

Flygtningenævnets baggrundsmateriale

Bilagsnr.:	343
Land:	Bangladesh
Kilde:	Robert F. Kennedy Human Rights
Titel:	Alternative report on Bangladesh Submitted to the CAT
Udgivet:	1. januar 2019
Optaget på baggrundsmaterialet:	03. marts 2020

**Alternative Report on Bangladesh
Submitted to the Committee against Torture**

67th CAT session (22 July – 9 August 2019)

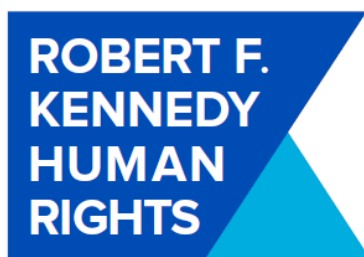


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This report, submitted to the United Nations Committee Against Torture (the “CAT” or the “Committee”) ahead of its upcoming review of Bangladesh, addresses the State party’s numerous violations of the Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment (the “Convention”). Robert F. Kennedy Human Rights provides this report to inform the Committee’s review.

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

I. Introduction

In 1998, after much urging from national and international non-governmental organizations (“NGOs”), the Government of Bangladesh (the “Government”) ratified the Convention. The Convention obligates the State, *inter alia*, to take “effective legislative, administrative, judicial, or other measures to prevent acts of torture” and “other acts of cruel, inhuman or degrading treatment or punishment” in any territory under its jurisdiction that are “inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”¹ This non-derogable prohibition² obligates Bangladesh to cease all acts of torture and ill-treatment committed within its jurisdiction, and to provide effective redress and compensation where such acts have occurred.³ Bangladesh has not yet been reviewed by the CAT and has failed, for over 20 years, to submit a report to the CAT in accordance with its treaty obligations.⁴ During this time, numerous UN bodies, UN Member States, and human rights experts have taken note of the torture and violence that continue to pervade law enforcement agencies in Bangladesh (“LEAs”) and have denounced the culture of impunity in which these officials continue to operate.⁵ As the recently concluded third cycle of the Universal Periodic Review (“UPR”) of Bangladesh has again revealed, the country continues to violate its obligations under the Convention.

UN bodies, UN Member States, and domestic and international NGOs have documented and denounced regular violations of the Convention by Bangladesh officials. Many of the Government’s violations of the Convention are a result of authoritarian tactics designed to instill fear and maintain control of the population. Fighting between the ruling party, the Awami League led by Prime Minister

¹ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, arts. 1-2, 16, U.N. Doc. 23/56 (Dec. 10, 1984), *entered into force* June 26, 1987 [hereinafter Convention against Torture].

² See U.N. Committee Against Torture, General Comment No. 2, U.N. Doc. CAT/C/GC/2, ¶ 5 (Jan. 24, 2008); see also International Covenant on Civil and Political Rights, art. 7 (Dec. 16, 1966, *entered into force* March 23, 1976); Universal Declaration of Human Rights, art. 5, U.N. Doc. A/RES/217 A (III) (Dec. 10, 1948).

³ See, e.g., Convention against Torture, arts. 2, 10-14, 16.

⁴ See U.N. Human Rights Council, Compilation on Bangladesh, Report of the Office of the United Nations High Commissioner for Human Rights, U.N. Doc. A/HRC/WG.6/30/BGD/2, ¶ 8 (Mar. 19, 2018); see also Convention against Torture, art. 19.

⁵ See, e.g., *id.*; U.S. DEPARTMENT OF STATE, BANGLADESH 2018 HUMAN RIGHTS REPORT, 1 (Mar. 11, 2019), <https://bd.usembassy.gov/wp-content/uploads/sites/70/Human-Rights-Report.pdf> [hereinafter U.S. DEPARTMENT OF STATE, BANGLADESH 2018 HUMAN RIGHTS REPORT].

Sheikh Hasina Wazed, and the opposition party, the Bangladesh National Party (“BNP”) led by Khaleda Zia, recently led to increased violence ahead of the December 2018 national election.⁶ Officers loyal to or affiliated with the Awami League continue to populate LEA top positions,⁷ enabling impunity and further driving the politically-infused violations of the Convention. The incidence of these violations has increased since the creation of the Rapid Action Battalion (the “RAB”) in 2004 as an “elite” counterterrorism unit composed of members from the armed forces, the police, and other LEAs.⁸

Both historically and during the most recent elections, State actors, including LEAs, have participated in the excessive use of force against civilians, extrajudicial killings, enforced disappearances, sexual violence and rape, and the imposition of inadequate prison conditions. All of these acts have previously been denounced by the CAT in State party reviews. Concerningly, these attacks frequently target human rights defenders, journalists, political opponents, and student activists, with the effect of suppressing freedoms of speech, assembly, and association in Bangladesh. This report provides information on and examples of these violations of the Convention, and in turn illustrates Bangladesh’s numerous violations of its obligations under the Convention.

Building upon the information and examples provided below, at the end of this report, we provide a series of recommendations for the Government of Bangladesh, for the purpose of curbing instances of torture and ill treatment in the country and assisting the Government in complying with its obligations under the Convention.

II. Structural Violations of the Convention Against Torture

Pursuant to Article 2(1) of the Convention, the Government is obligated to “take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.” Although the Government has undertaken some efforts to codify some of its obligations under the Convention, in practice, the Government has fallen far short in implementing and ensuring compliance with the Convention.

⁶ See generally HUMAN RIGHTS WATCH, “CREATING PANIC”: BANGLADESH ELECTION CRACKDOWN ON POLITICAL OPPONENTS AND CRITICS (Dec. 2018), <https://www.hrw.org/report/2018/12/22/creating-panic/bangladesh-election-crackdown-political-opponents-and-critics>. According to the BNP, in the eight-week period leading up to the December 2018 elections (September 1, 2018 through November 14, 2018), 434,975 criminal charges were brought against BNP members. See U.S. DEPARTMENT OF STATE, BANGLADESH 2018 HUMAN RIGHTS REPORT at 9.

⁷ See U.S. DEPARTMENT OF STATE, 2016 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES - BANGLADESH, sec. 1(d) (Mar. 3, 2017), <https://www.refworld.org/docid/58ec8a7113.html>; U.S. DEPARTMENT OF STATE, BANGLADESH 2018 HUMAN RIGHTS REPORT at 8.

⁸ See HUMAN RIGHTS WATCH, “CROSSFIRE”: CONTINUED HUMAN RIGHTS ABUSES BY BANGLADESH’S RAPID ACTION BATTALION (May 2011), <https://www.hrw.org/report/2011/05/10/crossfire/continued-human-rights-abuses-bangladeshs-rapid-action-battalion>; HUMAN RIGHTS WATCH, JUDGE, JURY, AND EXECUTIONER: TORTURE AND EXTRAJUDICIAL KILLINGS BY BANGLADESH’S ELITE SECURITY FORCE (Dec. 2006), <https://www.hrw.org/report/2006/12/13/judge-jury-and-executioner/torture-and-extrajudicial-killings-bangladeshs-elite>. The police, particularly members of the Detective Branch, have also been accused of serious human rights violations, including extrajudicial killings, torture, and enforced disappearances. See HUMAN RIGHTS WATCH, “NO RIGHT TO LIVE”: “KNEECAPPING” AND MAIMING OF DETAINEES BY BANGLADESH SECURITY FORCES,” 10 (Sept. 2016), <https://www.hrw.org/report/2016/09/29/no-right-live/kneecapping-and-maiming-detainees-bangladesh-security-forces> [hereinafter “NO RIGHT TO LIVE”].

A. Shortcomings in the Implementation of the Torture and Custodial Death (Prevention) Act of 2013

While the Constitution of Bangladesh first introduced the word “torture” into the country’s legal canon in 1972,⁹ “torture” was not defined in Bangladeshi law until the 2013 passage of the Torture and Custodial Death (Prevention) Act (the “Act”). The Act was enacted expressly for the purpose of implementing Bangladesh’s obligations as a signatory to the Convention and adopted a definition of “torture” that largely follows Article 1 of the Convention.¹⁰ Since its enactment, however, security forces have sought to limit the Act’s applicability, such as by lobbying for the removal of certain entities from the definition of “law enforcement agency”—namely, removal of the RAB, the Criminal Investigation Department, and the Special Branch and Detective Branch of Bangladesh Police—and limiting the scope of “torture” to only cover acts causing physical pain to obtain information or a confession.¹¹ These amendments, if accepted, would be in clear contravention of Articles 1 and 4 of the Convention.¹²

Well over three years after the enactment of the Act, Bangladesh was unable to report that it had any ongoing investigations into cases of torture. As detailed in the March 2017 UN Human Rights Committee evaluation, the Government failed to enforce the Act despite contemporaneous reports of widespread acts of torture and other forms of ill-treatment.¹³ As explored below, the Government’s implementation of the Act falls far short of the country’s obligations under the Convention on numerous fronts, including the inability of victims to file complaints, the failure of the Government to ensure prompt and impartial investigations into alleged acts of torture, and frequent prolonged pre-trial detention.

⁹ See Constitution of the People’s Republic of Bangladesh, art. 35(5), GOVERNMENT OF THE PEOPLE’S REPUBLIC OF BANGLADESH, LEGISLATIVE AND PARLIAMENTARY AFFAIRS DIVISION, http://bdlaws.minlaw.gov.bd/sections_detail.php?id=367§ions_id=24583 [hereinafter Constitution of Bangladesh].

¹⁰ The Act defines “torture” as:

- (vi) . . . **any act or omission** which causes pain, **whether physical or mental**, to any person, in addition to
 - (a) For the purposes of **obtaining** information or a confession from that person or some other person; or
 - (b) **Punishing** any person for any act or omission for which that person or some other person is responsible or is suspected of being responsible; or
 - (c) **Intimidating or coercing** any person or some other person; or
 - (d) On the basis of **discrimination, provocation or consent or authority of any public officer or any governmental capacity**.

Torture and Custodial Death (Prohibition) Act, 2013, pmbl, art. 2(vi) (emphasis added).

¹¹ See *Bangladesh: Global Anti-Torture Movement Alarmed Over Possible Licence to Torture* (Mar. 27, 2015), OMCT, <http://www.omct.org/statements/bangladesh/2015/03/d23066/>; see also *Police Want Amendment of Custodial Death Prevention Act*, DHAKA TRIBUNE (Jan. 11, 2018), <https://www.dhakatribune.com/bangladesh/law-rights/2018/01/11/police-want-amendment-custodial-death-prevention-act/>. These proposed amendments would thereby exclude “mental pain” and the use of torture for other purposes such as punishment, intimidation, coercion, and discrimination, all of which presently appear in the Act’s definition. See Torture and Custodial Death (Prohibition) Act, 2013, art. 2(vi).

¹² See Convention against Torture, arts. 1, 4.

¹³ See U.N. Human Rights Committee, Concluding observations on the initial report of Bangladesh, U.N. Doc. CCPR/C/BGD/CO/1, ¶ 21 (Apr. 27, 2017).

1. Inability to File Complaints

Under Article 13 of the Convention, each State party must ensure that any individual who alleges that he or she was a victim of torture has a right to complain and to have his or her case promptly and impartially examined by competent authorities. While aggrieved persons are supposed to be able to file complaints directly to police through the “General Diary” system, Bangladesh’s police and other LEAs systematically refuse to register complaints concerning enforced disappearances or other forms of torture or ill-treatment, insisting that the complainant instead list the individual(s) as “missing” or “kidnapped” and refusing to record the name of the accused law enforcement official or agency.¹⁴ Thus, complainants either are altogether unable to file complaints or are forced to file inaccurate complaints that diminish the potential liability of the LEAs.¹⁵

As Bangladeshi NGO Odhikar (“Odhikar”) and the World Organization Against Torture (“OMCT”) have documented, victims of torture and family members who manage to successfully file complaints often receive threats after doing so, and often are offered money to withdraw the complaints.¹⁶ The Act does not provide a form of protection for third parties or witnesses, who reportedly are often intimidated through surveillance by LEAs.¹⁷ Below are examples of the difficulty that families and friends face in filing complaints:

- Shamim Mahmud, 23, a second-year college student and a Jamaat-e-Islami (opposition party) student activist was sitting at a grocery store reading a newspaper when he taken away at gunpoint by men in plainclothes in 2016. Eyewitnesses tried to rescue Shamim but the men claimed they were police and threatened to shoot anyone who interfered in their “operation.” Family members went to the local police station but officials would not permit them to file a General Diary application and denied any involvement in the abduction. Instead, the officials criticized Shamim’s father for permitting his son to be involved in Jamaat-e-Islami student politics. Shamim’s family continued to search for Shamim at the local RAB office and other police stations, and even sought assistance from a local member of parliament. No one could provide information concerning Shamim’s whereabouts, and none offered assistance. Three weeks later, Shamim’s body was found along with another individual’s near a cremation ground with bullet wounds and clear signs of torture.¹⁸
- In May 2016, Moulana Mohammad Akhter Hossain, a 28-year-old imam, and his brother were abducted by plain-clothes law enforcement. They were told that they

¹⁴ See HUMAN RIGHTS WATCH, “WE DON’T HAVE HIM”: SECRET DETENTIONS AND ENFORCED DISAPPEARANCES IN BANGLADESH, 3, 28, 34-35, 40, 69, 71-72, 76-77 (July 2017), <https://www.hrw.org/report/2017/07/06/we-dont-have-him/secret-detentions-and-enforced-disappearances-bangladesh> [hereinafter “WE DON’T HAVE HIM”]; see also U.N. Human Rights Council, Written statement submitted by the Asian Legal Resource Centre, an NGO organization in general consultative status, U.N. Doc. A/HRC/39/NGO/103 (Sept. 3, 2018).

¹⁵ See “WE DON’T HAVE HIM” at 4; “NO RIGHT TO LIVE” at 13.

¹⁶ See Odhikar & OMCT, *Bangladesh: Torture prevails due to deeply rooted culture of impunity* (June 26, 2018), <http://www.omct.org/statements/bangladesh/2018/06/d24943/>.

¹⁷ See *id.*; U.N. Human Rights Council, Written statement submitted by the Asian Legal Resource Centre, an NGO organized in general consultative status, U.N. Doc. A/HRC/39/NGO/103, 2 (Sept. 3, 2018).

¹⁸ See “WE DON’T HAVE HIM” at 22.

needed to be questioned about the Union Parishad elections that had just taken place. Akhter's brother was released the following day, but Akhter was kept in custody. The family searched for Akhter at the police station as well as the local Detective Branch and RAB offices, but all denied involvement in his detention. When the brother sought to file a General Diary application with the local police, he was told he could only file a missing person complaint. Two months after the brothers had been abducted, police told the family that Akhter had been arrested in Dhaka and alleged he was a member of the Jamaat-ul-Mujahideen, a terrorist organization.¹⁹

2. *Failure to Ensure "Prompt and Impartial" Investigation*

Article 12 of the Convention requires that State parties ensure that "competent authorities proceed to a prompt and impartial investigation, where there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction."²⁰ A fundamental shortcoming of the Act, both on its face and in practice, is that it places primary investigative authority with the police and other LEAs that often are the very perpetrators of the alleged acts of torture or ill-treatment. If an aggrieved person believes that an independent investigation is not possible by the police, then the courts, upon finding such pleadings credible, can order a judicial investigation.²¹ However, the requirement that judicial investigation in lieu of police investigation be petitioned for, rather than guaranteed, means that investigations of torture continue to be delegated most commonly to the bodies that are responsible for these crimes, often leading to impunity and inaction. Further, although an investigation ostensibly must be concluded within 90 working days of recording the complaint, with a possible extension where "reasonable grounds" are pleaded,²² the Act fails to prescribe a procedure should the investigation not be completed within the defined time limit, and it does not provide a punishment for misconduct or failure to execute a competent investigation.

Further compounding these issues, *habeas corpus* petitions and other legal mechanisms serve as hollow recourse in Bangladesh.²³ LEAs often are delinquent in responding to court requests to conduct investigations and can take months, or more commonly years, to provide final reports when ordered to conduct an investigation, often concluding that there is no evidence to be found.²⁴ By September 2017, the Asian Legal Resource Centre had chronicled only one case of enforced disappearance in which the police had conducted an investigation since the passage of the Act in 2013.²⁵ As context, a recent report

¹⁹ See *id.* at 40-41.

²⁰ Convention against Torture, art 12.

²¹ See Torture and Custodial Death (Prevention) Act, sec. 5(ii).

²² *Id.* at secs. 5(ii), 8.

²³ See HUMAN RIGHTS SUPPORT SOCIETY ("HRSS"), BIMONTHLY HUMAN RIGHTS REPORT ON BANGLADESH SITUATION: JANUARY-FEBRUARY 2019, 7 (Mar. 30, 2019), <http://hrssbd.org/wp-content/uploads/2019/03/Bimonthly-Human-Rights-Report-on-Bangladesh-Situation-from-Jan-to-Feb-2019.pdf> [hereinafter HRSS JANUARY-FEBRUARY 2019 REPORT].

²⁴ See, e.g., "WE DON'T HAVE HIM" at 4.

²⁵ See U.N. Human Rights Council, Written statement submitted by the Asian Legal Resource Centre, an NGO in general consultative status, U.N. Doc. A/HRC/39/NGO/103, 2 (Sept. 3, 2018).

issued by the International Federation for Human Rights (FIDH) estimates that between 2013 and 2018, there were a total of 429 reported enforced disappearances.²⁶

Below is just one example of the many of the obstacles that victims and their families face in seeking investigations into acts of torture and ill treatment, both through LEA complaint processes and through the Bangladeshi court system:

- On March 23, 2011, college student Limon Hossain was shot in the left leg by a RAB officer, which resulted in amputation. Hossain's mother tried to file a case against RAB personnel at the local police station but was turned away. Only following a court order did the police ultimately agree to record the case. In August 2012, over one year later, the police submitted a final report in the case, claiming that the investigation had identified no evidence or witnesses. Hossain's mother immediately challenged the report, but a senior Judicial Magistrate rejected the challenge. Hossain's mother was able to move the case to the District and Session Court for separate review. Between March 2013 and 2018, the prosecution sought approximately 40 new dates for the hearing. Finally, on April 1, 2018, an Additional District Judge ordered that the Police Bureau of Investigation initiate a new investigation of the case, some seven years after its occurrence.²⁷

3. *Prolonged Pre-Trial Detention*

Another means by which LEA officials evade the court system is through extended pre-trial detention, often condoned or approved by the courts. Under the Act, a trial for the offense of torture must be completed within 180 days of the complaint being filed. If the trial is delayed during this period on “reasonable ground[s],” then it must be completed within the following 30 days.²⁸ However, the Act does not provide recourse if the trial is not concluded within the prescribed time limit, and detainees spend years languishing in jail, held under charges that have no right to bail. State practices of repeated denial of bail and rearrest for the same or different crimes contribute to prolonged detention and foster conditions in which torture and ill-treatment commonly occur.²⁹ As reported by the U.S. State Department in 2016, 74% of detainees were either in pre-trial detention or still undergoing trial³⁰—and this did not include those who disappeared or were otherwise unaccounted for. Indeed, in some cases, the length of pretrial detention can equal or exceed the sentence for the alleged crime.³¹

²⁶ See INTERNATIONAL FEDERATION FOR HUMAN RIGHTS, VANISHED WITHOUT A TRACE: THE ENFORCED DISAPPEARANCE OF OPPOSITION AND DISSENT IN BANGLADESH, 22 (Apr. 2019), https://www.fidh.org/IMG/pdf/bangladesh735a_web.pdf.

²⁷ See ODHIKAR, THREE-MONTH HUMAN RIGHTS MONITORING REPORT ON BANGLADESH: REPORTING PERIOD: JANUARY-MARCH 2019, 13-14 (Apr. 17, 2019), http://odhikar.org/wp-content/uploads/2019/04/HRR_January-March_2019_Eng.pdf [hereinafter ODHIKAR JANUARY-MARCH 2019 REPORT].

²⁸ Torture and Custodial Death (Prohibition) Act, 2013, sec. 14(ii)-(iii).

²⁹ See International Commission of Jurists, South Asia, Rule of Law Programme, *Briefing Paper on the amendments to the Bangladesh Information Communication Technology Act 2006*, 11 (Nov. 2013), <https://www.icj.org/wp-content/uploads/2013/11/ICT-Brief-Final-Draft-20-November-2013.pdf>.

³⁰ See U.S. DEPARTMENT OF STATE, 2016 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES - BANGLADESH, sec. 1(d) (Mar. 3, 2017), <https://www.refworld.org/docid/58ec8a7113.html>.

³¹ See *id.*

Where bail is obtained, police often continue to threaten individuals with rearrest for the same or a different crime. The Appellate Division of the Supreme Court of Bangladesh issued a directive in May 2016 explicitly prohibiting the rearrest of accused while they are released on bail or the arrest of the same individual for a new case without producing them in court; however, authorities routinely disregard this directive.³²

Below are two illustrative examples of cases involving prolonged pre-trial detention:

- On July 1, 2016, armed gunmen attacked the Holey Artisan Bakery, killing more than 20 people and holding others hostage, marking the nation's first-ever hostage crisis.³³ Security forces rescued the hostages, who were taken to Detective Branch headquarters to be questioned. Tahmid Khan, a student at the University of Toronto, and Hasnat Karim, a British citizen and former university professor, both had been dining at the Bakery and had no apparent connection to the attackers. They were held for one month until the police announced that the men had been arrested on suspicion of involvement in the Bakery attack. Khan was held until April 2017, when he was acquitted of charges that he had failed to appear at two police interviews during the very period when he was *in state custody*. Karim was not released until July 2018, marking two years of being held without charge, when LEAs decided not to pursue charges due to lack of evidence. In response to Karim's illegal detention, Amnesty International UK noted that his detention was "inhumane and illegal," and that Karim was "denied specialised medical treatment and saw his health deteriorate."³⁴
- On December 4, 2013, Mahmudur Rahman, the Acting Editor of the Daily Amar Desh, was arrested without being informed of the charges and was remanded into police custody for 13 days, where he was reportedly subjected to torture.³⁵ He then spent 1,322 days in arbitrary detention before being released on bail on November 24, 2016, at which time he had to be transferred to the hospital due to poor health.³⁶

³² See *id.*

³³ See, e.g., *Blood, Shock, Horror*, THE DAILY STAR (July 3, 2016), <https://www.thedailystar.net/frontpage/dhaka-attack/blood-shock-horror-1249471>.

³⁴ "WE DON'T HAVE HIM" at 44-45; see also U.S. DEPARTMENT OF STATE, BANGLADESH 2018 HUMAN RIGHTS REPORT at 10; *Innocent British man who survived Isis terror attack released after two years in Bangladesh jail*, INDEPENDENT (Aug. 12, 2018), <https://www.independent.co.uk/news/uk/home-news/isis-attack-bangladesh-dhaka-hasnat-karim-arrested-innocent-jailed-freed-terrorism-charges-a8488831.html>.

³⁵ See International Federation for Human Rights & OMCT, *Bangladesh: Guarantee personal integrity and release Acting Editor of Amar Desh, Mr. Mahmudur Rahman*, FIDH (Dec. 5, 2013), <https://www.fidh.org/en/region/asia/bangladesh/14345-bangladesh-guarantee-personal-integrity-and-release-acting-editor-of-amar>.

³⁶ See *Bangladesh: Mahmudur Rahman finally freed after more than three years in arbitrary detention*, OMCT (Nov. 24, 2016), <http://www.omct.org/human-rights-defenders/urgent-interventions/bangladesh/2016/11/d24072/>; see also *Bangladesh: Attack against Mr. Mahmudur Rahman, Acting editor of the Daily Amar Desh*, OMCT (July 24, 2018), <http://www.omct.org/human-rights-defenders/urgent-interventions/bangladesh/2018/07/d24976/>.

The prolonged custody of accused even before any semblance of a trial continues to be a grave concern and directly implicates Bangladesh's obligations under the Convention.³⁷ With a view to Article 2, Article 10, Article 11, and Article 16, the Government of Bangladesh should ensure that the directive issued by the Appellate Division of the Supreme Court in 2016 is implemented, and provide adequate training on and oversight of practices concerning the granting of bail and treatment of prisoners subjected to prolonged detention.

B. Deficiencies of the NHRC as an Investigative Body

Although Bangladesh established the National Human Rights Commission ("NHRC" or "Commission") in 2010, the NHRC has been embroiled in controversy and alleged bias since its creation. The NHRC ostensibly serves as an independent oversight mechanism that monitors the state's human rights conditions and investigates and/or issues recommendations or guidelines to other government bodies when human rights issues emerge. In particular, the NHRC has a mandate to investigate complaints concerning all forms of human rights violations, even when a complaint is not directly lodged with the Commission; visit "any jail or any other places where persons are detained or lodged for the purpose of correction, custody, [or] treatment" to make recommendations concerning those places and conditions; and provide training to law enforcement agencies on relevant issues.³⁸ All of these functions are integral to supporting Bangladesh's obligations under the Convention. However, and as recently concluded by the UN Committee on Economic, Social and Cultural Rights, the Commission is not sufficiently independent and lacks transparency in the selection of its constituent members.³⁹ For example, despite widespread reports of extrajudicial killings, enforced disappearances, and torture in connection with the December 2018 elections, NHRC Chairman Kazi Reazul Haque stated in a press conference in January 2019 that there were no incidents of human rights violations during the recent elections.⁴⁰ The Human Rights Support Society ("HRSS") of Bangladesh, on the other hand, documented six extrajudicial killings of BNP members by government agents and 25 enforced disappearances of political opposition activists in association with the elections.⁴¹

Where the Commission has acted, it is faced with a limited mandate—a mandate that the UN High Commissioner for Human Rights has recognized as being in tension with the UN General Assembly's Paris Principles, which provides that a national human rights commission should be granted,

³⁷ See U.N. Human Rights Council, Compilation on Bangladesh, Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/WG.6/30/BGD/2, ¶ 23 (Mar. 19, 2018).

³⁸ See National Human Rights Commission Act, 2009, Act No. 53 of 2009, sec. 12 (July 14, 2009); AIN O SALISH KENDRA ("ASK"), NATIONAL HUMAN RIGHTS COMMISSION, BANGLADESH: EXISTING CHALLENGES AND EXPECTATIONS OF CIVIL SOCIETY, 8-9 (Dec. 2018), https://www.askbd.org/ask/wp-content/uploads/2019/02/NHRC-Report_English.pdf.

³⁹ See U.N. Committee on Economic, Social and Cultural Rights, Concluding Observations on the Initial Report of Bangladesh, ¶¶ 9-10 (Apr. 18, 2018), https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FBGD%2FCO%2F1&Lang=en; see also ASK, NATIONAL HUMAN RIGHTS COMMISSION, BANGLADESH: EXISTING CHALLENGES AND EXPECTATIONS OF CIVIL SOCIETY, 15 (Dec. 2018), https://www.askbd.org/ask/wp-content/uploads/2019/02/NHRC-Report_English.pdf.

⁴⁰ See ODHIKAR JANUARY-MARCH 2019 REPORT at 30.

⁴¹ See HRSS, MONTHLY HUMAN RIGHTS OBSERVATION REPORT ON BANGLADESH: DECEMBER 2018, 5 (Feb. 21, 2019), <http://hrssbd.org/monthly-human-rights-report-december-2018/>.

inter alia, a broad human rights mandate, autonomy from the government, and adequate investigative powers.⁴² The limitations placed on the NHRC directly implicate Bangladesh's obligations under the Convention. Importantly, the Commission is unable to take enforceable steps after the completion of an investigation or the issuance of guidelines.⁴³ For example, the Commission submitted two significant recommendations to the Government to combat extrajudicial killings and enforced disappearances: (i) to discontinue the practice of LEAs executing operations in civilian clothing; and (ii) to have at least two witnesses present during operations and arrests.⁴⁴ The Government did not accept either recommendation.

Between 2012 and 2017, the NHRC sent a total of 185 letters to the Ministry of Home Affairs, requesting reports on alleged human rights violations committed by LEAs. Of these letters, 154 concerned extrajudicial killings and enforced disappearances, *none of which* received a response.⁴⁵ On the rare occasion where the Ministry does provide a report, the Ministry will often conclude that no evidence of LEA involvement has been found or claim that appropriate steps have been taken against the individuals involved—similar to outcomes that victims or family members face when seeking justice through the courts.⁴⁶

The restrictions placed on the NHRC conflict directly with Bangladesh's obligations under, at a minimum, Articles 2, 10, 11, 13, and 14 of the Convention.⁴⁷ Indeed, during the third cycle UPR of Bangladesh, the UN Human Rights Committee and the UN High Commissioner for Human Rights expressly recommended increasing the independence of the NHRC and expanding its mandate "to investigate all human rights violations including those involving State security actors."⁴⁸

⁴² See Letter from U.N. High Commissioner for Human Rights to H.E. Mr. Adul Hassan Mahmud Ali, Minister of Foreign Affairs, Bangladesh, at 1, Annex at 1 (Nov. 2, 2018), https://lib.ohchr.org/HRBodies/UPR/Documents/Session30/BD/HC_LetterBangladesh_30Session.pdf; Principles Relating to the Status of National Institutions (Paris Principles), U.N. Doc. A/RES/48/134 (Dec. 20, 1993), <https://www.ohchr.org/en/professionalinterest/pages/statusofnationalinstitutions.aspx>.

⁴³ See ASK, NATIONAL HUMAN RIGHTS COMMISSION, BANGLADESH: EXISTING CHALLENGES AND EXPECTATIONS OF CIVIL SOCIETY, 17 (Dec. 2018), https://www.askbd.org/ask/wp-content/uploads/2019/02/NHRC-Report_English.pdf.

⁴⁴ *Id.* at 17, 24.

⁴⁵ See *id.* at 24-25; *Human Rights Commission is Busy Preparing Guidelines for Police and RAB*, Prothom Alo (June 7, 2018), <https://www.prothomalo.com/bangladesh/article/1504621/>.

⁴⁶ See ASK, NATIONAL HUMAN RIGHTS COMMISSION, BANGLADESH: EXISTING CHALLENGES AND EXPECTATIONS OF CIVIL SOCIETY, 25 (Dec. 2018), https://www.askbd.org/ask/wp-content/uploads/2019/02/NHRC-Report_English.pdf.

⁴⁷ See Convention against Torture, arts. 2, 10, 11, 13, 14.

⁴⁸ Letter from U.N. High Commissioner for Human Rights to H.E. Mr. Adul Hassan Mahmud Ali, Minister of Foreign Affairs, Bangladesh, at 1, Annex at 1 (Nov. 2, 2018), https://lib.ohchr.org/HRBodies/UPR/Documents/Session30/BD/HC_LetterBangladesh_30Session.pdf; U.N. Human Rights Council, Compilation on Bangladesh, Report of the Office of the United Nations High Commissioner for Human Rights, A/HRC/WG.6/30/BGD/2, ¶ 11 (Mar. 19, 2018).

C. Arbitrary Arrest and Detention

As the Committee has recognized in past evaluations of State parties, warrantless or arbitrary arrest and detention enable conditions that are conducive to torture, and thus the Committee has urged State parties to address the practice of widespread arbitrary arrest where it exists.⁴⁹ Bangladesh's Constitution ostensibly protects against arbitrary arrest and detention, providing that "[n]o person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest," and further requiring that every person arrested and detained be produced before the nearest magistrate within 24 hours of arrest.⁵⁰ However, numerous laws in Bangladesh permit authorities to arrest and detain persons suspected of criminal activity without an order from a magistrate or a warrant, enabling authorities to hold detainees without charge and/or without divulging any information about a detainee's arrest to family members or legal counsel.⁵¹ For example, the UN Human Rights Committee has expressed concern over Bangladesh's expansive counter-terrorism efforts, which rely in part on the Special Powers Act of 1974 and the Anti-Terrorism Act of 2009, and grant the Government broad powers of arrest and detention for "prejudicial acts" and "terrorist acts," respectively.⁵² Although guidelines issued by the Supreme Court of Bangladesh in 2016 directed LEAs to discontinue the practice of warrantless arrest under the Special Powers Act,⁵³ it continues to be reported that LEAs cite this law to justify arrests, particularly with respect to the arrest of journalists, human rights activists, and opposition party members.⁵⁴

Similarly, Section 57 of the Information and Communication Technology Act 2006 (the "ICTA"), amended in 2009 and 2013, has been widely criticized as enabling the Government to engage in extensive arrest and detention, particularly of journalists, human rights activists, and members of the political opposition, and has been expressly cited as inconsistent with international law.⁵⁵ Section 57 criminalizes

⁴⁹ See, e.g., U.N. Committee Against Torture, Concluding Observations on Ethiopia, U.N. Doc. A/66/44, ¶ 15 (2011) ("[The Committee] is . . . gravely concerned at reports about . . . the widespread practice of arrests without a warrant and arbitrary and prolonged detention without charges and judicial process The Committee stresses that arrests without a warrant and the lack of judicial oversight on the legality of detention can facilitate torture and ill-treatment."); U.N. Committee Against Torture, Concluding Observations on Colombia, U.N. Doc. CAT/C/COL/CO/4, ¶ 20 (May 4, 2010); U.N. Committee Against Torture, Concluding Observations on Mongolia, U.N. Doc. A/66/44, ¶ 8 (2011); U.N. Committee Against Torture, Concluding Observations on Kenya, U.N. Doc. CAT/C/KEN/CO/1, ¶ 12 (Jan. 19, 2009).

⁵⁰ Constitution of Bangladesh at art. 33.

⁵¹ See U.S. DEPARTMENT OF STATE, 2016 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES - BANGLADESH, sec. 1(d) (Mar. 3, 2017), <https://www.refworld.org/docid/58ec8a7113.html>.

⁵² See U.N. Human Rights Committee, Concluding observations on the initial report of Bangladesh, U.N. Doc. CCPR/C/BGD/CO/1, ¶ 9 (Apr. 27, 2017); see also *id.* at ¶ 21.

⁵³ *Bangladesh Legal Aid and Services Trust (BLAST) v. Bangladesh*, Supreme Court of Bangladesh, Appellate Division, Civil Appeal No. 53 of 2004, at 390 (May 24, 2016), https://www.blast.org.bd/content/judgement/Civil_Appeal_No.53_of_2004.pdf.

⁵⁴ See U.S. DEPARTMENT OF STATE, BANGLADESH 2018 HUMAN RIGHTS REPORT at 7.

⁵⁵ International Commission of Jurists, South Asia, Rule of Law Programme, *Briefing Paper on the amendments to the Bangladesh Information Communication Technology Act 2006*, at 3 (Nov. 2013), <https://www.icj.org/wp-content/uploads/2013/11/ICT-Brief-Final-Draft-20-November-2013.pdf> (concluding that section 57 is "incompatible with Bangladesh's obligations under Article 19 of the ICCPR").

deliberately publishing or transmitting, or causing to publish or transmit, via a website or in electronic form, “any material which is fake and obscene or its effect is such as to tend to deprave and corrupt . . . or causes to deteriorate or creates possibility to deteriorate law and order, prejudice the image of the State or person or causes to hurt or may hurt religious belief or instigate against any person or organization.”⁵⁶ The ICTA, as amended, makes Section 57 offenses non-bailable and prescribes a minimum prison sentence of seven years.⁵⁷ The International Commission of Jurists in particular has expressed concern that “long periods of pretrial detention” associated with Section 57 and other non-bailable offenses under the ICTA “put accused persons at a risk of torture and other forms of ill-treatment,” and has highlighted that human rights NGOs have documented widespread “torture and other ill-treatment by the police . . . especially in police remand.”⁵⁸ In 2017, for example, there were 76 cases involving journalists who were charged under Section 57; in 2018, over 90 cases were brought against activists, journalists, and others.⁵⁹

The Government’s abuses have been further enabled by the passage of the Digital Security Act (the “DSA”) in October 2018. The DSA criminalizes, among other things, the publication, broadcast, or sending via any digital medium: (i) offensive, false, or fear-inducing information; (ii) information that “hurts religious sentiments or values”; (iii) defamatory information; (iv) any file that will “create hostility, hatred or adversity . . . or unrest” or deteriorates, or threatens to deteriorate law and order; or (v) material that breaches certain government secrets.⁶⁰ Certain offenses are again non-bailable, such as the electronic conveyance of information that disrupts or threatens to disrupt public order.⁶¹ Despite widespread advocacy against such a move, the DSA not only incorporated ICTA’s Section 57 but enhanced it. Section 43 provides that if a police officer believes that a crime under the DSA “has been or is being or will be committed in any place, *or there is a possibility of it happening*” or there is a possibility of evidence being lost, destroyed, or altered, then the officer can search said place and seize the devices or other objects or documents used in committing the offense or that might otherwise assist in proving the offense.⁶² Further, if any person is “suspected of committing or having committed” an offense under this Act, then the police can arrest that individual without a warrant.⁶³

During the third cycle UPR, the UN Human Rights Committee and the UN High Commissioner for Human Rights expressed significant concerns regarding these laws, specifically advising the

⁵⁶ Information & Communication Technology Act, 2006, Act No. 39 of the Year 2006, sec. 57 (2006), <http://www.icnl.org/research/library/files/Bangladesh/comm2006.pdf>.

⁵⁷ International Commission of Jurists, South Asia, Rule of Law Programme, *Briefing Paper on the amendments to the Bangladesh Information Communication Technology Act 2006*, at 3 (Nov. 2013), <https://www.icj.org/wp-content/uploads/2013/11/ICT-Brief-Final-Draft-20-November-2013.pdf>

⁵⁸ *Id.* at 11.

⁵⁹ *Bangladesh: Release of Shahidul Alam must be followed by dropping of charges and reform of repressive laws*, ARTICLE 19 (Nov. 21, 2018), <https://www.article19.org/resources/bangladesh-release-of-shahidul-alam-must-be-followed-by-dropping-of-charges-and-reform-of-repressive-laws/>.

⁶⁰ See Digital Security Act 2018, Act No. 46 of the Year 2018, secs. 25, 28, 29, 31, 32 (Oct. 8, 2018), <https://www.cirt.gov.bd/wp-content/uploads/2018/12/Digital-Security-Act-2018-English-version.pdf>.

⁶¹ *Id.* at sec. 53.

⁶² *Id.* at sec. 43(1)(a)-(c) (emphasis added).

⁶³ *Id.* at sec. 43(1)(d).

Government to amend Section 57 of the ICTA and associated provisions of the soon-to-be-enacted DSA.⁶⁴ The Government has made no such amendments to these laws.

D. Abuse of Remand

Under Bangladeshi law, a magistrate judge can order that a suspect be placed in interrogative custody, known as remand, during which a suspect may be questioned prior to being charged without the presence of a lawyer. Police are widely reported to abuse this remand period to execute acts of torture in order to procure information,⁶⁵ with methods including “severe beating, suspension from the ceiling, electric shocks, water-boarding, sexual abuse, threats of death, kneecapping, and in some cases mock executions.”⁶⁶

In 2016, in the case of *Bangladesh Legal Aid and Services Trust (BLAST) v. Bangladesh*, the Supreme Court of Bangladesh issued guidelines for LEAs, ostensibly to reduce custodial torture and address the issue of warrantless arrest and the abuse of remand.⁶⁷ Although these guidelines are technically binding on all courts and authorities in Bangladesh, they are not followed or enforced. Below are just two examples of the continued rampant abuse of remand by the Government:

- On August 5, 2018, Shahidul Alam, a renowned photojournalist, was detained within hours of making allegedly “provocative comments” on social media and in an Al Jazeera interview, in which he had discussed attacks on student protesters and the widespread “extrajudicial killings, disappearings, bribery and corruption” committed by state actors.⁶⁸ When brought to court, Shahidul Alam was unable to walk without assistance. He reported that he was tortured while in remand, where he had remained

⁶⁴ See U.N. Human Rights Council, Compilation on Bangladesh, Report of the Office of the United Nations High Commissioner for Human Rights, U.N. Doc. A/HRC/WG.6/30/BGD/2, ¶ 30 (Mar. 19, 2018) (calling ICTA a “de facto blasphemy law that limit[s] freedom of opinion and expression” and “create[s] an atmosphere of legal insecurity, making people afraid of participating in public debates on sensitive issues, [has an] application [that is] wider and the punishments threatened more draconian than under the Criminal Code”); Letter from U.N. High Commissioner for Human Rights to H.E. Mr. Adul Hassan Mahmud Ali, Minister of Foreign Affairs, Bangladesh, Annex at 3 (Nov. 2, 2018), https://lib.ohchr.org/HRBodies/UPR/Documents/Session30/BD/HC_LetterBangladesh_30Session.pdf.

⁶⁵ U.S. DEPARTMENT OF STATE, BANGLADESH 2018 HUMAN RIGHTS REPORT at 4; see also U.N. Human Rights Council, Joint written statement submitted by the Asian Legal Resource Centre, CIVICUS - World Alliance for Citizen Participation, NGOs in general consultative status, World Organisation Against Torture, Asian Forum for Human Rights and Development, International Federation for Human Rights Leagues, Robert F. Kennedy Center for Justice and Human Rights, NGOs in special consultative status, U.N. Doc. A/HRC/39/NGO/49, at 2-3 (Aug. 30, 2018) [hereinafter Joint Written Statement to U.N. Human Rights Council].

⁶⁶ Odhikar & OMCT, *BANGLADESH: Torture prevails due to deeply rooted culture of impunity* (June 26, 2018), <http://www.omct.org/statements/bangladesh/2018/06/d24943/>.

⁶⁷ *Bangladesh Legal Aid and Services Trust (BLAST) v. Bangladesh*, Supreme Court of Bangladesh, Appellate Division, Civil Appeal No. 53 of 2004, at 389-396 (May 24, 2016), https://www.blast.org.bd/content/judgement/Civil_Appeal_No.53_of_2004.pdf.

⁶⁸ See Qumr Ahmed, *Why did Bangladesh arrest Shahidul Alam?*, AL JAZEERA (Aug. 9, 2018), <https://www.aljazeera.com/indepth/opinion/bangladesh-arrest-shahidul-alam-180809112820231.html>.

for seven days.⁶⁹ After multiple bail hearing postponements, Alam was granted bail on November 20, 2018, which the government appealed. Trial proceedings, which recommenced in December, have been postponed to 2019.⁷⁰ Alam's trial is ongoing, and he faces a possible prison sentence of 14 years.⁷¹ The UN in particular has urged Bangladesh to investigate Alam's allegations of torture.⁷²

- On June 30, 2018, students associated with the parliamentary quota reform movement tried to organize a press conference at Dhaka University. However, they were attacked by activists of the Bangladesh Chhatra League, the student wing of the ruling Awami League. Police then arrested thirteen students, who were allegedly tortured by police while in remand.⁷³

The structural issues identified above have fostered an environment in which acts of torture and other forms of ill-treatment can and have been committed with impunity and on a widespread scale in Bangladesh. The following section illustrates the pervasiveness of these acts, which the Committee has previously found in State party reviews to raise significant concerns under, and indeed violate, the Convention.

III. Acts that Violate the Convention against Torture

Although the CAT has not previously reviewed Bangladesh through the State review mechanism, there is an abundant UN record documenting the Government's human rights transgressions, particularly with respect to torture and other cruel, inhuman, or degrading treatment or punishment. The UN's findings both underscore the inadequacies of Bangladesh's existing laws and highlight the ways in which the Government uses the law itself to defy the State's international obligations, including with respect to the Convention. This section presents several categories of torture and other treatment that are pervasive in Bangladesh and that have been deemed to be in violation of the Convention in previous State party reviews, including excessive use of force by State officials, extrajudicial killings, enforced disappearances, sexual violence and rape, and inadequate prison conditions.

⁶⁹ See Joint Written Statement to U.N. Human Rights Council at 3; *see also Bangladesh: UN human rights experts urge immediate release of photographer Shahidul Alam*, OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (Aug. 13, 2018).

⁷⁰ See U.S. DEPARTMENT OF STATE, BANGLADESH 2018 HUMAN RIGHTS REPORT at 19.

⁷¹ See David Gonzalez, *Despite Prison and Torture, Shahidul Alam Refuses to Stay Quiet*, NEW YORK TIMES (Apr. 9, 2019), <https://www.nytimes.com/2019/04/09/lens/shahidul-alam-prison-photo.html>.

⁷² See *Bangladesh: UN human rights experts urge immediate release of photographer Shahidul Alam*, OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (Aug. 13, 2018).

⁷³ See ODHIKAR, HUMAN RIGHTS MONITORING REPORT ON BANGLADESH - REPORTING PERIOD: 1-31 JULY 2018, 12 (Aug. 1, 2018), www.odhikar.org/wp-content/uploads/2018/08/human-rights-monitoring-report-July-2018_Eng.pdf. Further, female students allegedly were sexually harassed by Bangladesh Chhatra League leaders and activists, and one student reported that the police tried to extract a false confession that she was a drug addict. *Id.*; *see also* "Every moment felt like hell: Victim tells her story", THE DAILY STAR (July 6, 2018), <https://www.thedailystar.net/frontpage/it-was-second-hell-1600765>.

A. Excessive Use of Force

LEAs routinely employ excessive force against the citizens of Bangladesh, often with impunity, in violation of Bangladesh's obligations under the Convention. The CAT and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment have affirmed that excessive use of force by LEAs, including in non-custodial contexts such as during arrest and the policing of assemblies, is a violation recognized and prohibited under the Convention.⁷⁴ Further, "[a]ny tolerance, acquiescence or impunity for such abuse amounts to a serious violation of international law."⁷⁵

Under international human rights law, and as affirmed in a joint statement by two UN Special Rapporteurs, use of force against protesters, bystanders, and those under arrest must be restricted, particularly in the context of peaceful assembly, and must conform to the "principles of legality, precaution, necessity, proportionality, and accountability."⁷⁶ The United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials further establish that "intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life."⁷⁷

Notwithstanding international human rights standards, in Bangladesh, LEAs often use excessive force when breaking up demonstrations and conducting arrests, and, moreover, often target innocent bystanders or passersby who are wholly unassociated with the demonstrations. UN bodies have recognized the prevalence of the use of excessive force by LEAs in Bangladesh, with the UN Human Rights Committee noting in 2017 its concern about "the excessive use of force by State actors" in Bangladesh.⁷⁸ The Committee also highlighted that "torture and ill-treatment by law enforcement or military personnel is widespread in the State party during interrogations to extract confessions."⁷⁹ The Committee described the excessive use of force by state officials during past elections which "hinders the

⁷⁴ See, e.g., Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, U.N. Doc. A/72/178, ¶¶ 34, 38 (July 20, 2017) ("The Committee against Torture has repeatedly held that police brutality and excessive use of force outside the context of detention can fall within its purview" and "[m]andate holders have consistently maintained that, conceptually, the prohibition of torture and other cruel, inhuman or degrading treatment or punishment . . . also covers excessive police violence, such as during arrest and the policing of assemblies"); U.N. Committee Against Torture, Concluding Observations on Ecuador, U.N. Doc. CAT/C/ECU/CO/7, ¶ 39 (Jan. 11, 2017); U.N. Committee Against Torture, Concluding Observations on Denmark, U.N. Doc. CAT/C/DNK/CO/5, ¶ 16 (July 16, 2007); U.N. Committee Against Torture, Concluding Observations on Poland, U.N. Doc. CAT/C/POL/CO/4, ¶ 13 (July 16, 2007).

⁷⁵ *Arbitrary police violence can amount to torture, even in public spaces, UN expert warns*, U.N. OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS (Oct. 13, 2017), <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22235&LangID=E>.

⁷⁶ U.N. Human Rights Council, Joint report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association and the Special Rapporteur on extrajudicial, summary or arbitrary executions on the proper management of assemblies, U.N. Doc. A/HRC/31/66, ¶ 50 (Feb. 4, 2016), <https://undocs.org/A/HRC/31/66>.

⁷⁷ U.N. Office of the High Commissioner for Human Rights, Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, ¶¶ 9, 22 (1990), <https://www.ohchr.org/Documents/ProfessionalInterest/firearms.pdf>.

⁷⁸ See U.N. Human Rights Committee, Concluding observations on the initial report of Bangladesh, U.N. Doc. CCPR/C/BGD/CO/1, ¶ 19 (Apr. 27, 2017).

⁷⁹ *Id.* at ¶ 21.

rights of voters to participate in free and fair elections[.]”⁸⁰ The UN Human Rights Committee also expressed concern during the recent third cycle UPR at “the excessive use of force by State actors.”⁸¹ The U.S. State Department has highlighted similar concerns, noting in the U.S. State Department’s 2018 human rights report (the “State Department Report”) that “[s]ecurity forces reportedly used torture to gather information from alleged militants and members of political opposition parties” and “reportedly used threats, beatings, kneecappings, and electric shock[.]”⁸² Despite Bangladesh’s supposed “zero tolerance” policy with respect to criminal liability of LEAs,⁸³ the State Department Report and others detail the “widespread impunity” for LEAs, with the Government taking “few measures to investigate and prosecute cases of abuse and killing by security forces.”⁸⁴ National and international NGOs also have documented the pervasive use of excessive force by LEAs. As HRSS has described, “after arrests and during interrogations . . . security forces use cruel methods such as indiscriminate beatings, pouring boil water, removing finger nails and administering electric shocks etc.”⁸⁵

One common example of excessive use of force by LEAs is the practice referred to as “kneecapping.” In these cases, police officers summarily shoot citizens around their knees or elbows, often in connection with dispersing a public assembly or while a citizen is in detention. A 2016 Human Rights Watch report on the practice found that most kneecapping victims who were interviewed had suffered from permanent disabilities or injuries, including numerous amputated limbs.⁸⁶ The Human Rights Watch report notes that “[a]ctivists say they believe Bangladesh authorities adopted the practice of kneecapping to punish and dissuade people from participating in street protests[.]”⁸⁷

Journalists, human rights defenders, political protestors, and innocent civilians alike are subject to excessive use of force by LEAs. Below are a handful of the innumerable documented examples of such excessive uses of force:

- On February 28, 2013 Fazal, an 18-year-old law student, passed a Jamaat-e-Islami demonstration on his walk to a nearby college canteen. Bullets caused the demonstrators to scatter and Fazal began to run with the demonstrators. Two policemen in civilian clothing detained and beat him before taking him into custody. Once in custody, he was told to pay the police five lakh taka (approximately \$5,922 USD) for his freedom. When he could not pay, he was shot below his knee. His leg was ultimately amputated as a result.⁸⁸

⁸⁰ *Id.* at ¶ 29.

⁸¹ U.N. Human Rights Council, Compilation on Bangladesh, Report of the Office of the United Nations High Commissioner for Human Rights, U.N. Doc. A/HRC/WG.6/30/BGD/2, ¶ 21 (Mar. 19, 2018). (https://www.ecoi.net/en/file/local/1430787/1930_1524740166_g1806724.pdf)

⁸² U.S. DEPARTMENT OF STATE, BANGLADESH 2018 HUMAN RIGHTS REPORT at 4.

⁸³ *See* U.N. Human Rights Council, Working Group on the Universal Period Review, National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, U.N. Doc. A/HRC/WG.6/30/BGD/1, ¶ 30 (Feb. 26, 2018).

⁸⁴ U.S. DEPARTMENT OF STATE, BANGLADESH 2018 HUMAN RIGHTS REPORT at 1.

⁸⁵ *See* HRSS JANUARY-FEBRUARY 2019 REPORT at 32.

⁸⁶ “NO RIGHT TO LIVE” at 3.

⁸⁷ *Id.* at 5.

⁸⁸ *See id.* at 17-18.

- On March 18, 2013, Mahbub Kabir, a marketing officer for a pro- Jamaat-e-Islami newspaper, was stopped by police on his way to work. Kabir did not resist the police; however, upon reviewing his identification card, the police shot him in his right leg. According to the victim, the police told him: “I have shot in your leg. If you speak out, then next time I will shoot in your eyes.” In 2016, three years after the kneecapping, Kabir still could not walk.⁸⁹
- On February 3, 2015, Ahmed was walking to the market when five policemen stopped him, believing that he had participated in a protest earlier that day. Ahmed denied the allegations and other people at the market confirmed that Ahmed had just arrived and was not a participant. The police ignored these responses and took Ahmed to a narrow lane, where he was shot in the leg at close range. He was taken to a hospital where he stayed for two months in police custody. He was then moved to jail, where he learned the police had filed false claims that he damaged public property and that they had recovered explosives from him.⁹⁰
- On March 31, 2016, Mohammad Afzal Hossain, a correspondent on a popular, private news channel in Bangladesh who volunteered with Odhikar, was summoned by the Rajapur police superintendent to discuss vote rigging the correspondent had witnessed that same day. While at the station, the correspondent was writing notes for an upcoming live news update; without warning, he was shot in the leg at short range by a police officer with a tiger bullet (a large bullet comprising of eight pellets used to kill tigers).⁹¹

These examples are only a handful of the many instances of excessive use of force by LEAs against the citizens of Bangladesh. These incidents result not only in long-lasting physical handicaps for the individual(s) directly involved, but also have the broader effect of impeding freedom of speech and association within the country. These actions are in direct contravention of Bangladesh’s obligations under the Convention, including under Articles 2 and 16.

B. Extrajudicial Killings

Extrajudicial killings in Bangladesh, also known as extra-legal, arbitrary, or summary executions, have become increasingly common and are being used as a tool to stifle justice and bypass legal process. In Bangladesh, there is a record of increasing “crossfire” killings, “shoot-outs,” and “encounter killings”—i.e., instances in which LEAs claim that the killings were done in self-defense or the victim was caught in exchanges of gunfire between LEAs and criminal gangs.⁹² Bangladesh’s use of deadly force in this manner is in clear contravention of the Convention, and it denies the citizens of Bangladesh their fundamental rights to life and to free, fair, and impartial process and trial.

⁸⁹ *See id.* at 20.

⁹⁰ *See id.* at 32.

⁹¹ *See id.* at 39-40.

⁹² U.S. DEPARTMENT OF STATE, BANGLADESH 2018 HUMAN RIGHTS REPORT at 2; U.S. DEPARTMENT OF STATE, 2016 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES - BANGLADESH, sec. 1(a) (Mar. 3, 2017), <https://www.refworld.org/docid/58ec8a7113.html>

The Committee has cited extrajudicial killings amongst “grave violations of the Convention,”⁹³ “serious violations of the Convention,”⁹⁴ or simply “violations of the Convention.”⁹⁵ Additionally, the Committee frequently condemns extrajudicial killings in its concluding observations on State reports.⁹⁶

Various UN bodies have recognized the issue of extrajudicial killings in Bangladesh. In April 2017, the UN Human Rights Committee offered its concluding observations on its initial report of Bangladesh. Among other concerns, the Committee expressed that it was “concerned at the reported high rate of extrajudicial killings by police officers, soldiers and [other LEAs, including the RAB].”⁹⁷ Most recently, the UN Human Rights Committee also expressed concern during the recent third cycle UPR of Bangladesh at the “reported high rate of extrajudicial killings.”⁹⁸

According to the ICCPR, between May 2013 and September 2017, 845 documented cases of extrajudicial killings by LEAs occurred in Bangladesh.⁹⁹ More recently, from January 2018 to September 2018, the HRSS reported that security forces killed more than 400 individuals in “crossfire” incidents, a number that was confirmed by Odhikar’s work.¹⁰⁰ In the beginning of this year, from January to March, Odhikar estimates that there was a total of 91 extrajudicial killings comprising 86 due to “crossfire,” one person beaten to death, and four other people shot to death.¹⁰¹ Human rights NGOs have countered these State narratives and claim that many “crossfire killings” actually result from the detention, interrogation, and torture of suspects who are then brought back to the scene of the original arrest and executed by the RAB and LEAs under the guise of “lawful self-defense in response to violent attacks.”¹⁰² As noted in the

⁹³ See, e.g., U.N. Committee Against Torture, Concluding Observations on Yemen, U.N. Doc. CAT/C/YEM/CO/2/Rev.1, ¶ 11 (May 25, 2010); U.N. Committee Against Torture, Concluding Observations on Iraq, U.N. Doc. CAT/C/IRQ/CO/1, ¶ 12 (Sept. 7, 2015).

⁹⁴ See, e.g., U.N. Committee Against Torture, Concluding Observations on Ukraine, U.N. Doc. CAT/C/UKR/CO/6 (Dec. 12, 2014) (“The Committee is gravely concerned at reports concerning . . . deprivation of life and other serious violations of the Convention perpetrated in the context of [mass protests].”).

⁹⁵ See, e.g., U.N. Committee Against Torture, Concluding Observations on Turkmenistan, U.N. Doc. CAT/C/TKM/CO/2, ¶¶ 7, 14 (Jan. 23, 2017) (noting that it was “deeply concerned about reports of deaths in custody,” the Committee directed the State party to “investigate all incidents of death in custody . . . [and] prosecute those responsible for violations of the Convention resulting in such deaths”).

⁹⁶ See, e.g., U.N. Committee Against Torture, Concluding Observations on Sierra Leone, U.N. Doc. CAT/C/SLE/CO/1 (June 20, 2014); U.N. Committee Against Torture, Concluding Observations on Pakistan, U.N. Doc. CAT/C/PAK/CO/1, ¶¶ 6-7 (June 1, 2017); U.N. Committee Against Torture, Concluding Observations on Rwanda, U.N. Doc. CAT/C/RWA/CO/2, ¶¶ 38-39 (Dec. 21, 2017).

⁹⁷ U.N. International Covenant on Civil and Political Rights Human Rights Committee, Concluding observations on the initial report of Bangladesh, U.N. Doc. C/BDG/CO/1, ¶ 19 (Apr. 27, 2017).

⁹⁸ U.N. Human Rights Council, Compilation on Bangladesh, Report of the Office of the United Nations High Commissioner for Human Rights, U.N. Doc. A/HRC/WG.6/30/BGD/2, ¶ 21 (Mar. 19, 2018).

⁹⁹ See *The Committee Against Torture’s Approach to Extrajudicial Killing*, OMCT (Aug. 7, 2018), <http://blog.omct.org/the-committee-against-tortures-approach-to-extrajudicial-killing/>.

¹⁰⁰ See U.S. DEPARTMENT OF STATE, BANGLADESH 2018 HUMAN RIGHTS REPORT at 2.

¹⁰¹ See ODHIKAR JANUARY-MARCH 2019 REPORT at 5.

¹⁰² U.S. DEPARTMENT OF STATE, BANGLADESH 2018 HUMAN RIGHTS REPORT at 2.

State Department Report, the Government has “neither released statistics on total killings by security personnel nor [taken] comprehensive measures to investigate cases,” and in the few instances where the Government brought charges against security forces for extrajudicial killings, “those found guilty generally received only administrative punishment.”¹⁰³

More recently, extrajudicial killings have further increased after the Government announced in May 2018 that it would be implementing an extensive campaign against suspected “drug offenders.”¹⁰⁴ Since then, UN bodies, UN Member States, and domestic and international organizations have identified a dramatic rise in the number of reported extrajudicial killings and mass arrests of alleged “drug offenders” in Bangladesh.¹⁰⁵ On June 6, 2018, the Special Rapporteur on extrajudicial, summary or arbitrary executions, along with other UN special procedure mechanisms, expressed their “gravest concern” at “the information we have received that more than 132 people had been killed by security forces in Bangladesh since 15 May 2018 in the context of the announcement of a ‘war on drugs’,” noting that these alleged extrajudicial killings occurred “in the custody or at the hands of security forces.”¹⁰⁶ Local media reported that in the first two months of the campaign alone, some 230 alleged “drug dealers” were killed and 17,000 arrested.¹⁰⁷ This increase in extrajudicial killings also prompted UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein to “condemn[] the alleged extra-judicial killings of suspected drug offenders in Bangladesh and urged the authorities to ensure that these serious human rights violations are immediately halted and perpetrators brought to justice.”¹⁰⁸

Local NGOs have highlighted extrajudicial killings by the Awami League-controlled government to silence political opponents and activists. HRSS documented six extrajudicial killings of BNP members by LEAs, as well as 25 enforced disappearances of political opposition activists in December 2018 alone.¹⁰⁹ A subsequent HRSS report found that “many political activists have been forcefully disappeared from [January 2019 - February 2019] by the law enforcement agencies and deny the arrest; but days later,

¹⁰³ *Id.* at 8.

¹⁰⁴ See Julhas Alam, *Bangladesh detains 100 suspects in anti-drug crackdown*, AP (May 26, 2018), <https://www.apnews.com/2a2cb627c589431e95a080b46859b27d> (“Bangladesh’s leading English-language Daily Star newspaper reported Saturday that a total of 63 people had been killed since the anti-drug drive began on May 4. Other leading newspapers reported that some 3,000 people had been detained.”); ODHIKAR JANUARY-MARCH 2019 REPORT at 10 (Apr. 17, 2019), http://odhikar.org/wp-content/uploads/2019/04/HRR_January-March_2019_Eng.pdf.

¹⁰⁵ See Joint Written Statement to U.N. Human Rights Council at 2.

¹⁰⁶ Letter to the Government of Bangladesh, Mandates of the Working Group on Arbitrary Detention; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; et al., at 1-2 (June 6, 2018), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=23888>.

¹⁰⁷ U.S. DEPARTMENT OF STATE, BANGLADESH 2018 HUMAN RIGHTS REPORT at 2.

¹⁰⁸ U.N. High Commissioner for Human Rights, Killings of suspected “drug offenders” in Bangladesh must stop – UN Human Rights Chief (June 6, 2018), <https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23178&LangID=E>.

¹⁰⁹ See HRSS, MONTHLY HUMAN RIGHTS OBSERVATION REPORT ON BANGLADESH: DECEMBER 2018, 5 (Feb. 21, 2019), <http://hrssbd.org/monthly-human-rights-report-december-2018/>.

their bullet-riddled dead body [*sic*] has been found in several places.”¹¹⁰ Below are some specific examples of extrajudicial killings targeting political opponents and activists:

- On March 6, 2018, plainclothes LEAs arrested a student leader of the BNP party named Zakir Hossain Milon, alleging charges of obstructing justice. Officials claimed that while interrogating Milon, he complained of an “illness,” and he was transported to the Dhaka Medical College Hospital. Six days later, Milon was pronounced dead. Family members of Milon alleged that he died due to torture at the hands of law enforcement, as when they received his remains, Milon’s lower body was severely bruised and his fingernails were missing.¹¹¹
- On December 12, 2018, a city BNP leader, Kafil Uddin, was killed by alleged plainclothes LEAs in the Vatarā area of Dhaka. The plainclothes men raided Uddin’s home in the early morning, causing Uddin to take refuge on his home’s rooftop. After torturing Uddin’s son, the plainclothes men pursued Uddin and pushed him off the rooftop. Uddin was taken to a local hospital and pronounced dead.¹¹²

As the above examples illustrate, extrajudicial killings are used against political opponents in direct contravention of the Government’s obligations under the Convention. Further, the increasing use of “crossfire” killings as a cover for LEA murders undermines the country’s commitment to judicial process.

C. Enforced Disappearances

The UN, international and local human rights NGOs, and other observers have concluded that the use of enforced disappearance by LEAs in Bangladesh is rampant and not penalized by the Government despite such practice’s violation of the Convention and international law.

The Committee considers enforced disappearance to be a form of torture or cruel, inhuman or degrading treatment, as made clear in its 2015 consideration of *Guerrero Larez v. Venezuela*.¹¹³ The Committee also has confirmed in its regular evaluations of State parties that the practice of enforced disappearance violates the Convention because it precludes compliance with the most fundamental objective of the treaty: to prevent acts of torture.¹¹⁴

Various UN bodies have reported on the rampant practice of enforced disappearances in Bangladesh. The UN Working Group on Enforced or Involuntary Disappearances underscored that there are “hundreds, if not thousands, of such instances occurring in recent years,” which have targeted leaders

¹¹⁰ See HRSS JANUARY-FEBRUARY 2019 REPORT at 7.

¹¹¹ See U.S. DEPARTMENT OF STATE, BANGLADESH 2018 HUMAN RIGHTS REPORT at 3.

¹¹² HRSS, MONTHLY HUMAN RIGHTS OBSERVATION REPORT ON BANGLADESH: DECEMBER 2018, 8 (Feb. 21, 2019), <http://hrssbd.org/monthly-human-rights-report-december-2018/>.

¹¹³ See *Guerrero Larez v. Venezuela*, U.N. Doc. CAT/C/54/D/456/2011 (U.N. Comm. Against Torture May, 15, 2015); see also U.N. Committee Against Torture, Concluding Observations on Kenya, U.N. Doc. CAT/C/KEN/CO/1, ¶ 20 (Jan. 19, 2009).

¹¹⁴ See, e.g., U.N. Committee Against Torture, Concluding Observations on China, U.N. Doc. CAT/C/CHN/CO/4, ¶ 14 (Dec. 12, 2008). As such, the Committee requests that States parties include information on “incommunicado detention” in their reports under Articles 2(1) and 11, which require measures to prevent torture. See U.N. COMM. ON TORTURE, GUIDELINES ON THE FORM AND CONTENT OF INITIAL REPORTS UNDER ARTICLE 19 TO BE SUBMITTED BY STATES PARTIES TO THE CONVENTION AGAINST TORTURE, U.N. Doc. CAT/C/4/Rev.3, §§ 8, 20.

and activists of the BNP, student activists, and even ordinary citizens.¹¹⁵ As the Working Group expressed, and as this report seeks to augment, the Bangladeshi security and intelligence forces and other LEAs have all been directly implicated in these reported “grave human rights abuses and violations.”¹¹⁶ Compounding these egregious transgressions, Bangladeshi authorities had “refused the detainees access to a lawyer or family,” “publicly denied having arrested political opponents,” and “systematically denied access to the complaint mechanisms or, if not denied, controlled the mechanism and further investigation, refusing to register complaints in which the words ‘enforced disappearance’ appeared”¹¹⁷— directly contravening Convention Articles 2, 13, and 14, at a minimum. In turn, and as recognized by the Working Group, it is “known” that the Government actively undertakes efforts to cover up State responsibility for these unlawful arrests, namely by (i) fabricating charges; (ii) taking unlawfully arrested individuals across the Indian border and subsequently arresting them as “illegal migrants” or disappearing them altogether; and/or (iii) executing victims through “cross-fire shootings” (described in Section III.B).¹¹⁸

As of July 2018, the UN Working Group on Enforced or Involuntary Disappearances had officially recognized and transmitted 60 cases of enforced disappearances in Bangladesh—57 of which remained outstanding—and restated the three general allegations that had been issued to Bangladesh in 2011, 2016, and 2017 concerning “the alleged frequent use of enforced disappearance as a tool by law enforcement agencies, and paramilitary and armed forces to detain and even to execute individuals extrajudicially”; “the reportedly alarming rise in the number of cases of enforced disappearance in the country”; and “allegations of grave human rights abuses and violations committed by the security and intelligence forces, as well as law enforcement authorities,” respectively.¹¹⁹ As both the UN Human Rights Council and the UN Working Group on Enforced or Involuntary Disappearances have recognized, the Government has repeatedly ignored requests from the UN to conduct state visits and has failed to respond to communications concerning the State’s international obligations, including obligations that fall under the Convention, in particular with regards to enforced disappearances.¹²⁰

Local human rights NGOs have expressed concern that “enforced disappearances have become an institutional practice” under the Awami League rule, and that “abduction, killing after the abduction, rescuing dead body [*sic*] becomes the common and daily phenomenon in Bangladesh.”¹²¹ Between

¹¹⁵ U.N. Human Rights Council, Working Group on Enforced or Involuntary Disappearances, Communications, cases examined, observations, and other activities conducted by the Working Group on Enforced or Involuntary Disappearances, A/ HRC/WGEID/111/1, Annex II, ¶ 3 (Apr. 24, 2017).

¹¹⁶ *Id.* at ¶ 2.

¹¹⁷ *Id.* at ¶ 4.

¹¹⁸ *Id.* at ¶ 5.

¹¹⁹ U.N. Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, at 12 & ¶ 84, U.N. Doc. A/HRC/39/46 (July 30, 2018); *id.* at Annex II.

¹²⁰ *See id.* at ¶¶ 26, 84, Annex I; *see also* U.N. Human Rights Council, Compilation on Bangladesh, Report of the Office of the United Nations High Commissioner for Human Rights, U.N. Doc. A/HRC/WG.6/30/BGD/2, ¶ 9 (Mar. 19, 2018).

¹²¹ ODHAKAR JANUARY-MARCH 2019 REPORT at 14; *see also* HRSS JANUARY-FEBRUARY 2019 REPORT at 7.

January and November 2018, 83 persons were allegedly disappeared after being abducted by members of LEAs.¹²²

As the Asian Legal Resource Centre has recorded, despite LEAs' perennial denial of involvement in the abduction and disappearing of citizens, nearly one-fourth of the disappeared have ultimately been detained in prison and faced with reportedly fabricated charges; those who are finally released often do not dare to speak of their experiences.¹²³ Perhaps most glaringly, secret recordings and other reports have surfaced that clearly document law enforcement officials recounting their personal involvement or the common practice of extrajudicial killings, enforced disappearances, and interrogative torture committed by LEAs.¹²⁴

There are countless examples of enforced disappearances in Bangladesh, but for the purposes of this report, we highlight the cases of Ahmad Bin Quasem, Sajedul Islam Sumon, and Khaled Hossain Sohel.

- On October 28, 2016, the Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances, the Special Rapporteur on the independence of judges and lawyers, and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment transmitted a joint urgent appeal to the Government concerning the case of Ahmad Bin Quasem. Bin Quasem was abducted in August 2016 in connection with his legal defense work for his father, Mir Quasem Ali, who had recently been convicted by the International Crimes Tribunal of Bangladesh ("ICT").¹²⁵ Mr. Quasem was abducted with two other men, all of whom were linked to opposition political parties and had fathers that had recently been convicted by the ICT. This October 2016 joint appeal from three separate UN Rapporteurs urged the Government to remember its "absolute and non-derogable prohibition of torture and other ill-treatment as codified in . . . Articles 1, 2 and 16 of the [CAT], ratified by your Excellency's Government in 1998," emphasizing that "prolonged incommunicado detention or detention in secret places can facilitate the perpetration of torture and other cruel, inhuman or degrading treatment or punishment and *can in itself*

¹²² See ODHIKAR, HUMAN RIGHTS MONITORING REPORT ON BANGLADESH, REPORTING PERIOD: 1-30 NOVEMBER 2018, 4 (Dec. 9, 2018), http://odhikar.org/wp-content/uploads/2018/12/human-rights-monitoring-report-November-2018_Eng.pdf.

¹²³ See U.N. Human Rights Council, Written statement submitted by the Asian Legal Resource Centre, an NGO in general consultative status, U.N. Doc. A/HRC/39/NGO/103, 2 (Sept. 3, 2018); *see also* "WE DON'T HAVE HIM" at 37.

¹²⁴ See "NO RIGHT TO LIVE" at 2, 25; *Exclusive: Officer Exposes Brutal Killings by Bangladeshi Elite Police Unit RAB* SWEDISH RADIO (Apr. 4, 2017), <http://sverigesradio.se/sida/artikel.aspx?programid=83&artikel=6665807>; *cf.* "WE DON'T HAVE HIM" at 2; U.S. DEPARTMENT OF STATE, BANGLADESH 2018 HUMAN RIGHTS REPORT at 4; ODHIKAR JANUARY-MARCH 2019 REPORT at 14 n.18 (Apr. 17, 2019).

¹²⁵ See Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Oct. 28, 2016), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=22827>. The ICT was established in 2009 to investigate and prosecute crimes allegedly committed during Bangladesh's fight for independence in 1971.

constitute a form of such treatment.”¹²⁶ Despite mounting international support, Mr. Quasem remains in secret detention some two years after his abduction,¹²⁷ and only one of the other two individuals kidnapped under similar circumstances has been released—notably, shortly following the joint appeal from the UN in February 2017, but he emerged incapable of recounting his experience.¹²⁸

- Sajedul Islam Sumon, 36, was the general secretary of the BNP for his respective ward and had a criminal case filed against him. On the evening of December 4, 2013, he and five other BNP supporters and activists were abducted by armed men in multiple cars, including one with “RAB-1” written on it. Sumon’s family went to the RAB office, but the personnel denied any involvement. Sumon’s family stayed outside the RAB office throughout the night and for the next three days. Family members went to the local police station to file a General Diary entry but were told that they had to go to the place of occurrence in order to file. The family attempted to follow suit, but the on-duty officer refused to allow the family to file if they claimed that RAB was involved; instead, the family would need to claim that Sumon was missing. Meanwhile, family members continued to go to the RAB-1 office and RAB headquarters. At the end of January 2014, a RAB-1 officer ultimately admitted that Sumon had been detained and gave the contact information of another individual who was in charge of the operation; however, the official claimed that Sumon was not in his custody and they were searching for him. The family was finally able to file its first written application with the RAB on March 18, 2014, some three months after Sumon’s disappearance, and filed another twelve applications between that time and August 21, 2016. An additional five applications were filed with other government authorities, including the Ministry of Home Affairs, the police, and military intelligence. In May 2016, Sumon’s sister met with a RAB official she had met with earlier, who had been a senior RAB-1 officer at the time of her brother’s disappearance but had since left the position. He confirmed privately that RAB-1 had conducted the operation and admitted that he had been ordered to kill the men while they were in his custody, but he had refused. Instead, the RAB’s counterterrorism branch, led by an individual who later became the head of the RAB intelligence wing, took Sumon and the others. This latter official denied any involvement but also claimed they were searching for Sumon. Although the family sought information from RAB, Detective Branch, and various

¹²⁶ Mandates of the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on the independence of judges and lawyers; and the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, at 3 (Oct. 28, 2016) (emphasis added); Torture and other cruel, inhuman or degrading treatment or punishment, U.N. Res. A/RES/68/156, ¶ 27; *see also* Decision of the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (fifty-fourth session), Communication No. 456/2011, ¶ 6.6 (May 15, 2015); Statute of the International Criminal Court, UN Doc. A/Conf.183/9 art. 7(1)(i) (July 17, 1998) (to which Bangladesh is a party); International Convention for the Protection of All Persons from Enforced Disappearance, UN Res. 61/177, art. 5 (Dec. 20, 2006).

¹²⁷ *See Second Anniversary of Mir Ahmad Bin Quasem’s Abduction. His Family Speaks*, FREE ARMAN (Aug. 9, 2018), <https://www.freearman.com/news/second-anniversary-of-mir-ahmad-bin-quasems-abduction-his-family-speaks>.

¹²⁸ *See Hummam Quader Cannot Remember Anything About Abduction*, DHAKA TRIBUNE (Mar. 3, 2017), <https://www.dhakatribune.com/bangladesh/crime/2017/03/03/hummam-quader-cannot-remember-anything/>; *Bangladesh: Man Released From Long Secret Detention*, HUMAN RIGHTS WATCH (Mar. 2, 2017), <https://www.hrw.org/news/2017/03/02/bangladesh-man-released-long-secret-detention>.

police stations on numerous occasions, the family could procure no information about Sumon's detention.¹²⁹

In December 2014, a year after Sumon's initial disappearance, Sumon's family filed a formal complaint with the NHRC. The chair of the NHRC wrote to the senior civil servant of the Ministry of Home Affairs, conveying the allegation and appealing to the government to return Sumon and the others. The Ministry did not respond, and remained silent after monthly reminders were issued. Ultimately, the Ministry claimed on August 28, 2015 that Sumon's father had filed a case with a local police station back in January 2014, and that the case was under investigation; the family responded that they had never filed such a case because the police had refused. Subsequently, the police sent a letter to Sumon's mother asking her to come to the police station for a meeting, but that meeting never occurred. In March 2016, Sumon's mother filed a *habeas corpus* petition with the High Court, claiming that her son was illegally detained by RAB, that authorities had failed to investigate the incident, and that the court should order the authorities to produce him before the court. On March 10, 2016, the court issued an order, requiring that the Bangladeshi authorities and relevant law enforcement officials to "show cause" as to why Sumon's disappearance was not unlawful. Via an affidavit, the inspector general responded that neither the RAB nor any other unit of the police had arrested Sumon. RAB-1 also filed an affidavit disclaiming that it had arrested or otherwise taken Sumon and the others. As of July 2017, no further court hearing had occurred and Sumon remains disappeared.¹³⁰

- Khaled Hossain Sohel, a BNP student activist with no known criminal cases filed against him, was residing away from his family home to seek safety in light of the political climate and nature of police conduct. However, in 2013 Sohel's colleague realized Sohel was missing when he was not reachable by his cell phone and notified Sohel's wife. Fearing he had been arrested, family members and friends contacted various police stations. During this time, a friend notified the family that LEAs had taken Sohel late at night. The following day, Sohel's wife filed a missing person complaint at the local police station, and Sohel's sister was told she could not file a General Diary application if she alleged involvement of law enforcement and could come back the next day provided she file a missing person General Diary. Officers at Detective Branch headquarters denied that he was in their custody, first inquiring whether Sohel had any political affiliation and telling Sohel's wife not to "hang around here." Sohel's wife and other family members tried repeatedly for ten days to speak with Detective Branch officials but were told their efforts would be fruitless. Three individuals who had been abducted with Sohel were later released and notified Sohel's wife of what had occurred; however, all three went into hiding. Six months after Sohel was disappeared, the police established a 40-member anti-kidnapping brigade and Sohel's wife filed an application, again requesting an investigation into Sohel's disappearance. She then met with an additional deputy commissioner of police who placed her in contact with a Detective Branch official. No further information was received.¹³¹

As evidenced by the narratives of Quasem, Sumon, and Sohel, the practice of enforced disappearances have ravaged families and left them with no answers or truth. Indeed, this practice directly

¹²⁹ *Id.* at 59-62.

¹³⁰ *Id.* at 63-65.

¹³¹ *See* "WE DON'T HAVE HIM" at 52-53.

violates Convention Articles 2, 13, and 14, and the Government must adopt certain approaches to mitigate the damage such enforced disappearances has caused to Bangladeshi society.

D. Sexual Violence and Rape

State actors in Bangladesh, such as LEAs and officials of the ruling party, commit acts of sexual violence and rape against civilians in violation of the Convention.

The CAT has considered rape by state officials to be a form of torture that violates the Convention.¹³² The Committee first recognized rape as a violation of the Convention in 2007, when it found that “sexual abuse by the police . . . constitutes torture even though it was perpetrated outside formal detention facilities.”¹³³ Today, the Committee consistently considers and decries rape and other forms of sexual violence when reviewing State parties.¹³⁴

Organizations at both the local and national levels have recognized rape and sexual violence by State actors as a pervasive problem in Bangladesh. The State Department Report found that security forces used rape and other sexual abuses to “gather information from alleged militants and members of political opposition parties.”¹³⁵ Local NGOs have identified numerous instances of rape and sexual violence committed by members of the ruling political parties, in particular the Awami League and individuals backed by those political parties. Odhikar has reported that the ruling party leaders, activists, and supporters are enjoying impunity when carrying out various kinds of violence against women, including rape.¹³⁶ Examples of these findings include:

- In 2017, Awami League official Mohammed al-Helal allegedly raped an 18-year-old girl in Sherpur Upazila. He was detained by locals, but the officer-in-charge, Khan Mohammed Erfan, would not file a case against him and released him within hours.¹³⁷
- In December 2018, the wife of Abul Hossain, a BNP activist, was gang raped at gun point in Kabirhat of Noakhali District by members of a youth wing of the Awami League called Jubo League. The NHRC established an inquiry committee, ultimately finding no proof that the rape and injuries sustained had occurred in connection with the elections. In response to backlash from

¹³² See *VL v. Switzerland*, U.N. Doc. CAT/C/37/D/262/2005 (U.N. Comm. Against Torture Jan. 22, 2007); *E.K.W. v. Finland*, U.N. Doc. CAT/C/54/D/490/2012 (U.N. Comm. Against Torture Jun. 25, 2015); *CT and KM v. Sweden*, U.N. Doc. CAT/C/37/D/279/2005 (U.N. Comm. Against Torture Nov. 17, 2006).

¹³³ *VL v. Switzerland*, U.N. Doc. CAT/C/37/D/262/2005, § 8.10 (U.N. Comm. Against Torture Jan. 22, 2007).

¹³⁴ See, e.g., U.N. Committee Against Torture, Concluding Observations on Colombia, U.N. Doc. CAT/C/COL/CO/4, ¶ 28 (May 4, 2010); U.N. Committee Against Torture, Concluding Observations on Peru, U.N. Doc. CAT/C/PER/CO/7, ¶ 38 (Dec. 18, 2018); U.N. Committee Against Torture, General Comment No. 4, § 45 (Feb. 9, 2018) (“Indications of personal risk [of torture assessed by the Committee] . . . include . . . violence against women, including rape.”).

¹³⁵ U.S. DEPARTMENT OF STATE, BANGLADESH 2018 HUMAN RIGHTS REPORT at 4.

¹³⁶ ODHIKAR JANUARY-MARCH 2019 REPORT at 34-35.

¹³⁷ U.S. DEPARTMENT OF STATE, BANGLADESH 2018 HUMAN RIGHTS REPORT at 31-32.

the community, the NHRC later tried to distance itself from its own investigative committee's findings.¹³⁸

- In February 2019, a woman and a young girl went to the Satoria Police Station in Manikganj district to recover money taken from them by Sub-Inspector Sekendar Hossain. Sub-Inspector Hossain and Assistant Sub-Inspector Mazharul took them to the guest house of the Direct Council (the local district government body), where they allegedly confined the woman to a room, forced the young girl to take drugs, and then raped her.¹³⁹
- In March 2019, a Juba League¹⁴⁰ activist named Alauddin allegedly raped a woman in Subarnachar of Noakhali Distribut. Alauddin was apprehended by locals and brought to a local government official, Nuru Mia, who released him for 60,000 taka (approximately \$710 USD) instead of bringing him to the police.¹⁴¹

As these examples show, State actors and individuals acting with support from ruling political parties are subjecting Bangladeshi citizens to acts of rape and sexual violence. These acts, which have been classified by the Committee as torture and ill treatment, are being perpetuated in violation of Bangladesh's Convention obligations, including under Articles 2 and 16.

E. Inadequate Prison Conditions

Bangladesh's prison conditions are inadequate to such a degree that the country is in violation of its obligations under the Convention. The CAT has recognized that inadequate conditions of detention may themselves constitute ill-treatment or, in extreme cases, torture.¹⁴² As required under Article 11 of the Convention, the Government is required to "keep under systematic review" the "practices as well as arrangements for the custody and treatment of persons" subject to arrest, detention, or imprisonment within its jurisdiction, and inadequate prison conditions also bear on the cruel, inhuman, and degrading treatment or punishment that the Convention proscribes under Article 16 and/or acts of torture under Article 2, as recognized by the Committee.¹⁴³

¹³⁸ ODHIKAR JANUARY-MARCH 2019 REPORT at 30, 35; Robab Rosan, *NHRC Didn't Say Gang Rape Wasn't Linked to Polls*, DAILY STAR (Jan. 20, 2019), <https://www.thedailystar.net/frontpage/news/noakhali-gang-rape-didnt-say-it-was-not-linked-polls-1690129>.

¹³⁹ ODHIKAR JANUARY-MARCH 2019 REPORT at 12. A case was filed against Hossain and he was later arrested.

¹⁴⁰ The Juba League is the youth branch of the Awami League.

¹⁴¹ ODHIKAR JANUARY-MARCH 2019 REPORT at 35. Alauddin was later arrested.

¹⁴² See, e.g., U.N. Committee Against Torture, Concluding Observations on Mongolia, U.N. Doc. A/66/44, ¶ 16 (2011); U.N. Committee Against Torture, Concluding Observations on Benin, U.N. Doc. A/63/44, ¶ 19 (2008); U.N. Committee Against Torture, Concluding Observations on China, U.N. Doc. CAT/C/CHN/CO/4, ¶ 34 (Dec. 12, 2008).

¹⁴³ As the Committee Against Torture has previously found:

Detention conditions not only raise issues of cruel, inhuman or degrading treatment or punishment but in some circumstances can also be a means of torture, if used in a manner which accords with the provisions of article 1 of the Convention. Therefore, recommendations regarding conditions of detention play a critical role in effective prevention and will touch on a wide variety of issues, including matters relating to physical conditions, the reasons for, and levels of, occupancy and the provision of, and access to, a wide range of facilities and services.

(continued...)

UN representatives have acknowledged the inadequate conditions of jails in Bangladesh. In a 2013 visit to Bangladesh by the Special Rapporteur on violence against women, the Special Rapporteur noted the “shortcomings in the conditions of detention, especially with regard to detainees’ access to health care and hygiene” and issues with overcrowding.¹⁴⁴ The UN Human Rights Committee has similarly expressed concerns regarding the “overcrowding [and] unsanitary conditions” that pervade detention facilities in Bangladesh.¹⁴⁵ The ICCPR’s concluding observations on Bangladesh in 2017 specifically expressed concerns about the state of prisons in Bangladesh, highlighting “overcrowding, unsanitary conditions and extortion of inmates and their relatives by prison guards to enjoy basic rights.” The report also noted “the high number of deaths in prisons over the past five years, all of which are attributed by the State party to natural causes or suicide, while reports indicate that at least some of these deaths can be attributed to poor prison conditions, negligence by the authorities or lack of access to treatment, and some are cases of death as a result of injuries sustained by torture while in police custody (arts. 6-7 and 9-10).”¹⁴⁶

International entities and local NGOs also have documented the deterioration of detention facilities in Bangladesh. The State Department Report flagged concerns about “overcrowding, inadequate facilities, and a lack of proper sanitation.”¹⁴⁷ Per the same report, in November 2018, there were over 95,000 prisoners in a system designed to hold only 37,000 inmates.¹⁴⁸ Odhikar reported that in March 2019, the prison system continued to hold many more prisoners than its capacity, with over 86,500 inmates.¹⁴⁹

As a result of overcrowding, conditions within the detention facilities are highly deficient. In some cases, lack of space has led to the Government holding inmates in wholly inadequate spaces. For example, in January 2019, approximately 100 inmates were held in an abandoned warehouse in the Khulna District Jail, with many prisoners reportedly becoming ill due to the poor conditions of the warehouse.¹⁵⁰ In other cases, prisoners were not provided sufficient access to toilets and potable water,

See, U.N. Committee Against Torture, Fourth annual report of the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, U.N. Doc. C/46/2, ¶ 107(d) (Feb. 3, 2011) (emphasis added); *see also* U.N. Committee Against Torture, Report of the UN Committee Against Torture: Twenty-fifth Session (13-24 November 2000) and Twenty-sixth Session (30 April-18 May 2001), U.N. Doc. A/56/44, ¶ 95(f) (Oct. 26, 2001).

¹⁴⁴ U.N. Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, on her mission to Bangladesh (20–29 May 2013), U.N. Doc. A/HRC/26/38/Add.2, ¶ 18-20 (Apr. 1, 2014).

¹⁴⁵ U.N. Human Rights Council, Compilation on Bangladesh, Report of the Office of the United Nations High Commissioner for Human Rights, U.N. Doc. A/HRC/WG.6/30/BGD/2, ¶ 23 (Mar. 19, 2018).

¹⁴⁶ U.N. International Covenant on Civil and Political Rights Human Rights Committee, Concluding observations on the initial report of Bangladesh, U.N. Doc. C/BDG/CO/1, ¶ 25 (Apr. 27, 2017).

¹⁴⁷ U.S. DEPARTMENT OF STATE, BANGLADESH 2018 HUMAN RIGHTS REPORT at 5.

¹⁴⁸ *Id.* at 6.

¹⁴⁹ ODHIKAR JANUARY-MARCH 2019 REPORT at 6 (Apr. 17, 2019).

¹⁵⁰ *Id.* at 16.

and were forced to sleep in shifts.¹⁵¹ Some of the detention facilities also subject inmates to high temperatures and poor ventilation.¹⁵² The U.S. State Department has noted that adults and juveniles are commonly incarcerated together, even though local law requires juveniles and adults to be held separately, and women who were being held in “safe custody” (*i.e.*, to protect victims of crimes such as rape, trafficking, and domestic violence from their perpetrators) were sometimes housed together with criminals.¹⁵³

Other reports have noted that mass arrests have contributed to the “grossly overpopulated” prison system, exacerbating already poor conditions and leading to numerous identified deaths due to lack of access to proper treatment facilities or alleged negligence by prison authorities.¹⁵⁴ In 2018, Bangladesh-based NGO Ain o Salish Kendra recorded that poor prison conditions contributed to 74 deaths,¹⁵⁵ and Odhikar recorded another 11 deaths in jail between January and March 2019.¹⁵⁶

The poor, overcrowded conditions of Bangladesh’s jail system subject prisoners to treatment that, per the Committee’s previous state reports, may constitute ill treatment and, in extreme cases, torture in violation of Articles, 11, and 16 of the Convention.

IV. Observations & Recommendations

As further elucidated in Section III and as recently reaffirmed in the third cycle UPR of Bangladesh, it is incumbent upon the Government to “take urgent measures to observe human rights in criminal justice and law enforcement officials and address serious allegations of extrajudicial executions, disappearances and torture.”¹⁵⁷ In particular, the UN High Commissioner for Human Rights has noted that Bangladesh still needs to implement recommendations that it accepted during the second UPR cycle, conducted in April 2013, which similarly raised concerns regarding extrajudicial executions, enforced disappearances, and torture.¹⁵⁸ As the High Commissioner pointed out, and consistent with Bangladesh’s obligations under the Convention, Bangladesh must conduct “[p]rompt and thorough investigation of all allegations of extra-judicial execution, abductions and forced disappearances, taking place within law enforcement agencies, while ensuring that the perpetrators are brought to justice,” as some six years later these issues have gone unaddressed.¹⁵⁹ Fulfillment of these obligations should and must include “[p]rotection of human rights defenders and journalists and ensuring the prompt and impartial investigations into cases of killings, abduction attempts, physical attacks and threats against them” and

¹⁵¹ See U.S. DEPARTMENT OF STATE, BANGLADESH 2018 HUMAN RIGHTS REPORT at 6.

¹⁵² See *id.*

¹⁵³ See *id.*

¹⁵⁴ See ODHIKAR JANUARY-MARCH 2019 REPORT at 8, 16.

¹⁵⁵ See U.S. DEPARTMENT OF STATE, BANGLADESH 2018 HUMAN RIGHTS REPORT at 5.

¹⁵⁶ See ODHIKAR JANUARY-MARCH 2019 REPORT at 5.

¹⁵⁷ See Letter from U.N. High Commissioner for Human Rights to H.E. Mr. Adul Hassan Mahmud Ali, Minister of Foreign Affairs, Bangladesh, at 1 (Nov. 2, 2018), https://lib.ohchr.org/HRBodies/UPR/Documents/Session30/BD/HC_LetterBangladesh_30Session.pdf.

¹⁵⁸ See *id.* at 3.

¹⁵⁹ *Id.*; see also, *e.g.*, Convention against Torture, arts. 12-13.

“[e]nding impunity by conducting thorough investigations and criminal prosecutions of human rights violations and abuses against human rights defenders, journalists, [and] bloggers”¹⁶⁰

Robert F. Kennedy Human Rights further respectfully request that the CAT urge the Government of Bangladesh to immediately address the following recommendations

- The Government, consistent with its obligations under, *inter alia*, Articles 13 and 14 of the Convention, must ensure that:
 - i. any victim or aggrieved third party has the right to complain and has unfettered access to the prescribed complaint system, with the State making any necessary amendments to its complaint processes as may be necessary to ensure such complaints can be filed and effectively pursued;
 - ii. LEAs are trained and overseen, at all levels, to ensure that the prescribed complaint process is provided for and not selectively withheld upon allegations of LEA involvement;
 - iii. complainants and witnesses can access protection against ill-treatment or intimidation that may result from filing a complaint or providing evidence; and
 - iv. LEAs are sanctioned for any acts of ill-treatment or intimidation that they inflict in association with filing a complaint.
- The Government should fortify the mandate of the NHRC, by, at a minimum:
 - i. granting the NHRC full investigative authority to investigate cases alleging human rights violations committed by LEAs;
 - ii. ensuring the NHRC’s autonomy from the government through a transparent selection of members; and
 - iii. ensuring that the NHRC has adequate resources and access to places of detention and other locations where persons may be held in custody or treated for their welfare.
- The Government should ensure that the directive issued by the Supreme Court of Bangladesh in 2016, concerning warrantless arrest and prolonged pre-trial detention and rearrest, is implemented, and provide adequate training on, and oversight over, practices concerning the granting of bail and treatment of prisoners subjected to prolonged pre-trial detention, with a view to addressing the underlying structural issues that enable prolonged detention.¹⁶¹
- The Government should investigate all cases of alleged extrajudicial killings, enforced disappearances and excessive use of force, and prosecute and punish perpetrators, including LEAs, with appropriate sanctions and provide full reparation to the victims and their families.
- For cases of enforced disappearances, the Government should have a duty to investigate and establish the truth about the fate and whereabouts of victims and ensure that victims of enforced disappearance and their families receive truthful reports memorializing investigations.

¹⁶⁰ See Letter from U.N. High Commissioner for Human Rights to H.E. Mr. Adul Hassan Mahmud Ali at 5 (further calling upon the Government to “[e]nhanc[e] efforts to prevent cases of torture and enforced disappearances”).

¹⁶¹ As mentioned above, the Appellate Division of the Supreme Court issued a directive in May 2016 explicitly prohibiting the rearrest of accused while they are released on bail or the arrest of the same individual for a new case without producing them in court. See U.S. DEPARTMENT OF STATE, 2016 COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES - BANGLADESH, sec. 1(d) (Mar. 3, 2017), <https://www.refworld.org/docid/58ec8a7113.html>.

- The Government should take prompt measures to prevent all acts of torture and ill-treatment, including rape and other forms of sexual violence.
- The Government should improve the conditions of detention in police stations and prisons so as to bring them into conformity with Articles 2 and 16 of the Convention, including a reduction of both the number of persons in the prison system and overcrowding within the prisons.