**JAMAKON Report to the UN Human Rights Committee**

**Executive summary**

Bangladesh has acceded to the International Covenant on the Civil and Political Rights, 1966 (ICCPR) in 2000 and as a result, Bangladesh entails an obligation to submit regular reports to the Human Rights Committee. As a part of this obligation, the Government of Bangladesh has submitted initial report to the Human Rights Committee under article 40 of the ICCPR, 1966 on 19 June 2015. This report prepared by the National Human Rights Commission, Bangladesh (NHRC) (which also goes by the name ‘JAMAKON’ in Bangladesh) aims at analysis of implementation status of ICCPR in Bangladesh looking at the most relevant articles and critical assessment of the existing situation of enjoyment of civil and political rights in Bangladesh. It identifies gaps and main barriers in implementation of ICCPR in Bangladesh. It also highlights concerns and challenges in implementation of civil and political rights in Bangladesh. Some of the key challenges in implementation of the ICCPR include: inadequate legal framework, administrative practices such as remand, torture and extra-judicial killing, unreasonable restrictions on some rights and conflicting laws. Key institutions such as judiciary, law-enforcing agencies and prison system needs reforms and orientation towards realization and respect for civil and political rights. Domestic legal framework of Bangladesh is not fully compatible with the norms of the ICCPR. Although most of the civil and political rights under the ICCPR have been guaranteed in the Constitution of the People’s Republic of Bangladesh as fundamental rights, Bangladesh made some reservations and declaration to the ICCPR to limit the application of ICCPR. Finally, this report makes recommendations for effective implementation of the ICCPR in Bangladesh.

**Acronyms and Abbreviations**

BNWLA- Bangladesh National Women Lawyers Association

BLAST- Bangladesh Legal Aid Services Trust

CAT- Convention against Torture

CEDAW- Convention on the Elimination of Discrimination against Women

CHT- Chittagong Hill Tracts

Cr. P. C.- Code of Criminal Procedure

ICCPR- International Covenant on Civil and Political Rights

HCD- High Court Division

ICT- Information Communication and Technology

JAMAKON- Jatio Manobadhikar Commission (National Human Rights Commission)

NHRC- National Human Rights Commission

PCJSS- Parbattya Chattagram Jana SanghatiSamity

PIL- Public Interest Litigation

RAB- Rapid Action Battalion

UNDP- United Nations Development Programme

UPR- Universal Periodic Review

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**Introduction**

1.Bangladesh has ratified eight out of nine core human rights treaties. As a result of such ratification, Bangladesh entails obligation under international law to respect, protect and fulfil human rights enumerated in those treaties. Under the human rights treaties, Bangladesh has obligation to submit regular reports to the relevant treaty bodies on measures taken by it regarding implementation of treaties. International Covenant on Civil and Political Rights (ICCPR), 1966 mainly deals with implementation of civil and political rights in national jurisdiction. Bangladesh has acceded to the ICCPR in 2000 and accordingly, Bangladesh has obligation to submit regular reports to the Human Rights Committee. As a part of this obligation, the Government of Bangladesh has submitted initial report to the Human Rights Committee under article 40 of the ICCPR, 1966 on 19 June 2015.

2. The National Human Rights Commission of Bangladesh (NHRC) established under the National Human Rights Commission Act, 2009 is a statutory independent body to protect and promote human rights in Bangladesh. According to National Human Rights Commission Act, 2009, one of the key functions of the NHRC is ‘To research or study treaties and other international instruments on human rights and to make recommendations to the government for their effective implementation.” As a part of its mandate, the NHRC is submitting this report on the status of implementation of the ICCPR in Bangladesh. However, the NHRC views that the Paris Principles 1993 has not been exhaustively adhered to. The top administrative positions is still been seconded from the Government. Financial independence has not been ensured even not in accordance with the founding Act. And recruitment of officials is still subject to bureaucratic process that lies with the support of the Government. NHRC has already submitted its proposal to the concerned ministries to comply with the Paris Principles.

3. This report aims at analysis of implementation status of ICCPR in Bangladesh looking at the most relevant articles and critical assessment of the existing situation of enjoyment of civil and political rights in Bangladesh. It also identifies gaps and main barriers in implementation of ICCPR in Bangladesh. While the state report mainly focuses on law and policies on the ICCPR, this alternative report highlights supplements the State report and in some cases, challenge the issues raised in the state report.

4. NHRC believes that this report will serve as a valuable source for the Independent Experts who analyses the implementation of the ICCPR in Bangladesh’s context. This report evaluates the situation as objectively as possible and to take a critical look at the government action to prevent the violation of civil and political rights in the country. It also highlights concerns and challenges in implementation of civil and political rights in Bangladesh. Finally, it makes recommendations for effective implementation of the ICCPR.

5. This report mainly takes an analytical approach. The report is based on extensive literature review of primary and secondary sources. The report has been prepared in the light of the guidelines of the UN Human Rights Committee on shadow or alternative report.

6. When a state becomes a party to the ICCPR, it undertakes to immediately guarantee to all individuals in its territory or under its jurisdiction, without any discrimination, all the rights specified in the ICCPR. States parties also undertake to adopt legislative or other measures to give effect to the rights recognized in the ICCPR; ensure to victim of violation of rights an effective and enforceable remedy; and develop the possibility of judicial remedies.

**Status of Compliance with ICCPR Articles**

7. Since Bangladesh has acceded to the ICCPR, it has obligation under international human rights law to implement its provision through adoption of legislative, policy and institutional measures. The Constitution of Bangladesh has guaranteed most of the civil and political rights under ICCPR as fundamental rights and has made provisions for enforcement of these rights through appropriate judicial means. The Constitution of Bangladesh has proclaimed that any law inconsistent with fundamental rights will be void to the extent of such inconsistency. The Supreme Court of Bangladesh is the guardian of the constitution and as such, remains main institution and forum for providing remedies in case of violation of such rights. Judicial review under article 102 is the main mechanism for enforcement of fundamental rights under the constitution of Bangladesh.

8. Over the last two decades, the higher judiciary of Bangladesh has played a pro-active role in upholding the civil and political either in Public Interest Litigation (PIL) or *suo moto* exercise of its jurisdiction in case of illegal detention, violation of prisoners rights, custodial torture, enforced disappearance, equal protection of law and non-discrimination. The law enforcement agencies, prison system, the lower judiciary and prosecutors are also part of broad spectrum of a set of legal institutions which are concerned with enforcement of civil and political rights. Apart from these, institutional mechanisms like National Human Rights Commission of Bangladesh, Bangladesh Law Commission, Anti-Corruption Commission, Information Commission are also related to implementation of the civil and political rights in Bangladesh.

9. However, despite these positive developments, full implementation of the provisions of the ICCPR remains a big challenge due to unabated custodial torture and death, enforced disappearance, unlawful detention, extra-judicial killing, attack on freedom of expression, thought, opinion by non-state actors, and attack on religious and ethnic minorities. Some of the key challenges in implementation of the ICCPR include: inadequate legal framework, administrative practices such as remand, torture and extra-judicial killing, unreasonable restrictions on some rights and conflicting laws. Key institutions such as judiciary, law-enforcing agencies and prison system needs reforms and orientation towards realization and respect for civil and political rights. Domestic legal framework of Bangladesh is not fully compatible with the norms of the ICCPR. Although most of the civil and political rights under the ICCPR have been guaranteed in the Constitution of Bangladesh as fundamental rights, Bangladesh made some reservations and declaration to the ICCPR to limit the application of ICCPR. For example, Bangladesh has made Declaration on Article 10, 11 and 14. The Declaration provides that so far as the first part of paragraph 3 of Article 10 relating to reformation and social rehabilitation of prisoners is concerned, Bangladesh does not have any facility to this effect on account of financial constraints and for lack of proper logistics support. But the last part of this paragraph relating to segregation of juvenile offenders from adults is a legal obligation under Bangladesh law and is followed accordingly.

10. Declaration on Article 11 states that ‘no one shall be imprisoned merely on the ground of inability to fulfill a contractual obligation,’ is generally in conformity with the Constitutional and legal provisions in Bangladesh, except in some very exceptional circumstances, where the law provides for civil imprisonment in case of willful default in complying with a decree. The Government of Bangladesh will apply this article in accordance with its existing municipal law.

Declaration on Article 14 provides that so far as the provision of legal assistance in paragraph 3(d) of Article 14 is concerned,    the Government of Bangladesh, notwithstanding its acceptance of the principle of compensation for miscarriage of justice, is not in a position to guarantee a comprehensive implementation of this provision for the time being. However, the aggrieved has the right to realise compensation for miscarriage of justice by separate proceedings and in some cases, the court  *suo moto* grants compensation to victims of miscarriage of justice. Bangladesh, however, intends to ensure full implementation of this provision in the near future. Bangladesh has also made reservation to paragraph 3 (d) of Article 14 which prohibits trial in *absentia.* Thus, in Bangladesh, a person can be tried in his absence if he is a fugitive offender. NHRC deems it necessary to have arrangement of awarding compensation to the victim of miscarriage of justice.

11. Apart from the institutional barriers, reservations and declarations, there are some laws which are in conflict with the ICCPR articles. The Special Power Act, 1974, the Anti-terrorism Act, 2009 and the Mobile Court Act, 2009 remain major stumbling block to fully implement the ICCPR as many provisions of these laws curtails liberty of individuals.

 12. In the recent years, the National Human Rights Commission Bangladesh has made some important interventions for protection of civil and political rights through facts finding, visit of prisons, hospitals and juvenile development centres, asking appropriate government agencies to take measures, investigation of human rights violation, recommendation, legal aid and human rights advocacy, research and training on human rights norms and practices. It also calls for reports from public authorities in case of allegation of violation of human rights by the law enforcing agencies, visits jails, prisons or correctional centres, files writ petitions with the High Court Division (HCD) on behalf of an aggrieved person in case of gross violation of human rights. It has organised many training programmes for government officials, police, human rights defenders, NGO representatives, journalists, judges, lawyers and local government representatives. It has also built networking with NGOs and civil society organisations. The NHRC also holds consultation with NGOs, experts and civil society organisations for initiating reforms of laws which are inconsistent with international human rights norms. Recently, the NHRC has drafted Guidelines on Procedure following Deaths in the Custody of Law Enforcement Agencies or in Crossfire. These guidelines aim to compile all of the existing procedural requirements for the police, judiciary and executive following a death in custody or cross fire.

**Article 3**

**Protection against discrimination on the grounds of sex**

13. The constitution of Bangladesh prohibits discrimination on the ground of sex. Bangladesh has ratified the Convention to Eliminate Discrimination against Women (CEDAW) and is also signatory to the Declaration on the Elimination of violence Against Women, 1993. Bangladesh has enacted series of legislation such as the Child Marriage Restraint Act, 1929, the Dowry prohibition Act, 1980; the Prevention of repression of women and children Act, 2000, the Domestic violence (Protection and Prevention) Act, 2010. However, these laws remain largely unimplemented due to lack of public awareness of these laws, male dominated social structure and psychological barriers of women justice seekers. Therefore, discrimination and violence against women continues unabated and remains a serious human rights concern in Bangladesh. Many gender-specific violence against women still pervasive in Bangladesh.

In the State report, it is mentioned that equal right of women in regard to marriage and dissolution of marriage is ensured.[[1]](#footnote-1) But in reality, under personal law, women still face discrimination regarding marriage, separation and divorce. Muslim personal law allows polygamy for men, contains limited provisions on maintenance and does not ensure women's equal right to marital property during marriage and upon divorce. Hindu women can seek judicial separation but the law does not recognise divorce. Bangladesh has established family courts to deal with separation, divorce and maintenance cases. But delay at every stage of the legal proceeding, non-execution of maintenance awards, and evidentiary challenges makes the family court ineffective to some extent.

14. Bangladesh has made reservation to Article 2 and Article 16.(1)(c ) of the CEDAW on the ground that they conflict with  *Sharia* law based on Holy Quran and *Sunna*. These two articles require the state party to enact new laws or amend all discriminatory laws that affect women's human rights. However, these reservations are no longer justified as many Muslim majority countries, including, Jordan, Kuwait, Tunisia, Lebanon, Maldives, Oman, etc., have placed no reservations on Article 2. As a result of such discrimination, Muslim women are deprived of equal rights relating to inheritance of property. Moreover, Bangladesh's reservation to Article 2 is in contradiction with constitutional guarantees provided under Articles 10, 19, 27, 28, 29, which say that the state shall not discriminate against any citizen on the ground of religion, race, caste, sex or place of birth, and women shall have equal rights with men in all spheres of state and public life. Article 16 (1) (c) of CEDAW deals with the right to inheritance of property. On the other hand, under personal law, women of minority community are also deprived of property rights. For example, under traditional Hindu law, Hindu women do not have inheritance rights nor are the marriages of the Hindu community registered.

15. In Bangladesh, fatwa-induced violence against women often occurs by pronouncement made in traditional *shalish* or other occasions in rural areas. Primarily poor and vulnerable women and men in rural areas across the country have been subjected to whipping, lashing and beating in imposition and execution of certain penalties, by private individuals acting without any authority of law. In a PIL case of *Bangladesh Legal Aid and Services Trust vs. Govt. of Bangladesh[[2]](#footnote-2)*the Court declared that the imposition of extra-judicial punishment in the name of *Sharia/Fatwa* is illegal and without lawful authority. The court also issued the directions that the persons responsible for imposition of extra-judicial punishments shall be held responsible under the relevant sections of the Penal Code and other laws of law applicable in the regard.

In similar vein, in the case of *Md. SalauddinDolon vs. Govt. of Bangladesh[[3]](#footnote-3),* the High Court Division declared that imposition of dress code on women by the government official such as veil or *purdah* is a violation of women’s rights.

16. Sexual harassment of women what is popularly known as 'eve teasing' has emerged most pressing social problem in Bangladesh. In recent years, ‘eve teasing’ resulted in several suicides by the victim girls, killing of their relatives or other people who try to protect the victims from any attempt by the perpetrators of such menace. In the case of *Bangladesh National Women Lawyers Association (BNWLA) vs. Government of Bangladesh[[4]](#footnote-4),* the court recommended for incorporation of Sexual Harassment as a new offence in the Suppression of Oppression of Women and Children Act, 2000.

Domestic workers are most disadvantaged and deprived segments of society in Bangladesh. In particular, child and female domestic workers are often abused and subjected to torture and other forms of inhuman treatment. In the case of *Bangladesh National Women Lawyers Association (BNWLA) vs****.*** *Govt. of Bangladesh,[[5]](#footnote-5)*the government is directed to take immediate steps to prohibit employment of children up to the age of 12 from any type of employment, including employment in the domestic sector and to include domestic workers within the definition of “worker” in the Labour Act, 2006.

Sexual harassment of female students at educational institutions or workplaces is another prevalent form of gender-based abuse and violence in Bangladesh. But the existing laws of Bangladesh do not define the term ‘sexual harassment’. In the case of *Bangladesh National Women Lawyers Association (BNWLA) vs. Government of Bangladesh and Others[[6]](#footnote-6),* the High Court Division found that there is no virtually any law to prevent and punish acts and behaviour known as sexual harassment of women. The court observed that protection from sexual harassment and right to education and work with dignity is universally recognised as basic human rights. The Directives provide that it shall be the duty of the employers and other responsible persons in work places, and the authorities of all educational institutions to maintain an effective mechanism to prevent or deter the commission of offences of sexual abuse and harassment, and to provide effective measures for prosecution of the offences of sexual harassment.

In Bangladesh, women living in poverty, in both rural and urban areas, are facing problems in access to justice due to various constraints such as discriminatory attitude, legal and institutional barriers, social stereotyping, cultural norms and lack of financial capacity. The justice chain- the series of steps that a woman has to take to access the formal justice system, often breaks down due to poverty, lack of legal awareness and discriminatory attitudes of service providers, including the police and judiciary. The ability of women to effectively utilize the legal and judicial procedure is circumscribed by a wide array of other factors also such as lower literacy, lack of family support and lack of access to information about legal services.

**Article 6**

**Right to life**

17. The right to life is the most fundamental of all human rights, without which all other rights are meaningless. Pursuant to the ratification of the ICCPR, Bangladesh has undertaken an obligation to ensure the right to life of individuals. Article 31 and 32 of the Constitution guarantee the right to life and personal liberty. Thus, Bangladesh is obliged to take measures to ensure the right to life, liberty and security of life.

In Bangladesh, the right to life is frequently violated through extra-judicial killings which are characterized as ‘cross fires’ or ‘armed encounters’ by law enforcing agencies, and enforced disappearances. Recently two foreigners and four bloggers had been allegedly killed by Islamic militants in Bangladesh, which sent shock wave across the country.

In the Universal Periodic Review (UPR) in 2009 and 2013, Bangladesh reaffirmed its stand on ‘zero tolerance’ against human rights violations by law enforcement agencies and against their impunity.[[7]](#footnote-7) But despite a reported decline in numbers, extra-judicial killings have continued. Reports of disappearance have also been a major concern in recent years The NHRC has received complaints of torture, unlawful detention, domestic violence inaction by government officials and enforced disappearance. In most cases, these complaints were related to law enforcement agencies including the Rapid Action Battalion (RAB) and it has asked relevant government agencies to investigate such incidents. During 2014 NHRC, has received complaints on enforced disappearance 14, extra judicial killings 2, custodial torture 17, abduction 8. However, NHRC also notes with concern, the regularity of reports by the NGOs and media of killings and torture by the law enforcing agencies. According to Ain-O-Salish Kendra (ASK), from January to August 2015, 135 persons were allegedly killed by law enforcement agencies[[8]](#footnote-8), 34 persons died in jail custody from January to June 2015[[9]](#footnote-9), and there were 43 cases of enforced disappearances allegedly by law enforcement agencies and reported by family members for the period from January to August 2015.[[10]](#footnote-10) The victims include politicians, businessmen, students, teachers, and leaders and activists of the ruling and opposition parties. Some are recovered as dead after they were abducted.[[11]](#footnote-11) In many cases, the families of the disappeared claim that law enforcement agencies picked up the victims. However, the law enforcement agencies deny any knowledge about the disappeared.[[12]](#footnote-12)

The expression of ‘enforced disappearance’ is absent in criminal laws of Bangladesh. However, there are penal provisions for crimes such as abduction, wrongful confinement, and grievous hurt. In case of enforced disappearance involving support or acquiescence of the state, currently no legal action can be directly lodged for enforced disappearance as it does not fall within the definition of abduction. In case of enforced disappearance by non-state actors, legal proceedings can be initiated for such incident at least as offence of abduction under the Penal Code. Moreover, the Code of Criminal Procedure requires government authorization prior to suing a public servant, which remains a main obstacle to hold law enforcement agencies accountable for enforced disappearance. Thus, state actors involved in enforced disappearance currently enjoy impunity for such a crime. Another barrier in ensuring legal accountability is the lack of witnesses in cases of enforced disappearance. This promotes a culture of impunity and undermines the rule of law.

The NHRC is also concerned about a new trend of deaths in custody when it is claimed that the victim died of heart attack or in a grenade explosion while in custody of the RAB or detectives.[[13]](#footnote-13) Human rights violations by the Indian border security forces (BSF) is frequently reported along the borders between Bangladesh and India. Instances of BSF shooting, killing, torturing and abducting unarmed Bangladeshi civilians in the border constitute gross violation of human rights. The NHRC has expressed its deep concern about the border killing and asked Indian authorities to take measures to stop border killing.

There unfortunately continues to be a lack of accountability for such actions. NHRC views that impunity of law enforcing agencies is also major barrier in implementation of the ICCPR. The need to end the culture of impunity of law enforcement officials and to increase their accountability is utmost. Stamping out extrajudicial killings and enforced disappearances is critical for upholding the rule of law as well as ensuring the right to life. The NHRC supports action to bring to justice all officials accused of extrajudicial killings and enforced disappearances in a transparent way. The NHRC calls for independent and impartial investigations into any alleged such cases.

18. Another disturbing trend is that punishment of death penalty is provided for many pretty offences under the laws of Bangladesh, which are out of proportion to the gravity of the offence. Such widespread prescription of death penalty as a mode of punishment is inconsistent with international human rights standard. The Penal Code, 1860 prescribes death sentence for eight kinds of offence. Apart from the Penal Code, death sentence has been prescribed for kidnapping or abducting a minor under the Criminal Law Amendment Act, 1958; keeping arms under the Arms Act, 1878, causing explosion under the Explosive Substance Act, 1908. After emergence of Bangladesh, a large number of criminal statutes were enacted prescribing death sentences for various crimes. The statutes that prescribe death sentence include the Special Power Act, 1974, the Emergency Power Act, 1975; the Martial Law Regulations, 1975; the Terrorism Control Act of 1992, the Suppression of Oppression of Women and Children Act, 2000, the Acid Offences Act, 2002 etc.

The President's power of pardoning sentence under article 49 of the Constitution of Bangladesh, in particular, death sentence, is often abused and controversial as there is no guideline for exercising such power. The NHRC considers that guidelines should be formulated by the government soon for exercising this power.

However, a recent landmark judgment has been made on mandatory death penalty: In 2005, a renowned human rights organisation BLAST filed a writ petition (see, BLAST and another v Bangladesh and others, Writ Petition No. 8283 of 2005) challenging Shukur Ali's sentence and constitutionality of section 6(2) of the Act of 1995. The High Court Division delivered its judgment on 2 The Supreme Court of Bangladesh has declared mandatory death penalty unconstitutional under the Act of 1995. However, the Court has now the discretion to award the offender with death sentence or life term imprisonment – under the Act of 2000 – depending on the gravity of the offence. March 2010, in which it declared section 6(2) unconstitutional on the ground that the provision of awarding mandatory death penalty curtails the discretionary power of the Court. By time, this Act of 1995 was also repealed in 2000. [[14]](#footnote-14)

**Article 7**

**Prohibition of torture**

19. The right not to be subjected to torture or cruel, inhuman or degrading treatment or punishment, is absolute under the ICCPR. Article 35 of the Constitution of Bangladesh prohibits torture as it provides that no body will be subject to cruel, inhuman or degrading treatment. Although Bangladesh has acceded to the Convention against Torture, 1984, custodial torture has become a persistent trend in Bangladesh. In response to widespread public concern of lawlessness and crime in society, government has formed various special forces from time to time. For example, the government formed Special Forces with Army, Navy, Bangladesh Rifles and police under different names such as ‘Operation Clean Heart’, Rapid Action Team (RAT), Rapid Action Battalion (RAB) and *Cheeta.* These combined forces led arbitrary arrests, excessive use of force, and custodial torture and deaths. The majority of those detained were subject to severe physical and mental torture.[[15]](#footnote-15)Suspects are arrested by these special forces in total disregard of due process of law. The suspects are often kept in *incommunicado* detention[[16]](#footnote-16) by joint or special force without external monitoring of the interrogation process. In most cases, after such detention, suspects are killed and declared as “killed in an encounter.”

20. These forces were given special powers to recovery of unauthorised arms, apprehend armed gangs of criminals, and maintain internal securities. Their acts of violence were justified as containing a spree of crimes. RAB which is currently operating as a composite elite force’ comprising of the army, navy, air force, police force for law enforcement came into existence through amendment of the Armed Police Battalions Ordinance, 1979 in 2003.[[17]](#footnote-17) This amendment authorised RAB exclusively to take on special duties of ‘intelligence in respect of crime and criminal activities’ and investigation of any offence on the direction of the government. On October 25, 2004, the constitutionality of the Armed Police Battalions (Amendment) Act was challenged on the grounds that there were no rules or procedures to specify how RAB operates.  The High Court subsequently ruled to the effect that RAB should function within the bounds of existing law.[[18]](#footnote-18)

21. In order to implement the obligations under the Convention against Torture, the government of Bangladesh has enacted a legislation called ‘Torture and Custodial Death (Prevention) Act, 2013. Section 3 prescribes that this law will prevail upon any other existing law. Section 4 deals with complaint procedure regarding torture. Section 12 provides that war situation, threat of war or internal political instability or emergency situation or superior order or order of government will not be used as an excuse for commission of an offence under this Act. Another important feature of this Act is that if a complainant suffers harm due to negligence or lack of care of the government official, the burden of proof of such harm will lie upon the accused government officials.[[19]](#footnote-19) Section 20 authorises the government to make Rules to implement the Act. But the definition of ‘torture’ in the Torture and Custodial Death (Prevention) Act, 2013 does not reflect all the elements of torture as defined in CAT. For example, ‘coercion’ which appears in the CAT is absent in the definition clause of the Act.[[20]](#footnote-20) On the other hand, the Act does not have the following exclusion clause that appears in Article 1 of CAT: “It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.”

The Act provides for two alternative ways for making complaints against purported acts of torture. Sections 4 and 5 of this Act provide that a court may order the Superintendent of Police to register a complaint of torture after due medical examination of the complainant by a registered medical practitioner. Alternatively, a complaint can be made directly to a police officer not below the rank of the Superintendent of Police. The law also allows a third person to make a complaint against torture. However, the Act does not contain any provision that allow it to prevail upon the laws such as the Armed Police Battalions Ordinance 1979, (as amended in 2003), which contain provisions for immunity of law enforcing agencies. The Act does not explicitly extend protection to a witness. This law is yet to be applied in practical situations.

**Article 9**

**Prohibition of arbitrary arrest or detention**

22. The Constitution of Bangladesh provides that no person will be deprived of personal liberty and article 33 provides some safeguards as regards arrest and detention. But in practice, Section 54 and 167 of the Code of Criminal Procedure, 1898 gives wide powers to the police to arrest a person without warrant on reasonable suspicion. Section 54 and 167 of the Code of Criminal Procedure, 1898 are the main legal provisions, which facilitate torture in Bangladesh. Section 54 gives arbitrary and wide power to the police to arrest a person without warrant on reasonable suspicion. The word ‘reasonable suspicion’ is not defined and as such creates ample scope of the misuse by police. However, the power of arrest is qualified by the existence of any one or more of the nine grounds expressly specified in the section.[[21]](#footnote-21)

23. Section 167 empowers the magistrate to grant detention of an accused in police custody of what is popularly known as ‘remand’,[[22]](#footnote-22) - remains main instrument for custodial torture. Section 167 provides that the maximum period of remand which a Magistrate can authorise is 15 days as a whole. If remand is ordered, the Magistrate must record his reasons. Another precondition is that unless the accused is brought before the court, no remand order can be passed. Remand in Bangladesh is mostly used for putting the accused on police custody. Although it is not mentioned that remand can be allowed for the purpose of interrogation, the prevailing practice is that accused is taken on remand only for the purpose of interrogation or extorting information from the accused through interrogaration. Magistrates are legally bound to examine reasonable grounds before granting remand but in reality, they hardly check the police diary of the arrested persons nor record the reasons for granting remand.[[23]](#footnote-23)According to section 167(3), remand should be granted only in the custody of police, which means that the place of remand must be police station and only the police can have access for interrogation during remand.

24. Apart from above provisions, section 46, 55 and 151 of Cr.P.C. are also abused leading to torture by police. Section 46 of Cr. P.C. allows the use of ‘all means necessary’ by the police to affect arrest. Section 55 of Cr. P.C permits an officer to arrest any suspicious person whom the police officer reasonably thinks might commit a crime or any person who cannot give a satisfactory account of him or herself. Section 151 of Cr. P.C. states that a police officer knowing of an intention of a person to commit any cognizable offence may arrest him, without orders from a magistrate and without a warrant, if it appears to such officer that the commission of the offence cannot be otherwise prevented. These provisions are abused and the use of torture and ill-treatment are more often found necessary by law enforcement agencies under these provisions.

25. Although the Magistrate before whom the detained person is to be produced within 24 hours, has the duty to apply his mind and grant even judicial custody only for good reason, and police custody even more sparingly (the latter not exceeding fifteen days in the whole) and this too after scrutinizing case diaries, it is found that this is seldom done with the solemnity that it deserves.

 In Bangladesh, custodial confessions are outlawed unless made to a Magistrate and then, if an accused states that he is unwilling to make a confession, he must be sent only to judicial custody if not released.[[24]](#footnote-24) Section 27 of the Evidence Act, a statement made by the accused in police custody that leads to the recovery of incriminating information and when it is found to be true, is admissible in court. This provision enables law enforcement officials to use material evidence obtained through torture[[25]](#footnote-25). In most cases, custodial torture is used to extract such incriminating information. Considering the potential abuse of the provision, the High Court Division in *Zillur Rahman vs. the State[[26]](#footnote-26)* has emphasised that section 27 of the Evidence Act needs to be construed as far as possible in favour of the accused.

26. Indiscriminate order of remand for extracting confessions immensely contributes to culture of custodial torture. The provision relating to presenting the accused person before a magistrate within 24 hours of his arrest is also frequently violated. The requirements laid down in section 164 of the Cr. P. C. are frequently ignored by the magistrates. The formalities such as informing the accused that he was not bound to make a confession, that what he said could be used as evidence against him, ensuring that the police were not present in the court room, giving the accused time to reflect before he makes his statesment and making sure that the confession is voluntary given - are often disregarded by the magistrates. There is overwhelming evidence to support the view that most of the information/ confession extracted during remand is not voluntary. The involuntary means for extracting confession goes against the article 35(4) of the constitution, which provides that no person shall be compelled to be a witness against himself.

27. Under the four Metropolitan Police Ordinances, police can arrest a person without warrant in certain situations.[[27]](#footnote-27)According to Section 34 of the Police Act of 1861, if any one does any of the offences specified in this section in an open street which may annoy, cause trouble or difficulties or create hindrance to the people, any police official may arrest without warrant.[[28]](#footnote-28) This broad power provide an opportunity to use torture. .

28. There are a number of special criminal laws which also contributes to culture of torture. The most infamous piece of special law is the Special Power Act, 1974 under which a person can be ‘preventively detained’ by the executive, i.e., detailed to prevent that person from committing any prejudicial act, which the administration deems detrimental to the interest of the state. The most important power conferred by this Act is that a person can be detained if the government ‘suspects’ that he is about to commit a ‘prejudicial act’, though the individual has not yet committed such an act. It is well recognised that the formulation of the eight prejudicial acts as laid down in section 2(f)(i) of the Special Act is of a generalised nature, enabling the government to include almost any conceivable act or suspicion within the ambit of one or the other of these formulations. It is common for persons arrested under Section 54 of the Code of Criminal Procedure are later charged under the Special Powers Act 1974.

29. The other special laws include the Acid Control Act, 2002 and the Acid Offenses Act, 2002, which were enacted apparently to ensure protect public safety. The Law and Order Contravening Offenses (Speedy Trial) Act, 2002 and the Speedy Trial Tribunal Act, 2002 are two special laws enacted for ensuring speedy disposal of certain criminal cases. These special laws define offence in very broad and ambiguous manner, impose harsh punishment to solve ‘law and order’ situation and give the police wide and arbitrary power to arrest and detain people and deny the right to appeal for release on bail.[[29]](#footnote-29) However, the notion of public protection by harsh punishment is not supported either by principle or evidence of effectiveness. The Mobile Court Act 2009 which empowers executive magistrates to hold trials, has no provision of bail. As a result, accused is sent to jail if they fail to instantly pay the monetary fine imposed by the mobile courts under section 9(2) of this Act. Instant execution of sentence of imprisonment in case of the offenders' failure to instantly pay the fine imposed by the mobile courts very often results in violation of human rights. Section 9 (2) of the Mobile Court Act 2009 also runs counter to section 388 of the Code of Criminal Procedure, 1898. Section 388 empowers a court to order for payment of monetary fine in installments if an offender cannot pay it instantly. The court can even release him temporarily on bond.

30. One important effect of special criminal laws is proliferation of special criminal courts and tribunals in which crime can be tried under different procedures. The underlying purpose of these special courts and tribunals is to ensure speedy trial of specified offences. Usually, these laws contemplate 7-21 day timeframe for the police to complete the investigation and a 30-45 day timeframe running from the date of submission of police report to the Court to completion of the trial. Such rigid-time frame of completion of investigation and trial may sometimes prevent to prepare legal representation adequately by accused to defend himself and create pressure upon the investigating officer to extract confessional statement by torture.[[30]](#footnote-30)

**Judicial Guidelines on Arbitrary Arrest and Detention**

31. The higher judiciary in Bangladesh has taken a proactive stand in the protection, promotion and implementation of the rights of torture survivors and in enforcing the corresponding obligations of the State. Over the last years, the High Court Division delivered several judgements where the Government has been directed to amend legislation facilating torture and follow guidelines in dealing with arrested persons to restrain police power. The judgements in *BLAST vs Bangladesh* and *Saifuzzaman vs. State* are the most important judicial pronouncements, which provide some important recommendations for amendments of relevant laws and contains directions to reduce the scope and possibility of the abuse of police power. The guidelines and directions given in *BLAST vs Bangladesh*[[31]](#footnote-31)and *Saifuzzaman vs State[[32]](#footnote-32)* broadly cover two important aspects of criminal proceedings:

**Guidelines on Arrest without warrant:**

32. No police officer shall arrest a person under section 54 of the Cr. P.C. for the purpose of detaining him under sec. 3 of the Special Powers Act, 1974.

- A Police officer shall disclose his identity and if demanded, shall show his identity card to the person arrested.

- He shall record the reasons for the arrest and other particulars in separate register till a special diary is prescribed.

- Police officer shall furnish reasons of arrest to the detained person within three hours of bringing him to the police station.

- Arrested person should be allowed to consult a lawyer of his choice or meet his relatives.

- If a police officer finds any marks of injury on the person arrested, he shall record the reasons for such injury and shall take the person to the nearest hospital or Government doctor for treatment.

- The police officer making the arrest of any person shall prepare a memorandum of arrest immediately after the arrest and such officer shall obtain the signature of the arrestee with the date and time of arrest in the said memorandum.

**Guidelines on Remand**

33. If the Magistrate is satisfied that the accusation or the information is well-founded and that there are materials in the case diary for detaining the person in custody, the Magistrate shall pass an order for further detention in jail. Otherwise, he shall release the person forthwith.

- If the Magistrate passes an order for further detention in jail, the Investigating officer shall interrogate the accused if necessary for the purpose of investigation in a room constructed with glass wall in the jail;

- In the application for taking the accused in police custody for interrogation, the investigating officer shall state reasons for it;

- The police officer of the police station, or the Investigating officer who takes a person in police custody or the jailor of the jail, shall at once inform the nearest Magistrate of the death of any person who dies in custody.

- A Magistrate shall inquire into the death of a person in police custody or in jail immediately after receiving information of such death.

- If the arrested person is taken on police remand, he must be produced before the Magistrate after the expiry of the period of such remand and in no case he shall be sent to the judicial custody after the period of such remand without producing him before the Magistrate.

- Registration of a case against the arrested person is sine-qua-non for seeking the detention of the arrestee either to the police custody or in the judicial custody under section 167(2) of the Code.

The court directed the Government to implement the recommendations made above in *BLAST vs Bangladesh* case within six month from the date of the judgment. In this judgment, the court also made detailed recommendations for the necessary amendments to the relevant sections of the Code of Criminal Procedure, 1898, the Penal Code, 1860 and the Evidence Act, 1908 to ensure that the directions, guidelines and safeguards enunciated in the judgment are strictly followed as a matter of law.

The guidelines delivered in these two judgments are yet to be implemented by the government by undertaking necessary amendments or change in the relevant provisions of the Cr. P. C. The government had filed appeal against these judgments and as a result, these cases are still pending in the Appellate Division of the Supreme Court. The NHRC believes that implementation of these guidelines requires political will on the part of the government.

**Article 10**

**Rights of prisoners**

34. The state report describes various laws on prisoners' rights and prison management.[[33]](#footnote-33) But it hardly addresses the dismal scenario of rights of prisoners and prison management. The existing law says that persons deprived of liberty are to be treated with humanity and with respect for the inherent dignity of the human person But prison conditions in Bangladesh are harsh due to overcrowding, lack of medical facilities and lack of proper sanitation contributing to custodial death. Sometimes political prisoners are subjected to torture and ill-treatment. Prisoners are given minimum substance allowance. It is alleged that food supply for prisoners is inadequate and sub-standard.[[34]](#footnote-34) The prisoners are deprived from health care and medical facility due to absence of prison hospital except 12 prisons centres out of 68. In practice, many people, particularly the poor, become entangled in the penal system where they face violations of their human rights. Masses of prisoners languish in jail awaiting trial and spend many years imprisoned without legal support. There are many reports of prisoners deaths in the prison while being under trail and most of the deaths in the prison occurred due to sickness, torture, suicide and other reasons.[[35]](#footnote-35) Allegation of corruption is also widespread in the prison management. The criminal justice system in Bangladesh is mainly based on punitive as opposed to restorative justice. Prisons in Bangladesh are governed by laws which date back to the 19th century. Prisons are managed under the Prison Act of 1894, its accompanying Rules, and the Prisoners Act, 1900, and the Jail Code. The Jail Code consists of the provisions of Prisoners Act 1894, the Prisoners Act 1900, the Identifications of Prisoners Act 1920, the Rules made under Section 59 of the Prisons Act 1894. In Bangladesh, prisons are still treated as punitive centres of confinement. But little effort has been made by government to change the existing laws and the Jail Code for rehabilitation of the prisoners and make the prisons as correctional institutions.

It is stated in the state report that law provides for separation of the un-convicted and convicted prisoners and also separation of the juveniles from the adults in prison[[36]](#footnote-36). But in practice, this provision is frequently violated and both un-convicted and convicted prisoners and also the juveniles and the adults are kept together in prison due to lack of physical space.

**Article 14**

**Right to fair trial**

35. Individuals have the right to equality before courts and tribunals and to a fair and public hearing by a competent, independent and impartial tribunal. Although the main components of this right is guaranteed under 35 of the constitution of Bangladesh, excessive delay in justice delivery system, political interference and corruption in judiciary create obstacle in ensuring right to fair trial. In particular, political interference in lower judiciary is a big challenge in their independent functioning. There is widespread allegation against the law enforcement agencies for extracting confessional statements with the use of force and torture in violation of legal norms. Absence of adequate legal aid to the poor litigants may vitiate fair trial principles. The general rule in criminal cases is that all inquiries and trial should be conducted in the presence of the accused person. But in Bangladesh, trial in absentia is allowed, which goes against spirit of the article 14 of the ICCPR. It is also one of the attributes of the fair trial that the accused person is given adequate opportunity to defend himself. But this opportunity will have no meaning if the accused is not informed of the accusation against him. But in fact many public prosecutors lack both skill and knowledge adequately to prepare defence because they are appointed on partisan basis. Although the Legal Aid Act, 2006 of Bangladesh makes provision for legal aid in both civil and criminal cases, the national legal aid fund has remain unutilized due to lack of awareness of the law. One of the important elements of fair trial is the speedy trial. But the fact is that thousands of under trials languishing in jail due to delay in the disposal of cases and mostly poor accused are victims of delayed justice.

**Article 19**

**Right to hold opinions and to freedom of expression**

36. The Right to Information Act adopted in 2009 provides the right to receive information from any authority, and makes it obligatory for each authority to make readily available to the public all information relating to its decisions, workings or its completed or proposed work and with regard to publication and dissemination of information, no authority may conceal information or restrict easy access to the same. Reports issued by the authorities must be easily accessible, and free of charge to the general public. An Information Commission has been set up under the Act, to ensure compliance with the Act. A weakness of this law is that national security and intelligence agencies have been kept outside its purview.

37. Section 7 of the Act, provides the following grounds for exceptions regarding providing information: defence, national security and international relations, trade secrets or commercial or financial information which should be protected for effective management of the economy and commercial interests, privacy of an individual; physical security of an individual, intellectual property, advance information on exchange rate or financial policy changes, information protected by privacy law. Moreover, disclosure of information which hurts relationships with other countries, would obstruct justice, impede investigation and incite offense, information related to any purchase before it is complete, documents relating to reasons, deliberations and decisions to be placed before cabinet are also exempted from the operation of this Act. According to section 32 of the Act, the following security agencies have been exempted from the operation of the Act: National Security Intelligence; Directorate General of Forces Intelligence; Defence Intelligence Units; Criminal Investigation Department, Bangladesh Police; Special Security Force; Intelligence Cell of the National Board of Revenue; Special Branch, Bangladesh Police; and Intelligence Cell of Rapid Action Battalion. Thus, grounds for exception to the Right to Information are very broad and information is often denied to the people under the pretext of these exceptions. The NHRC believes that the exceptions should be narrowed down for maximum disclosure of information.

38. In recent times, several bloggers had been killed by Islamic extremists for expressing their free opinions. Bloggers Niloy Neel, Avijit Roy and Washique Rahmar were killed and these incidents show that serious threats to freedom of expression persist in the country. Bloggers have been critical of extremism and militancy. It is a chilling attack on free speech. It has triggered huge outrage. Very recently one publisher- Dipon, has been killed and several publishers have been wounded for publishing bloggers' writings allegedly by Islamic extremists. Bloggers, activists, rights bodies and different political parties have protested the killings. Demonstrations were held in different parts of the city, demanding speedy investigations and trials. There is also criticism against the government for its failure to find the killers of bloggers killed in the last few months. The NHRC recommends that freedom of expression, both online and offline should be protected and freedom of expression is essential for sustaining a pluralistic society. The NHRC also demands that perpetrators of such killings must be investigated and brought to the justice.

39. The Information Technology & Communication Act, 2006 has been amended by an Ordinance on 20 August 2013, and subsequently passed as law on 9 October 2013 by the Parliament. With a few significant changes, the Act of 2006 remains unchanged with all its discrepancies. Therefore, the understanding of the original Act of 2006 is necessary to understand the subsequent changes. The Information and Communication Technology (ICT) Act 2006 provides the legal framework for regulation in respect to freedom of online expression. Several provisions in both the ICT law and the recent drafts are incompatible with international standards on online freedom of expression; they include broad content-based restrictions. Parts of the ICT law are ambiguous and disproportionately criminalize several areas of expression which are generally legitimate. The use of vague language in the law also means that there is legal uncertainty, leaving the law open to arbitrary interpretation and application. Sections 57 and 46 of the ICT law in Bangladesh contain certain offences such as ‘obscenity and expression of false information’, however, no interpretation has been provided as to what implies to ‘obscenity’ leaving the meaning vague and could be used against people’s right to freedom of expression and speech. The NHRC is pleased to note that on it has been declared by the government that all the contradictory provisions of the Information and Communication Technology Act (ICT) Act including Section 57 will be removed with a proposed Digital Security Act.

The NHRC has been continuously voicing its concern over the blogger killings to attack their freedom of expression and speech. Due to raising our voice, we are now witnessing the trial of the killers of bloggers. However, government could have done more regarding killing of bloggers. Further, NHRC views that it is crucial to take necessary measures to strike the balance between exercising individual rights including the right to freedom of opinion and expression, and the protection of rights and interests of others, including in terms of ensuring their security. However, we view that a real security of the State as well as the people can only be ensured by ensuring human rights.

**Article 20**

**Prohibition of hate speech**

40. The obligation on states parties to prohibit war propaganda and advocacy of national, racial or religious hatred. This right is not explicitly guaranteed in the constitution of Bangladesh. Definition of hate speech is also not mentioned in any law of Bangladesh. Recently, some bloggers have recently been detained on the ground that they had engaged in “hate speech” against Islam and the Prophet Muhammad. Such arrest drew criticism from rights groups and activists.

**Article 23**

**Protection of the family**

Although this right is not explicitly guaranteed in the constitution of Bangladesh, it is generally protected by law.. This right includes protection against forced marriage and the equality of spouses both during marriage and at its dissolution. There are many incidents of forced marriage in Bangladesh, which goes against free consent. Child marriage is also still prevalent in rural areas of Bangladesh.

**Article 24**

**Children's rights**

41. Despite the fact that Bangladesh has ratified the Convention on the Rights of Child, 1989 and adopted the Children Act, 2013. The Children Act 2013 was specifically adopted by abolishing the Children Act 1974 to implement the Convention on the Rights of Child, 1989.[[37]](#footnote-37) This Act aims at ensuring protection, care and establishment of rights for the children. In the new law, the issues of overall wellbeing and protection of the children have been considered. The Act makes provisions for realizing the objectives of non-stigmatization of children, maintenance of privacy, reintegration of children in the society as responsible citizens, state protection for neglected, abused and other children in difficult circumstances. The Act prescribes for separate trial of the juvenile offenders. The Act fixes 18 years as the age of child in line with the definition of the Convention.[[38]](#footnote-38) The Act especially says that such court should be child friendly and child’s right to participate in judicial proceeding should be treated as child’s right. The child court should ensure best interest of the children in every step of judicial proceedings.[[39]](#footnote-39)

42. The Government has adopted the National Elimination of Child Labour Policy in 2010. It should be implemented properly to eliminate child labour. Corporal punishment at educational institutions is rampant in Bangladesh. Corporal punishment is a major reason for dropping out of children from school that insist children to labour market. In January 2011, the High Court declared corporal punishment of children in all educational institutions illegal. Following the judgment in April 2011, the Ministry of Education issued ‘Guidelines to Prohibit Corporal and Psychological Punishment in All Educational Institutions- 2011’. The National Children Policy 2011 also prohibits all forms of punishment of children at educational institutions.

43. Despite the adoption of the Children Act, 2013, child abuse, killing, child labour, abduction and trafficking continue unabated. The concerned authorities responsible for protection of children are not aware of the Act. In recent times, many children have been brutally killed in workplaces and other places by their employers and neighbours. Many children are still involved in worst form of labour such as hazardous work, hotel, factories, hotel and restaurant etc. The juvenile justice system is not well developed and rehabilitation centres lack necessary facilities and human resources.

44. The NHRC has made important initiative for protection of the rights of children. It has formed committee on child rights, child labour and trafficking in order to organise awareness programme for elimination of child labour, especially bonded labour in fish firm in southern part of Bangladesh, held consultation to review the Child Marriage Restraint Act, 1929 to measure its compliance with international human rights standards. It has also organised meetings and workshops on combating child marriage, trafficking of children and eradication of child labour in particular, child domestic workers and submitted recommendations on reforming laws on child marriage, trafficking and child labour. The NHRC believes that the effective implementation of the existing laws and policies will contribute to a large extent in protection and promotion of the rights of child. The NHRC finds that the Children Act, 2013 has protection measures for the children who are in contact or conflict with the law but there is no protection measures of the general children.

**Article 26**

**Equality, freedom from discrimination and equal protection of law**

45. The rights to equality before the law and to equal protection of the law, and freedom from discrimination on grounds such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 19, 27, 28 and 29 of the Constitution of Bangladesh provides for equality and non-discrimination on the ground of relgion, race, caste, sex or place of birth. Thus, the grounds of non-discrimination in the constitution of Bangladesh are narrower than those of ICCPR. Bangladesh acceded to Convention on the Elimination of All Forms of Racial Discrimination, 1965on 11th June, 1979. Bangladesh adopted the Small Ethnics Cultural Institutions Act, 2010 in order to preserve culture of 27 ethnic minorities. The National Education Policy (2010) also includes provision for primary education in own mother tongue. The 15th amendment to the Constitution of Bangladesh refers to tribes, minority races, ethnic sects and communities, in order to preserve diversity and protect the rights of minority groups. Through 15th Amendment to the Constitution of Bangladesh, article 12 has been restored. This article provides for a secular state and protects freedom of religion.

46. However, currently there is no anti-discrimination law in Bangladesh. A legal framework on anti-discrimination is essential for defining discrimination and to provide remedy in case of violation of the right to equality and non-discrimination. Under the current framework of affirmative action for the disadvantaged segments of the people, e.g. *Dalits* and transgender who remain some of the poorest people in Bangladesh are excluded.

The NHRC thinks that there should have an Anti-Discrimination Legislation for which NHRC is advocating with a strong voice to bridge the gap of the vacuum of legislation. A draft legislation on Anti-discrimination has already been drafted and submitted to the Ministry of Law, Justice and Parliamentary Affairs which is now at the vetting stage.

47. Realisation of equal protection of law requires access to justice for all. But access to justice remains a hollow promise to the vast majority of people of Bangladesh for many reasons. Prohibitive cost of litigation, inordinate delay in the courts, corruption in the justice delivery spheres, backlogging of cases, and complex procedural rules are few, if not exhaustive causes, which remain as obstacles to access to justice. Legal system continues to be inaccessible to economically and socially disadvantaged segments of society as they can not afford to pay lawyers to vindicate their rights, which itself constitutes a violation of human rights. Many poor people also live far away from centres providing legal services and have very few legal resources and facilities in their communities.[[40]](#footnote-40) The lack of human and physical resources, inadequate training, malfunctioning of systems can also restrict the access to justice to a significant extent.

The government enacted the Legal Aid Services Act, 2000 which aims at legal aid to the poor litigants. But this Act remains largely unimplemented due to lack of awareness about the law and lack of institutional capacity to deliver the services.

**Article 27**

**Minority rights**

48. This right covers persons belonging to ethnic, religious or linguistic minorities, in community with others, to enjoy their culture, profess and practice their religion or use their language.In recent past, many incidents of attacking and destroying Hindu temples by Islamic extremists are reported.

Bangladesh is home to as many as 45 distinct ethnic minority groups, which constitute two percent of the total population.[[41]](#footnote-41) Their largest concentration is in the Chittagong Hill Tracts, where 13 different groups constitute majority over the Bangali population. Rest of the ethnic minority groups live in the plain lands, and in plain land, these ethnic minority groups are dispersed in different districts of Bangladesh. The ethnic minority community in the plain lands is one of the most disadvantaged and vulnerable segment of the society in terms of almost all major development indicators, such as income; employment; poverty; health; education; access to justice etc. It cannot be denied that they face discrimination in access to education, employment, and enjoyment of civil and political rights.

49. However, in the plain lands, indigenous people face persistent land and resource grabbing as well as endangerment of their livelihood and culture.[[42]](#footnote-42) As a result, indigenous people of the plain land are poorest of the poor in Bangladesh. Land grabbing takes place through producing fake documents by local influential people. Ethnic minority communities living on the plains have continuously been thrown out of their ancestral lands, allegedly by Government agencies, influential quarters and private organizations using different techniques including use of forged documents and forcibly ousting them from their lands while the government was expropriating their lands for various development projects. Land acquisition by the Government for its so-called social afforestation has made the highest number of ethnic families landless in the north-western areas. Lands used as common property, graveyards, and shrines were also grabbed. The increasing landlessness of the indigenous community has a severe effect on fulfillment of their basic needs. The majority of the indigenous people’s household income basically depends on agricultural work. But their food security and habitat are at stake, as a result of land-grabbing and loss of their traditional livelihood.[[43]](#footnote-43)

50. There are three kinds of ownerships recognized by the constitution of Bangladesh such as, state ownership, co-operative ownership and private ownership. However the collective ownership which is prevalent amongst the ethnic minority groups, is not recognized in the constitution. This ownership should be legally protected as it is very important to them in term of enjoyment of enjoyment of rights to land and natural resources. Amongst the indigenous people, poverty level is very high compared to mainstream society. While 60% of indigenous people live below poverty line, at the national level, 40% people live below poverty line. Many indigenous people are deprived of basic health service and pure drinking water due to geographical constraints and lack of human resources and medical facilities.

51. The Chittagong Hill Tracts Peace Accord (hereinafter the ‘CHT Accord’) signed on 2ndDecember, 1997 between the Government of the People’s Republic of Bangladesh and the *ParbattyaChattagram Jana SanghatiSamity* (PCJSS), marked a historical step for ending a long-standing ethnic conflict in Bangladesh. But even after 17 years of conclusion of the Accord, the CHT Accord has been partially implemented. Since many core provisions of the Peace Accord have not been implemented, many view it as a potential cause of extreme frustration for the tribal people, leading to ‘disturbances’, movements or struggles. The slow pace and partial implementation of the Accord has widened the divide between the pro-Accord PCJSS and anti-Accord the United People’s Democratic Front (UPDF). According to UPDF, the Peace Accord has not fulfilled the demand for full autonomy of the region.

52. Continuous influx of Bengali settlers into the three hill districts, denial of land rights and access to natural resources to the tribal people, heavy military presence, widespread human rights violations in the region with a prevailing culture of impunity for law enforcement agencies remain main problems in implementation of the Peace Accord. Although some institutions such as the Ministry of CHT Affairs, the CHT Regional Council, three Hill District Councils and the Land Dispute Settlement Commission have been established and several laws, and adopted as per the CHT Accord, key provisions of the Accord such as the devolution of powers, land management, withdrawal of temporary army camps from the CHT, transfer of local police and control over civil administration are yet to be implemented. This is creating a feeling of mistrust, fear and insecurity in the CHT areas.[[44]](#footnote-44) The NHRC strongly believes that the full implementation of the CHT Accord is essential for realization of human rights of the ethnic minorities in the CHT. It is worth stating that the Chairman, National Human Rights Commission has initiated a process for confidence building among different stakeholders in the CHT issues to reach an amicable settlement of outstanding issues.

**Implementation Mechanisms**

53. Article 40 provides that State parties submit reports to the Committee on the measures they have adopted to give effect the rights recognised in the Covenant and on the progress made in the enjoyment of those rights within their jurisdiction. Article 41 of the Covenant allows States to declare at any time their recognition of the competence of the Committee to receive and consider inter-state communication that the State concerned is not fulfilling its obligations under the Covenant. Bangladesh is yet to make any declaration under Article 41 to allow inter-state communication.

**Protocols to ICCPR**

54. Two optional protocols had been annexed to the ICCPR. The First Optional Protocol to the Covenant provides for the individual communication to the HRC. State parties to this Protocol have recognised the competence of the HRC to consider complaints from individuals or groups whose rights under the Covenant have been violated. The Second Optional Protocol requires states to take the necessary measures to abolish the death penalty. However, Bangladesh is yet to ratify the two Optional Protocols.

**Recommendations**

55. The NHRC puts forward the following recommendations for full implementation of the ICCPR in Bangladesh:

* The Government of Bangladesh should withdraw reservation regarding trial in absentia and declarations made relating to prisoners right, compensation in case of miscarriage of justice under various provisions of the ICCPR.
* The Government of Bangladesh should ratify the Convention for the Protection of All Persons from Enforced Disappearance, 2006. Bangladesh should include the crime of enforced disappearance into its criminal law. It should enact separate legislation or reform the existing penal law for prohibition and criminalization of the enforced disappearance.[[45]](#footnote-45) However, given the special nature of the crime and numbers of victims potentially involved in enforced disappearance, a separate law criminalizing it is preferable. The specific law criminalizing enforced disappearance can provide legal protection and remedies to the victims of enforced disappearance in Bangladesh.
* Accountability of state agencies including law-enforcement agencies should be ensured through ending of impunity for committing the crime of extra-judicial killing, torture and enforced disappearance. Every incidence of extra-judicial judicial killing, torture and enforced disappearance must be investigated and responsible persons-whether government officials or private entities, should be prosecuted.
* Bangladesh should ratify the two Optional Protocols in order to fully implement the rights guaranteed under the ICCPR.
* In order to ensure transparency and accountability of actions of the police authorities, it is imperative that the directives of the Supreme Court in *BLAST vs. Bangladesh* and *Saifuzzaman vs. State* should be implemented as soon as possible. Legislative reform should be initiated in line with the recommendations and guidelines of these judgments.
* Compensation scheme should be introduced for victim of extra-judicial killing, torture and enforced disappearance.
* A national law on witness and victim protection should be adopted and an effective program for witness and victim protection should also be put in place.
* The government should provide effective protection against discrimination based on sexual orientation and gender identity, including by adopting comprehensive anti-discrimination legislation that includes the prohibition of discrimination on the ground of sexual orientation and gender identity. The government should adopt an Anti-Discrimination law drafted by the Law Commission of Bangladesh to provide effective protection against discrimination.
* The Jail Code should be revised in the light of the UN Standard Minimum Rules for the Treatment of Prisoners.
* The government should investigate allegations of human rights violations committed by members of special forces and ensure the prosecution of perpetrators of violations.
* Under-trial prisoners should be provided necessary legal support for access to justice.
* The government should provide access to effective remedies and reparations, including compensation, to victims of such violations.
* Prohibition of hate speech should be incorporated in the constitution of Bangladesh.

**Concluding Remarks**

56. Mere incorporation of civil and political rights in the Constitution is not enough unless and until these rights are observed and enabling legal framework for protection of these rights is in place. The above discussion makes it clear that in order to fully implement the obligations under the ICCPR Bangladesh should initiate necessary legal, institutional and administrative reforms to make its domestic legal framework consistent with international standards.

1. Para 44 of the State Report [↑](#footnote-ref-1)
2. DLR (HCD) (2010). [↑](#footnote-ref-2)
3. Writ Petition N0. 4495 of 2009. [↑](#footnote-ref-3)
4. Writ petition no. 8769 of 2010. [↑](#footnote-ref-4)
5. Writ petition no. 3598 of 2010. [↑](#footnote-ref-5)
6. 14 BLC (HCD) (2009) 694. [↑](#footnote-ref-6)
7. http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G13/155/20/PDF/G1315520.pdf?OpenElement (para 7, 63,64) [↑](#footnote-ref-7)
8. http://www.askbd.org/ask/2015/09/07/death-law-enforcement-agencies-january-august-2015/ [↑](#footnote-ref-8)
9. http://www.askbd.org/ask/2015/07/09/deaths-jail-custody-january-june-2015/ [↑](#footnote-ref-9)
10. http://www.askbd.org/ask/2015/09/07/enforced-disappearance-january-august-2015/ [↑](#footnote-ref-10)
11. Enforced disappearance, http://odhikar.org/enforced-disappearances/#sthash.MbmO6UpM.dpuf [↑](#footnote-ref-11)
12. Ibid. [↑](#footnote-ref-12)
13. http://www.thedailystar.net/frontpage/ugc-official-dies-rab-custody-150700: The death (claimed died of heart attack) of Omar Siraj, the University Grants Commission official who had been arrested for his alleged involvement in leaking questions of medical college and university admission exams in RAB custody [↑](#footnote-ref-13)
14. On 11 June 1996, Shukur Ali, a 14-year old boy living in Manikganj, raped and subsequently killed a 7-year old girl. Both the accused Shukur Ali and the victim deceased girl were children as per the then Children Act of 1974 (that has been revised in 2013). This implies a decline on imposing death penalty. [↑](#footnote-ref-14)
15. Tanim Hossain Shawon, ‘Political and State Violence’, in: *Human Rights in Bangladesh*, ASK, Dhaka, 2004, page 49. [↑](#footnote-ref-15)
16. e.g., detaining somebody either without acknowledgement or without allowing them access to anyone, such as their lawyer or family [↑](#footnote-ref-16)
17. See, the Armed Police Battalions (Amendment) Act, 2003, (Act no. XXVIII of 2003). [↑](#footnote-ref-17)
18. “Government Asked to Reply Why RAB Not Be Run as per Law,” *Daily Star*, November 29, 2004, <http://www.thedailystar.net/2004/11/29/d4112901055.htm>. Please provide court case reference.   [↑](#footnote-ref-18)
19. Section 19 of the Act. [↑](#footnote-ref-19)
20. See JAMAKON Report to the UN Committee against Torture, June, 2015, Dhaka, p. 23. [↑](#footnote-ref-20)
21. See section 54 of Cr. P.C. *54.-*(1) Any police-officer may, without an order from a Magistrate and without a warrant, arrest-
first, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned;
secondly, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking;
thirdly, any person who has been proclaimed as an offender either under this Code or by order of the Government;
fourthly, any person in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing;
fifthly, any person who obstructs a police-officer while in the execution his duty, or who has escaped, or attempts to escape, from lawful custody;
sixthly, any person reasonably suspected of being a deserter from the armed forces of Bangladesh;

seventhly, any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of Bangladesh, which, if committed in Bangladesh, would have been punishable as an offence, and for which he is, under any law relating to extradition or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in Bangladesh;
eighthly, any released convict committing a breach of any rule made under section 565, sub-section (3);

ninthly, any person for whose arrest a requisition has been received from another police-officer. [↑](#footnote-ref-21)
22. The term ‘remand’ is not mentioned in this section. But it has been used in sec. 344, which permits the courts to send an accused of a pending case on remand by warrant for the period of its adjournment of hearing. [↑](#footnote-ref-22)
23. M Rafiqul Islam and S M Solaiman, “Torture under Police Remand in Bangladesh: A Culture of Impunity for Gross Violations of Human Rights”, Asia Pacific Journal on Human Rights and the Law, Vol. 2, (2003), pp. 1-27, at p. 20. [↑](#footnote-ref-23)
24. Sections 162. 164 CrPC and Sections 25 and 26 Evidence Act. [↑](#footnote-ref-24)
25. Torture in Bangladesh 1971-2004, Making International Commitments A Reality and Providing Justice and Reparations to Victims, August 2004, A Study prepared by Lutz Oette for Redress. [↑](#footnote-ref-25)
26. 6 MLR(HCD)(2001) 99 [↑](#footnote-ref-26)
27. See section 86 and 100 of Dhaka Metropolitan Police Ordinances- a person can be arrested if he is found between sunset and sunrise in following situations:

a. equipped with dangerous instruments without satisfactory excuse;

b. with face covered or otherwise disguised without satisfactory excuse;

c. being present in any dwelling house or other building, or on board any vessel, boat or veiche without satisfactory reason;

d. lying or loitering in any street or other places without satisfactory reason;

e. having in possesion implement of house breaking without satisfactory reason.

Identical provisions are found in other Metropolitan Ordinances. [↑](#footnote-ref-27)
28. Any person if he commits any of such offices:

- If any domestic animal is slaughtered, skinning or riding on horse recklessly or rearing

animals in an open place;

- Torturing animal viciously and unkindly in open;

- Unnecessarily parking car or other vehicles, which causes trouble and difficulties for the passer-by;

- Piling goods for sale in open space;

- Throwing or depositing garbage in the street or using the roadside for making stable and other factory which creates odour of cow dung and other muck;

- Roaming in the streets in drunken condition or insane condition;

- Wandering around the streets without clothes or urinating on the streets or exhibiting any physical disability or any painful disease or using any restricted pond for washing clothes and having bath;

- If any pond, well or other water source which is unsafe is kept uncovered. [↑](#footnote-ref-28)
29. Shahdeen Malik, ‘Laws of Bangladesh’, in: A.M. Chowdhury &Fakrul Alam, (ed.), *Bangladesh on the threshold of the Twenty-First Century,* Asiatic Society of Bangladesh, Dhaka (2002), p. 446. [↑](#footnote-ref-29)
30. See Islam, M. Rafiqul and S. M. Solaiman, ‘The New Speedy Trial law to maintain law and order in Bangladesh: Its constitutional and human rights implications’. Vol. 46, No. 1. *Journal of the Indian Law Institute*, (2004) pp. 79-98. [↑](#footnote-ref-30)
31. 56 DLR 324. [↑](#footnote-ref-31)
32. See for detailed discussion on the judgement of *BLAST vs. Bangladesh*, ‘Seeking Effective Remedies: Prevention of Arbitrary Arrests and Freedom from Torture and Custodial Violence’, A Publication of Bangladesh Legal Aid Services Trust, Dhaka, 2005. [↑](#footnote-ref-32)
33. Para 112 of the State report. [↑](#footnote-ref-33)
34. M. Anwarul Aziz Kanak and Muhammad Mizanur Rahman Chowdhury, 'The Present Rights of Prisoners in Bangladesh: Disparity between Law and Practice', The International Journal of Social Science, 2014, Vol. 20, No. 1. [↑](#footnote-ref-34)
35. Advocate Shahanur Islam, 'Reforms of Prisons Law in Bangladesh: Need for Comprehensive Approach', available at www.internationalcure.org/documents/pdf/201 [↑](#footnote-ref-35)
36. Para 115 of the State Report [↑](#footnote-ref-36)
37. The Child Act, 2013 (Act No. 24 of 2013). [↑](#footnote-ref-37)
38. See section 6 & 7 of the Act. [↑](#footnote-ref-38)
39. Section 22 of the Act [↑](#footnote-ref-39)
40. .Shahdeen Malik, ‘Access to Justice: A Truncated View from Bangladesh’, in: Rudolf V. Van Puymbroeck (ed.) *Comprehensive Legal and Judicial Development: Toward an Agenda for a Just and Equitable Society in the 21st Century*, Washington D.C., World Bank, (2001). [↑](#footnote-ref-40)
41. Sukanto Sen, Avijit Roy and Silvanus Lamin, *Indigenous People of Plain Land*:, BARSIK, Dhaka (2007), p. 16. [↑](#footnote-ref-41)
42. See generally, Dr. Mizanur Rahman (ed.), *The Garos: Struggling to Survive in the Valley of Death*, Dhaka, ELCOP, 2006. [↑](#footnote-ref-42)
43. “The state of Land Rights of Indigenous People”, 2008. The survey conducted jointly by the Jatiya Adibashi Parishad, Incidin Bangladesh and Jahangirnagar University’s Department of Anthropology, of the north-western minority communities since January 2008. [↑](#footnote-ref-43)
44. ‘Chittagong Hill Tracts: Peace Treaty Still to be Implemented’, see[www.unpo.org/article/13572](http://www.unpo.org/article/13572) [↑](#footnote-ref-44)
45. Sayed Masud Reza, *Disappearance: Contemporary Context*, Dhaka, National Human Rights Commission of Bangladesh, 2013, p. 14. [↑](#footnote-ref-45)