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## Human Rights Council

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Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

## **Written statement\* submitted by ODHIKAR - Coalition for Human Rights, a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[03 June 2019]

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\* Issued as received, in the language(s) of submission only.



## **Bangladesh: Lack of political will and impunity of law enforcement agencies shows failure to fulfill obligations under the UN Convention against Torture**

Odhikar draws the special attention of the Human Rights Council and the Special Procedures to the persistent use of torture and inhuman or degrading treatment in Bangladesh. Torture is widespread and systematic, notably in custody, where law enforcement officers use it as a method of interrogation, extortion or punishment. There are numerous allegations of torture and deaths due to torture in custody, against law enforcement agencies. According to Odhikar documentation from 2009 to 2018, at least 126 persons were reportedly tortured to death in custody by members of different law enforcement agencies. However, Odhikar believes that the actual number is higher, as most of the incidents are not reported due to lack of information, as victims/families do not speak out in fear of further torture or harassment. In Bangladesh law enforcers inflict torture in remand or when the suspect/arrest is in custody, to get statements or to extort money.

According to human rights organisations and media reports, law enforcement agencies including the police, RAB and intelligence agencies, engage in torture and physical and psychological abuse during arrests and interrogations. Torture methods include severe beatings, suspension from the ceiling, electric shocks, and threats of death and in some cases, knee-capping and mock executions.

Although Bangladesh acceded to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on 5 October 1998 with a declaration on Article 14<sup>1</sup>, it has not yet submitted its initial state report to the Committee against Torture. The Committee has decided to consider Bangladesh's observance of the UNCAT in its 67th Session (August 2019) even without its initial state party report.<sup>2</sup> In addition to the UNCAT, the ICCPR (acceded in 2000) and the Rome Statute (ratified in 2010), the Constitution of Bangladesh [Article 35(5)] prohibits torture.

In 2013, Bangladesh enacted the Torture and Custodial Death (Prevention) Act, its first anti-torture legislation. The Act had been passed basically due to pressure put by human rights defenders and the victim-families so as to criminalize torture and thus curtail the widespread impunity enjoyed by law enforcers. However, reports of torture in police custody continue and perpetrators enjoy almost complete impunity.

The Act criminalises torture by all kinds of law enforcement officers in a long but not exhaustive list laid down in the law and other 'public servants'. The Act also criminalised custodial deaths. The minimum penalty for torture is five years of imprisonment or a fine and the maximum is life in imprisonment, if the person dies of torture.<sup>3</sup> However, the legal definition of torture in the Act, does not reflect entirely the definition of the Convention against Torture – the definition is limited to physical and mental pain pursuant to obtaining information and confessions. It offers a poor amount of compensation leaving no room for redress, reparation, and rehabilitation. The law does not bar the convicted perpetrators of torture or custodial death from entering into service of public and private sectors in the future. It does not prescribe effective witness protection mechanism.

The Act does not include any definition of 'custody'. There should be a clear definition of 'custody' in the Act to make the law more effective. Further, section 8 of the Act fails to

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<sup>1</sup> Article 14 of the CAT: 1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation. 2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law

<sup>2</sup> <https://www.ohchr.org/EN/HRBodies/CAT/Pages/NGOsNHRIs.aspx>

<sup>3</sup> Blast, Review of the Torture and Custodial Death (Prevention) Act, 2013 (December 2015) p.5 - [https://www.blast.org.bd/content/publications/Review%20of%20The%20Torture%20&%20Custodial%20Death\(Prevention\)%20Act,%202013.pdf](https://www.blast.org.bd/content/publications/Review%20of%20The%20Torture%20&%20Custodial%20Death(Prevention)%20Act,%202013.pdf)

provide any direction on what procedure will be followed if the investigation does not conclude within the prescribed time limit of 120 days. Section 14 does not provide any direction on what procedure will be followed if the trial of the offences does not complete within the prescribed time limit of 210 working days. The 2013 Act primarily entrusts the investigation of these offences to the police, this will endanger the credibility of a neutral investigation. Thus, it is recommended that the judicial investigation under section 5(2) should be mandatory. It is also recommended that the offences under this Act must be investigated by an independent investigating agency, which should not have administrative and supervisory authority with district police.

Impunity for crimes related to torture remains the norm. Victims and/or their families do not often lodge a complaint against law enforcement officials due to fear of reprisals and threats from public authorities; lack of access to complaint mechanisms (which remains in police hands or to the Court); ignorance of the law; as well as distrust in the judiciary system, which is dysfunctional. If and when a complaint is filed, law enforcement officials are rarely formally investigated. The few cases that have been filed under the 2013 Act are still ‘under investigation’. There is no public information regarding on-going investigations into torture allegations in the country. Several public officials are granted immunity for their actions. For instance, officials working in the RAB, are granted immunity against any suit, prosecution or legal proceedings for anything done or intended to be done “in good faith”. RAB officers are thus not held accountable for their actions.<sup>4</sup> Section 197 of the Code of Criminal Procedure also provides a kind of immunity against prosecution of public servants.<sup>5</sup>

Law enforcement officials believe “torture” is a better and easy tool to extract information from criminals. It is to be noted that a Police Reform Programme in Bangladesh supported by the UNDP and DFID in 2009, was initiated to improve human security in Bangladesh and support the transition of the Bangladesh Police from a colonial style police force to a more effective and service-oriented one through capacity building trainings on human rights.<sup>6</sup> This initiative clearly has not worked as law enforcement officials have become more attuned to torture instead.<sup>7</sup>

Ironically, Bangladesh is adorning the seat of the Human Rights Council for the third term despite its terrible human rights record and non-implementation of the Convention against Torture. Despite the Government’s omission/refusal to submit its report on the UNCAT, the National Human Rights Commission (NHRC) of Bangladesh submitted an alternative report to the Committee on compliance by Bangladesh with the UNCAT.

Bangladesh has made commitments to various international forums, including the UN HRC, for defending human rights and promoting a democratic culture. It has declared ‘zero tolerance’ on torture and extrajudicial killings during the UPR sessions on Bangladesh. However, acts of torture never stopped. The impunity afforded to State officials and members of the law enforcement agencies is a common trend in Bangladesh as in many countries of Asia, and is the first and major obstacle to the fight against torture and ill-treatments. Furthermore, Bangladesh has failed to implement the recommendations accepted during the first, second and third cycle of the UPR hearings at the UN Human Rights Council in 2009, 2013 and 2018 respectively.

In Bangladesh, there is obviously a lack of political will to end torture and make the authority accountable.

<sup>4</sup> Under the Armed Police Battalion Act (1979) Section 13 (amended in 2013).

<sup>5</sup> The Code of Criminal Procedure (1898) -

[http://bdlaws.minlaw.gov.bd/sections\\_detail.php?id=75&sections\\_id=21025](http://bdlaws.minlaw.gov.bd/sections_detail.php?id=75&sections_id=21025)

<sup>6</sup> Police Reform Programme Phase II, UNDP Bangladesh,

[http://www.bd.undp.org/content/bangladesh/en/home/operations/projects/democratic\\_governance/police-reform-programme-phase-ii.html](http://www.bd.undp.org/content/bangladesh/en/home/operations/projects/democratic_governance/police-reform-programme-phase-ii.html)

<sup>7</sup> See: The Guardian, 25 February 2011, Bangladeshi MP ‘tortured’ by British-trained paramilitary unit, <https://www.theguardian.com/law/2011/feb/25/bangladeshi-mp-tortured-rapid-action-battalion>; and The Guardian, 17 January 2011, UK linked to notorious Bangladesh torture centre, <https://www.theguardian.com/world/2011/jan/17/uk-link-bangladesh-torture-centre>

## **Recommendations**

Odhikar is concerned about the massive use of torture by Bangladesh's law-enforcement and intelligence agencies. Odhikar call for the UN Human Rights Council to:

Urge the Government of Bangladesh to unconditionally implement the Convention against Torture and the Torture and Custodial Death (Prohibition) Act of 2013 (after effective amendments) to protect the citizens' right not to be tortured and right to justice and reparation;

Urge the government of Bangladesh immediately withdraw its reservation from Article 14.1 of the Convention Against Torture;

Urge the Government of Bangladesh to accede to the Optional Protocol to the Convention against Torture;

Urge the Government to follow the recommendations made by the UN Human Rights Committee in its 119th session to end torture;

Urge the Government of Bangladesh to recognize the competence of the Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment to receive and consider individual complaints of torture or other breaches of obligations under the Convention;

Urge Bangladesh, as a State Party, to cooperate with the Committee Against Torture and submit all the overdue reports regularly;

Urge Bangladesh to send invitation to the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment and Punishment immediately.

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