 May 2020, courts remained closed and

²⁰² Id. at ¶ 51.

²⁰³ See Penal Code 1860 (Bangladesh); The Arms Act 1878 (Bangladesh); The Constitution of the People’s Republic of Bangladesh 1972 (Bangladesh); International Crimes (Tribunals) Act 1973 (Bangladesh); Special Power Act 1974 (Bangladesh); Flight Safety Protection Act 1997 (Bangladesh); Women and Child Repression Prevention Act 2000 (Bangladesh); Acid Offense Prevention Act 2002 (Bangladesh); Anti Terrorism Act 2009 (Bangladesh); Human Trafficking Prevention and Suppression Act 2012 (Bangladesh); Narcotic Control Act 2018 (Bangladesh); Army Act 1952 (Bangladesh); Air Force Act 1953 (Bangladesh); The Navy Ordinance 1961 (Bangladesh); Bangladesh Coast Guard Act 2016 (Bangladesh); Bangladesh Border Guard Act 2010 (Bangladesh), <http://bdlaws.minlaw.gov.bd/laws-of-bangladesh.html>.

²⁰⁴ *BANGLADESH/WORLD: The Nomination of A B M Khairul Haque as a Judge of ICC Must Be Opposed for the Interest of Justice and its Integrity*, Asian Human Rights Centre (23 May 2020), <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-006-2020/>.

²⁰⁵ Human Rights Committee, *CCPR General Comment No. 6: Article 6 (Right to Life)*, ¶ 7 (30 Apr. 1982).

²⁰⁶ See The Special Powers Act 1974, <http://bdlaws.minlaw.gov.bd/act-details-462.html>.

²⁰⁷ See Odhikar, *Three-Month Human Rights Monitoring Report on Bangladesh, Reporting Period April – June 2020* (6 July 2020), http://odhikar.org/wp-content/uploads/2020/07/Odhikar_Three-month-HRR_April-June-2020_Eng.pdf.

court proceedings have taken place online. In the three months from April to June 2020, no one was sentenced to death, but one person was executed.²⁰⁸ According to a report by the Dhaka Metropolitan Police (DMP), Captain (Retd.) Abdul Majed, who had been sentenced to death in connection with the murder of former President Sheikh Mujibur Rahman and his family members, was arrested on 6 April 2020 from Gabtoli area of Dhaka. On 8 April, Dhaka District and Sessions Judge M Helal Chowdhury ordered the issuance of a death warrant for Abdul Majed. On the same day, he appealed to the President for mercy. On 11 April, Majed's execution was carried out by hanging at the Dhaka Central Jail, after the President rejected his request for clemency.²⁰⁹

208. Despite commitments during the UPR and the Human Rights Committee's session by the government delegations of Bangladesh, the Government has not yet taken action to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty. The recommendations by the UN member-states on the abolition of death penalty during the third cycle of the UPR of Bangladesh, were noted, with the Government of Bangladesh saying that the death penalty remains a valid form of punishment and deterrence for the most serious and heinous crimes, and that the Government had been gradually replacing the death penalty with other forms of punishments, such as life imprisonment.²¹⁰

S. Other issues

The Committee made the following general recommendations to the State Party:

209. The Committee invites the State party to consider making the declarations envisaged under articles 21 and 22 of the Convention and withdrawing its reservation to article 14 of the Convention.²¹¹

210. 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.²¹²

211. 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

²⁰⁸Id.

²⁰⁹*Bangabandhu's Killer Majed Hanged*, The Daily Star (12 Apr. 2020),

<https://www.thedailystar.net/country/news/bangabandhus-killer-majed-be-hanged-tonight-ig-prisons-1891942>.

²¹⁰UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: Bangladesh*, U.N.

Doc. A/HRC/39/12/Add.1 (11 July 2018) <https://undocs.org/en/A/HRC/39/12>.

²¹¹ UN Committee against Torture, *Concluding Observations on the Initial Report of Bangladesh*, ¶ 53, UN Doc.

CAT/C/BGD/CO/1 (Aug. 26, 2019), <https://undocs.org/CAT/C/BGD/CO/1>.

²¹² Id. at ¶ 54.

the 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.²¹³

212. 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 NGOs and to inform the Committee about its disseminating activities.²¹⁴

213. 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.²¹⁵

Civil society's findings on implementation of the recommendations:

214. Preventing and redressing torture require a strong legal framework, effective implementation of that framework, a functioning criminal justice system, and monitoring mechanisms. These conditions are not met in Bangladesh, and little action has been taken towards ensuring the protection of all people from torture and ill-treatment. The judiciary and law enforcement agencies have failed to take any effective measures to investigate and prosecute the cases of torture and provide remedies to survivors and victim-families

215. Bangladesh acceded to the Convention on 5 October 1998, with a declaration on Article 14 that ensures victims redress and enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. Although Bangladesh has accepted recommendations from the UPR, the Human Rights Committee, and the CAT to withdraw its declaration on Article 14, Bangladesh has yet to do so.

216. Bangladesh has not ratified the Optional Protocol to the Convention against Torture (OPCAT) despite recommendations accepted at the UPR. The Bangladesh Government refrains from accepting the individual complaint procedure²¹⁶ of the Committee against Torture or other Treaty Bodies, except CRPD-OP and CEDAW-OP.

²¹³ Id. at ¶ 55.

²¹⁴ Id. at ¶ 56.

²¹⁵ Id. at ¶ 57.

²¹⁶ Bangladesh has not recognised the competence of the CAT Committee (Article 22).

217. Bangladesh has yet to sign or ratify the International Convention for the Protection of All Persons from Enforced Disappearance, and the Bangladesh Government noted the recommendation to become a State party to this treaty during the third cycle of the UPR in May 2018.

218. The State party has neither granted access to the special procedures mandate holders who have requested visits nor issued invitations to: the 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 or Involuntary Disappearances; the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression; the Special Rapporteur on the rights to freedom of peaceful assembly and of association; and the Special Rapporteur on the situation of human rights defenders.

III.ABOUT THE CONTRIBUTING ORGANISATIONS

Advocates for Human Rights

The Advocates for Human Rights is a volunteer-based non-governmental organization committed to the impartial promotion and protection of international human rights standards and the rule of law. Established in 1983, The Advocates conducts a range of programs to promote human rights in the United States and around the world, including monitoring and fact finding, direct legal representation, education and training, and publications.

Contact: Amy Bergquist | abergquist@advrights.org | www.theadvocatesforhumanrights.org

330 Second Avenue South, Suite 800, Minneapolis, MN 55401 USA

Anti-Death Penalty Asia Network (ADPAN)

The Anti-Death Penalty Asia Network (ADPAN) is a regional network of organizations and individuals committed to working towards abolition of the death penalty in the Asia Pacific. ADPAN was founded in Hong Kong on the World Day against the Death Penalty in 2006.

Contact: Ms. Sara Kowal | contactadpan@protonmail.com | <https://adpan.org/>

Phone: +613433126926

Asian Federation Against Involuntary Disappearances (AFAD)

AFAD is a federation of human rights organisations working directly on the issue of involuntary disappearances in Asia. Envisioning a world without desaparecidos, AFAD was founded on June 4, 1998 in Manila, Philippines. AFAD was the recipient of the 2016 Asia Democracy and Human Rights Award conferred by the Taiwan Foundation for Democracy.

Contact: Ms. Nilda Sevilla | nildasevilla@gmail.com | www.afad-online.org

Rooms 310-311 Philippine Social Science Center Bldg. Commonwealth Ave., Diliman, Quezon City, Philippines | Phone: +63 2 456 6434 | Fax: +63 2 454 6759

Asian Legal Resource Centre (ALRC)

ALRC works towards the radical rethinking and fundamental redesigning of justice institutions in Asia, to ensure relief and redress for victims of human rights violations, as per Common Article 2 of the International Conventions. Sister organisation to the Asian Human Rights

Commission, the ALRC is based in Hong Kong & holds general consultative status with the Economic & Social Council of the United Nations.

Contact: Mr. Md. Ashrafuzzaman | zaman@ahrc.asia | www.alrc.asia

Ground Floor, 52 Princess Margaret Road, Ho Man Tin, Kowloon, Hong Kong, China | Phone: +852 26986339

FIDH - International Federation for Human Rights

FIDH is a non-governmental federation of human rights organizations around the world. Founded in 1922, FIDH is the oldest international human rights organization in the world, and today brings together 192 member organizations from 117 countries. Its core mandate is to promote respect for all the rights set out in the UDHR.

Contact: asia@fidh.org | www.fidh.org

Headquarters: 17 Passage de la Main d'Or 75011, Paris, France | Phone: +33 1 43 55 25 18

Odhikar

Odhikar meaning 'rights' in Bangla is a registered human rights organisation based in Dhaka, Bangladesh established on October 10, 1994 by a group of human rights defenders, to monitor human rights violations and create wider awareness. It holds special consultative status with the ECOSOC of the United Nations.

Contact: Mr. Adilur Rahman Khan | Odhikar.bd@gmail.com | www.odhikar.org

House No. 35 (3rd Floor), Road No. 117, Gulshan, Dhaka 1212, Bangladesh | Phone: +88 01711405188

Robert F. Kennedy Human Rights

Robert F. Kennedy Human Rights is a non-governmental organization based in Washington, D.C. Founded in 1968 as a living memorial, it strives to achieve Robert F. Kennedy's vision of a more just and peaceful world. Robert F. Kennedy Human Rights' core programs focus on the power of the individual and providing sustained advocacy, litigation, and capacity-building support to grassroots leaders to advance social justice movements around the globe.

Contact: Ms. Angelita Baeyens | legal@rfkhumanrights.org | www.rfkhumanrights.org

1300 19th Street, NW, Suite 750, Washington, D.C., 20003, USA | Phone: +1.202.463.7575

World Organisation Against Torture (OMCT)

OMCT is the main coalition of international nongovernmental organisations (NGOs) fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment. OMCT has more than 200 affiliated organisations in its SOS-Torture Network and many tens of thousands correspondents across the world.

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END OF THE REPORT