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**INTERNATIONAL COMMISSION OF JURISTS (ICJ) SUBMISSION  
TO THE UNIVERSAL PERIODIC REVIEW OF BANGLADESH**

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*Composed of 60 eminent judges and lawyers from all regions of the world, the International Commission of Jurists works for the legal protection of human rights and the promotion of the Rule of Law, by using its unique legal expertise to develop and strengthen national and international justice systems. Established in 1952, in consultative status with the Economic and Social Council since 1957, and active on five continents, the ICJ aims to ensure the progressive development and effective implementation of international human rights and international humanitarian law; secure the realization of civil, cultural, economic, political and social rights; safeguard the separation of powers; and guarantee the independence of the judiciary and legal profession.*

## **SUBMISSION OF THE INTERNATIONAL COMMISSION OF JURISTS TO THE UNIVERSAL PERIODIC REVIEW OF BANGLADESH**

### **Introduction**

1. The International Commission of Jurists (ICJ) welcomes the opportunity to contribute to the Human Rights Council's (HRC) Universal Periodic Review (UPR) of Bangladesh.
2. In this submission, the ICJ raises concern about the following issues:
  - A. Enforced disappearances;
  - B. Imposition of the death penalty;
  - C. Freedom of expression; and
  - D. International human rights instruments.
3. With respect to each of the above-mentioned concerns, the ICJ calls upon the Working Group on the UPR and the Human Rights Council to make a number of recommendations to the Bangladeshi authorities.

### **(A) Enforced Disappearances**

4. While enforced disappearances were reported in Bangladesh during the 1971 liberation war, until 2009 there appear to have been only a few isolated cases documented in the country. Since 2009, however, when the Awami League Government led by Sheikh Hasina Wazed came into power, the number of reported enforced disappearances has significantly increased. For example, Odhikar, a domestic human rights non-governmental organization, has reported over 370 cases of enforced disappearances allegedly committed by Bangladesh law enforcement agencies from 2009 to July 2017.<sup>1</sup> Human Rights Watch recorded over 90 cases of enforced disappearance in 2016 alone.<sup>2</sup> As of September 2017, the UN Working Group on Enforced and Involuntary Disappearances (WGEID) had more than 49 outstanding cases of enforced disappearances from Bangladesh.<sup>3</sup>
5. The Government, however, has denied the existence of enforced disappearances in the country, and has refused to cooperate with the WGEID. In its 2016 report, the WGEID regretted that "no information has been received from the Government in connection with two general allegations transmitted on 4 May 2011, concerning the alleged frequent use of enforced disappearance as a tool by law enforcement agencies, paramilitary and armed forces to detain and even extrajudicially execute individuals and on 9 March 2016, concerning the reportedly alarming rise of the number of cases of enforced disappearances in the country."<sup>4</sup>
6. The large majority of those subjected to enforced disappearance since 2009 have been members of opposition political parties and political activists. According to families of the people "disappeared", those responsible for the enforced disappearance include law enforcement agencies, specifically members of Rapid Action Battalion (RAB) or the Detective Branch of the Police.
7. Furthermore, enforced disappearance is still not recognized as a distinct, autonomous criminal offence in Bangladesh. In its Concluding Observations following the initial review of Bangladesh's implementation of the International Covenant on Civil and Political Rights (ICCPR) in 2017, the UN Human Rights Committee expressed concern that "domestic law does not effectively criminalize

enforced disappearances” and recommended that Bangladesh “effectively criminalize enforced disappearance”.<sup>5</sup>

8. Families of “disappeared” people can file writs of *habeas corpus* in the High Court Division of the Supreme Court. However, law enforcement agencies rarely comply with the directions of the courts, making this remedy ineffective.

9. On the rare occasion that police register criminal complaints in such cases, they do so for the crimes of “abduction”, “kidnapping” or “wrongful confinement”.<sup>6</sup> In addition, in Bangladesh, a prosecutor must obtain a prior government “sanction” before lodging any criminal complaint against a State official, permission that is seldom granted. The law also allows both police officers and the Rapid Action Battalion to escape prosecution if they can show that they acted in “good faith.”

10. In February 2017, a number of UN human rights experts called on Bangladesh to “halt an increasing number of enforced disappearances in the country.” The WGEID said the number of cases has risen from a few isolated cases a few years ago to more than 40 and that the number is continuing to grow. They further said: “independent reports blame the Rapid Action Battalion of the Bangladesh Police for several disappearances and extra-judicial executions, notably of political opponents of the Government.”<sup>7</sup>

11. In its second UPR in 2013, Bangladesh accepted a number of recommendations, including becoming a party to the International Convention for the Protection of All Persons from Enforced Disappearance. To date, however, Bangladesh had not taken any steps to fulfill that commitment.

## **(B) Imposition of the Death Penalty**

13. Bangladesh has executed at least 18 people from April 2013 to October 2017. At least five of those executed were convicted and sentenced to death by the International War Crimes Tribunal.

14. The Bangladesh International Crimes Tribunal was established in 2010 after Parliament amended the International Crimes (Tribunals) Act, 1973. The International Crimes Tribunal has jurisdiction to try crimes against humanity, crimes against peace, genocide, violations of the Geneva Conventions and any other crimes under international law.

15. The ICJ supports the right of victims to seek truth and justice for the atrocities committed in the 1971 Liberation War. However, any such process must adhere to international human rights standards, including full guarantees for a fair trial.

16. In its second UPR, Bangladesh accepted a number of recommendations committing itself to guaranteeing fair trials of defendants before the International Crimes Tribunal. However, the ICJ’s analysis of some of those trials shows the International Crimes Tribunal does not adhere to international fair trial standards and fails to guarantee due process. There are serious procedural flaws at all stages: pre-trial release has been routinely and arbitrarily denied; witnesses have been abducted and intimidated; there have been credible allegations of collusion between the Government, prosecutors and judges. On 14 February 2013, a draft amendment was tabled in Parliament, retroactively modifying the International Criminal (Tribunals) Act, 1973, to enable prosecutors to appeal life sentences given by the ICT and seek the death penalty instead.<sup>8</sup>

17. As a State party to the International Covenant on Civil and Political Rights, Bangladesh is obligated to guarantee due process and fair trial rights to all suspects, even those accused of war crimes. Such obligations include the right to an public hearing before a competent, independent and impartial tribunal; the right to be tried in one's own presence; the right to counsel and the right to a full defense; and the right not to be punished twice for an offence for which there has already been a final conviction in accordance with the law (the rule against double jeopardy). Furthermore, the imposition of the death penalty after clearly unfair trials is also violation of the right to life, the right to a fair trial and the right to be free from torture and other ill-treatment.

### **(C) Freedom of expression**

18. On 6 October 2013, the Bangladeshi Parliament amended the Information and Communication Technology (ICT) Act, 2006. The amendments made many offences under the Act non-bailable and cognizable.<sup>9</sup> The amendments also imposed a minimum prison sentence of seven years for offences under the Act and increased the maximum penalty for offences under the law from ten to 14 years' imprisonment.

19. The stated objective of the ICT Act is "the legal recognition and security of information and communication technology." However, the amendments to the Act appear designed to stifle the legitimate exercise of public criticism and to subject various persons including journalists, bloggers, and human rights defenders to arbitrary detention. Soon after the Act was amended, the prominent human rights organization Odhikar was subjected to harassment for allegedly distorting information, presenting false evidence and manipulating photographs of a Government crackdown on a rally by Hefazat-e-Islam, an Islamist political organization. Odhikar's Secretary, Adilur Rahman Khan, was arbitrarily detained for over one month. He was denied bail three times before he was finally granted interim bail for six months and released from jail on 11 October 2013. His release was followed by the arrest of Nasiruddin Elan, Director of Odhikar, who was arbitrarily detained for two months under the ICT law, and was eventually released on bail in December 2013.<sup>10</sup> A number of other journalists have also been tried under the amended law.<sup>11</sup>

20. The original ICT Act contained a number of vague, imprecise and overbroad provisions that serve to criminalize the use of computers for a wide range of activities in contravention of the right to freedom of expression, including the right to receive and impart information, protected under international law. Although the right to freedom of information is not absolute, the restrictions contemplated under the Act do not fall within the scope of exceptions permissible under international law, including Bangladesh's treaty obligations.

21. Section 46 of the original ICT Act, for example, grants powers to the Government to direct any law-enforcing agency to restrict information through any computer resource if in their opinion such prevention is ...*necessary or expedient so to do in the interest of the sovereignty, integrity, or security of Bangladesh, friendly relations of Bangladesh with other States, public order or for preventing incitement to commission of any cognizable offence.*

22. Section 57 of the original ICT Act criminalized publishing or transmitting or causing to publish or transmit

*...any material which is fake and obscene or its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant*

*circumstances, to read, see or hear the matter contained or embodied in it, or causes to deteriorate or creates possibility to deteriorate law and order, prejudice the image of the State or person or causes to hurt or may hurt religious belief or instigate against any person or organization, then this activity of his will be regarded as an offence.*

23. These provisions of the original ICT Act, particularly section 57, are incompatible with Bangladesh's obligations under Article 19 of the ICCPR: the offences prescribed are vague and overbroad; the restrictions imposed on freedom of opinion and expression go beyond what is permissible under Article 19(3) of the ICCPR; and the restrictions are not necessary and proportional to achieve a legitimate purpose.

24. The ICT (amendment) Act 2013 makes the law even less compliant with Bangladesh's human rights obligations. Under the original Act, the police had to get permission from the Home Ministry before registering a case under the law. The amended Act has made offences under sections 54, 56, 57 and 61 cognizable, allowing the police to make arrests without a judicial warrant.

25. In addition, under the amended Act, offences prescribed by sections 54, 56, 57 and 61 have been made non-bailable, which means that bail cannot be sought as a matter of right, but is at the discretion of the court.

26. Lastly, the amended Act has also increased the maximum sentence for offences under sections 54, 56 and 57 of the Act from 10 to 14 years' imprisonment and prescribed a minimum sentence of seven years. The amended law has also retained the optional fine of ten million taka (\$130,000).<sup>12</sup>

#### **(D) International human rights instruments**

27. In its second UPR, Bangladesh accepted a number of recommendations committing to become party to the Optional Protocol to CRC on a communications procedure; the International Convention for Protection of All Persons from Enforced Disappearance and the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

28. However, Bangladesh is yet to become party to the Optional Protocol (OP) to the ICCPR, the Second OP to the ICCPR, the OP to the International Covenant on Economic, Social and Cultural Rights (ICESCR), the OP to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), the Third OP to the Convention for the Rights of the Child (CRC), and the International Convention for the Protection of All Persons from Enforced Disappearances (ICPPED).

29. The Government of Bangladesh has not adhered to the periodic reporting deadlines to the treaty bodies with initial Reports under the ICCPR and the ICESCR submitted a decade after their due date, and the initial report under the CAT still pending eight years after the due date.

30. During its second UPR, Bangladesh accepted recommendations on cooperating with UN Special Procedures, including to consider issuing invitations to the Special Rapporteurs.<sup>13</sup> From 2013 and 2017, however, Bangladesh has only agreed to visits by the Special Rapporteur on the Freedom of Religion or Belief (2015) and the Special Rapporteur on violence against women, its causes and consequences (2013).

31. Bangladesh has not extended a standing invitation to the UN Special Procedures, and has pending requests for visits by the Special Rapporteur on the rights to freedom of peaceful assembly and of association; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on contemporary forms of slavery; the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance; the Special Rapporteur on minority issues; the Special Rapporteur on the independence of judges and lawyers; the Special Rapporteur on the human rights of internally displaced persons; and the Working Group on Enforced or Involuntary Disappearances.

## **Recommendations**

32. In light of the concerns set out above, the ICJ calls upon the UPR Working Group and the Human Rights Council to recommend the following to Pakistani authorities:

- Make enforced disappearance a distinct, autonomous crime in the Penal Code.
- Carry out prompt, thorough, independent and impartial investigations into all allegations of enforced disappearance, and bring those responsible to justice.
- Repeal section 197 of the Code of Criminal Procedure, and other sanction provisions.
- Ensure procedures of the International Crimes Tribunal meets fair trial standards in accordance with article 14 of the ICCPR.
- Immediately declare a moratorium on executions with a view to abolishing the death penalty for all crimes and in all circumstances.
- Repeal the Information and Communication Technology Act (2006), as amended in 2013, or modify the ICT Act to bring it in line with international law and standards.
- Take steps to ensure that provisions of the ICT Act are not used to violate the right to freedom of expression, including limiting the legitimate exercise of comment on public matters that might contain criticism of the Government.
- Become a party to the OPCAT; the Second OP to the ICCPR; Third OP to the Convention for the Rights of the Child (CRC), the OP to the ICESCR; the ICPPED; and facilitate the visits of all UN Special Procedures.

## **ENDNOTES**

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<sup>1</sup> *Odhikar*, Human rights monitoring reports.

<sup>2</sup> *Human Rights Watch*, "We Don't Have Him": Secret Detentions and Enforced Disappearances in Bangladesh", July 2017, accessed at: <https://www.hrw.org/report/2017/07/06/we-dont-have-him/secret-detentions-and-enforced-disappearances-bangladesh>

<sup>3</sup> Report of the Working Group on Enforced or Involuntary Disappearances, UN Doc. A/HRC/33/51, July 2017, accessed at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/33/51](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/33/51)

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<sup>4</sup> Report of the Working Group on Enforced or Involuntary Disappearances, UN Doc. A/HRC/33/51, July 2017, accessed at: [http://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/HRC/36/39](http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/36/39)

<sup>5</sup> UN Human Rights Committee, "Concluding observations on the initial report of Bangladesh", UN Doc. CCPR/C/BGD/CO/1, para 19-20.

<sup>6</sup> Sections 362 to 365 of the Bangladesh Penal Code relate to the crimes of "kidnapping" and "abduction". The crime of "abduction" is regulated by section 362 of the Penal Code and is defined as "whoever by force compels, or by any deceitful means induces, any person to go from any place." Section 364 prescribes a punishment of ten years imprisonment for the crime of "kidnapping or abducting in order to murder". Section 365 relates to kidnapping or abducting "any person with intent to cause that person to be secretly and wrongfully confined" and prescribes a punishment of a maximum of seven years' imprisonment. Sections 339 to 348 relate to wrongful confinement, with penalties ranging from one to three years depending on the length of the confinement.

<sup>7</sup> "UN expert group urges Bangladesh to stop enforced disappearances", 24 February 2017, accessed at:

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

<sup>8</sup> International Commission of Jurists, "Bangladesh International Crimes Tribunal should pursue justice, not vengeance," 28 February 2017, accessed at: <https://www.icj.org/bangladesh-international-crimes-tribunal-should-pursue-justice-not-vengeance/>

<sup>9</sup> Cognizable offence are offences for which a police officer may arrest without warrant.

<sup>10</sup> See, for example, International Commission of Jurists, "Bangladesh: ICJ demands government drop cybercrime charges against Nasiruddin Elan and Adilur Rahman Khan," 10 January 2014, accessed at: <https://www.icj.org/bangladesh-icj-demands-government-drop-cybercrime-charges-against-nasiruddin-elan-and-adilur-rahman-khan/>

<sup>11</sup> Tuhin Shubhra Adhikary, *The Daily Star*, "The trap of Section 57", 7 July 2017, accessed at: <http://www.thedailystar.net/frontpage/bangladesh-ict-act-the-trap-section-of-57-1429336>

<sup>12</sup> For more details, see International Commission of Jurists, "Bangladesh: Information and Communication Technology Act draconian assault on free expression," 20 November 2013, accessed at: <https://www.icj.org/bangladesh-information-and-communication-technology-act-draconian-assault-on-free-expression/>

<sup>13</sup> See, for example, Recommendation 129.51. Continue in the cooperation with Special Procedures and the mechanisms, and consider issuing invitations to the special Rapporteurs (State of Palestine) and Recommendation 29.48. Improve cooperation with human rights mechanisms, including presenting outstanding reports and approving visits for special procedures, (Sierra Leone).