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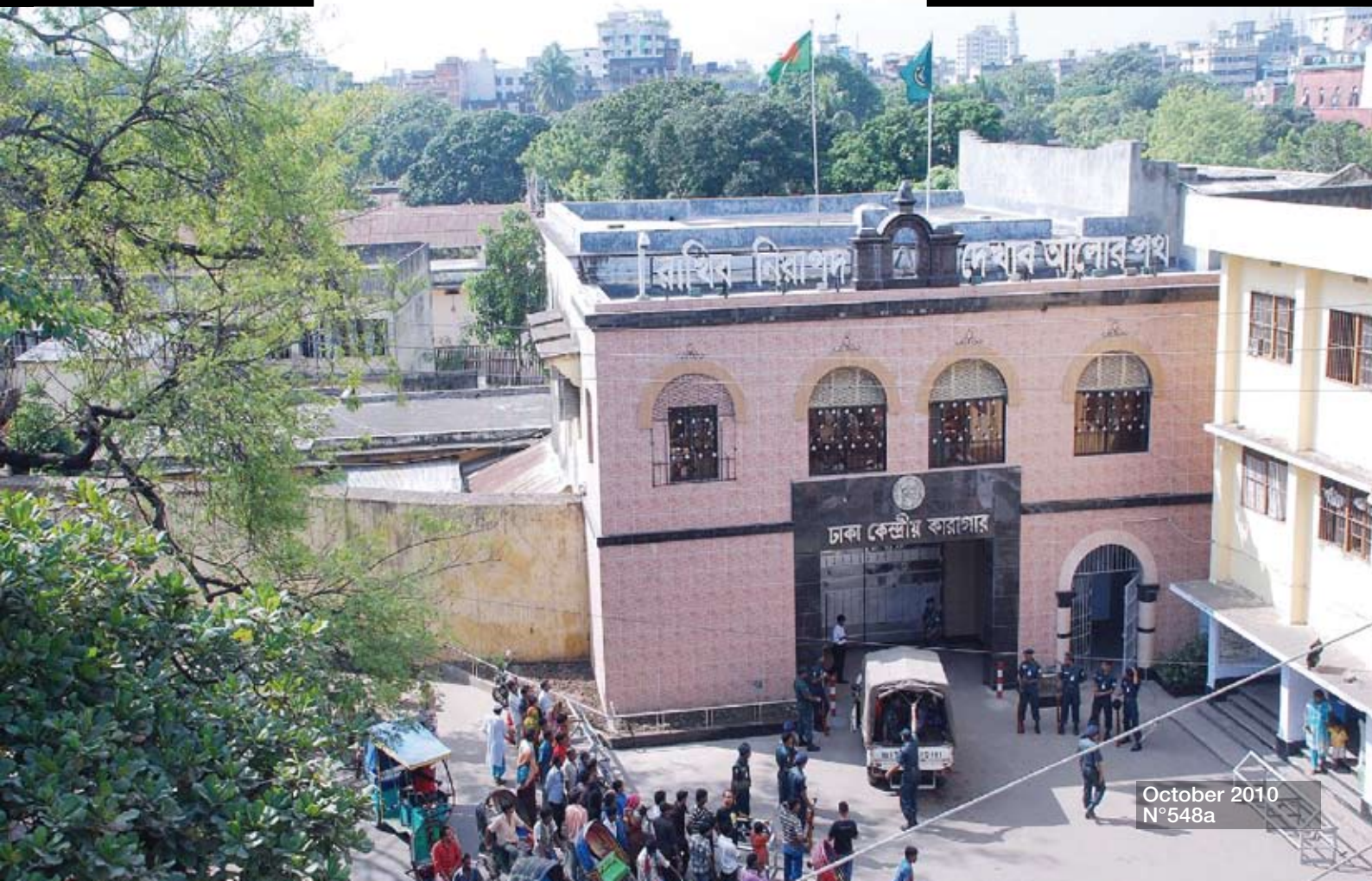
BANGLADESH

Criminal justice through the prism of capital punishment and the fight against terrorism

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Article 2: Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty. Article 3: Everyone has the right to life, liberty and security



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Cover: Dhaka Central Jail

Introduction

Context of the mission

The International Federation for Human Rights (FIDH) fact-finding mission's mandate was to enquire on the death penalty and the administration of criminal justice in Bangladesh, with a focus on people convicted for so-called terrorist offences. The principal objective was to assess the respect of the fair trial guarantees, in particular the prohibition of torture, in capital cases. The mission also attempted to look at the specific situation of persons suspected of having committed so-called terrorist offences, and determine whether there are specificities in terms of criminal procedure or practices in their regard, that contravene international human rights law.

The mission was composed of three representatives: Mr. Mouloud Boumghar (Algeria/France); Ms. Laurie Berg (Australia) and Ms. Nymia Pimentel Simbulan (Philippines), and was supposed to take place from 23rd to 31st January 2010. However, FIDH and Odhikar decided to delay it because the Supreme Court was expected to deliver a final judgment in a highly sensitive case involving the death penalty. Indeed, on 27 January 2010, the Supreme Court upheld the death sentences against 15 persons convicted for the killing in 1975 of the first President of Bangladesh. Five of them were executed the next day.

The mission eventually took place from 1st to 9 April 2010. In Jessore, Narail and Jhenaidah, the mission met with families of death row prisoners. Most meetings took place in Dhaka, the capital of Bangladesh.The mission met with a range of human rights NGOs, academics, judges, journalists, lawyers, the National Human Rights Commission, people prosecuted under the Anti-Terrorism Act and families of death row inmates. The mission also had the opportunity to meet with several representatives of the authorities, including Mr. Justice Md. Fazlul Karim, Chief Justice of Bangladesh ; Mr. Mahbubey Alam Attorney General for Bangladesh ; Barrister Shafiq Ahmed Minister of Law, Justice and Parliamentary Affairs; Mr. Ashraful Islam Khan, the Inspector General of Prisons, and several Members of Parliament.

FIDH wishes to thank the authorities for their cooperation during the mission and their acceptance to meet with its members. It regrets that access to prisons was refused though no reason has been given and hope that this trend could be reversed in the future, since it would allow to have first-hand information on prison conditions, rather than relying on indirect sources.

FIDH also wishes to thank Odhikar, its member organization in Bangladesh, without which the mission and this report would not have been possible.

Legal History of Bangladesh: Criminal Law

The Indian Subcontinent, comprising of Bangladesh, India and Pakistan, has a long history of the use of capital punishment. A stay in this form of punishment came at the time of Emperor Ashoka, who preached peace, Buddhism and non-violence during the 2nd century BC. During his reign, capital punishment was banned. However, this all changed after his reign ended and by the end of the 15th century BC the states that made up India were wrought with warfare and

intrigue and capital punishment was extremely common[1]. During the Moghul era in the early 16th century, capital punishment was retained as the highest form of punishment and connected with class and caste. A Chinese visitor to India in the 5th century BC observed that a Sudra[2] who insulted a Bhramin faced death whereas a Bhramin who killed a Sudra was given a light penalty, such as a fine – the same penalty he might have incurred if he had killed a dog.[3]

The present legal and judicial system of Bangladesh owes its origin mainly to two hundred years British rule in the Indian Sub-Continent although some elements of it are remnants of Pre-British period tracing back to Hindu and Muslim administration. The legal system of the present day emanates from a mixed system which has structure, legal principles and concepts modeled on both Indo-Mughal and English law. The Indian sub-continent has a history of over five hundred years with Hindu and Muslim periods which preceded the British period, and each of these early periods had a distinctive legal system of its own. The ancient India was divided into several independent states and the king was the Supreme authority of each state. So far as the administration of justice was concerned, the king was considered to be the fountain of justice and was entrusted with the Supreme authority of administration of justice in his kingdom. The Muslim period starts with the invasion of the Muslim rulers in the Indian sub-continent in 1100 A.D. The Hindu Kingdoms began to disintegrate gradually with the invasion of Muslim rulers at the end of eleventh and at the beginning of twelfth century. When the Muslims conquered all the states, they brought with them the theory based on the Holy Quran. According to the Holy Quran, sovereignty lies in the hand of Almighty Allah.[4]

The so-called 'modernisation' of the legal system began with the British and their Royal Charters. The East India Company gained control and was ultimately powerful enough to take part in the administration of justice with the local authorities. The Charter of 1726, issued by King George I, gave Letters Patent to the East India Company and was the gateway through which other legal and judicial systems entered India from England. In 1753, another Charter was issued by King George II to remove the defects of the previous Charter. In 1773, the House of Commons passed the Regulation Act to improve the judicial system and under it, the King issued another Charter in 1774 establishing the Supreme Court of Judicature at Calcutta (now Kolkata). On 15 August 1772, Lord Hastings drew up a collection of laws that became the first British Indian law code in Bengal, Bihar and Orissa. The code contained 37 sections addressing both civil and criminal law and a new system of courts took over from the slowly defunct Moghul ones. The new court system provided for separate civil (dewani) and criminal (fowjdari) courts. In 1801, another Supreme Court was established in Madras and one in Bombay in 1824.

Between the 1790's and the 1820's, the East India Company promulgated the largest number of Regulations that brought about changes in the criminal justice system in the sub continent. In 1853, the Law Commission was established in India and the British Crown replaced the East India Company in 1859. The Penal Code was enacted in 1860, followed by the Criminal Procedure Code 1898, following the efforts of Lord Macaulay, an English lawyer, in bringing

1. For more information see Johnson, David T. and Zimrig, Franklin. The Next Frontier: National Development, Political Change and the Death Penalty in Asia. Oxford University Press 2009.
2. A lower Hindu caste. Bhramins are the highest caste.
3. For more information see Johnson, David T. and Zimrig, Franklin. The Next Frontier: National Development, Political Change and the Death Penalty in Asia. Oxford University Press 2009.
4. www.bangladesh.gov.bd/index.php?option=com_content&task=view&id=58&Itemid=137.

together the 'native' and British systems into a single criminal law. With them, laws such as the Code of Civil Procedure 1908 and the Evidence Act 1872 were also enacted.

It took nearly three decades to give final shape to the codification of criminal law in British India. This codification is the result of the strenuous effort of two law commissions. The first of these commissions was established in 1837 in India and was led by Thomas Babington Macaulay. The second Commission was established in England in 1853. One of the controversial issues during the period was the separate dispensation provided to European subjects in India and the Indians. They came under the jurisdiction of separate sets of courts and laws. Equality of protection under the same law and a common judicature based on the principle of rule of law became issues of paramount importance. This is where Macaulay intervened. He defined the principle on which the codification of law must be based. He defined the principle as uniformity where it was possible to achieve and diversity where necessary. This was the guiding principle which initiated the process leading to the abolition of the dual system of judicial administration and the establishment of a secular legal system.

The process culminated, after much debate, changes and discussion, in the enactment of the Indian Penal Code (Act XLV of 1860) and the Criminal Procedure Code (Act XXV of 1898). These two Codes laid the foundation of criminal law in British India. After 1947(the partition of India and Pakistan), the title of the Indian Penal Code was changed to that of the Pakistan Penal Code. Similarly, after 1971 (the independence of Bangladesh from Pakistan), the Pakistan Penal Code came to be known simply as the 'Penal Code' in independent Bangladesh. Except for the changes in title the Penal Code more or less remained an immutable document with only minor modifications. The same can be said of the Code of Criminal Procedure1898.

II. Bangladesh and International Human Rights Law

Ratification of international human rights instruments

The People's Republic of Bangladesh (Bangladesh) has bound itself to upholding human rights law by committing to a number of international human rights treaties[5]. Bangladesh therefore has the obligation to take legislative measures in accordance with the treaties that it has ratified, as well as upholding their implementation on every level.

In a number of the international human rights treaties ratified or acceded to by the People's Republic of Bangladesh, however, the government had registered some declarations and reservations to particular articles of the treaties (see table in annex 2). Paramount among these is the reservation to Article 14 paragraph 1 of the Convention Against Torture (CAT), on the ground that Bangladesh will apply it "in consonance with the existing laws and legislation of the country".[6] It is to be noted that there is no definition of 'torture' in the domestic legislation of Bangladesh.

Furthermore, Bangladesh has not yet ratified nor has it acceded to a number of international human rights treaties, particularly the Optional Protocols to the two International Covenants, i.e. the ICESCR and the ICCPR. The Second Optional Protocol of 15 December 1989 to the ICCPR aims at abolishing the death penalty. Likewise, it has not yet ratified or acceded to the Optional Protocol to the Convention against Torture (CAT). This important instrument mandates State Parties to allow members or experts of independent international and national bodies to conduct regular visits to places like jails, detention centres, state penitentiaries and military camps, where individuals deprived of their liberty are kept, to investigate cases of torture, cruel and ill treatment or punishment.[7] Neither is Bangladesh a State Party to the International Convention for the Protection of All Persons from Enforced Disappearance. Moreover, As a major sending country of migrant workers[8], many of whom find themselves exposed to grave abuse and exploitation, ratification of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, signed in 1998, would send a strong signal of Bangladesh's commitment to ensuring the protection of its citizens abroad.

Cooperation with UN human rights mechanisms

As a State Party to international human rights instruments, the government of Bangladesh has the obligation to submit periodic reports to the treaty-monitoring bodies established by the international human rights instruments. Those reports detail the efforts carried out at national

5. See table in annex on ratified human rights instruments.
6. visit www2.ohchr.org/english/law/cat-reserve.htm
7. Optional Protocol to the Convention Against Torture and Other Forms of Cruel, Degrading or Ill Treatment or Punishment
8. International Migration Guide. http://uk.oneworld.net/guides/migration?gclid=CJSj2Pvsl6MCFcdS6wodc3vKtg (Accessed: 1 August 2010).

level by the authorities in order to implement the relevant international conventions. Although the government of Bangladesh submitted periodic reports to various treaty bodies over the past years, such reports are overdue to the Human Rights Committee[9], the Committee on Economic, Social and Cultural rights[10] and the Committee Against Torture[11]. All of them are initial reports, which means that the authorities have not yet submitted a single report under those conventions.[12]

Several requests by Special Rapporteurs have likewise been made to the Bangladesh government to be invited to conduct field visits and gather data on alleged violations of human rights. Among these were the request for an invitation from the *Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, made in 2006 and reiterated in 2008 and 2009.[13] In 2007, the *Special Rapporteur on Independence of Judges and Lawyers* requested to visit the country to look into the state of the country's judicial system and the administration of justice.[14] These requests have not been granted by the government to this date, in spite of the fact that accepting those invitations is included in the Universal Periodic Review's recommendations.[15] The government of Bangladesh replied to that recommendation as follows: "Bangladesh has been fully cooperating with the special procedure mechanisms. Some special rapporteurs have visited in recent years. A few requests are pending. We are in the process of finalizing their requests and we expect the visits to begin very soon."[16]

The National Human Rights Commission of Bangladesh (NHRC)

In application of the National Human Rights Commission Ordinance 2007 (Ordinance 40 of 2007), the National Human Rights Commission of Bangladesh was established and came into existence in September 2008. It was created by the President on 1 December 2008 and initially composed of a Chairman and two Commissioners, with Justice Amirul Kabir Chowdhury, a retired judge of the Appellate Division of the Supreme Court of Bangladesh, as Chairman.[17] However, with the passage of the National Human Rights Commission Act 2009 (Act 53 of 2009) on 14 July 2009, the composition of the Commission was expanded to a maximum of 7 members, i.e. the Chairperson and up to six Members. The Act also stipulates that one member of the Commission must be a woman and another from an ethnic group. A full-fledged NHRC under the present Act has been reconstituted appointing a new full time chairman and one full time member and five part time members on 22 July 2010 as per provision of the law. The Selection Committee has the authority to recommend the names of the members of the NHRC to the President for appointment, who then appoints the members.[18]

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9. HRC, the body established under the ICCPR to monitor its implementation.
10. Established under the ICESCR.
11. Under the Convention Against Torture, or CAT.
12. www.unhchr.ch/tbs/doc.nsf/NewhvVAllSPRByCountry?OpenView&Start=1&Count=250&Expand=14.2#14.2 (Accessed: 7 August 2010).
13. www2.ohchr.org/english/bodies/chr/special/countryvisitsa-e.htm#bangladesh (Accessed: 8 August 2010).
14. *Ibid.*
15. A/HRC/11/18, 5 October 2009, Recommendation n° 12.
16. A/HRC/11/18/Add.1, 9 June 2009.
17. National Human Rights Commission. *National Human Rights Commission Marches Ahead.* (Brochure).
18. The Act provides for a selection procedure of members to the National Human Rights Commission by a seven- member Selection Committee. The Selection Committee will be headed by an Appellate Division Judge nominated by the Chief Justice and will also include the Cabinet Secretary; Attorney General; Comptroller and Auditor General; Chairman, Public Service Commission; and the Law Secretary as members. In particular, the Act provides that the selection of the members of the Commission is made by a committee predominantly made up of Government officials.

Consistent with the Paris Principles on national human rights institutions, the NHRC is mandated to:[19]

– investigate complaints on human rights violations filed by any individual or any person on behalf of the victim/s;
– visit places where persons deprived of their liberty are detained and make recommendations for the improvement of these places;
– review laws and legislations if consistent with human rights treaties and standards, conduct studies on laws and international human rights instruments and provide advise to the Government;
– coordinate with human rights NGOs and institutions; and
– take concrete actions like mediation and arbitration to address human rights violations.

Former Chairman Justice Amirul Kabir Chowdhury told the FIDH/Odhikar delegation in an interview that as of March 2010, the NHRC had received 112 complaints, mostly against the police forces,[20] and claimed that 65 have been "disposed of." Other sources, however, assert that the NHRC has failed to make a single field visit, initiate an investigation of a complaint, or provide legal assistance to a victim of a human rights violation.[21]

The cases of human rights violations handled by the NHRC involved misuse of power by police authorities, torture of detainees or under trial prisoners, killing of civilians under police custody, abduction allegedly perpetrated by Rapid Action Battalion (RAB)[22], killing in "cross fire", and illegal arrest and detention.[23]

Yet, in addressing these complaints, the most common action taken by the NHRC was to refer the case to another government agency, usually the law enforcement office that ranks above and oversees the accused officers. The ranking law enforcement officers are expected to conduct an investigation and submit a report on their findings. The problem with this process is the issue of partiality and conflict of interest. The people expected to conduct the enquiries are officers belonging to the very agencies to which the alleged human rights violators are attached. There is an obvious risk that the higher authorities may protect their ranks and institution rather than unveil the truth.

An example of the conflict of interest that this practice enmeshes is that of referring human rights violation complaints against members of the police forces with the rank of Inspector primarily to the Office of the Inspector General of Police (IGP). This referral procedure is further mandated by The Police Officers (Special, Provisions) Ordinance, 1976 (Ordinance No. LXXXIV of 1976)[24] Clearly, the lack of independent investigation of the claims is likely to result in a dismissal of the claim, or at best in a highly questionable finding.

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19. *Ibid.* pp. 2-3.
20. Interview with NHRC Chair Justice Amirul Kabir Chowdhury. Dhaka, Bangladesh, 6 April 2010. Dhaka.
21. *Manpozer shortage cripples NHRC*, The Daily Star, 21 April 2010, www.thedailystar.net/newDesign/news-details.php?nid=151605.
22. The RAB, an elite force created by the Bangladeshi government in March 2004, is in operating since June 2004. The objective is supposedly to curb organised crime. However, RAB is responsible for a number of extrajudicial executions ("death in crossfire") and there is also an alarming number of deaths in RAB custody.
23. *Ibid.* pp. 5-8.
24. The Police Officers (Special, Provisions) Ordinance, 1976Ordinance No. LXXXIV of 1976. www.police.gov.bd/index5.php?category=23 (Accessed: 8 August 2010).

For the NHRC to maintain its independence and impartiality, improvements in the conduct of its work are necessary. Strengthening its investigative functions and enhancing the capabilities of its staff are essential to more effectively fulfil its mandate of advancing and promoting human rights, especially of the impoverished and marginalized sections of the population. In response to a UNDP-funded study of the fledgling NHRC in 2008 that recommended a workforce of 128 members, six workers were hired. Recently, approval has been granted to hire 28 more staff members.[25]

25. *Ibid.*, note 13.

III. The Death Penalty in Bangladesh

Crimes punishable by death

A broad range of crimes are currently subject to the death penalty. These include crimes set out in the Penal Code 1860, such as:
– waging war against Bangladesh (s.121),
– abetting mutiny (s.132),
– giving false evidence upon which an innocent person suffers death (s.194),
– murder (s.302),
– assisting the suicide of a child or insane person (s.305),
– attempted murder by life-convicts (s.307),
– kidnapping of a child under the age of ten (with intent to murder, grievously hurt, rape or enslave the child) and
– armed robbery resulting in murder (s.396).

In addition, other legislative regimes enumerate offences punishable by death. The *Special Powers Act 1974*, which establishes emergency police powers to maintain national security, makes provision for the death penalty for the offences of:
– sabotage (s.15),
– hoarding of goods or dealing on the black market (s.25),
– counterfeiting (s.25A), smuggling (s.25B), and
– poisoning or contamination of consumables (s.25C) or attempt of any of these offences (s.25D).

A range of offences related to firearms and explosives also attract the death penalty,[26] as do offences under the Anti-Terrorism Ordinance 2008.

Finally, a range of laws designed to prevent violence against women and children prescribe death as punishment. Under legislation known as the *Women and Children Repression Prevention Act*, passed in 2000, the death sentence is available for:
– murder or attempted murder involving burning, poison or the use of acid (s.4),
– causing grievous hurt by the above substances if eyesight or hearing capacity or face or breast or reproductive organs are damaged (s.4(2)(ka)),
– trafficking of women and children for illegal or immoral acts (s.5 and 6),
– kidnapping (s.8),
– sexual assault of women or children occasioning death (s.9(2)),
– committing dowry murder (s.11), and
– maiming of children for begging purposes.

26. The Arms Act 1878, s 20A (use of unlicensed firearms for murder); the Explosives Act 1884, s 12 (abetment or attempt to commit offences punishable by death); the Explosive Substances Act 1908, s 3 (causing explosion likely to endanger life or property).

In total, twelve offences under this law are punishable by the death sentence, of which two are simply attempted crimes. The *Acid Crime Control Act 2002* makes the following crimes punishable by death: causing death by acid (s.4), causing hurt by acid in a way which totally or partially destroys eyesight, hearing capacity or defacing or destroying face, breasts or reproductive organs (s.5(ka)).

The ICCPR expressly states in Article 6(2) that a sentence of death 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."[27] In addition, the UN Safeguards guaranteeing protection of the rights of those facing the death penalty state that crimes punishable by death should "not go beyond *intentional* crimes with *lethal* or other extremely grave consequences" (emphasis added).[28] The UN Special Rapporteur on extrajudicial, summary or arbitrary executions has further stated that "the death penalty should be eliminated for crimes such as economic crimes and drug related offences."[29] Following this line of statutory interpretation, the shocking breadth of crimes that attract the death penalty under Bangladeshi law breaches the ICCPR due to the economic and non-lethal nature of several of the crimes, such as dealing goods on the black market or counterfeiting.

A General Comment on Article 6 of the ICCPR, adopted in 1982, by the Human Rights Committee established that this article "refers generally to abolition [of the death penalty] in terms which strongly suggest (...) that abolition is desirable. The Committee concludes that "all measures of abolition should be considered as progress in the enjoyment of the right to life."[30] One may consequently consider that the adoption of legislation providing for capital punishment after signature and accession by Bangladesh to the ICCPR in 2000 goes against the spirit of the Covenant, which is particularly the case for the Acid Crime Control Act of 2002 and the Anti-Terrorism Act of 2009.

Mandatory Death Sentences

Under the *Women and Children Repression Prevention Act* of 2000, causing death for dowry (s11(ka)) is a crime punishable with mandatory death penalty, in other words no other sentence is available.

Mandatory death sentences are cause for grave concern as they deprive the judiciary of the discretion to consider extenuating circumstances relating to the crime or the accused. The obvious injustice that can result from a mandatory death sentence is illustrated in the case of *State vs. Shukur Ali,* decided in 1995, where the High Court Division confirmed the death sentence of a minor boy who was 14 years old when he committed the rape and murder of a 7 year old girl, under s.6 of an earlier version of the *Women and Children Repression Prevention Act, 1995*. The Court noted that it was compelled to confirm the death sentence:

> "No alternative punishment has been provided for the offence that the condemned prisoner has been charged and we are left with no other discretion but to maintain the sentence if we

27. Human Rights Committee General Comment 6, para. 7.
28. UN Economic and Social Council, 45th plenary meeting. Resolution 15 (1996) [Safeguards guaranteeing protection of the rights of those facing the death penalty]. (E/RES/1996/15). 23 July 1996.
29. Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, UN Doc: E/CN.4/1996/4, at para. 556.
30. UN Human Rights Committee General Comment 6 on the right to life (art. 6, par. 6), 30/04/1982.

believe that the prosecution has been able to prove the charge beyond reasonable doubt. This is a case, which may be taken as 'hard cases make bad laws".[31]

The Court proceeded to note that the age of the convicted person, who was only 16 at the time of the trial, would have meant that his sentence would have been commuted to life imprisonment had he been charged under the Penal Code which provides alternatives to the death sentence.

On 16 May 2010, the High Court Division of the Supreme Court of Bangladesh declared unconstitutional such a provision providing for a mandatory death sentence.[32] The Court ruled that, regardless of the nature of the offence, legislation may not require that the death penalty is the only punishment available. This would impermissibly constrain the judiciary's discretion under the constitution to consider the individual circumstances of each case, including the credibility of evidence and witnesses.

FIDH and Odhikar welcome this landmark ruling, which contributes to restricting the scope of the death penalty in the domestic legal system, as prescribed by international human rights standards. As a consequence, the legislator should amend all the laws establishing mandatory death sentences in order to provide for an alternative prison sentence when there are extenuating circumstances. However, if it fails to do so, it remains to be seen how the courts of law of Bangladesh will give effect to this ruling in practice.

Available statistics on the death penalty

Executions are not publicly reported in Bangladesh, unless it is related to a 'sensational' or 'political' case. For example, the February 2010 hanging of 5 persons accused and tried for the murder of Sheikh Mujibur Rahman was widely reported; the same holds true of the 2007 hanging of members of the JMB who were accused in the 2005 bomb attacks on two judges at Jhalakathi.

No official statistics are available concerning the number of death sentences handed down, or the number of executions carried out. The FIDH/Odhikar mission was not able to obtain statistics regarding the number of condemnations and executions in Bangladesh from the officials met.

According to a prison official interviewed, there are about 75,000 prisoners all over Bangladesh and 40-45 percent of them are convicted prisoners. In one district jail outside Dhaka, out of the 2,300-2,400 estimated total prison inmates, 90 prisoners are on death row.[33]

31. Case name State vs Sukur Ali [9 (2004) BLC (HCD) 238].
32. Writ Petition No. 8283 of 2005. BLAST vs State (Not yet reported)
33. FIDH/Odhikar interviewed the IG Prisons on 07/04/2010

The following table includes the number of death sentences and executions reported in Amnesty International's annual reports for the past five years, as well as the numbers reported by Hands Off Cain.

Number of Executions, Bangladesh, 2005-2010[34]

Year	Executions		Convictions	
	AI*	HOC**	AI	HOC
2005	7	5	120	218
2006	-	4	-	197
2007	6	6	93	94
2008	5	4	185	175
2009	5	3	65	86
2010	-	5	-	29

*AI = Amnesty International; ** HOC = Hands Off Cain.
- = no statistics available.

The scarcity of information and its contradictory nature according to the source illustrate the lack of transparency of the government of Bangladesh concerning the use of the death penalty in the country. FIDH considers that the authorities of Bangladesh should guarantee transparency of data regarding the number of prisoners detained and those on death row. Bangladesh must also report the number of death sentences pronounced and executed every year, differentiated by gender, age, charges, etc. in order to allow for an informed public debate on the issue. These statistics must be made public in order to allow both international and domestic scrutiny of compliance with international law.

34. Amnesty International annual reports, searchable at www.amnesty.org/en/library and Hands Off Cain statistics on Bangladesh, searchable at www.handsoffcain.info/. Accessed 7 September 2010.

IV. Administration of Criminal Justice

Police custody and arrest

There are two kinds of offences in Bangladesh criminal law: non-cognizable and cognizable. Cognizable offences, as enumerated in Section 4(f) of the Code of Criminal Procedure, 1898 (Cr.P.C.), are those in which a police officer may arrest without a warrant and include crimes such as murder, robbery, theft, rape, rioting and assault. Non-cognizable offences, which include bribery and sedition, require a police officer to first obtain a warrant before making an arrest. Section 54 of the Code of Criminal Procedure, 1898 (Cr.P.C.) enumerates nine grounds in which a police officer may arrest without a warrant.

As stated by many human rights activists and lawyers met by the FIDH/Odhikar delegation in Bangladesh, police very often abuse this power of unwarranted arrest under Section 54. Several of the nine circumstances enumerated in Section 54 of the Cr.P.C. are drafted with such nebulous wording that they facilitate this abuse of power. The Supreme Court itself has called for a revision of the code, especially Section 54(a), which allows unwarranted arrest upon "reasonable suspicion," "reasonable complaint," or "credible information" against "any person who has been concerned in any cognizable offence." This section is a virtual *carte blanche* for the police to abuse their power of arrest without a warrant due to the nebulous phrases "concerned in any cognizable offence" and "reasonable suspicion."

As in other common law countries, statutory "reasonable suspicion" wording has been interpreted by the High Court Division of the Bangladesh Supreme Court into an articulable standard, that the arresting officer had "actual knowledge of underlying facts that lead to the suspicion."[35] Unfortunately, however, this standard has not been enforced or applied by local courts or authorities, which has rendered the Supreme Court's power of statutory interpretation impotent. The rules of the Cr.P.C. dealing with the investigation and arrest by police therefore facilitate the misuse of the power of arrest without a warrant.

In Bangladesh, every criminal action commences with a First Information Report (FIR), lodged by the victim, relatives, or a witness. The FIR is a written or oral complaint to the investigating officer who must lodge the complaint in writing in the police records per Section 154 of the Cr.P.C. In a case of a cognizable offence, any officer of a police station may, without the order of a Magistrate, investigate the matter. According to Mr. Arafat Amin, Advocate to the Supreme Court of Bangladesh[36], as well as several FIDH interlocutors, when a FIR is lodged in the police station, describing a cognizable offence, the common practice is that the police immediately seek out and arrest the persons named in the FIR, regardless of the suspects' involvement in the crime. Following the arrest, the suspect must be produced in front of a magistrate within 24 hours, per section 61 of the Cr.P.C.

35. *BLAST and others v. Bangladesh*, 55 (2003) DLR (HCD) 363., accessible at www.blast.org.bd/index.php?option=com_content&view=article&id=214&Itemid=105.
36. Criminal Responsibility for Torture: An Urgent Human Safeguard in Bangladesh, in Criminal Responsibility for Torture. A South Asian Perspective, Odhikar, Research Report 2004, p. 19 [11-25].

Several human rights activists and lawyers have told the FIDH that naming a person in a FIR is often a way for people to strike back at their enemies or perpetuate neighbourly squabbles. This practice of false, vengeful reporting is particularly common in acid throwing cases and other cases falling under the laws protecting women and children, FIDH has been told. The nature of the FIR and their accompanying improper police practices allow citizens to "manipulate" the justice system and to involve it in private conflicts.

The newly elected President of the Supreme Court Bar Association, for example., stressed that "the investigation is not sufficient in criminal matters", and that there are many cases with fabricated evidences. It also appears that the investigating officers are understaffed, and not properly trained in the field of criminal investigation. Several interlocutors of the mission also regretted the political influence within the police.

After the FIR has been submitted and an arrest is made, according to Article 33 (2) of the Constitution of the People's Republic of Bangladesh, Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate. Section 61 of the Cr.P.C. requires that the defendant is brought in front of a magistrate within 24 hours of incarceration in order to determine whether further detention is necessary. Under Section 167 of the Cr.P.C., however, magistrates can allow remand the case for a period not exceeding 15 days at the request of the officer. This infamous remand process has widely been denounced as another vehicle for the abuse of police power. In order to ask for further detention in police custody, police must demonstrate that there are grounds for believing that the accusation or information upon which the arrest is based is well-founded. However, as stated *inter alia* by Prof. Shahdeen Malik, "it is common knowledge that Magistrates routinely allow this request for remand".[37]

The remand period is critical because it opens the door to severe human rights violations. Ill-treatment, torture and extra-judicial killings in custody are commonplace. Much of this torture and abuse takes place because police hope to extract bail money from the accused during the detention period. This issue was addressed in the *BLAST* (Bangladesh Legal Aid and Services Trust, one of the largest legal services NGOs in the country) judgement[38] of 2003, in which the High Court Division of the Supreme Court of Bangladesh called for the strict adherence to Constitutional guarantees of due process and condemned the systematic police practices of torture and extortion.

The Court in *BLAST* attempted to narrow the ambiguity of the terms "reasonable suspicion" and "concerned in any cognizable offence" as requirements for arrest. The Court required the officer to record his suspicion and personal knowledge of facts implicating the accused of criminal involvement. In order to curb excessive force, the police officer must also record the existence and reason for any marks of injury on the person arrested, and take the person to the nearest hospital or government doctor for treatment. In order to comport with due process, if the person is not arrested from his residence or place of business, the police officer shall inform the nearest relation of the person over phone or through a messenger within one hour

37. Shahdeen Malik, "Arrest and Remand: Judicial Interpretation and Police Practice", *Bangladesh Journal of Law,* Special Issue, p. 277.
38. *BLAST and others,* 55 (2003) DLR (HCD) 363.

of bringing him to the police station. The police officer must also allow the person arrested to consult a lawyer of his choice if he so desires or to meet any of his nearest relations.

As for the remand process, the court in the *BLAST* case condemned the police practice of trying to "extort information or confession from the person arrested by physical or mental torture" as violating Article 35 of the Constitution's right to life and right to be free from self-incrimination.[39] Magistrates must also take all three subsections of Section 167 of the Cr.P.C. on remand into consideration when deciding if remand is proper, which include whether the investigation requires more than 24 hours, if there are grounds for believing that the accusation or complaint is well founded, and if the officer has submitted his "diary," which must include the time and place of the occurrence and the articulated reasons for the arrest.

While the *BLAST* judgement is a very positive step towards a more effective right to liberty and a police custody without ill-treatment, torture and death custody, it is not sufficient to reform the law enforcement agencies and foster a culture of respect for human rights amongst their members.

Indeed, according to Odhikar figures, 68 persons have been tortured in 2009 by members of law enforcing agencies, and the *BLAST* decision itself cites the death of 38 people in custody.[40] The case of Mr. Mahmudur Rahman, the Acting Editor of the daily *Amar Desh*, unfortunately illustrates the abuse of power by the police on remand. Mr. Rahman, with whom the FIDH mission met during its stay in Bangladesh, was arrested by the police on 2 June 2010, after the daily's publisher filed a fraud case against him allegedly at the instigation of the National Security Intelligence (NSI). When he was produced before a court at the end of his remand, Mr. Mahmudur Rahman alleged he has been tortured in detention.[41] Subsequently, Mr. Rahman has been charged with sedition for allegedly meeting with people attempting to overthrow the government in 2006, which allows for indefinite remand. Writers and reporters, detained for sedition, report that mistreatment, malnutrition and torture are common.[42] He has also been charged under section 6 (1) of Anti Terrorism Act 2009.

Every month, the Bangladeshi newspapers report cases of extra-judicial killings and custodial deaths in Dhaka. End of June 2010, three persons – Mizanur Rahman, Mujibur Rahman and Babul Kazi – died while in police custody. In the case of Mizanur Rahman, police allegedly shot and killed him upon failure to produce money that police had demanded from him.[43] It is clear, therefore, that torture and custodial deaths are facilitated not only by the provisions of the Cr.P.C. but also by the widespread corruption in the ranks of law enforcing agencies.

After the three custodial deaths mentioned above, the High Court asked the Dhaka Metropolitan Police Commissioner to submit inquest reports on these cases and to turn in a report by the end of July on measures to prevent lock-up deaths. The High Court also asked the Government to explain, within two weeks, why it does not take punitive action against the police officers

39. Art 35(4) of the Constitution of Bangladesh: "No person accused of any offence shall be compelled to be a witness against himself".
40. Odhikar, Human Rights Report 2009, p. 17.
41. See "Mahumudur alleges torture in remand", bdnews24.com, 12 June 2010, available at www.bdnews24.com/details.php?id=164100&cid=2.
42. "Detained editor Mahmudur Rahman now facing sedition charge", *IFEX*, 10 June 2010, available at www.ifex.org/bangladesh/2010/06/10/rahman_sedition_charge.
43. See Odhikar Human Rights Monitoring Report, 1st August 2010, p. 2 and "Cops slammed for custodial deaths", The Daily Star, 6 July 2010, available on www.thedailystar.net/newDesign/news-details.php?nid=145551

responsible for the custodial deaths. When this report was not submitted, the police commissioner Md Muniruzzaman was charged with contempt of court, but was subsequently cleared of the contempt charges after offering an "unqualified apology" and suspending the investigating officer suspected of the custodial deaths.[44]

The trial phase and violations of due process

Bail

The important procedural safeguard of bail is denied for many offences which could lead to the death penalty. Section 497 of the Code of Criminal Procedure provides that an accused shall not be released on bail if there appears reasonable grounds for believing that he is guilty of an offence punishable with death. The special laws for the protection of women and children provide that all offences under those Acts are non-bailable, which means that bail is *per se* unavailable unless, at the judge's discretion, the court decides to grant bail.[45]

As discussed further below, criminal trials in Bangladesh regularly last for months or years. As a result, the presumption against bail for offences which involve the death penalty can result in a *de facto* pre-trial conviction of the accused who may spend months or years in jail before ultimately being acquitted at trial.

Filing of false cases

Perhaps because of the presumption against bail for these serious offences, laws which specify crimes punishable by death penalty appear to be regularly abused by the filing of false cases. Both government and academics have recognised that the *Women and Children Repression Prevention Act* of 2000 is often misused by falsely implicating the relatives of the husband.[46] Such cases may be filed out of a desire to take revenge for a personal grievance or for property gain. The Bangladesh Law Commission, established by Parliament in order to revise the civil and criminal codes, has recommended amending the law so that relatives of the husband cannot be arrested if there is no *prima facie* case against them. In our view, this recommendation has merit in that an articulable reasonable suspicion must always exist for a proper arrest to occur under international and Bangladeshi guarantees of the right fair trial and to due process.

All relatives of persons condemned to death stressed the following elements: when someone is named in a FIR, s/he is automatically prosecuted. The relatives generally believe that revenge is often behind those FIR. They also denounce that political connections play an important role at local level in criminal cases: people with relevant connections in political parties at local level can avoid conviction. Those who are able to bribe can also benefit from a more favourable outcome.

Media pressure can also introduce an element of arbitrariness into Bangladesh's sentencing regime, in violation of international law: judges sometimes feel obliged to condemn to death due to such pressure, as reported by several persons interviewed by the mission, including

44. "Enough with custodial deaths, says HC", *bdnews24*, 1 June 2010, available at www.bdnews24.com/details.php?id=163013&cid=2.
45. See section 19 of the Women and Children Repression Prevention Act of 2000 and section 15 of the Acid Crime Control Act 2002.
46. Report of the Law Commission on amendment of certain sections of the Nari O Shishu Nirjaton Daman Ain 2000, SI No 77; Sharmin Jahan Tania, 'Special Criminal Legislation for Violence Against Women and Children – A Critical Examination' (2007) *Bangladesh Journal of Law* 199.

a high-level official in the judiciary. The case of Mizan's murder in Dhaka illustrates this situation.

> Muhamad Kuddus Gazi, 55, a housing estate contractor, was convicted to death for participating in the murder of a man called Mizan. The murder of Mizan occurred in Dhaka in 2003. According to Kuddus's lawyer, 4 persons were accused of being involved in the murder of Mizan: the wife of Mizan, her "lover", a man called Mozam who is allegedly a rental killer and Kuddus himself. The 4 accused have been sentenced to death. However, Kuddus is the only one in custody. Although it is not a bailable offence, the wife of the victim and her lover have been granted bail. Mozam, the "rental killer" has never been arrested. Kuddus's lawyer believes that the name of Kuddus appeared in the charge sheet because of local enmities. According to Kuddus family, Kuddus is a victim of manipulation. They think that the problems of Kuddus started when he filed a FIR when his cousin Abdul Halim was killed. Abdul Halim was a local member of the political party BNP. Those accused of being involved is his murder are also local members of the BNP. Another local member of BNP called Islam had been killed in 2001. Islam belonged to a group of BNP supporters which was a rival group to the one Abdul Halim belonged to. Kuddus has been accused of the murder of Islam. But Kuddus has been granted bail after 11 months in custody. Islam's case was still pending when we the FIDH/Odhikar mission met with the family of Kuddus.

According to the family, the name of Kuddus does not appear in the FIR filed in the case of Mizan. However, he has reportedly been arrested at his home, in a small village close to Jessore at the end of 2004 by the RAB. According to Kuddus lawyer, the conviction of Kuddus relies on what the son of the victim (Mizan's son) told at the hearings. According to the lawyer, Mizan' son told the court that he heard from somebody that Kuddus was the killer.

Courts and the Judiciary

Bangladesh operates under a judicial system that was bequeathed to it from the British common law tradition. The highest appeals court in the country is the Supreme Court, which is divided into the High Court and the Appellate Division. The High Court hears appeals from subordinate courts and issues orders and directives as writs to enforce fundamental rights and to grant other reliefs available under the writ jurisdiction. The Appellate Division hears appeals from the High Court division and other bodies and supervises the subordinate courts and tribunals, an important function considering the judicial legacy of dependence on the executive branch (see below, section on the integrity of the Judiciary).

The first court of appeals is the District Court, headed by what is formally known as a Sessions Judge, which hears all crimes punishable by more than 5 years and appeals from the Magistrates. The courts of first instance are 1st Magistrate courts, headed by Assistant Session judges, and they hear all criminal matters with crimes punishable up to 5 years.[47] There are also special courts established under particular criminal statutory schemes, called tribunals, such as the Special Tribunal established by the *Women and Children Repression Prevention Act of 1995* and the Acid Crime Tribunal established by the Acid Crime Control Act 2002.

47. "From Rule of Law to Legal Empowerment of the Poor in Bangladesh" United Nations Development Programme, Ferdous Jahan, available at www.undp.org/legalempowerment/reports/National%20Consultation%20Reports/Country%20Files/4_Bangladesh/4_3_Access_to_Justice.pdf.

Delay plagues the administration of justice in Bangladesh at each level of the judiciary, with a backlog of 43,000 criminal cases in Dhaka alone. The government's Ministry of Law estimated that approximately 1,200 prisoners had made no court appearance in six months, often surpassing the maximum sentence possible had they been found guilty.[48] Such backlog seems to be chronic in all 64 district courts that serve the country of 150 million population. Such lengthy delay compounds concerns about denial of bail to accused and raises serious questions about the presumption of innocence in Bangladesh's criminal justice system.

In order to address this, a number of Speedy Tribunals have been established under the Law and Order Infringement (Speedy Trial) Bill of 2010, which has been extended several times and is now set to expire in June 2014.[49] Under this Act, special tribunals get assigned certain cases such as murders, vandalism, and extortion, and must dispose of them within 90 days with a possible extension of 30 days in special circumstances. While welcoming the government's attempts to address delays in criminal trials that leave accused people in remand for years awaiting a verdict, FIDH is concerned that these Speedy Tribunals sacrifice other vital safeguards such as rules of evidence and other rights of the accused, which also affect the right to equal protection under the law. Finally, the Speedy Trial courts provide an outlet for government interference with the judiciary because the assignment to these special courts is often politically motivated. For example, 86 of the Bangladesh Rifles mutineers who took part in the bloody 2009 mutiny are subject to high-profile trials under the Act (see below section on the BDR case).[50]

Integrity of the Judiciary

FIDH was informed of documented cases where courts of first instance have not taken a critical or independent approach to charges based on false claims which have been filed by individuals for personal or financial gain. For instance, the High Court Division, in 2003, overturned a conviction on the basis that the prosecution case was entirely concocted.[51] The death sentence had been ordered by the Special Tribunal which adjudicates the legislation on the suppression of violence against women, and the Tribunal had convicted the accused (who were the mother-in-law and husband of the victim) and sentenced them to death solely on the basis of a newspaper report.

The lack of fair trial and presumption of innocence principles result from a combination of systemic weaknesses within the criminal justice system, including corruption in the lower levels of the judiciary and the police force, lack of police investigation to provide forensic evidence to counter claims by a self-proclaimed "eye-witness" and close ties between the Magistracy and police force. It is also a result of the weak institutional separation between the lower courts and the executive government of Bangladesh.

Lower levels of the judiciary, including Sessions Judges and special tribunal judges who can impose the death penalty, have traditionally sat within the administrative arm of government, reporting directly to the Ministry of Home Affairs and the Ministry of Law, Justice and Parliamentary Affairs. Citing the constitutional requirement for separation of powers between

48. US Department of State, Bureau of Democracy, Human Rights, and Labor, "Bangladesh" Section 1(d), available at www.state.gov/g/drl/rls/hrrpt/2006/78869.htm.
49. "Speedy trial act extended" *bdnews24*, 24 June 2010, available at www.bdnews24.com/details.php?id=165596&cid=3.
50. "BDR mutiny trial in Bangladesh begins", *The Hindu*, 23 February 2010, available at www.thehindu.com/news/international/article111964.ece.
51. *The State vs. Osena Begum @ Babuler Ma and another* (2003) 23 BLD (HCD) p. 336.

the judiciary and the executive[52], in 1999, the Supreme Court directed the government to de-link the lower judiciary from the direct control of the government and place it under the supervision and management of the Supreme Court to ensure its independence. However, the formal separation of the lower courts from the executive of the Bangladesh government did not take place until 2007. Many of the judicial officers currently sitting on those courts and tribunals have remained unchanged since that time.

The culture of Magistracy, therefore, remains highly vulnerable to government influence through judicial appointments and promotions which remain overseen by the Ministry of Law. Questions have been raised about whether political nepotism has driven recent appointments to the courts, including the High Court Division, since two proposed appointees named in April 2010 had been facing criminal charges, including for murder and arson, which were withdrawn just before these appointments were announced.[53] After media scrutiny of this event, the Chief Justice refrained from administering the oath to these nominees, although no guarantee has been forthcoming from the Bangladesh Courts that no similar appointments will be made in the future.

According to the Transparency International Bangladesh National Household Survey 2007, approximately half of the people in rural areas who have dealings with the lower courts experience corruption. In urban areas, incidences of bribery were of a slightly lower frequency (37.7%).[54] Some bribes are solicited by clerks responsible for registering, filing and processing cases, whereas other bribes are solicited by lawyers directly from the defendants and plaintiffs and are then passed on to judges or magistrates. The bribes are paid in order to gain information or favours from magistrates in criminal courts. According to this report, 41.7% of households interacting with the judiciary had to pay bribes, the average of which was BDT 4,825 (about 50 euros). In 45.2% of the cases interacting with the lower courts the plaintiff had to pay a bribe, the average of which was BDT 5,124. In 47.6% of cases involving the middle courts, the plaintiff had to pay a bribe, the average of which is BDT 5,516. Urban households paid an average amount of BDT 6,104, whereas rural households paid an average amount of BDT 3,966.[55] Corruption affects the *independence* of the judiciary to act without undue influence from powerful interests. And it affects its *accountability*, such as the effectiveness of rules and oversight

The lower judiciary is subject to executive influence and suffers from corruption.[56] However, the Supreme Court is not spared either. Promotions and appointments based on political favouritism are quite common here too. The Anti-Corruption Commission of Bangladesh lodged a corruption charge against Justice Fazlul Haque on April 13, 2009. He was accused of illegally amassing huge wealth and concealing information about his assets. The ACC complaint states that Haque earned huge amounts of money through corruption as a government adviser, a judge of the Supreme Court, and the head of various probe commissions after his retirement from the

52. Article 22 of Bangladesh's Constitution mandates that 'the state shall ensure the separation of the judiciary from the executive organs of the state'.
53. Asia Human Rights Commission, 'ASIA: Access to Justice and Fair Trials a Distant Dream in Nepal, India and Bangladesh' a written statement to th e Human Rights Council, 14th sess, Agenda Item 3, Interactive Dialogue with the Special Rapporteur on the independence of judges and lawyers, at www.ahrchk.net/statements/mainfile.php/2010statements/2580/.
54. Transparency International Bangladesh. National 2007 Household Survey on Corruption in Bangladesh. Substantive Summary. Dhaka, 18 June 2008. See also www.ti-bangladesh.org/research/HHsurvey07
55. Ibid. P xiii.
56. http://jurist.law.pitt.edu/world/bangladesh.htm and www.idhrb.org/

judicial service. The ACC has also commenced an investigation about the wealth accumulated by a former Judge of the Appellate Division, Justice Mohammad Zainul Abedin.[57]

The International Crimes Tribunal

Throughout the Bangladesh Liberation War in 1971, there were widespread violations of human rights, many of which were allegedly perpetrated by the Pakistan Army. While the newly independent Bangladesh enacted legislation to try these war crimes, *The International Crimes (Tribunals) Act 1973*, pressure from the United States, India and the Soviet Union after the war influenced the government to offer the perpetrators amnesty.

In March 2010, Bangladesh officially lifted this amnesty and officials announced the establishment of the International Crimes Tribunal to try those accused of committing war crimes during the 1971 war, fulfilling a campaign promise of Prime Minister Sheikh Hasina. Established under the amended International Crimes (Tribunals) Act 1973, the tribunal includes three high court judges and six investigators. In July 2010, the International Crimes Tribunal issued its first charges of genocide, murder and torture against four senior leaders of the political party Jamaat-e-Islami (JI), accused of committing war crimes in 1971.[58]

While welcoming Bangladesh's commitment to address impunity for violations carried out in 1971 in the context of the independence war, FIDH has concerns about the trial processes under the Act. The Tribunal dispenses with "technical rules of evidence",[59] omits to mention the burden of proof for conviction,[60] and provides for the application of the death penalty. Bangladesh must redress these deficiencies in the operation of the Tribunal so that its planned trials for atrocities and crimes committed in the 1971 war of independence from Pakistan will bring meaningful and adequate justice to victims. The International Criminal Court has jurisdiction over even the most heinous crimes yet maintains fair standards of due process and does not impose the capital punishment. FIDH and Odhikar consider that the International Crimes Tribunal should institute similar safeguards to ensure a fair justice system, and should not impose the death penalty.

Appeals and Clemency

Neither the Magistrates Courts nor the Courts of Assistant Sessions Judge may pass a final sentence of death.[61] This may be done only by the High Court Division, the Courts of the Sessions Judge or the Additional Sessions Judge.[62] Any death sentence passed by the Sessions Judge cannot be executed until examined and confirmed by the High Court Division.[63] On appeal, the death sentence can be suspended, remanded to a lower court, or commuted.[64]

There is also the opportunity for an appeal for clemency directly to the President.[65] This request must be submitted in writing within seven days of the High Court Divisions confirmation of the

57. The Daily Prothom Alo, 21/07/2010. See also: www.prothom-alo.com/detail/date/2010-07-21/news/80370
58. JI head Motiur Rahman Nizami, Secretary General Ali Ahsan Mohammad Mujahid and senior assistant secretaries general Muhammad Qamaruzzaman and Abdul Quader Mollah. A fifth JI leader, Delwar Hossain Saidee, is also expected to be charged.
59. Section 19(1).
60. Section 20.
61. Code of Criminal Procedure 1898, sections 29C, 33A, 31(3) and (4).
62. Code of Criminal Procedure1898, sections 31(1) and (2).
63. Code of Criminal Procedure1898, sections 31(2) and 374.
64. Code of Criminal Procedure 1898, sections 29C, 33A, 31(3) and (4).
65. Code of Criminal Procedure1898, section 402A.

death sentence.[66] The presidential power to pardon death row convicts has been exercised in Bangladesh, as recently as September 2010 when clemency was granted to twenty Awami League activists who had been convicted for murdering a local leader of the opposition BNP in 2005.[67] While FIDH welcomes the decision to withhold the death penalty in this case, it is concerned that this creates a perception that the Presidential pardon is politically motivated.[68]

As mentioned earlier, cases are expedited that have a high political profile. The October 2006 conviction of seven members of the Jama'atul Mujahideen Bangladesh (JMB) for the November 2005 bomb attack of two judges at Jhalakathi, was followed by their execution in the late hours of 29 March of 2007. The High Court's consideration of these applications for review was done with extreme haste and were followed quickly with the execution of the sentence. The difference between the speed of such politically expedient trials and all other cases is stark and has serious implications for the rule of law and equality of all citizens under the law.

Trial of the killing of Sheikh Mujibur Rahman and his family members

In August 1975, Sheikh Mujibur Rahman (the first President of newly Independent Bangladesh), was assassinated by a group of junior army officers who had invaded his residence. The military refused to court-martial the military officials who had masterminded and participated in the coup. No case was registered with the police, for 21 years. Indeed, the new government of President Khondker Mushtaq Ahmed ensured that the conspirators could not be tried before a court in relation to the killing by passing the Indemnity Act. Thus, no charges were laid in connection with the coup until 1996 when the Awami League, led by Mujib's daughter, Sheikh Hasina, won the national election, and repealed the Act.

Thus, in 1996, a number of alleged coup leaders were arrested and the Bangabandhu murder trial commenced. With an exceptional speed, the trial concluded on November 8, 1998 with the court ordering death sentences for 15 out of 20 accused of the assassination. Apparently due to a shortage of judges in the appellate division of the Supreme Court, appeals from a number of these sentences were pending a hearing since August 2001. The appellate division of the Supreme Court gave its verdict denying these appeals, and upholding the death sentences, on November 19, 2009, after a five-member special bench spent 29 days hearing the appeal petitions. On 27 January 2010, the Supreme Court delivered judgement in its final review of the case, upholding the death sentences. Bazlul Huda, AKM Mohiuddin, Syed Faruk Rahman, Muhiuddin Ahmed and Sultan Shahriar Rashid Khan were executed in Dhaka Central Jail in the early hours of 28 January 2010, 13 hours after the final judicial review of their sentences.

The haste with which the executions were carried out raises serious questions about the timing and procedures for these executions. In particular, these executions appeared to violate a Bangladeshi law allowing prisoners sentenced to death a period of seven days from the date that all judicial remedies have been exhausted in order to petition for mercy from the

66. Bengal Jail Code amended 1989, cl 991.
67. Mozammel H Khan, 'Presidential Clemency: Beyond Question?' *The Daily Star*, 25 September 2010.
68. President Zillur Rahman granted presidential pardon to 20 death row inmates of the Jubo Dal leader Sabbir Ahmed Gama killing case. Only one condemned in this case was not pardoned and that person is on the run. Gama was the nephew of former BNP deputy minister Ruhul Quddus Talukdar Dulu and he was gunned down in 2004 in Natore. On 6 September 2010, the Home Ministry sent an official order to jail authorities concerned for their immediate release.

President.[69] The President had rejected petitions for clemency from three of the five executed men before the Supreme Court's final review. A fourth man's mercy petition was considered after the Supreme Court's judgement on 27 January and was dismissed within hours of receipt by the President. A further six men sentenced to death *in absentia* in the same case are living outside Bangladesh, and the government is currently seeking their extradition. The way those executions were carried out raises serious questions about the timing and the procedures of conducting executions in Bangladesh.

The BDR case

Elements in the Bangladesh Rifles, the country's border guard unit, staged a rebellion at BDR headquarters in Dhaka, the capital, on February 25 and 26, 2009. In the rebellion, 74 people were killed, including 57 army commanding officers in the army. As of September 2009 about 3,700 border guards were detained as a result of the indiscriminate arrests that followed the rebellion. In July 2010, the Criminal Investigation Department indicted 824 people on charges of murder, arson, looting, hiding of bodies and sedition, of which 801 are border guards and the others civilians. Many of these low-ranking officers, known as 'jawans', have been tried in civilian courts and in special tribunals created under the BDR ordinance.

The government has committed to try the massacre suspects under the fast track 'Speedy Trial Tribunal' under the Civil Penal Code which prescribes capital punishment for offences like murder. Those who are charged with mutiny rather than murder are to be tried under the military court system. An estimated 3,500 soldiers, who allegedly joined the mutiny as it spread to other border posts across the country, are to be tried in six special military courts on lesser charges. Tthese 'special courts' are to be headed by the BDR Director General. Many of the defendants in these special military courts do not have access to lawyers. FIDH reaffirms that the jurisdiction of military courts, if used at all, should be restricted to offences of a strictly military nature, that were committed by military personnel, and must provide full guarantees of a fair trial. FIDH has doubts about the transparency of these trials, in light of the numbers of low-ranking officers whom have been targeted. The opposition BNP has questioned the neutrality of the investigation, arguing that BNP leader Nasiruddin Ahmed Pintu has been charged without evidence against him.

Further, reports suggest that hundreds of BDR personnel had suffered torture in detention for possible involvement in the mutiny. Scores have died in custody since February 2009, for which the government blames both suicide and natural causes. Nearly all mutineers were denied the opportunity to seek the assistance of a lawyer over the course of weeks or months.[70]

Prison Conditions

The FIDH/Odhikar team did not have the opportunity to visit prisons, detention centres or places where persons deprived of their liberty are kept. Neither was the team able to access prisoners and interview them about prison life and conditions. This is because of the standing policy of the government prohibiting NGOs, local and international, from having access to places of detention and prisoners.

69. Bengal Jail Code amended 1989, cl 991.
70. Odhikar annual reports 2009. See also. www.odhikar.org/documents/2009/English_report/HRR_2009.pdf

In an article written by Sheikh Hafizur Rahman Karzon (2007)[71], a Lecturer at the Department of Law, Dhaka University, there were 81 jails throughout Bangladesh as of 2004, 9 of which are central jails, 56 District jails, and 16 *thana*, or sub-district, jails.[72] Overcrowding in prisons and jails seems to be widespread. Prison population is about three times above capacity, resulting in inhumane living conditions. In 2001, it was estimated that the maximum number of prisoners which Bangladesh prisons can accommodate was 24,152 inmates.[73] The present total population of prisoners in Bangladesh was estimated by prison officials to be 75,000 – three times more than the reported capacity.

According to a prison official interviewed by FIDH/Odhikar, and confirmed by families of prisoners on death row, death row inmates are kept in separate cells that house 3-5 prisoners per cell of 5 per 5 feet. Female prisoners on death row are also kept in separate cells measuring 10 feet by 10 feet in size. For male prisoners not on death row, each cell is around 120 – 130 square feet in size with no window and one door providing ventilation in the area and houses 50 to 60 inmates. It has a toilet separated by a wall from the sleeping area. The bathing area is outside the cell.[74] Death row prisoners do not have activities inside the jail, contrary to other inmates.

According to Mr. Karzon, prison authorities in Bangladesh have failed to satisfy the Standard Minimum Rules for the Treatment of Prisoners set by the United Nations. Food is generally insufficient and of low quality. The water supply is inadequate and has to be secured from a container located in the bathing area of prisoners outside their cells.[75]

Besides poor prison conditions that make the maintenance of proper health and hygienic practices nearly impossible for prisoners, hospital facilities and services inside prisons are also reportedly inadequate.[76] In fact, there have been cases of seriously ill prisoners who have died inside the prisons because of the failure of prison authorities to provide timely and appropriate medical treatment or care. According to the rights organisation ASK, in 2010, 17 prisoners under trial and 3 convicted prisoners died in jail custody.[77] According to the same source, in 2009, 28 prisoners under trial died in jail, as well as 30 convicted prisoners.

According to relatives of death row inmates, prisoners are not allowed to receive food from relatives except dry items like biscuits. However, death row inmates can buy food from the prison canteen if they can afford it financially.[78]

Family members and relatives can visit death row inmates in Jessore Central Jail, once a month for 20 to 30 minutes. In some prisons, the frequency of visits has increased to twice a month or once every 15 days. Lawyers are allowed to meet with their clients during visiting days. There is a designated visitors' area where all prisoners meet their visitors including lawyers. Usually the meetings take place in a common place altogether.

71. Karzon, SHR. "Treatment of prisoners: How modern are our laws? Human Rights Monitor. September 12, 2004. www.thedailystar.net/law/2004/09/02/index.htm (Accessed: 11 August 2010).
72. *Ibid.*
73. *Ibid.*
74. Interview with a prison official, 4 April 2010.
75. Interview with family members of death row inmates. 4 April 2010
76. Interview with family members of death row prisoners. 4 April 2010
77. See www.askbd.org/web/?page_id=672 (consulted on September 28, 2010).
78. Interview with family members of death row inmates. 4 April 2010.

Executions

All executions in Bangladesh are, by law, required to be done by hanging.[79] All convicted prisoners facing the death sentence are, by law, to be detained on 'death row', in separation from other prisoners.[80]

While government data on the numbers of hangings in Bangladesh are not available, sources indicate that, since the liberation of Bangladesh in 1975 and as at January 2008, 247 individuals had been hanged.[81] At least 1500 convicted criminals now face the death penalty, of which more than 950 convicts are in custody on death row (including 28 women), and more than 500 have absconded. A number of recent hangings have followed two significant periods of time with no executions: 1989-92 and 1998-2001.[82] These tentative steps toward abolition were reversed when executions resumed after several years of a de facto moratorium.

Method of execution

FIDH was informed by lawyers, government representatives and jail administrators that it is customary to request a fellow prisoner in the prison, who is not facing a death sentence, to carry out the execution. Since executions are done by hanging, this means that a fellow prisoner or two prisoners are responsible for placing the person to be executed under the beam, place a rope around his neck and open the trap door by level so that the convicted person is hanged. FIDH was told that incentives were offered to prisoners to carry out the execution, such as a remission of sentence.

When asked about the ethics and legality of such practice, numerous respondents explained to FIDH that the use of fellow prisoners was authorised by the Bengal Jail Code. However, while the Jail Code makes detailed reference to the 'duty of the executioner',[83] requires the hanging of the body for half an hour,[84] and specifies that the government department is responsible for expenses of the hanging,[85] nothing in the Code authorises the practice of offering prisoners reduced sentences as incentives to perform an execution. Some respondents further claimed that this was a colonial practice introduced by the British and has been performed in South Asia since independence from British rule. Regardless of the provenance of this custom, FIDH urges Bangladesh to dispense with it. It is readily understandable that it is difficult to find an official or administrator to personally carry out the execution. For this reason, among others, FIDH urges Bangladesh to abolish the death penalty.

79. Section 368 of the Code of Criminal Procedure 1898 provides that when a person is sentenced to death, 'he be hanged by the neck till he is dead'.
80. The Prisons Act 1894, s 30(2); Bengal Jail Code, amended 1989, cl 980.
81. Azad Mak, 'Death Sentence: International Trend and Bangladesh', *The Daily Star*, 26 January 2008.
82. David T Johnson and Franklin E Zimring, 'Taking Capital Punishment Seriously' (2006) 1 Asian Criminology 89-95.
83. Cl 1005
84. Cl 1006.
85. Cl 1009.

IV. Terrorism

The Special Powers Act, 1974 (SPA) was enacted under the emergency provisions of the Second Amendment of the Constitution, which allows Parliament to pass national security legislation. The SPA outlaws any activity that is "intended or likely to: prejudice the sovereignty or defence of Bangladesh, prejudice the maintenance of friendly relations with Bangladesh, prejudice the security of Bangladesh or to endanger public safety or the maintenance of public order, create or incite feelings of enmity or hatred between different communities, classes or sections of people, interfere with or encourage or incite interference with the administration of law or the maintenance of law and order, prejudice the maintenance of supplies and services essential to the community, cause fear or alarm to the public or to any section of the public, prejudice the economic or financial interests of the State."

Because they are overly expansive, these definitions of "prejudicial acts" are not compatible with Article 15 of the ICCPR which bans retroactive punishment for actions that were not clearly defined before the commission of the act. Moreover, Section 8 of the SPA provides that the arresting and detaining authority may inform the detainee of the reason for his arrest within 15 days of the arrest. This provision is clearly incompatible with Article 9 (2) of the ICCPR which states that: "Anyone who is arrested shall be informed, at the time of the arrest, of the reasons for his arrest and shall be promptly informed of any charges against him". Even worse, Section 10 of the SPA provides that the Government can detain a person without trial for as long as 120 days. Section 10 of the SPA is in total opposition with Article 9 (3) of the ICCPR, which states that "anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release." Thus, it is not surprising that the SPA is denigrated by human rights activists as "black law," allegedly used to harass and detain political opponents, union representatives[86], and media members.

On 11 June 2008, the Anti-Terrorism Ordinance of 2008 was promulgated by the Care-Taker Government, an unelected military-backed interim government put into place following the cancelled elections and controversial anti-corruption drive of 2007. Based on the Ordinance, the Parliament enacted the Anti-Terrorism Act[87] (also known as ATA) on 24 February 2009. According to the National Report submitted by Bangladesh to the Human Rights Council before the Universal Periodic Review of the country, the Ordinance of 2008, and therefore the ATA, shows, in conjunction with other new laws, Bangladesh's evident commitment to protect and promote human rights in compliance with its international obligations.[88] However, human rights defenders publicly criticized the Anti-Terrorism Ordinance 2008 and the ATA, describing it as "black law" and a legislation that will facilitate torture and other violations of human rights. The ATA's compliance with Bangladesh's international human rights commitments is highly questionable.

86. See International Trade Union Confederation Annual Survey of violations of trade unions rights 2010. Available on http://survey.ituc-csi.org/+-Bangladesh-+.html?lang=en. See also www.unhcr.org/refworld/country,,IRBC,,BGD,,45f146f628,0.html
87. Its full title is "An Act to prevent and effectively punish certain terrorist activities and to make provisions connected therewith".
88. Bangladesh National Report submitted in accordance with paragraph 15(A) of the Annex to Human Rights Council Resolution 5/1, A/HRC/WG.6/4/BGD/1 (19 November 2008), para. 70.

This being said, no region of the world is exempt from the extremism and violence which has been defined as terrorist activity. While counter-terrorism policies should be designed to meet the legitimate aim of increasing the security and protection of the individual through state action, the measures adopted must respect human rights and the rule of law as the bedrock of the global fight against terrorism.

The questionable compliance of the new anti-terrorism legislation with Bangladesh human rights commitments

Vague terminology in the ATA

The definition of terrorist activities in the ATA is too vague and is not consistent with the UN High-Level Panel appointed by Kofi Annan, which was mandated to define the act of terrorism in the absence of any existing legal standard.[89] It is not in conformity either with the elements of definition proposed by the UN Special Rapporteur on the protection of human rights while countering terrorism.

Regarding the tricky issue of the definition of "terrorism", the Special Rapporteur indicated that "The solution to this problem can be drawn from Security Council resolution 1566 (2004). Although the resolution did not purport to define "terrorism", it called on all States to cooperate fully in the fight against terrorism and, in doing so, to prevent and punish acts that have the following three cumulative characteristics:

(a) Acts, including against civilians, committed with the intention of causing death or serious bodily injury, or the taking of hostages; and
(b) Irrespective of whether motivated by considerations of a political, philosophical, ideological, racial, ethnic, religious or other similar nature, also committed for the purpose of provoking a state of terror in the general public or in a group of persons or particular persons, intimidating a population, or compelling a Government or an international organization to do or to abstain from doing any act; and
(c) Such acts constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism.

The third criterion represents the trigger-offence approach already identified. The important feature of the resolution is the cumulative nature of its characterization of terrorism, requiring the trigger-offence to be accompanied with: the intention of causing death or serious bodily injury (or the taking of hostages); for the purpose of provoking terror, intimidating a population, or compelling a Government or an international organization to do or to abstain from doing any act. This cumulative approach acts as a safety threshold to ensure that it is only conduct of a terrorist nature that is identified as terrorist conduct. The Special Rapporteur emphasizes that not all acts that are crimes under national or even international law are acts of terrorism or should be defined as such."[90]

89. "Any action, in addition to actions already specific by the existing conventions on aspects of terrorism, the Geneva Conventions and Security Council resolution 1566 (2004) that is intended to cause death or serious bodily harm to civilians or non-combatants, when the purposes of such an act, by its nature or context, is to intimidate a population , or to compel a Government or an international organization to do or abstain from doing any act." See report by the Secretary General's high level panel on threats, challenges and charges (available at www.un.org/secureworld).
90. http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/168/84/PDF/G0516884.pdf?OpenElement

Subsection 1 of Section 6 of the ATA defines terrorist activities as following:

"If any person by creating fear amongst the public or segment of the public in order to jeopardize the territorial integrity, solidarity, security or sovereignty of Bangladesh, for the purpose of compelling the government or any other person to do or refrain from doing an act -
(a) causes death, inflicts grievous hurt, confines or abducts any person or causes damage to any *property* of a person; or
(b) uses or keeps any explosive, ignitable substance, firearms or any other chemical substance with a view to effect the purposes enumerated in clause (a):
shall commit the offence of 'terrorist activities'." (emphasis added)

Since terrorist activities are criminal offences punishable by death penalty or a minimum 20-year imprisonment sentence, their definition must comply with the principle of legality of criminal law enshrined in Article 15 of the ICCPR. Article 15 embodies the requirement of both criminal liability and punishment being limited to *clear* and *precise* provisions in the law that was in place and applicable at the time the act or omission took place, except in cases where a later law imposes a lighter penalty. The ATA uses vague expressions such as "creating fear amongst the public or a segment of the public" and "solidarity of Bangladesh," the use of which are not compatible with Article 15 of the ICCPR.

Length of police custody facilitates abuse of power

The ATA increases the risk of ill-treatment and torture because of the length of police custody and the time frame of investigation.

Concerning the length of police custody, Section 26 of the ATA provides that:

"(1) In any case when a person is arrested and detained for the purpose of conducting investigation, the investigating officer can apply to a Magistrate of competent jurisdiction for remanding the person to police custody.
(2) The Magistrate shall have the power after considering the application under subsection
(1) to grant remand of the accused and the term of such remand shall not extend *ten days* in its totality or continuity; provided that if the investigating officer can satisfactorily prove before the Magistrate that if granted remand for an extended period, additional evidence may be obtained, the Magistrate shall have the power *to extend the period of such remand by not more than five days*." (emphasis added)

FIDH is concerned by the length of police custody and recalls that, according to the Human Rights Committee, police custody that can be extended to last 12 days is a matter of concern[91]. As above documented, ill-treatment and torture occur very often during police custody in Bangladesh in order to extract confessions and bribes.

The fact that the ATA states that the investigations into the offences under this Act must be completed within 30 days (Section 24 (1)) increases the risk of the use of ill-treatment and torture for extracting confession. Section 24 makes it possible for the investigating police officer to obtain an extension of the time for investigation, and can be subject to departmental

91. See Concluding Observations on Algeria, CCPR/C/DZA/CO/3, 12 December 2007, para. 18.

action for delay[92]. A pressure to complete investigations of terrorist activity within a short time may cause hasty, shortcut investigations with little regard for due process.

ATA crimes non-bailable

According to Section 39 (1) of the ATA, "all offences under this Act are non-bailable". [93] This goes against the normal practice of the Criminal Procedure Code and violates fundamental human rights of the accused persons. It is not compatible with Article 9(3) of the ICCPR which provides in part that "It shall not be the general rule that persons awaiting trial shall be detained in custody". According to the Special Rapporteur on the promotion and the protection of human rights and fundamental freedom while countering terrorism, "this [article of the ICCPR] properly places the burden upon the State to establish the need for the detention of accused person to continue. Where there are essential reasons, such as the suppression of evidence or the commission of further offences, bail may be refused and a person remanded in custody. The Special Rapporteur stated, however, that classification of an act as a terrorist offence in domestic law should not result in automatic denial of bail, nor in the reversal of onus. Each case must be assessed on its merits, with the burden upon the State for establishing reasons for detention."[94]

Specially-constituted tribunals invite abuse

FIDH notes that, in the last decades, anti-terrorism special courts have been established in many countries and they are very often conducive to abuse of the accused and violation of human rights. Section 28 (1) of the ATA states that "The Government, through Government Notification, shall constitute one or more Anti-terrorism Special Tribunals for the purpose of speedy and effective disposal of cases under this Act". Section 28(2) provides that this Special Tribunal shall be composed by Sessions Judges or Additional Sessions Judge "appointed by the Government in consultation with the Supreme Court." It is not clear from the wording of this provision whether the Supreme Court's disapproval of the nomination of a judge is binding on the Government. With such lack of precision, the independence of the Special Tribunal is not guaranteed, therefore raising the question whether the special courts' independence are guaranteed. Therefore, it is not sure that these provisions meet the condition of independence of the tribunal provided for by Article 14 of the ICCPR.

According to the UN Human Rights Committee, Article 14 of the ICCPR signifies that "trials of civilians by (…) special courts should be exceptional, i.e. limited to cases where the State party can show that resorting to such trials is necessary and justified by objective and serious reasons, and where with regard to specific class of individuals and offences at issue the regular civilians courts are unable to undertake the trials".[95] The ATA provides for one or more Anti-terrorism Special Tribunals for the purpose of speedy and effective disposal of cases under

92. Section 25 provides for a time extension of investigation in certain cases.
93. Section 32, included in Chapter 7 on the Trial by a Special Tribunal for Anti-Terrorism, provides: "The Magistrate or the Judge shall not grant bail to the person accused under of any offense punishable under this Act, unless (a) the state party is given an opportunity of being heard; and (b) the judge is satisfied that there is reasonable cause to believe that accuses may not be guilty of offences alleged in the trial and he reduces the reasons of such satisfaction in writing."
94. See Australia: Study on Human Rights Compliance While Countering Terrorism. Report of the Special Rapporteur on the promotion and the protection of human rights while countering terrorism, Martin Scheinin, A/HRC/4/26/Add.3 (14 December 2006), para. 34.
95. UN Human Rights Committee, General Comment No. 32 (Article 14: Right to equality before courts and tribunals and to a fair trial), CCPR/C/GC/32, 27 August 2007, para. 22.

this Act. FIDH considers that it remains unclear why, according to the ATA, regular civilians courts are unable to undertake the trials related to terrorism and that the proffered inefficiency has a link with the class of individuals and offences.

Moreover, FIDH notes that Bangladesh has established special courts specifically for the purpose of speedy and effective disposal of cases stemming from other laws, such as the Women and Children Repression Prevention Act of 1995**.** The government has announced to implement "bribery-free court management"[96] in these special terrorism courts, implying therefore that the regular courts are considered both corrupt and inefficient. FIDH suggests consequently to the Bangladeshi authorities to tackle these problems directly rather than create a parallel justice system which stacks its own problems to the already existing ones while failing to comply with their international obligations. Last but not least, "speedy trials" for cases as complicated as so-called terrorist offences appear utterly inappropriate since such cases by definition require in-depth and elaborate enquiries, which cannot be "speedy".

Anti-terrorist surveillance legislation violates rights to privacy and fair trial

The Bangladesh Telecommunication (Amendment) Act of 2006 was passed by Parliament in February 2006, which added Section 97A into the Telecommunication Act 2001, allowing the Government to engage in telecommunication surveillance and intelligence gathering, such as tapping mobile or land phone lines, without judicial oversight. Section 97B of the Act allows information collected under Section 97A to be admissible evidence at trial under the Evidence Act of 1872.[97] In FIDH's view, this is clearly an arbitrary interference with the privacy provision of Article 17 of the ICCPR. Moreover, the admission of such evidence during a trial undermines respect for the right to a fair trial guaranteed by Article 14 of the ICCPR.

FIDH is concerned about the elevated risk of using Sections 97A and Section 97B for harassing political opponents and recalls that an effective oversight mechanism, notably judicial oversight, is of critical importance. Moreover, it is vital that there are clear thresholds as to when intelligence powers can be used that require a sufficient level of reasonable suspicion, and there must be a clear time limit to how long the extraordinary intelligence surveillance powers can be used, and when a target must be notified of surveillance. Finally, the principle of due process relies upon adequate access to legal counsel, a right that is often ignored by intelligence agencies when interviewing suspects.[98]

FIDH urges the Bangladesh Parliament to conduct an immediate review of the legislation in order to ensure its continuing necessity as a tool to combat terrorism, and pass legislation amending the Telecommunication Act in order to require law enforcement and intelligence agencies to obtain a warrant before surveillance. Finally, there must be a serious and independent inquiry into human rights violations committed under the Act in order to ensure accountability of public officials.

96. Report of the Working Group on the Universal Periodic Review of Bangladesh, 5 October 2009, A/HRC/11/18, para. 49.
97. "National security or infringement on civil rights?", *The Daily Star,* 6 May 2006, available at www.thedailystar.net/law/2006/05/01/index.htm.
98. As emphasised by the Eminent Jurists Panel on Terrorism, Counter-Terrorism and Human Rights of the International Commission of Jurists (ICJ). See the report Assessing Damage, Urging Action, Geneva, ICJ, 2009, p. 70.

Restriction of freedom of speech by the ATA

FIDH is deeply concerned about the negative impact that the definition of terrorism embodied in the ATA could have on the exercise of fundamental freedoms embodied in the ICCPR, such as the right to freedom of expression (Article 19), the right of peaceful assembly (Article 21), the right to freedom of association (Article 22) and the right to take part in the conduct of public affairs (Article 25). This fear is motivated, *inter alia*, by Section 18 of the ATA which allows the Government to prohibit any organisation on "the reasonable basis of involvement in terrorist activities".

The recent banning of *Hizb-ut-Tahrir* (HuT) *Bangladesh* illustrates an example of such possible abuse. *Hizb-ut-Tahrir Bangladesh* is the Bangladeshi section of *Hizb-ut-Tahrir*, a pan-Islamic political organisation whose aim is to re-establish the Caliphate under Islamic law to unify all Muslim countries into one state.[99] According to Odhikar Human Rights Report 2009, the banning of this organisation "was conveyed through a press note on October 22, 2009. The press note states the government has banned *Hizb-ut-Tahrir Bangladesh* from October 10, 2009 because it poses a threat to the security of the public in general". Odhikar emphasizes the fact that "the issue of public security was used in the past by the Home Ministry to prevent [the present Prime Minister] Sheikh Hasina from returning to Bangladesh". As stated in Odhikar Human Rights Report 2009, the Government banned HuT "without showing any evidence" of its involvement in violent or terrorist activities or any "anti-State activities".[100] In another case, Mahmudur Rahman, Acting Editor of the daily "Amar Desh", has been issued a four days remand under the Anti-Terrorism Act, 2009.[101]

FIDH notes with concern that there is a serious risk that the ATA could be directed against political opponents rather than against terrorists and has too few legal safeguards to prevent miscarriages of justice.

Mobilisation against the Anti-Terrorism Act 2009

Many Bangladeshi legal experts and human rights activists strongly criticized the new legislation when the Anti-Terrorism Ordinance was promulgated in June 2008.[102] The renowned jurist, Prof. Dr. Shahdeen Malik stated: "In the last few decades, we have enacted more criminal laws than was necessary and another criminal law will not serve any purpose except for giving the law enforcement agencies another weapon to misuse and abuse and harass citizens".[103]

Apparently, even the Bangladesh Government was aware that a specific anti-terrorist legislation was not necessary, as displayed by the Bangladesh reports to the Security Council Counter-Terrorism Committee.[104] In its 2002 Report, the Bangladesh Government stated that:

99. See Taqiuddin an-Nabahani, The System of Islam (Nidham ul Islam), London, Al Khilafa Publications, p. 50. Available on www.hizb-ut-tahrir.org/PDF/EN/en_books_pdf/system_of_islam.pdf.
100. 17 Hizb-ut-Tahrir (HuT) members were charged under sections 8/9(1)/10/13 of Anti Terrorism Act, 2009.
101. www.fidh.org/Arbitrary-detention-of-Mr-Mahmudur-Rahman-and
102. "Experts oppose anti-terror ordinance," The South Asian, 16 July 2008 (available at http://www.thesouthasian.org/archives/2008/experts_oppose_antiterror_ordi.html).
103. See "Legal experts oppose anti-terrorism ordinance," The Daily Star, 18 June 2006 (available at www.thedailystar.net/story.php?nid=41371).
104. Reports pursuant to Security Council resolution 1373 (2001). The reports are available at www.un.org/en/sc/ctc/resources/1373.html.

"The Special Powers Act, 1974 empowers the Bangladesh Government with wide ranging powers to detain suspected persons without necessarily showing expressed reasons. It was drafted with a view to control, prevent and pre-empt prejudicial activities *including terrorism in all its forms and manifestations*. The schedule to this Act covers all offences under the "Arms Act of 1878" and "Explosive Substance Act of 1908". The provisions of these statutes cover a wide range of activities generally recognized as terrorist acts. The two statutes also provide for mandatory sentencing, including death penalty, for certain categories of offences".[105]

In the Report of July 2005, the Bangladesh Government further stated that "there are no records of recruitment of international terrorist groups in Bangladesh. Some local groups are engaged in criminal activities which are dealt with by the existing criminal laws of the Country".[106]

As mentioned above, the Report of Bangladesh Government to the Security Council of July 2005 states that the criminal laws existing before the adoption of the ATA could already deal with the "terrorist acts". This viewpoint quickly reversed, however, after the bombing campaign allegedly carried out by the *Jamaat al Mujahideen Bangladesh* (JMB) in August of 2005. In December 2005, then Law Minister Moudud Ahmed expressed the need for a new and comprehensive anti-terrorism law arguing that "the existing laws are not enough to deal with this type of violence".[107]

The bombing that took place on August 17, 2005 belies Minister Moudoud's claim. In connection to a bomb blast at the Motihar Police Station, seven members of JMB were sentenced for life in March 2009 under the Explosive Substances Act, 1908.[108] FIDH also notes that two separate cases were filed by the police in relation to the killing of two judges on November 14, 2005, one for murder under the Penal Code and another for bomb detonation under the Explosive Act. In this case, the High Court confirmed death sentences to the members of JMB accused of the killings. In his reaction to this ruling, Law Minister Moudud Ahmed expressed his satisfaction and said that "Bangladesh has proved that militants can be detected, arrested and put into trial."[109] This statement contradicts his December claim that existing law is insufficient to prosecute those responsible for bombings.

The ATA therefore appears to be nothing more than a political tool to prove to the Bangladeshi public and foreign partners that Bangladesh takes a "tough on crime" and strong anti-terrorist position. Not only are existing laws sufficient to dispose of the JMB bombing cases, but the ATA is a potential tool of repression and injustice. FIDH therefore urges Bangladesh to repeal the Anti-Terrorism Act, 2009.

105. UN Document S/2002/1137, point 7. Emphasis added.
106. UN Document S/2005/456, p. 5.
107. See "Bangladesh plans anti-terror law ," BBC News, 21 December 2005 (available at http://news.bbc.co.uk/2/hi/south_asia/4547874.stm).
108. See "7 JMB men get life in Rajshahi," The Daily Star, 23 March 2009 (available at www.thedailystar.net/newDesign/news-details.php?nid=80925.
109. See "Death sentence to 7 JMB kingpins upheld," The Daily Star, 1 September 2006 (available at www.thedailystar.net/2006/09/01/d6090101011.htm).

V. Torture

According to several interlocutors of the FIDH delegation, ill-treatment and torture have become so entrenched in the country that once someone is arrested it can be assumed that he or she that will be subject to abuse. The culture of forcibly extorting confessions is deeply rooted within the law enforcement agencies in Bangladesh and is reportedly considered a normal practice. Furthermore, FIDH interlocutors, including politicians who were in prison, consider that members and sympathizers of opposition political parties who are arrested are almost systemically subject to ill-treatment and torture.

An inadequate legislation

Bangladesh has the international obligation to ban torture in its domestic law. While the Constitution and Criminal Penal Code make several halting steps towards fulfilling these obligations, the process is not complete. For example, Bangladesh must fully respect Article 7 of the ICCPR, which states that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Accordingly, this provision is nearly duplicated in Article 35 (5) of the Constitution of Bangladesh, which states: "No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment."

In addition to the ICCPR, Bangladesh ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) on 5 October 1998, which codifies an absolute prohibition of torture. Article 1 of the CAT defines torture as when a "public official" intentionally inflicts "severe pain or suffering, whether physical or mental" for purposes of, *inter alia*, obtaining a confession, intimidation or coercion. Article 2(2) of the CAT reads: "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." The UN Committee Against Torture considers that "this includes any threat of terrorist acts" and "rejects absolutely any efforts by States to justify torture and ill-treatment as a means to protect public safety or avert emergencies in these and all other situations."[110]

Bangladesh is obliged to incorporate the CAT's rejection of torture under Article 4 (1), which requires state parties to "ensure that all acts of torture are offences under its criminal law. The same shall apply to commit torture and to an act by any person which constitutes complicity or participation in torture." The UN Committee Against Torture adds that such laws must be "in accordance, at a minimum, with the elements of torture as defined in article 1 of the Convention, and the requirements of article 4".[111]

Although the Constitution of Bangladesh expressly prohibits torture, Bangladesh fails to create a specific definition of torture and therefore allows impunity of law enforcement officials to engage in torture. The provisions criminalizing offences against a person, enshrined in Chapter XVI of The Penal Code of 1860 (offences causing physical pain in Sections 319 to 338A and offences relating to wrongful confinement in Sections 339 to 358), never specify what qualifies as torture. Sections 330 and 331 of the Penal Code criminalize causing "grievous hurt"

110. See the CAT General Comment No. 2 (Implementation of article 2 by State parties), CAT/C/GC/2, 24 January 2008, para. 5.
111. CAT General Comment No. 2, CAT/C/GC/2, para. 8.

in order to extort a confession or information leading to the detection of an offence, but not only do they fail to use the term torture or explicitly mention that public officials are similarly culpable under the law, but mental suffering is excluded from the provision altogether.

FIDH takes note of governmental inaction towards remedying this situation. On 5 March 2009, MP Saber Hosain Chowdhury, with whom FIDH had the opportunity to speak and who had been arrested and tortured in the early 2000's, submitted the Torture and Death in Custody Prevention Bill to Parliament, as a Private Member's Bill. This Bill was tabled in Parliament on 10 September 2009, but there has been no move since. Despite this, the Minister for Foreign Affairs, Dr. Dipu Moni, informed the United Nations Human Rights Council during the Universal Periodic Review of Bangladesh in 2009 that Bangladesh had the "policy of zero tolerance on matters of extrajudicial killings, torture, and deaths in custody".[112]

FIDH recalls that such a policy can not be reached without appropriate criminalisation of torture and other cruel, inhuman, or degrading punishment or treatment, in accordance with the international commitments of Bangladesh under the CAT.

A culture of impunity consecrated by Bangladeshi law

The Constitution of Bangladesh is ambiguous on torture. While Article 35 (5) prohibits torture, Article 46 allows the Parliament to enact law to acquit "any person in the service of the Republic or any other person in respect of any act done by him in connection with…the maintenance or restoration or order in any area in Bangladesh or validate any sentence passed, punishment, forfeiture ordered, or other act done in any such area". In other words, Article 46 of the Constitution allows the Parliament to indemnify human rights violations of state officials, including torture, by enacting legislation.

According to the Human Rights Committee, amnesty for acts of torture is not compatible with Article 7 of the ICCPR.[113] Moreover, recalling that the prohibition of torture is non-derogable and absolute, the Committee Against Torture considers that under the CAT "amnesties (…) violate the principle of non- derogability".[114]

Furthermore, the Code of Criminal Procedure encourages a culture of impunity and protects the perpetrators of torture. Under Section 132 of the Code of Criminal Procedure, no criminal complaint can be lodged against any State official without prior approval from the Government. This provision is questionable under Article 12 of the CAT which imposes on State parties to promptly and impartially investigate allegations of torture. It is also a violation of Article 13 which states "that any individual who alleges he has been subjected to torture in any territory under [the] jurisdiction [of a State party] has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities".

112. Report of the Working Group on the Universal Periodic Review of Bangladesh, 5 October 2009, A/HRC/11/18, para. 87.
113. See HRC General Comment No 20: Article 7 (Prohibition of torture, or other cruel, inhuman or degrading treatment or punishment), para. 15.
114. CAT General Comment No. 2, CAT/C/GC/2, para. 5.

Impunity for Enforced disappearances

Although Bangladesh is not yet a signatory to the International Convention for the Protection of All Persons from Enforced Disappearance, it still has obligations under the ICCPR and the CAT to prevent cases of enforced disappearance. Under Article 10 of the CAT, state parties have the obligation to educate their police force about the prohibition of torture during arrest and detention. Article 11 requires state parties to periodically review arrest, interrogation and detention "with a view to preventing any cases of torture." The ICCPR's Article 9 prohibits arbitrary arrest or detention, requires that those being arrested are informed of the charges against them, are brought in front of a judge swiftly, and are entitled to compensation in the case of an illegal arrest or detention.

As delineated by the *BLAST*[115] case, the High Court of Bangladesh has found that the Bangladeshi government fails to uphold this obligation to prevent enforced disappearances. Not only does the Code of Criminal Procedure fail to provide adequate safeguard from arbitrary arrest and enforced disappearances, but the government actively prevents media coverage of deaths in custody and has failed to grant visit requests to both the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions and the Rapporteur on the Independence of Judges and Lawyers.[116]

115. Supra, note 38.
116. "Enforced disappearances must be halted", Asian Legal Resource Centre, 24 August 2010, available at www.scoop.co.nz/stories/WO1008/S00381/enforced-disappearances-must-be-halted.htm.

VII. Conclusion and Recommendations

Conclusion

Although Bangladesh is party to many important human rights treaties, such as the ICCPR and the CAT, it also is yet to ratify several important documents that will ensure rights for its citizens and further adherence to international law. In addition, Bangladesh must fulfil its obligations to existing human rights mechanisms by allowing access for the UN Special Rapporteurs and furnishing initial reports to the HRC, CAT and the ICESCR. The National Human Rights Commission that was established in 2007 is a step in the right direction but lacks the appropriate resources and manpower to properly fulfil its mandate.

An extremely broad range of crimes currently attracts the death penalty in Bangladesh. These include non-lethal crimes such as counterfeiting and smuggling, as well as less serious crimes such as kidnapping. This practice runs counter to both the ICCPR and the HRC's directives on the issue, which mandate that the death penalty be applied only for the most serious lethal crimes. The further imposition of mandatory death sentences for certain crimes deprives the judiciary of discretion to take into account possible extenuating circumstances.

FIDH and Odhikar also note grave problems with the administration of criminal justice in Bangladesh and the procedures of law enforcement. The standard police practice of arresting whomever is accused on the First Information Report, filed by the complainant, facilitates the use of the justice system as a form of popular justice in which neighbours retaliate for private disputes via the justice system.

The ability of officers to arrest individuals suspected of so-called cognizable offences without a warrant violates the right not to be subjected to arbitrary arrest and detention. Section 54 of the Criminal Procedure Codes, which delineates the broad and vague grounds on which an officer may make an arrest without a warrant, has opened the door to abuse of police power that even the Supreme Court of Bangladesh has condemned. Section 61 of the Code, which provides for the infamous remand process, has been widely documented to facilitate torture and abuse of suspects while in police custody, often in order to exhort bribes or confessions. In a case involving deaths in police custody, *BLAST and others v. Bangladesh*, the Supreme Court called for an overhaul of the Criminal Procedure Code.

The Bangladeshi trial system appears to be imbued with violations of due process and presumption of innocence principles. Bail is per se unavailable for several crimes, including all of those enumerated by the *Women and Children Repression Prevention Act* of 2000 and all defendants who are "reasonably suspected" to have committed homicide.

Severe delay and backlog in the court system reportedly drags cases on for years, which is especially pernicious for those held for non-bailable offences or for those who could not afford bail. Speedy-trial courts have been established to try certain cases, although their use appears

to be politically-motivated more than hastening the process of justice. Due to these delays, police exhort bribes to release detained suspects, and Court Clerks and Government lawyers often demand bribes to expedite their cases. Repressive and often inhumane prison conditions perpetuates this system of bribery and extortion, further violating international standards in administration of justice and the proper treatment of prisoners. Executions are carried out in jail by hanging. The method of execution is deprived of any legal basis in domestic legislation since other prisoners are forced into carrying out the executions of their peers. This practice clearly amounts to an inhuman and degrading treatment, if not to torture.

Both the Special Powers Act of 1974 and the Anti-Terrorism Act (ATA) of 2009 govern the prosecution of terrorist activities. In light of the 2005 bombing campaign carried out by Jamaat-ul Mujahideen, a radical pan-Islamist organisation, against judges across Bangladesh, the need and obligation for the authorities to prosecute the authors of such outrageous attacks became clear. However, the ATA, like so many anti-terror laws passed around the world in the aftermath of 9/11, grants extraordinarily broad powers to the government, often violating the fundamental rights of its citizens. In addition, the ATA provides an extremely vague definition of terrorism, which violates the principle of legality and allows for abuse of police power, which is not consistent with definitions proposed at international level, notably by the UN Special Rapporteur on the respect of human rights while countering terrorism.

The ATA's grant of broad rights of surveillance to law enforcement and restrictions upon freedom of speech are further cause for concern. FIDH encourages the Bangladeshi government to frankly analyse the continuing necessity of all provisions of the ATA, and whether many of the crimes it addresses are not already covered by existing criminal law.

Under the ICCPR and the CAT, Bangladesh has the obligation to ban torture in its domestic law. However, torture is not defined under its criminal law, as is required by the CAT. The Bangladesh Constitution allows parliament to pardon public officials accused or convicted of torture while the Code of Criminal Procedure requires prior governmental approval before a complaint of torture can be lodged against a political officials. FIDH is concerned that these factors, combined with the lenient procedural rules for unwarranted arrest and remand, contribute towards a culture of impunity for torture for both law enforcement and political officials.

Based on those findings, FIDH and Odhikar issue the following recommendations:

To the People's Republic of Bangladesh:

On the administration of criminal justice:

– The Parliament and Ministry of Justice should amend the Code of Criminal Procedure according to the guidelines provided by the Supreme Court in the *BLAST* case and the Bangladesh Law Commission.
– The Penal Code should define and criminalize torture as required by the CAT.
– The judiciary should exert a close scrutiny on conditions of detention and interrogation by the police during the remand procedure, and declare inadmissible any statement which is established to have been made as a result of torture, in conformity with Articles 12 and 13 of the UN Convention against Torture, and the prohibition of self-incriminating statements enshrined in Art. 35(4) of the Constitution of Bangladesh.

– The immunity provisions for public officials that engage in torture within the Code of Criminal Procedure must be repealed in particular Section 132 of the Code, and other legal provisions which impede alleged victims of human rights violations from lodging complaints against State officials suspected of being the authors, instigators or accomplices of such acts.
– Bangladesh should consider amending Article 46 of the Constitution in order to limit the power given to Parliament by excluding acts of torture and other cruel, inhuman or degrading treatment or punishment from the scope of acts for which public officials can be indemnified.
– FIDH considers that reservation to Article 14 of the CAT must be withdrawn and recommends to the competent Bangladeshi authorities to ensure that victims of torture receive reparation for the injuries suffered and benefit from an appropriate rehabilitation programme
– Police investigations should be strengthened, in particular through material and forensic information collection, and proper training in those fields should be ensured to prevent arbitrary arrests based solely off of a spurious complaint or FIR and excessive reliance on confessions.
– The backlog of the courts should be diminished, without creating a parallel system of special tribunals like the speedy trial courts, which may contradict the principle of equal protection under law. FIDH recalls that the right to a fair trial includes the right to be tried without undue delay (Art. 14.3 of the ICCPR).
– Prison conditions should be improved in order to comport with relevant international human rights standards. Overcrowding in detention facilities should notably be addressed.

The death penalty:

Considering the large potential for abuse and violations of due process in Bangladesh, FIDH calls upon the authorities, as a first step towards abolition, to:
– Examine existing law with a view towards diminishing the scope of crimes that attract the death penalty to only those with lethal consequences, in conformity with Art. 6 of the ICCPR.
– All mandatory death penalty sentences should be repealed as unconstitutionally restricting the discretion and independence of the judiciary, as required under international standards, and as stressed by the High Court Division in its 1995 ruling.
– Other prisoners may under no circumstances be delegated to carry out an execution, a practice that is not in conformity with the domestic legal framework and constitutes an inhuman and degrading treatment for concerned prisoners.
– Make public statistics on the number of death sentences and executions to allow an informed public debate on the death penalty.
– Appoint a committee of high level jurists to report on the application and conditions of implementation of the death penalty in the country.

Reassess the need for anti-terrorism legislation:

FIDH urges Parliament and the Ministry of Law to reassess the need for the ATA. If maintained, this law should definitely be amended:
– If the ATA is maintained, it must be amended in order to eliminate vagueness in its wording and the potential for abuse in its application, including regarding the length of police custody, the systematic non-bailable character of the crimes, and the establishment of anti-terrorism special tribunals.
– Judicial oversight should be instituted for all surveillance, searches, and wire tapping.
– The ATA should not be used as a repressive tool against political dissidents.
– FIDH urges the Bangladeshi government to take all available actions to prevent enforced disappearances and oversee and train police forces in proper arrest and detention practices

Bolster the National Human Rights Commission:

FIDH urges the Parliament to approve further allocation of funds for staff improvement and hiring within the NHRC in order to maintain the Commission's effectiveness and independence without any hindrance from the government.

Treaty Ratification:

Bangladesh must withdraw its reservation to Article 14(1) of the CAT and to ratify the following international human rights instruments:

– Optional Protocol to the ICESCR (1966), allowing individual complaints from citizens of member states
– Optional Protocol to the ICCPR (1966), allowing individual complaints from citizens of member states
– 2nd Optional Protocol to the ICCPR, aiming at the abolition of the death penalty (1989)
– Optional Protocol to the CAT (2002), allowing site visits to the country and requiring establishment of National Preventive Mechanisms.
– International Convention for the Protection of All Persons from Enforced Disappearance (2006)
– Convention on the Protection of the Rights of All Migrant Workers & Members of Their Families (1990)

To the international community

– Third states are invited to raise the issues of concern addressed in this report and echo the afore-mentioned recommendations in the framework of their bilateral meetings with the government of Bangladesh at all levels.
– Support civil society initiatives in favour of abolition in Bangladesh
– Provide technical assistance in the field of criminal investigation, in particular concerning forensic and ballistic expertise and others methods that would allow to rely less systematically on confessions that are often obtained under duress.
– To support efforts to develop professional and public human rights education and judicial and prosecutorial training
– to condition its cooperation with the police and other forces of Bangladesh (like the RAB) to concrete progress in the field of the fight against impunity for extrajudicial killings and torture and to ensure transparency and accountability in all the actions undertaken.

ANNEX 1

Status of Commitment to International Human Rights Treaties of Bangladesh, 2010[1]

Treaty	Signature	Ratification	Accession
International Convention on the Elimination of Racial Discrimination (1965)			11 June 1979
International Covenant on Economic, Social & Cultural Rights (1966)			5 Oct. 1998
Optional Protocol to the ICESR (2008)	Not signed		
International Covenant on Civil & Political Rights (1966)			6 Sept. 2000
Optional Protocol to the ICCPR (1966)	Not signed		
2nd Optional Protocol to the ICCPR, aiming at the abolition of the death penalty (1989)	Not signed		
Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW, 1979)			6 Nov. 1984
Optional Protocol to the CEDAW (1999)	6 Sept. 2000	6 Sept. 2000	
Convention Against Torture & Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment (CAT, 1984)		5 October 1998	
Optional Protocol to the CAT (2002)	Not signed		
Convention on the Rights of the Child (CRC, 1989)	26 Jan.1990	3 August 1990	
Optional Protocol to the CRC on the involvement of children in armed conflict (2000)	6 Sept. 2000	6 Sept. 2000	
Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography (2000)	6 Sept. 2000	6 Sept. 2000	
Convention on the Protection of the Rights of All Migrant Workers & Members of Their Families (1990)	7 Oct. 1998		
Convention on the Rights of Persons with Disabilities (CRPD, 2006)	9 May 2007	30 Nov. 2007	
Optional Protocol to the CRPD		12 May 2008	
International Convention for the Protection of All Persons from Enforced Disappearance (2006)	Not signed		
Rome Statute of the International Criminal Court	16 Sept. 1999	April 2010	

1. United Nations Treaty Collection. http://treaties.un.org/Pages/Treaties.aspx?id=4&subid=A&lang=en (Accessed: 31 July 2010).

ANNEX 2

Declarations and/or Reservations of Bangladesh on Human Rights Treaties

Human Rights Treaty	Declarations/Reservations
ICESCR	Declarations of the Bangladesh government on the following Articles of ICESCR include:[1] – Articles 2 and 3 pertains to the obligations of State Parties to progressively realize the economic, social and cultural rights of their citizens, and to guarantee that these rights will be exercised without discrimination and will be enjoyed equally by men and women. The Bangladesh government declared that these provisions, particularly aspects on the economic rights related to inheritance will be applied in accordance with the provisions of the Bangladesh Constitution. – Articles 7 and 8 on the rights to the enjoyment of just and favourable conditions of work and the right to form and join trade unions will be applied "in conformity with the procedures established in the Constitution and the relevant legislation of Bangladesh". – Articles 10 on the protection of the family and pregnant mothers including those working, and Articles 13 on the right to education, will be implemented progressively and based on the "existing economic conditions and development plans" of the government.
ICCPR	The Bangladesh government made one reservation and several declarations on certain Articles of the ICCPR. These include:[2] – A reservation on the application of Article 14 par. 3(d) particularly on the right of the accused to be tried in his/her presence. Laws in Bangladesh allow an accused to be tried in his/her absence if the person is "a fugitive offender, or is one, who being required to appear before a court, fails to present himself or to explain the reasons for non-appearance to the satisfaction of the court." – The Bangladesh government declared that due to financial constraints, it does not have any facility intended for the reformation and rehabilitation of prisoners. The provision of segregating juvenile offenders from adults as stipulated in the Covenant is complied with by the government. – On Article 11 prohibiting the imprisonment of a citizen for failure to fulfill a contractual obligation, the government declared this is generally consistent with the Constitution, "except in some very exceptional circumstances, where the law provides for civil imprisonment in case of willful default in complying with a decree." The government further declared it will comply with Article in accordance with its "existing municipal law". – On the principle of providing compensation for miscarriage of justice as stipulated in Article 14 par. 6, the Bangladesh government has declared that while it recognizes the principle, it is unable to comply fully with this provision "for the time being". However, it "intends to ensure full implementation of this provision in the near future."
CEDAW	Articles 2 & 16 (1)(c): The two articles pertain to State Parties condemning all forms of discrimination against women and taking all steps to eliminate discrimination and ensure the equality of men and women in all spheres. The Bangladesh government does not consider as biding these provisions because of the conflict with Sharia law.[3]
OP - CEDAW	Using Article 10 (1) as basis, the government declared its refusal to undertake its obligations as stipulated in Articles 8 & 9 of the OP. These two articles pertain to the obligation of State Parties to cooperate with members of the Committee on CEDAW in the investigation and/or examination of information or reports received by the Committee regarding serious or systematic human rights violations. This includes inviting Committee members to visit the territory of State Parties to conduct an inquiry or investigation on the information received.[4]
CAT	The government will apply Article 14 par. 1 in accordance with the country's existing laws and legislations. This means the government will allow the Subcommittee on Prevention to fulfill its mandate by providing them "unlimited access to information on persons deprived of their liberty, their treatment and conditions of detention; unlimited access to all places of detention and the opportunity to interview persons deprived of their liberty in private", for as long as these activities are allowed by or are not in conflict with, the laws of Bangladesh.[5]

Human Rights Treaty	Declarations/Reservations

CRC	Reservations on the following Articles of the Convention were made by the government:[6] – Art. 14, par. 1 which mandates State Parties to respect the right of children to freedom of thought, conscience and religion. – Article 21 which pertains to adoption of children will be permitted by the government in accordance with its laws and practices.
OP – CRC on the Involvement of Children in Armed Conflicts	Article 3(2) on the minimum age of recruitment in the national armed forces and safeguards taken to ensure the voluntary character of the recruitment, the Bangladesh government declares "that the minimum age at which it permits voluntary recruitment into its national Armed Forces is sixteen years for non-commissioned soldiers and seventeen years for commissioned officers, with informed consent of parents or legal guardian, without any exception.[7]

1. http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11&chapter=4&lang=en (Accessed: 4 August 2010)
2. http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-11-b&chapter=4&lang=en (4 August 2010)

ANNEX 3

Leading Cases on Death Penalty from 1987 to 2009

No.	Case Name	Bench	Reference	Relevant laws & Sections
1.	Nausher Ali Sarder vs.State	Appellate Division	39 (1987) Dhaka Law Report 194	Sections 302/34 of Penal Code-1860 and Section 164 of the Code of Criminal Procedure-1898.
2.	The State vs. Fazal	Appellate Division	39 (1987) Dhaka Law Report 168	Sections 302/34, 364 of the Penal Code-1860 and Sections 154/114 of the Evidence Act- 1872.
3.	Majibur Rahman vs. State	High Court Division	39 (1987) Dhaka Law Report 437	Sections 302/34 of the Penal Code-1860 and Section 103 of the Code of Criminal Procedure-1898.
4	Nowsher Ali vs. State	High Court Division	39 (1987) Dhaka Law Report 57	Sections 302/34 of the Penal Code-1860 and Section 164 of the Code of Criminal Procedure-1898.
5.	Dipok k. Sarker vs. The State	Appellate Division	40 (1988) Dhaka Law Report 139	Section 302 of the Penal Code – 1860.
6.	Ibrahim Mollah & Ors vs. The State	Appellate Division	40 (1988) Dhaka Law Report 216	Sections 302/34, 326/306 of the Penal Code-1860 and Section 30 of the Evidence Act-1872.
7.	Shahjahan Biswas & others vs. The State	Appellate Division	40 (1988) Dhaka Law Report 291	Sections 148, 325, 302/34 of the Penal Code-1860.
8.	The State vs. Abdur Rashid	Appellate Division	40 (1988) Dhaka Law Report 106	Sections 302/34 & 201 of the Penal Code-1860 and Section 164 and 364 of the Code of Criminal Procedure 1898.
9.	Taleb Ali & Others vs. The State	Appellate Division	40 (1988) Dhaka Law Report 240	Sections 302/34 & 201 of the Penal Code-1860.
10.	Kabul vs. The State	High Court Division	40 (1988) Dhaka Law Report 216	Sections 302/34 of the Penal Code-1860 and Section 374 of Code of Criminal Procedure-1898.
11.	M. Sana Alias Moni & others vs. The State	High Court Division	40 (1988) Dhaka Law Report 402	Sections 302/34 of the Penal Code-1860.
12.	Mizazul Islam @ Dablu vs. State	Appellate Division	41 (1989) Dhaka Law Report 157	Sections 302 of the Penal Code-1860. Sections 342 and 374 of Code of Criminal Procedure -1898.
13.	State vs. Badshah Mollah	High Court Division	41 (1989) Dhaka Law Report 11	Sections 342 Code of Criminal Procedure -1898.
14.	State vs. Khalilur Rahman	High Court Division	41 (1989) Dhaka Law Report 1	Sections 26(2) of Special Powers Act 1974.
15.	State vs. Manik Bala	High Court Division	41 (1989) Dhaka Law Report 435	Sections 302/34 of the Penal Code-1860 and Section 164 of the Code of the Criminal Procedure.
16.	Abul Kashem & another vs. The State	High Court Division	42 (1990) Dhaka Law Report 378	Sections 302/34, 303/34,379/411 of Penal Code-1860 and Section 118, 32, 30 of the Evidence Act-1872.
17.	Hazrat Ali & Abdur Rahman vs. The State	High Court Division	42 (1990) Dhaka Law Report 177	Sections 302/34, 303/34,379/411 of the Penal Code-1860.
18.	Shahjahan Manik & Farida Akter Rina vs. The State	High Court Division	42 (1990) Dhaka Law Report 465	Sections 302/34 of Penal Code-1860 and Section 374 of the Code of Criminal Procedure-1898.
19.	The State vs. Imdad Ali Bepari	High Court Division	42 (1990) Dhaka Law Report 428	Section 302 of the Penal Code – 1860. Sections 265 G and 374 of the Code of Criminal Procedure – 1898.
20.	State vs. Jahaur Ali & others	High Court Division	42 (1990) Dhaka Law Report 94	Sections 302/34, of the Penal Code-1860 and Section 339B of the Code of Criminal Procedure-1898.
22.	Abed Ali vs. State	Appellate Division	42 (1990) Dhaka Law Report 171	Sections 302/34, of the Penal Code-1860 and 376 of the Code of Criminal Procedure- 1898.

23.	Abu Taher Chowdhury vs. State	Appellate Division	42 (1990) Dhaka Law Report 253	Sections 302/34 of the Penal Code- 1860. Section 374 of the Code of Criminal Procedure -1898 & 103(3) Constitution of People's Republic of Bangladesh.
24.	Sk Shamsur Rahman vs. State	Appellate Division	42 (1990) Dhaka Law Report 200	Section 302 of the Penal Code-1860 and Sections 32(1), 8, 154 of Evidence Act- 1872.
25.	Abdul Quddus vs. The State	Appellate Division	43(1991) Dhaka Law Report 234	Section 302 of the Penal Code-1860, Sections 118, 134, 45, 137 of the Evidence Act 1872 and Section 374 of the Code of Criminal Procedure-1898.
26.	State vs. Mofazzal Hussain Pramanik	Appellate Division	43 (1991) Dhaka Law Report 65	Sections 302/34 of the Penal Code-1860 and Sections 17 and 23 of the Evidence Act-1872.
27.	The State vs. Md. Safiqul Islam	Appellate Division	43 (1991) Dhaka Law Report 92	Section 302/114 of the Penal Code-1860 and Section 5 of the Evidence Act-1872.
28.	Wajear Rahman Moral vs. The State	Appellate Division	43(1991) Dhaka Law Report 25	Section 302 of the Penal Code-1860.
29.	State vs. Kalu Bapari	High Court Division	43 (1991) Dhaka Law Report 249	Section 302 of the Penal Code-1860 and Section 164 of the Code of Criminal Procedure-1898.
30.	State vs. Ali Kibria	High Court Division	43(1991) Dhaka Law Report 513	Section 302/109 of the Penal Code-1860 and Section 164 of the Code of Criminal Procedure-1898.
31.	Tenu Miah vs. The State	High Court Division	43(1991) Dhaka Law Report 633	Section 149/302 of the Penal Code-1860.
32	Abul Khair vs. The State	Appellate Division	44 (1992) Dhaka Law Report 225	Section 302/34 of the Penal Code-1860 and Section 374 of the Code of Criminal Procedure-1898.
33.	Babor Ali Molla vs. State	Appellate Division	44 (1992) Dhaka Law Report 10	Section 302/34 of the Penal Code-1860 and Sections 154, 155, 30 of the Evidence Act -1872.
34.	Hazarat Ali vs. State	Appellate Division	44 (1992) Dhaka Law Report 51	Section 302/34 and 302/109 of the Penal Code-1860.
35.	State vs. Montu	Appellate Division	44 (1992) Dhaka Law Report 287	Section 300, 299, 304 part 1, 302/34 of the Penal Code-1860.
36	Abdur Rahman vs. State	High Court Division	44 (1992) Dhaka Law Report 556	Section 302 of the Penal Code-1860, Section 30 and 45 of the Evidence Act 1872 and Section 374 of the Code of Criminal Procedure 1898.
37.	Akhtar Hossain vs. State	High Court Division	44 (1992) Dhaka Law Report 83	Section 302 of the Penal Code-1860 and Sections 154 and 162 of the Code of Criminal Procedure-1898.
38.	Fulu Mohammad vs. State	High Court Division	44 (1992) Dhaka Law Report 431	Section 374 of the Code of Criminal Procedure -1898 and Section 302/34, 325 and 526 of the Penal Code 1860.
39.	Mostain Mollah vs. State	High Court Division	44 (1992) Dhaka Law Report 295	Sections 302/109 of the Penal Code-1860 and Section 34 of the Evidence Act-1872.
40.	Taslimuddin vs. State	High Court Division	44 (1992) Dhaka Law Report 136	Sections 302/34 of the Penal Code-1860 and Sections 3 and 8 of the Evidence Act-1872.
41.	Farid Karim vs. State	High Court Division	45 (1993) Dhaka Law Report 171	Section 302 of the Penal Code-1860 and Section 27,8 and 30 of the Evidence Act 1872.
42.	Giasuddin and 5 others vs State	High Court Division	45 (1993) Dhaka Law Report 267	Sections 302/149 and 304 part 1 of the Penal Code-1860.
43.	Hanif Gani vs. State	High Court Division	45 (1993) Dhaka Law Report 400	Sections 374 of the Code of Criminal Procedure-1898 and Section 302/34 of the Penal Code.
44.	Nurul Hoque vs State	High Court Division	45 (1993) Dhaka Law Report 306	Sections 302/34 of the Penal Code-1860 and 164 of the Code of Criminal Procedure- 1898.
45.	Sree Ranjit Kumar Pramanik vs. State	High Court Division	45 (1993) Dhaka Law Report 660	Sections 302/364 of the Penal Code-1860 and Section 238 of the Code of Criminal Procedure-1898.
46.	Nowabul Alam & others vs. State	Appellate Division	45 (1993) Dhaka Law Report 140	Sections 148/307/302/34 of the Penal Code-1860 and Section 5 of the Evidence Act.
47.	Harun Sarker vs. State	High Court Division	45 (1993) Dhaka Law Report 49	Sections 109/201/302/34 of the Penal Code-1860.
48.	Abdus Sattar & others vs. State	Appellate Division	46 (1993) Dhaka Law Report 239	Sections 302/149 of the Penal Code-1860.
49.	Mojibur Rahman Gazi vs. State	High Court Division	46 (1993) Dhaka Law Report 423	Sections 324/302 of the Penal Code-1860 and Section 374 of the Code of Criminal Procedure- 1898.

50.	State Vs Fulu Mohammad & 6 others	High Court Division	46 (1993) Dhaka Law Report 160	Sections 34/148/302/325/326 of the Penal Code-1860.and Section 509 A Code of Criminal Procedure-1898.
51.	Abdul Khaleque vs. State	High Court Division	46 (1993) Dhaka Law Report 353	Sections 302 of the Penal Code-1860 and Section 374 of the Code of Criminal Procedure-1898.
52.	Zahiruddin Son of Abdul Hye vs State	Appellate Division	47 (1995) Dhaka Law Report 92	Section 374 of the Code of Criminal Procedure – 1898 and Section 302 of the Penal Code- 1860.
53.	State vs. Balai Chandra Sarker	High Court Division	47 (1995) Dhaka Law Report 467	Section 374 of the Code of Criminal Procedure – 1898. Sections 3 and 8 of the Evidence Act – 1872.
54.	Sate vs. Abul Kalam Azad	High Court Division	48 (1996) Dhaka Law Report 103	Section 374 of the Code of Criminal Procedure – 1898 and Sections 302/326/324 of the Penal Code-1860.
55.	State vs Lokman Miah	High Court Division	48 (1996) Dhaka Law Report 149	Section 164 of the Code of Criminal Procedure – 1898 and Sections 326/302/307 of the Penal Code-1860.
56.	State vs. Abul Howlader	High Court Division	48 (1996) Dhaka Law Report 257	Section 300 of the Penal Code – 1860 and Section 374 of Code of the Criminal of Procedure.
57.	Arzan @ Iman Ali vs. State	High Court Division	48 (1996) Dhaka Law Report 287	Sections 300 & 396 of the Penal Code-1860. Section 410 of the Code of the Criminal Procedure – 1898.
58.	State vs Khalilur Rahman	High Court Division	48 (1996) Dhaka Law Report 184	Section 5 of the Evidence Act – 1872 and Sections 304 part I /149 of Penal Code – 1860.
59.	State vs. Tajul Islam and others	High Court Division	48 (1996) Dhaka Law Report 305	Sections 154, 164 of the Code of Criminal Procedure – 1898. Section 3, 5, 30, 80 Evidence Act – 1872.
60.	Abdul Aziz Mina and others vs State	High Court Division	48 (1996) Dhaka Law Report 382	Section 300 of the Penal Code – 1898 Section 374 of the Code of Criminal Procedure – 1898
61.	State vs. Raja Abdul Majid & others	High Court Division	48 (1996) Dhaka Law Report 336	Section 25(B) of the Special Powers Act – 1974 Section 164(3) of the Code of Criminal Procedure – 1898
62.	State vs. Raisuddin & others	High Court Division	48 (1996) Dhaka Law Report 517	Sections 302/149 of the Penal Code-1860 and Section 164 of the Code of Criminal Procedure.
63.	State vs. Mesbahuddin	High Court Division	49 (1997) Dhaka Law Report 245	Section 161/ 396 of the Penal Code-1860.
64.	State vs. Kamal Ahmed	High Court Division	49 (1997) Dhaka Law Report 381	Sections 302 of the Penal Code & 374 of the Code of Criminal Procedure-1898.
65.	State vs. Abul Hashem	High Court Division	50 (1998) Dhaka Law Report 17	Section 374/ 376 of the Code of Criminal Procedure-1898 and Sections 302/34 of the Penal Code-1860.
66.	State vs. Afazuddin Sikder	High Court Division	50 (1998) Dhaka Law Report 121	Section 374 of the Code of Criminal Procedure and Sections 302/149 of the Penal Code-1860.
67.	State vs. Hamida Khatun	High Court Division	50 (1998) Dhaka Law Report 517	Section 374/376(a) of the Code of Criminal Procedure and Sections 302/34 and 201 of the Penal Code.
68.	State vs. Hosen Shikh	High Court Division	50 (1998) Dhaka Law Report 508	Section 374/ 161 of the Code of Criminal Procedure and Sections 302/34 of the Penal Code.
69.	State vs. Innocent N Egbunine	High Court Division	50 (1998) Dhaka Law Report 460	Section 19(1)(4) of the Narcotics Control Act 1990 and Sections 374 of the Code of the Criminal Procedure-1898.
70.	State vs. Jamaluddin	High Court Division	50 Dhaka Law Report 67	Section 302 of the Penal Code and Section 374 of the Code of the Criminal Procedure.
71.	State vs. Giasuddin & others	Appellate Division	51 (1999) Dhaka Law Report 103	Sections148 & 302/149 of the Penal Code-1860. and Sections 376 of the Code of the Criminal Procedure-1898.
72.	Shahjahan Vs. State	High Court Division	51 (1999) Dhaka Law Report 373	Section 302 of the Penal Code 1860 and Section 376 of the Code of the Criminal Procedure-1898.
73.	State vs. Md. Bachchu Mia & Abdul Mannnan & 5 others	High Court Division	51 (1999) Dhaka Law Report 355	Section 302/ 202 of the Penal Code 1860 and Section 30 of the Evidence Act 1872.
74.	State vs. Tota Mia	High Court Division	51 (1999) Dhaka Law Report 244	Section 302 of the Penal Code 1860, Section 164 of the Code of the Criminal Procedure-1898 and Section 32(1) of the Evidence Act-1872.

75.	State vs. Babul Hossain	High Court Division	52 (2000) Dhaka Law Report 400	Sections 10(1)/14 of Nari Shisu Nirjaton (Bishes Bidhan) Act-1995 and Section 161 of the Code of the Criminal Procedure 1898.
76.	State vs. Md. Khosbor Ali	High Court Division	52 (2000) Dhaka Law Report 633	Section 302 of the Penal Code and Section 376 of the Code of the Criminal Procedure- 1898.
77.	State vs. Rakibul Hossain Alias	High Court Division	52 (2000) Dhaka Law Report 370	Sections 396/34 of the Penal Code and Section 340 of the Code of the Criminal Procedure- 1898.
78.	Ansar (Md) Chan Mia vs. State	Appellate Division	53 (2001) Dhaka Law Report 116	Sections 302 of the Penal Code and Section 154 and 161 of the Code of the Criminal Procedure-1898.
79.	State Vs. Abu Musa @ Shapir Bap	Appellate Division	53 (2001) Dhaka Law Report 81	Section 302 of the Penal Code and Article 103 of the Constitution of People's Republic of Bangladesh.
80.	State vs. Shahjaahan	Appellate Division	53 (2001) Dhaka Law Report 58	Section 302 of the Penal Code and Article 103 of the Constitution of People's Republic of Bangladesh
81.	Md. Shamim ailias Shamim Skider & others vs. State	High Court Division	53 (2001) Dhaka Law Report 439	Section 302/34 of the Penal Code and Section 374 of the Code of the Criminal Procedure-1898.
82.	State vs. Lt. Colonel Farook Rahman	High Court Division	53 (2001) Dhaka Law Report 287	Sections 302/34/120B of the Penal Code-1860.
83.	State vs. Abul Barek & others	Appellate Division	54 (2002) Dhaka Law Report 28	Sections 302/21/120B of the Penal Code-1860.
84.	State vs. Monu Mia & others	Appellate Division	54 (2002) Dhaka Law Report 60	Sections 302/21/34 of the Penal Code-1860.
85.	Giasuddin & another vs. State	Appellate Division	54 (2002) Dhaka Law Report 146	Sections 302/34 of the Penal Code-1860.
86.	Harish vs. State	High Court Division	54 (2002) Dhaka Law Report 473	Section 6(4) of Nari O Shishu Nirjaton (Bishes Bidhan) Ain 1995.
87.	State vs. Abdus Samad @ Samad Ali	High Court Division	54 (2002) Dhaka Law Report 590	Sections 302/326 of the Penal Code-1860.
88.	State vs. Rafiqul Islam Alias Gadan	High Court Division	55 (2003) Dhaka Law Report 61	Sections 396/302 of the Penal Code-1860.
89.	State vs. Kabel Molla	High Court Division	55 (2003) Dhaka Law Report 108	Sections 302/34 of the Penal Code-1860.
90.	State vs. Moslem	High Court Division	55 (2003) Dhaka Law Report 116	Section 6(2) of Nari O Shishu Nirjaton (Bishes Bidhan) Ain 1995.
91.	Osena Begum vs. State	High Court Division	55 (2003) Dhaka Law Report 299	Sections 10(1)/14 of Nari O Shishu Nirjaton (Bishes Bidhan) Ain 1995.
92.	Abul Khair vs. State	High Court Division	55 (2003) Dhaka Law Report 437	Sections 302/114/34/144 of the Penal Code 1860.
93	State vs. Ershad Sikder	High Court Division	55 (2003) Dhaka Law Report 672	Sections302/34/109 of the Penal Code 1860.
94.	Moinul Haque vs. State	High Court Division	56 (2004) Dhaka Law Report 81	Section 6(4) of Nari O Shishu Nirjaton (Bishes Bidhan) Ain 1995.
95.	Ershad Ali Sikder vs. State	Appellate Division	56 (2004) Dhaka Law Report 87	Section 302 of the Penal Code and Article 105 of the Constitution of the People's Republic of Bangladesh.
96.	Mukul vs. State	Appellate Division	56 (2004) Dhaka Law Report 187	Sections 10(1) & 14 of Nari O Shishu Nirjaton (Bishes Bidhan) Ain 1995.
97.	Abul Bashir vs. State	High Court Division	56 (2004) Dhaka Law Report 207	Sections 302/326/307 of the Penal Code 1860.
98.	State vs. Mir Hossain	High Court Division	56 (2004) Dhaka Law Report 124	Sections 302/34 of the Penal Code 1860.
99.	Abul Kashem vs. State	High Court Division	56 (2004) Dhaka Law Report 132	Sections 302/114 of the Penal Code 1860.
100.	State vs. Ershad Ali Sikder	High Court Division	56 (2004) Dhaka Law Report 185	Sections 302/34 of the Penal Code 1860.
101	State vs. Shah Alam	High Court Division	56 (2004) Dhaka Law Report 232	Sections 302/304 of the Penal Code 1860.

102	State vs. Ershad Ali Sikder	High Court Division	56 (2004) Dhaka Law Report 305	Sections 302/201/34 of the Penal Code 1860.
103	State vs. Billal Hossain	High Court Division	56 (2004) Dhaka Law Report 355	Section 302 /34 of the Code of Criminal Procedure – 1898.
104.	State vs. Saiful Islam	High Court Division	56 (2004) Dhaka Law Report 376	Sections 302/34 of the Penal Code 1860.
105.	State vs. Abdul Hatem	High Court Division	56 (2004) Dhaka Law Report 431	Sections 302 of the Penal Code 1860.
106	State vs. Bahar Miah	High Court Division	56 (2004) Dhaka Law Report 454	Section 11(1) of Nari O Shishu Nirjaton (Bishes Bidhan) Ain 1995.
107	State vs. Md Abu Taher	High Court Division	56 (2004) Dhaka Law Report 556	Section 10(1) of Nari O Shishu Nirjaton (Bishes Bidhan) Ain 1995. Sections 235, 239, 202 of the Code of Criminal Procedure – 1898.
108	State vs. Md. Awal Fakir	High Court Division	56 (2004) Dhaka Law Report 647	Sections 6(2)/10(1) of Nari O Shishu Nirjaton (Bishes Bidhan) Ain 1995.
109.	Ershad Ali Shikdar vs. State	Appellate Division	57 (2005) Dhaka Law Report 75	Section 302 of the Penal Code 1860. Section 8 of the Evidence Act – 1872. Section 374of the Code of Criminal Procedure – 1898.
110	Rafiqul Islam Mullah vs. State	High Court Division	57 (2005) Dhaka Law Report 581	Section 302 of the Penal Code 1860.
111	State vs. Md. Delwar Hossain	High Court Division	57 (2005) Dhaka Law Report 264	Sections 302/120 of the Penal Code 1860.
112	State vs. Nazrul Islam	High Court Division	57 (2005) Dhaka Law Report 289	Section 302 of the Penal Code 1860.
113	State vs. Anjuara Khatun	High Court Division	57 (2005) Dhaka Law Report 277	Sections 302 of the Penal Code 1860.
114.	Abul Kalam Azad Alias Ripon vs. State	Appellate Division	58 (2006) Dhaka Law Report 26	Section 10(1) of Nari O Shishu Nirjaton (Bishes Bidhan) Ain 1995. Sections 161 and 162 of the Code of Criminal Procedure – 1898.
115.	State vs. Washikur Rahman & another	Appellate Division	58 (2006) Dhaka Law Report 60	Sections 302/303/34 of the Penal Code1860.
116.	State vs. Mokammel Hyeath Khan	High Court Division	58 (2006) Dhaka Law Report 373	Sections 147/148//149/302/114/34 of the Penal Code-1860.
117.	State vs. Mukul Swapon	High Court Division	58 (2006) Dhaka Law Report 40	Sections 302/333/224 of the Penal Code -1860.
118.	Abdul Mannan Alias Mona Miah vs. State	High Court Division	58 (2006) Dhaka Law Report 91	Section 10(1) of Nari O Shishu Nirjaton (Bishes Bidhan) Ain 1995.
119.	State vs. Md. Shahjahan	High Court Division	58 (2006) Dhaka Law Report 203	Section 302 of the Penal Code-1860.
120.	State vs. Maku Rabi Das	High Court Division	58 (2006) Dhaka Law Report 229	Section 302 of the Penal Code-1860.
121.	Ibrahim (Md) & others vs. State	High Court Division	58 (2006) Dhaka Law Report 598	Section 302 of the Penal Code-1860.
122.	State vs. Md. Kaloo	High Court Division	58 (2006) Dhaka Law Report 615	Section 10(1) of Nari O Shishu Nirjaton (Bishes Bidhan) Ain 1995.
123.	State vs. Shahidul Islam alias Shahid & others	High Court Division	58 (2006) Dhaka Law Report 545	Section 302/34 of the Penal Code-1860.
124.	Iftekhar Hasan @ Almamun & others vs. State	Appellate Division	59 (2007) Dhaka Law Report 36	Sections 302/324/34 of the Penal Code.
125.	State vs. Al Hasib Bin Jamal Hasib & 5 others	High Court Division	59 (2007) Dhaka Law Report 653	Sections 302/120B/109/34 of the penal Code-1860.
126.	State vs. Md. Roushan Mondol @ Hashem	High Court Division	59 (2007) Dhaka Law Report 72	Section 83 of Penal Code – 1860. Sections 5(3), 7(2) of Children Act – 1974. Section 164 of the Code Criminal Procedure – 1898.

127.	Uzzal Alias Elias Hossain vs. State	High Court Division	59 (2007) Dhaka Law Report 505	Sections 7, 9(1) (2) of Nari O Shishu Nirjaton (Bishes Bidhan) Ain 1995. Section 32, 157 of the Evidence Act – 1872.
128.	State vs. Kajal Ahmed Jalaili	High Court Division	59 (2007) Dhaka Law Report 345	Sections 364/302/109/120b/34of the Penal Code.
129.	Mukter Hossain Khan vs. State	Appellate Division	60 (2008) Dhaka Law Report 44	Sections 302/207 of the Penal Code-1860 and Section 106 of the Evidence Act- 1872.
130	State vs. Matiur Rahman	Appellate Division	60 (2008) Dhaka Law Report 04	Sections 302/201 of the Penal Code 1860.
131.	State vs. Abdul Kader	High Court Division	60 (2008) Dhaka Law Report 420	Sections 364/302/201/34 of the Penal Code 1860.
132.	State vs. Aynul Haque Mollah	High Court Division	60 (2008) Dhaka Law Report 255	Sections 302/304 of the Penal Code 1860.
133.	State vs. Moniul Hoque @ Ripon another	High Court Division	60 (2008) Dhaka Law Report 298	Sections 302/34/364 of the Penal Code 1860 and Section 374 of the Code of the Criminal Procedure-1898.
134.	State vs. Naimul Islam @ Mainul Islam & Another	High Court Division	60 (2008) Dhaka Law Report 481	Sections 302/34 of the Penal Code and Section 154 of the Code of the Criminal Procedure 1898.
135.	State vs. Nitish Mondol & others	High Court Division	60 (2008) Dhaka Law Report 334	Section 23(2), (4) of Acid Crime Control Act - 2002.
136.	State vs. Salauddin @ Tipu & others	High Court Division	60 (2008) Dhaka Law Report 188	Sections 147/148/149/364/342/325/326/302/384/114 /109 of the Penal Code-1860.
137	State vs Anowar Hossain pinto alias Anowar Hossain & Another	Appellate Division	61 (2009) Dhaka Law Report 108	Sections 339B, 376 of Penal Code 1860.
138	Abdul Hannan vs State	High Court Division	61 (2009) Dhaka Law Report 713	Section 302 of Penal Code-1860.
139	State vs Anjali Debi alias Monju Debi	High Court Division	61 (2009) Dhaka Law Report 738	Section 6(1) of Nari O Shishu Nirjaton (Bishes Bidhan) Ain 1995.
140	State vs Hamidul and others	High Court Division	61 (2009) Dhaka Law Report 614	Sections 302/34/109 of Penal Code-1860.
141	State vs Fazlur Rahman Tonmoy@ Taposh and another	High Court Division	61 (2009) Dhaka Law Report 169	Sections 302/ 149 of Penal Code-1860.
142	State vs Md Rafique	High Court Division	61 (2009) Dhaka Law Report 158	Sections 2Gha, 2 Chha, 8, 12 of Nari O Shishu Nirjaton (Bishes Bidhan) Ain 1995.
143	State vs Resalder Moslemuddin and others	High Court Division	61 (2009) Dhaka Law Report 310	Sections 302/109 of Penal Code-1860.
144	State vs Suman Saha and Another	High Court Division	61 (2009) Dhaka Law Report 253	Sections 396 of Penal Code-1860.

ANNEX 4

Persons met by the FIDH/Odhikar mission

Authorities

– Mr. Justice Md. Fazlul Karim, Chief Justice of Bangladesh
– Barrister Shafiq Ahmed Minister, Ministry of Law, Justice and Parliamentary Affairs
– Justice Amirul Kabir Chowdhury, Chairman, National Human Rights Commission
– Justice Md. Abdur Rashid, Chairman, Bangladesh Law Commission
– Mr. Mahbubey Alam, Attorney General for Bangladesh
– Mr. Abdus Sobhan Sikder, Secretary, Ministry of Home Affairs
– Mr. Ashraful Islam Khan, Inspector General of Prisons

Members of Parliament

– Mr. Hasanul Huq Inu, Member of Parliament
– Mr. Saber Hossain Chowdhury, Member of Parliament

Civil society

– Mr. Farhad Mazhar, Advisor, Odhikar
– Dr. C R Abrar, President, Odhikar
– Ms. Taleya Rahman, Executive Director, Democracy Watch
– Farida Akhter, Executive Director, Policy Research for Development Alternatives (UBINIG)
– Dr. Mizanur Rahman, Professor, Department of Law, Dhaka University and Executive Director, Empowerment through Law of the Common People (ELCOP)
– Ms. Sultana Kamal, Executive Director, Ain O Salish Kendro (ASK)
– Dr. Shahdeen Malik, Director, School of Law, BRAC University and Treasurer, Bangladesh Institute of Law and International Affairs (BILIA)
– Dr. Tasneem Siddiqui, Chairperson, RMMRU
– Dr. Saira Rahman Khan, Associate Professor, School of Law, BRAC University, Dhaka

Judges and lawyers

– Justice Shamim Hasnain, High Court Division of the Supreme Court
– Barrister Moudud Ahmed, Former Law Minister and Senior Advocate, Supreme Court of Bangladesh
– Mr. A F Hassan Ariff, Former Adviser to the Ministry of Law, Justice and Parliamentary Affairs under the Caretaker Government in 2008 and Senior Advocate, Supreme Court of Bangladesh
– Mr. Khandakar Mahbub Hossain, President, Supreme Court Bar Association
– Mr. Khan Saifur Rahman, Senior Advocate, Supreme Court of Bangladesh
– Mr. Anisul Huq, Advocate, Supreme Court of Bangladesh
– Mr. Saleh Uddin, Advocate, Supreme Court of Bangladesh

Journalists

– Mr. Mahmudur Rahman, Acting Editor, The Daily Amar Desh
– Mr. Nurul Kabir, Editor, New Age

Embassies

– Delegation to the European Commission to Bangladesh
– French Embassy
– People prosecuted under the ATA and families of death row prisoners

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Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility. Experts sent to the field give their time to FIDH on a voluntary basis.
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Supporting civil society – Training and exchange

FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

Mobilising the international community – Permanent lobbying before intergovernmental bodies

FIDH supports its member organisations and local partners in their efforts before intergovernmental organisations. FIDH alerts international bodies to violations of human rights and refers individual cases to them. FIDH also takes part inthe development of international legal instruments.

Informing and reporting – Mobilising public opinion

FIDH informs and mobilises public opinion. Press releases, press conferences, open letters to authorities, mission reports, urgent appeals, petitions, campaigns, website… FIDH makes full use of all means of communication to raise awareness of human rights violations.

odhikar অধিকার

Odhikar, a human rights organisation, is committed to uphold the civil, political, economic, social and cultural rights of the people. Odhikar has been monitoring the human rights situation in Bangladesh since its inception on October 10, 1994 and advocating and promoting human rights.

Odhikar monitors the human rights situation in the light of the protection ensured under international humanitarian laws and the Constitution of the People's Republic of Bangladesh. Odhikar also addresses national and global concerns expressed in various forms that may not have legal bindings but have direct or indirect impact on the dignity of lives and persons of the People's Republic of Bangladesh. Right to life, prevention of torture, freedom of expression, concerns of religious and ethnic minority communities, women and workers, etc., are some of the areas that are directly monitored. Odhikar maintains a strong network of human rights defenders and given the difficulty and challenges they are facing, increasingly concentrating on developing the capacity of the human rights defenders coming from all walks of life. Odhikar emphasises on enacting a law based on the UDHR and monitors institutional development in this regard. Fact-finding of incidents of human rights violations and documentation of human rights abuses receive priority in terms of immediate concerns.

For more on Odhikar and its publication, visit its website at: **www.odhikar.org**

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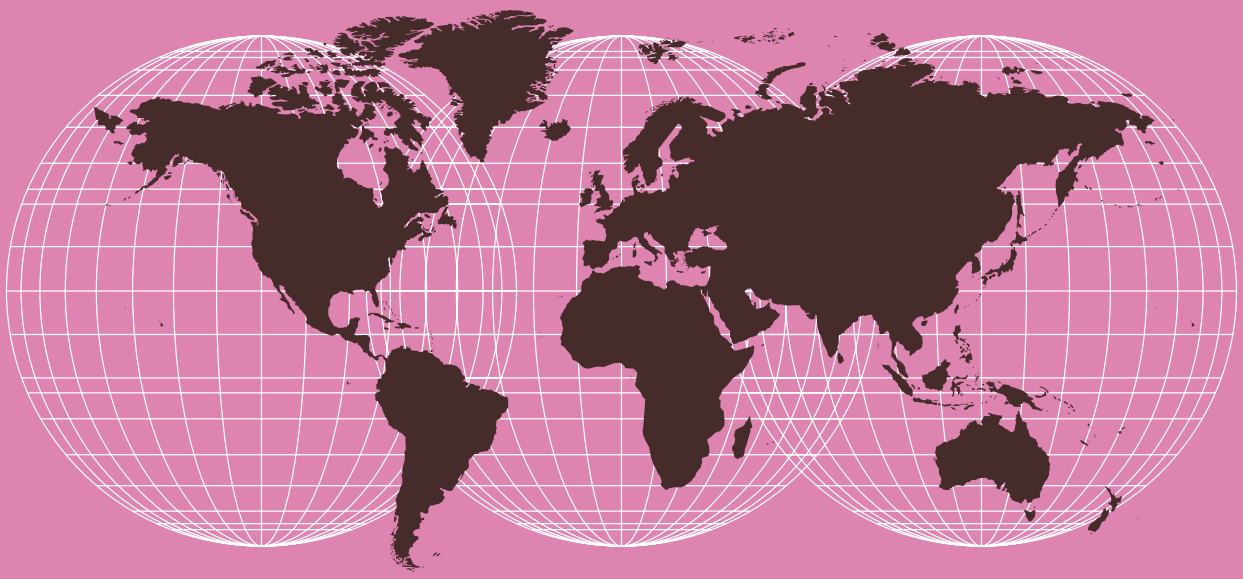

of person. Article 4: No one shall be held in slavery or servitude; slavery and the slave trade shall be prohibited in all their forms. Article 5: No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Article 6: Everyone has the right to recognition everywhere as a person before the law. Article 7: All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. Article 8: Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law. Article 9: No one shall be subjected to arbitrary arrest,

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