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Bangladesh:

Global anti-torture movement alarmed over possible licence to torture

Geneva-Dhaka, 27 March 2015 – the World Organization against Torture (OMCT) and Odhikar call on the government of Bangladesh to reject proposals to amend the country’s Torture and Custodial Death Prohibition and Prevention Act 2013. The proposed amendments would have the effect of condoning systematic practice of torture and immunizing from any responsibility.

In early March, the security services proposed to the Ministry of Home affairs to amend several sections in the Torture and Custodial Death Prohibition and Prevention Act 2013, which would defeat the very purpose of the Act and the Convention against Torture (CAT) that Bangladesh ratified in 1998.

Limit the definition of torture

According to the proposal, the Act would omit the country’s notorious Rapid Action Battalion, as well as the Criminal Investigation Department, Special Branch and Detective Branch from the definition of ‘law enforcement agency’ excluding the very actors frequently alleged to resort to torture altogether from responsibility and prosecution under the Act.

The proposal further suggests limiting the definition of torture to “acts or omissions which cause physical pain to any person for the purpose of obtaining information or a confession”. The other purposes – punishment, intimidation, coercion and discrimination – as well as causing “mental pain” are proposed to be repealed.

These two amendments are not compatible with Article 1 of the CAT which provides a comprehensive definition of torture binding upon all parties to the Convention against Torture. We cannot see any valid grounds for departing from those universal principals.

We urge the authorities to strictly adhere to its original definition of torture and keep mental pain as well as punishment, intimidation, coercion and discrimination as part of the definition of torture. In addition, Article 1 defines the perpetrator as being “public officials or other person acting in an official capacity”. This includes any branch of the police and investigating body as well as the military. Consequently, the Rapid Action Battalion, the Criminal Investigation Department, the Special Branch and the Detective Branch need to be included in the Torture and Custodial Death Prohibition and Prevention Act 2013.

“Wanting to exclude those forces with a notorious reputation for torture is similar to issuing a license to torture. Guaranteeing impunity at a time when the country needs nothing more than a return to the rule of law is deeply troubling”, said Gerald Staberock, Secretary General of the OMCT.

Cripple complaint and investigation procedures

The police also proposed to amend the complaint and investigation procedure regulated in section 7 of the Act. The proposal suggests that complaints should be lodged before the police or a magistrate instead of a court. This would mean that a petition would need to be filed with the very entity that is accused of torture.

Article 12 of the CAT requires “impartial and independent investigations” into torture allegations. According to the Committee against Torture, the authoritative global body overseeing the implementation of the CAT, this means not to entrust investigations to persons who have close professional or personal contact to the alleged perpetrators or have an interest in protecting an alleged perpetrator, but to mandate an external monitoring body. The complaints procedure thus needs to remain with the Court of Sessions Judge.

Justification for torture in the current political crisis

In addition, the proposal suggests to repeal section 12 of the Act, which provides that a “state of war, threat of war, internal political instability, public emergency; or an order of a superior officer or a public authority” shall not be an excuse for torture.

Section 12 of the Torture and Custodial Death Prohibition and Prevention Act 2013 is in compliance with Article 2 paragraphs 2 and 3 of the CAT, providing that the prohibition of torture is both absolute and non-derogable. This means that nothing can justify torture under any circumstances including war, emergency, or superior orders.

Licence to torture

The proposal to amend the Act comes amidst political violence that had intensified over the past two months. Reports of arbitrary detention, extrajudicial killing, torture and other ill-treatment by law enforcement authorities have rapidly increased since the latest confrontation between supporters of the government and the opposition.

The severe limitations are not only contrary to the very object and purpose of the Act and the CAT, but strongly suggest that torture has long been an integral and systematic practice of law enforcement. The adoption of the proposed changes would effectively immunize the authorities from accountability, which amidst serious allegations of torture, cannot but be understood as condoning the practice of torture in times of crisis.

“In order to put a halt to the culture of impunity prevailing in Bangladesh, the government should ensure that all allegations of torture are investigated independently and that all the perpetrators are brought to justice” said Adilur Rahman Khan, Secretary of Odhikar.

We strongly urge the government of Bangladesh to reject the suggested changes and ensure the absolute prohibition of torture.

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