

BANGLADESH

Election pledges on human rights and the rule of law remain unfulfilled

Introduction

Bangladesh has seen two years of its elected political government in the post-emergency period without any visible change in the area of human rights and rule of law despite the fact that prior to the general election of December 29, 2008 the “grand alliance”, which came to the power of the Government for a five year tenure, led by the Bangladesh Awami League, publicly pledged to bring change by establishing rule of law and human rights. Instead, the nation has been experiencing the “rule of ruling political alliance” along with frequent lawless actions by the members of the law-enforcement agencies followed by blatant impunity as usual throughout the whole of 2010.

Bangladesh is a long-standing member of the Human Rights Council and despite it pledges to the international community, given as part of its election to the body and the requirement for the HRC’s members to uphold human rights to the highest standards, Bangladesh has allowed widespread and grave human rights to be committed by state agents with total impunity. It is feared that the recorded increase in forced disappearances now marks a new phase in this regrettable record of abuse of rights that are enshrined in the country’s constitution as well as its international legal obligations, and of non-cooperation with the Human Rights Council.

Bangladesh acceded to the International Covenant on Civil and Political Rights (ICCPR) on September 6, 2000, that prohibits the grave violations of rights highlighted above. According to Article 6 and 2 of the ICCPR, Bangladesh respectively has the obligation to ensure the right to life of its people and to ensure prompt and effective reparation where violations occur. It is also obliged to bring legislation into conformity with the ICCPR. Article 32 of the Constitution of Bangladesh protects the fundamental right to life and liberty, stating that:

“No person shall be deprived of life or personal liberty, save in accordance with law.”

In reality, this has not been implemented and this most fundamental right is being repeatedly violated with complete impunity.

However, there are entrenched problems as partisan politics has been merged into all types of public, academic and rule of law institutions at all levels in the country. Deliberate unlawful interventions into public and rule of law affairs by the leaders and activists of the pro-ruling party and alliance, and their relatives and supporters, have contributed to the further deterioration of the existing human rights situation.

In many cases, such interventions have been the triggering factor to deny access to the minimum possible remedy for the victims of the gross human rights abuses.

Extreme political bias, by default to the ruling political camps, remains as the main characteristic for any kind of benefit or decision. Loyalty to the ruling political group functions as the key indicator for anyone expecting anything from the public systems. A deserving public officer is destined to be sidelined in the promotion race if the person fails to exhibit partisan performance through his or her actions, words and relationship. It is also obvious for a public official to suffer all kinds of discrimination if the same person had been able to occupy lucrative, powerful or comfortable posting in his or her service in the past regimes led by the parties that are opposition to the incumbent ruling party. Merit, efficiency and professionalism, which are also very rare in the public institutions of Bangladesh, are of little assistance to a public service-holder to step forward in their respective departments. This practice has been a contagious disease in the institutional setups as well as in public mindsets. People expect nothing other than arbitrary arrest, detention and harassment in the country without political loyalty to, and relationship with, the ruling parties regardless of whether the matter is related to a promotion or posting or recruitment in public service, or in the police department, or the judiciary.

There is the notorious practice of ensuring impunity to the ruling party political activists for their violent crimes as well as to the members of the law-enforcing agents. There has not yet been a single instance where a pro-ruling party person has been prosecuted with credibility for a reported crime. This process involves manipulation of all steps of the criminal justice system -- for example, the registering of a complaint, investigation of a case, prosecution and trial of the case.

Instead of concentrating on reforms in the criminal justice system including the implementation of the judiciary's independence the government and the main opposition are more concerned with their individual gains and vengeance. For example, the government initiated a dispute over a house occupied by Begum Khaleda Zia, the former Prime Minister and current Leader of Opposition in the Parliament and a widow of assassinated military general Ziaur Rahman, who usurped the office of the President following a series of military coups and countercoups in the mid 1970s, which remained as one of the most important issues for the ruling and opposition political parties. The opposition party placed before the Supreme Court while the government took over the

possession of the 2.72 acre house while the judicial battle remained unfinished. The incident led to further violence in public life that resulted in illegal arrest, arbitrary detention and criminal charges against the opposition political activists while ordinary pedestrians also fell prey to the law-enforcement officers.

Throughout the year the Government, which controls a huge majority having 305 out of a total of 345 seats in the Parliament including its alliances', did not say a single word about the criminalization of torture despite a Bill being pending in the Parliament for more than a year. Torture continued in all the custodies controlled by the law-enforcement agencies as well as the security forces including the secret The torture cells maintained by the armed forces dominated intelligence agencies' and the Rapid Action Battalion (RAB), a paramilitary force composed of officers deputed from the armed forces, border security force and the police but mostly dominated by the military, which was officially termed as an "elite force".

Arbitrary arrests and detentions by the plain clothed members of the law-enforcing agencies, particularly by the RAB, has led to enforced disappearances. The allegations of the illegal arrests and detention and subsequent disappearances of the persons had been only entertained with complete denial by the law-enforces and misguiding statements by the ministers of the government instead of any credible investigation or rescue attempts or effective judicial action providing remedy. For example, in one case, a small businessman named Mohammad Salim Mian was arrested along with two more persons from a house in Gazipur district by the RAB, which was witnessed by dozens of people of the neighbourhood, however, the authorities denied this after Salim was alleged to be disappeared while one his fellow arrestees was released after a week and another one was found detained in an allegedly fabricated criminal cases. In another case, a local government representative named Chowdhury Alam, who was an elected Commissioner of the Dhaka City Corporation, was picked up on 25 June 2010 from the street by plain clothed members who claimed to be the officers of the RAB, has remained disappeared till the time of writing this report.

The judiciary appears to be incapable of protecting the fundamental rights of the citizens in the face of the gross abuses of the human rights -- including torture, extrajudicial killings, enforced disappearances and lynchings -- which have gone on unabatedly. Few rulings asking for an end to extrajudicial killings have been heard from the Benches of the High Court Division of the Supreme Court of Bangladesh yielding no successful result. Similarly, the detainees of arbitrary arrest and detention were granted bail from the High Court Division followed by their changes of the authorities' action many detainees were forced to remain in detention due to extralegal intervention allegedly from the office of the Attorney General. It is needless to mention that the subordinate judiciary does not have judicial mindset to protect the rights of the victims of human rights abuses.

At the same time, the higher judiciary has degraded itself to the level of a tool of the extended hand of the government to harass the media for exposing the arbitrariness of the Office of the Attorney General for creating unlawful influence upon the Supreme Court, which imprisoned an editor and a journalist of a national daily newspaper, of the opposition, and fined a monetary penalty for contempt of court beyond the purview of the laws related to contempt of court. In an unprecedented trial the Appellate Division of the Supreme Court, which is the topmost court of the country, spontaneously became the trial court on the issue of the said contempt of court issue bypassing the normal procedure of trial, which should begin from the Courts of Magistrates while the Appellate Division crosschecks and ratifies the verdicts of the lower court.

The attitudes and practices of the prosecution and attorney service are contradictory to the basic principles of rule of law as far Bangladesh's current situation and systems are concerned. The prosecutorial and attorney service urgently need to be made independent from the ruling political party's control and effective measures should be put in place to verifiably combat practices of discrimination and corruption in the judiciary.

The absence of the rule of law as a result of political impunity having the criminal justice system mostly dependent on the policing system, which is highly corrupt and works as hired musclemen of the ruling political party, resulted in the deterioration of the rights of women and girls in the country. Incidents of stalking women and attacking their guardians, including the teachers of the academic institutions for protesting, stalking leading to deaths of girls, guardians and protestors has increased alarmingly.

Finally, during the session of Bangladesh's Universal Periodic Review in 2009 a number of European nations enquired as to whether the country was ready to cooperate with the special procedures of the Human Rights Council. However, there had been no specific time frame for straight answers from the Bangladeshi delegates in response to the queries. Bangladesh should issue a standing invitation to the Special Rapporteur on Torture in order to begin to address its lack of cooperation with the international community and human rights system concerning the issue of torture and human rights more widely. Moreover, various nations asked Bangladesh in the UPR session about the country's decision on commuting death penalty and ending the culture of impunity; improving the rights of the women and girls as well as labourers; strengthening the anti corruption mechanisms, human rights institution and independence of judiciary; however, the replies that came out with positive political rhetoric have not yet been implemented in reality although two years have passed.

Police Remand and Extortion are integral part of policing:

“Police remand” is one of the most familiar terms to the people of Bangladesh in general. The police of the country have established “police remand” as an immediate next procedural “obligation” of the policing system whenever a person is arrested on a criminal charge.

The Constitution of Bangladesh¹ does not include any word like “remand”, which is also not included in the Code of Criminal Procedure-1898².

The police apply for remand on a plain sheet of paper under Section 167³ of the Code of Criminal Procedure-1898⁴, which reads:

“167.(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by section 61, and there are grounds for believing that the accusation or information is well-founded, the officer in charge of the police-station or the police-officer making the investigation if he is not below the rank of sub-inspector shall forthwith transmit to the⁵ [nearest Judicial Magistrate] a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has no jurisdiction to try the case from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole. If he has no jurisdiction to try the case or⁶ [send] it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: Provided that no Magistrate of the third class, and no Magistrate of the second class not specially empowered in this behalf by the Government shall authorize detention in the custody of the police.

(3) A Magistrate authorizing under this section detention in the custody of the police shall record his reasons for so doing.

1 http://bdlaws.minlaw.gov.bd/pdf_part.php?id=367&vol=15

2 http://bdlaws.minlaw.gov.bd/pdf_part.php?id=75&vol=4

3 http://bdlaws.minlaw.gov.bd/sections_detail.php?id=75§ions_id=20861

4 <http://www.bdlaws.gov.bd/pd%3Cb%3Epart.php?id=75&vol=4>

5 http://bdlaws.minlaw.gov.bd/print_sections.php?id=75&vol=§ions_id=20861

6 http://bdlaws.minlaw.gov.bd/print_sections.php?id=75&vol=§ions_id=20861

⁷(4) If such order is given by a Magistrate other than the Chief Metropolitan Magistrate or the Chief Judicial Magistrate, he shall forward a copy of his order, with his reasons for making it to the Chief Metropolitan Magistrate or to the Chief Judicial Magistrate to whom he is subordinate.

⁸(4A) If such order is given by a Chief Metropolitan Magistrate or a Chief Judicial Magistrate, he shall forward a copy of his order, with reasons for making it to the Chief Metropolitan Sessions Judge or to the Sessions Judge to whom he is subordinate.]

⁹(5) If the investigation is not concluded within one hundred and twenty days from the date of receipt of the information relating to the commission of the offence or the order of the Magistrate for such investigation-

(a) the Magistrate empowered to take cognizance of such offence or making the order for investigation may, if the offence to which the investigation relates is not punishable with death, imprisonment for life or imprisonment exceeding ten years, release the accused on bail to the satisfaction of such Magistrate; and

(b) the Court of Session may, if the offence to which the investigation relates is punishable with death, imprisonment for life or imprisonment exceeding ten years, release the accused on bail to the satisfaction of such Court:

Provided that if an accused is not released on bail under this sub-section, the Magistrate or, as the case may be, the Court of Session shall record the reasons for it:

Provided further that in cases in which sanction of appropriate authority is required to be obtained under the provisions of the relevant law for prosecution of the accused, the time taken for obtaining such sanction shall be excluded from the period specified in this sub-section.

Explanation-The time taken for obtaining sanction shall commence from the day the case, with all necessary documents, is submitted for consideration of the appropriate authority and be deemed to end on the day of the receipt of the sanction order of the authority.”

But, according to Rule 458 of the Police Regulation of Bengal (PRB)-1943, as a mandatory guideline for the police, which contains the term “remand”, the police have

7 http://bdlaws.minlaw.gov.bd/print_sections.php?id=75&vol=§ions_id=20861

8 http://bdlaws.minlaw.gov.bd/print_sections.php?id=75&vol=§ions_id=20861

9 http://bdlaws.minlaw.gov.bd/print_sections.php?id=75&vol=§ions_id=20861

the obligation to apply for remand by completing Bangladesh Police (BP) Form No. 90.¹⁰ The Rule reads:

“458. Previous offence suspected:

(a) Whenever there is good reason to suspect that a person accused of an offence under Chapter XII or XVII of the Penal Code, for which, on reconviction, an enhanced punishment may be awarded under Section 75 has been previously convicted or when the name, residence and antecedents of a person so accused are unverified, an application for remand shall be made in B.P. Form No. 90 (Bangladesh Police Form) by the Court officer pending the result of the inquiry into the prisoner’s antecedents. This application will remain with the record.

(b) If a remand is not granted, an immediate report shall be made to the Superintendent, who, if the reasons appear insufficient, shall report the matter to the District Magistrate.”

It is usual practice for the police to bring in crime suspects under their custody for interrogation. In reality, the police officers, particularly the Investigation Officers, submit an application on plain paper only, even not on an official letterhead. In it they seek “remand” for the number of days they wish to keep a person under their custody. It means that the police extract the word “remand” from the PRB, but they do not follow the Rule 458 of the PRB, which they are obliged to follow.

In almost all cases, the subordinate courts, particularly the Courts of Magistrates, which deal with more than 70% of the criminal cases in Bangladesh, grant police petitions for remand without checking whether the application was submitted properly by the completion of B.P. Form No. 90 or not. The Magistrates traditionally reduce the number of days in only some cases. For example, when a police officer requests 7 days remand, the Magistrate grants five or three days’ remand.

In remand, the police torture detainees for two reasons: to extort money and within certain parameters to obtain a confession statement, regarding one or more specific criminal cases. It happens in almost all cases despite the fact that the country’s Constitution, according to Article 35 (4) upholds that:

“No person accused of any offence shall be compelled to be a witness against himself.”

If the police intend to fabricate additional charges against the detainees, but the detainee is able to satisfy the police by paying bribes, he is more likely to reduce the amount of

¹⁰ <http://www.police.gov.bd/form/90.pdf>

torture as well as to gain relief from further charges. Failure to pay money endangers the persons' life and brings about further disaster to his socio-economic situation. Thus, remand contributes to keep the "chain of corruption" alive and strengthened within and around the police as a big tool, parallel to torture, in the business of extorting money from the relatives of the detainees.

The Magistrates consent to petitions that cannot be legally entertained by the police as if it is a routine job of responding to the applications of the police officers; but for the detainees or crime suspects, police remand is synonymous with torture leading to death. Moreover, once the detainees die in the custody of the law-enforcement agencies while in police remand the alleged perpetrators try their best to obstruct the victim's relatives from getting access to the complaint mechanism, which mostly under the control of the police. Even, if an aggrieved person attains the courage and ability to file a petition with the Court of Magistrate, the Magistrates mostly leave the complaint to the wish of the police by writing another vague order: "take lawful action followed by inquiry" instead of writing -- "register the complaint as a First Information Report". The Magistrates, in most cases of arbitrary arrest and detention followed by torture and extortion, also do not order a Judicial Magistrate to inquire into the complaint. Rather, they send the complaint back to the police to investigate, which further deteriorates the condition of the victim and his or her family due to continuous harassment, intimidation and threats from the police and their hired men. Thus, the Magistrates prove that they do not have a "judicial mindset" to administer justice to the victims of human rights abuses.

A verdict pronounced by the High Court Division Bench of the Supreme Court of Bangladesh comprising Justice Md. Hamidul Haque and Justice Salma Masud Chowdhury, as reported in the Dhaka Law Report (DLR) 55, pages 363-381, observed that "[t]he very system of taking an accused on 'remand' for the purpose of interrogation and extorting of information by application of force is totally against the spirit and explicit provisions of the Constitution" as per Article 35 (4)¹¹, directed the subordinate courts on how to entertain the application for police remand.

According to the directives, "the Investigating Officer shall state in details the ground of taking the accused in custody (remand) and shall produce the case diary for consideration of the Magistrate. If the Magistrate is satisfied that the accused be sent back to police custody for a period not exceeding three days, after recording reasons, he (Magistrate) may authorize detention in police custody for that period." It also directed that "the accused, before sending to the Investigating Officer, shall be examined by a doctor designated or medical board constituted for the purpose and the report shall be submitted to the Magistrate concerned."

11 http://bdlaws.minlaw.gov.bd/sections_detail.php?id=367§ions_id=24583

After taking the accused “in police custody only the Investigating Officer shall be entitled to interrogate the accused” and after the period of remand “if the accused makes any allegation of any torture, the Magistrate shall at once send the accused to the same doctor or Medical Board for examination.”

“If the Magistrate finds from the report of the doctor or Medical Board that the accused sustained injury during the period under police custody he shall proceed under Section 190 (1) (c)¹² of the Code of Criminal Procedure-1898¹³ against the Investigating Officer for committing offence under Section 330¹⁴ of the Penal Code-1860¹⁵ without filing any petition of complaint by the accused.”

In reality, the Magistrates of Bangladesh do neither follow the instructions as per the PRB nor the directives given by the Supreme Court’s High Court Division.

Case-1:

Mr. Robiul Hasan Khokon, a suspect of a robbery case, died in police custody from torture while under a two-day remand at the Chatkhil police station. In Khokon’s case (AHRC-UAC-072-2010¹⁶), the police filed a petition, not on the prescribed form (B.P. Form No. 90) but on plain paper. They requested remand for five days while the Magistrate granted two days. However, this was enough time for the police to kill him by applying brutal methods of torture. The police unprecedentedly registered a poorly drafted murder case, which did not include anyone as witness of the incident of torture but claimed that the man was tortured by police officer, at the Chatkhil police regarding Khokon’s death to obstruct the family of the deceased victim to file a complaint. As a normal practice in all incidents of custodial death in the history of Bangladesh’s complaint mechanism, the police always refuse to register a case of a custodial death or



12 http://bdlaws.minlaw.gov.bd/sections_detail.php?id=75§ions_id=21014

13 http://bdlaws.minlaw.gov.bd/pdf_part.php?id=75&vol=4

14 http://bdlaws.minlaw.gov.bd/sections_detail.php?id=11§ions_id=3182

15 http://bdlaws.minlaw.gov.bd/pdf_part.php?id=11&vol=1

16 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-072-2010/>

an allegation of torture in Bangladesh. The relatives of the victims of custodial deaths are normally forced to go to the Magistrates' Courts to file their cases as the last option. By registering a poorly-drafted, unwitnessed complaint the Chatkhil police did their best to ensure impunity to the alleged perpetrators.

Case-2:

Mr. Mantu Ghosh, a lawyer cum leftist politician, was arbitrarily arrested without any specific warrant of arrest or explanation. He was detained in the police cell of the Detective Branch of the Dhaka Metropolitan Police as well as the Gulshan, Tejgaon and Adabor police stations while four police stations of Dhaka have allegedly fabricated 10 criminal cases against Mantu and applied for bringing him in remand for 58 days though the Magistrates granted 9 days police remand and five days remand in jail.

Torture – an entrenched endemic problem:

Torture is a widespread, endemic and chronic problem in Bangladesh and has been accompanied by systematic impunity for the perpetrators and without any form of legal redress for the victims. The country's law-enforcement agencies, notably the police and military and paramilitary security forces use torture as a key tool for maintaining order.

Torture is neither defined as a crime nor is made punishable in the domestic laws of Bangladesh though the nation has acceded to the Convention against Torture, and Other Cruel, Inhuman, or Degrading Treatment or Punishment of the United Nation. Instead, the culture of impunity to the perpetrators of torture is so deeply rooted in the country that nothing happens to the state-agents after killing persons by torture while in detention centres. Moreover, the perpetrators are rewarded with gallantry and lucrative promotions after committing such heinous crimes. There have been many examples in which the authorities of Bangladesh sent the members of the law-enforcing agencies and security forces to participate in the UN Peacekeeping Missions, which is considered the best reward for any state official in the country.

Any person targeted or suspected by any member of the police or other agencies, can be illegally arrested, arbitrarily detained and experience torture in custody, which often leads to the death of the person.

Case-3:

A Rapid Action Battalion (RAB) team comprising three plain clothed members - Mr. Anowar, Mr. Babul and Mr. Bishawnath went to the house of Mr. Abdul Mazid in

Pallabi, Dhaka on 24 January, and forced Mazid to have his son, Mr. Mohiuddin Arif, return home. After Arif's arrival the paramilitary force members arrested him and took him to the office of the RAB-4, without giving any specific reason why they were doing so to him or his family members. The officers also warned Mazid not to communicate with anyone else about the incident.



Arif was detained in the custody of RAB-4 from 8AM of 24 January to 8PM of January 25 without any publicly-available record, or 36 hours, which is in violation of Article 33 (2) of the Constitution of Bangladesh and Section 61 of the Code of Criminal Procedure-1898. He was tortured in custody and at his home, where 10 RAB officers had taken him to conduct a search of his home, as they suspected him of possession of weapons. At 8 pm on 25 January, the RAB handed him over to the Pallabi police, who did not allow his family access to him and also allegedly tortured him throughout the night. On 26 January afternoon, the police sent Arif to the Chief Metropolitan Judicial Magistrate's Court of Dhaka. Instead of producing Arif before the court, the police detained him in a cell there. His relatives were able to see Arif there and saw that his eyes and legs were swollen and he was unable to stand or walk. Arif told them that the police officers had stood on his chest and beat his legs causing fractures. The police claimed that Arif was arrested as a suspected robber in a robbery case. The police informed the Court that at the time arrest by the RAB the detainee received some injuries regarding which a medical certificate was attached. The Magistrate ordered Arif to be sent to Dhaka Central Jail without hearing him or checking his physical condition.

On 28 and 31 January the prison authorities sent Arif to Dhaka Medical College Hospital (DMCH) for treatment due to worsening health, but his family members were not allowed to visit him there. On 3 February, the prison authorities sent Arif's body to the DMCH where doctors recorded him as being dead on arrival. On 4 February, Executive Magistrate Mokbul Hossain, prepared an inquest report, which clearly mentioned that the dead body had several injury marks, including a fractured leg, and bruised and swollen feet and eyes. The doctors of the Forensic Medicine Department of the DMCH conducted a post-mortem of Arif's dead body. However, the report of the post-mortem has not yet been available to the family of the victim.

Before Arif's burial his neighbours held a demonstration in the Pallabi area demanding the punishment of the alleged perpetrators from the RAB and the police. In response, the Pallabi police have registered a case against 40 persons including his neighbours and relatives and the police and the RAB have been repeatedly threatening the relatives of Arif over the telephone and in person to silence them. The families are understandably scared

and unlikely to even attempt to seek redress concerning Arif's death.

Upon hearing a Writ Petition filed by a local human rights organization a High Court Division Bench of the Supreme Court ordered the Ministry of Home Affairs to conduct probe into the custodial murder of Arif. The Court specifically ordered to formulate a three member probe committee comprising a member from the civil society excluding the police in it.

The Asian Human Rights Commission had learned from the probe committee that it found the allegation of custodial murder as a result of torture was true when the committee finalized its report. However, the probe report has not yet inspired the authorities to bring any murder charges against the alleged perpetrators who are officers of the RAB and the police. Thus, the hope for justice disappears and the potential possibilities of getting a legal remedy go in vain in Bangladesh.

As with many other cases of this type - carried out in police stations, military garrisons, the intelligence agencies' torture cells, and paramilitary forces camps such as those of the RAB - impunity prevails.

Article 35 (5) of the Constitution of Bangladesh reads:

“No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.”

This provision regarding the prohibition of torture has not been implemented in practice, mainly because of the lack of a law criminalizing torture. There is no culture of protecting human rights in the country, particularly victims who suffer ill-treatment and torture at the hands of the law-enforcement agencies. According to the Rule 75 (3) of the Criminal Rules and Orders-2009, which reads:

“Whenever a person is arrested and brought before the Magistrate, the Magistrate should be satisfied that there has been no unauthorised detention beyond 24 hours as provided in Section 61 of the Code [of Criminal Procedure-1898] and if there be any complaint to the that effect against the police, he shall make an enquiry into the matter and take such actions as may be deemed necessary.”

In the afore-mentioned case, the victim was detained for more than 50 hours by the RAB and the police. The Magistrate, as per records of the Court, did not ask the police to bring the person before him in person to hear whether Arif had any complaint against the police. There is no functioning institution or mechanism at present to hold the Magistrates, the police and the RAB accountable for their lawless actions.

Case-4:

Following a collision between a motorcyclist and a car driver on the street an armed police constable suggested Mr. Masud Reza, driver of the car, to complain at the Motijheel police station. Reza did so for insurance purposes but did not name anyone in the complaint.

The constable then demanded a bribe of BDT 25,000.00 (USD362.31) from the motorcyclist, Mr. Kazi Muhammad Zia ul Haque, a banker by profession. Zia informed the policeman that he did not have the money. The constable then sat on the back seat of Zia's motorbike and instructed him to drive home to get the money. However on the way, in a call to his brother, Zia found out that the family didn't have enough money in the house that night. Constable Murad called Sub Inspector (SI) Md. Rafikul Islam, who quickly arrived at the scene and threatened Zia for his lack of cooperation and helped take Zia to the Motijheel police station.

Arriving at the station Constable Murad alleged that Zia had attempted to throw him from the bike while it was in motion. The detained man was taken to the Sub Inspectors' office where around five policemen beat him for around 30 minutes with sticks, while being hit and kicked, as you can photos in the injuries to his back¹⁷, shoulders¹⁸, leg: 1¹⁹ and 2²⁰, and knees²¹ can be seen here.

SI Rafik allegedly then threatened to fabricate a case against Zia and instructed his colleagues to detain him until a 'crossfire' scenario could be arranged in Jheelpar (an isolated area beside a lake in Dhaka). A 'crossfire' in Bangladesh is usually a fake ambush in which police execute detainees.

After a long bargaining Zia's brother paid BDT 8,000.00 (USD 116.00). Rafik in consultation with the Second and the Officer-in-Charge (OC) agreed to release. But, asked to sign on blank pieces of papers, which Zia refused to do. SI Rafik then ordered the sentry to detain him again. Zia and Mazed both later signed the papers. Beyond the settled amount the officers demanded BDT 1,000 extra money, which was not possible for the two brothers as they paid all their money to the police. SI Rafik then registered a case against Zia for failing to pay that amount.

17 <http://www.urgentappeals.net/images/2010/AHRC-UAC-031-2010-01.jpg>

18 <http://www.urgentappeals.net/images/2010/AHRC-UAC-031-2010-05.jpg>

19 <http://www.urgentappeals.net/images/2010/AHRC-UAC-031-2010-03.jpg>

20 <http://www.urgentappeals.net/images/2010/AHRC-UAC-031-2010-02.jpg>

21 <http://www.urgentappeals.net/images/2010/AHRC-UAC-031-2010-04.jpg>

He was released at 3am on 8 March and reportedly had to argue strongly to not have his motorbike confiscated by the officers. Later, a doctor at Dhaka Medical College Hospital (DMCH) recorded Zia's injuries as: "H (History) O (of) P (police) assault falling multiple blunt bruises on diff (different) part of the body".

Few days later the Deputy Commission of the Dhaka Metropolitan Police Mr. Krishna Pada Roy called in Zia in his office for inquiry. The police officer abused language at Zia and his brother and threatened not to communicate with any rights groups or media regarding the matter. He also threatened to fabricate more cases against Zia and his brother.

The country does not have an independent and credible medico-legal system that is able to establish and report the findings of their examinations of victims of torture. Lawyers do not often offer to provide legal assistance to victims of torture, out of fear. In fact there are many instances where the senior members of the bar have suggested that victims of torture not file any case against the authorities concerning torture. Even if a case is registered with a Magistrate's Court, the police by default refuse to record a case of torture against police officers or other state agents such as the armed forces or paramilitary forces. In the rare case that an investigation is carried out by the police, it typically justifies or exonerates the accused. Rarely, if a case reaches a Sessions Court a public prosecutor, who by default belongs to the ruling political party, and therefore seeks to protect the establishment, typically upholds the distorted police investigation report. Moreover, complainants and witnesses routinely face intimidation and threats of extra-judicial killing unless the case is withdrawn.

Bangladesh is a party to Convention against Torture, Other Cruel, Inhuman or Degrading Punishment and Treatment since 5 October 1998. The nation also acceded to the International Covenant on Civil and Political Rights (ICCPR) on 6 September 2000. The country has international obligations under both of these instruments to criminalize torture.

Criminalisation of torture still remains a dream:

A member of the Parliament of Bangladesh, Mr. Saber Hossain Chowdhury, tabled a Bill titled "Torture and Custodial Death (Prohibition) Bill-2009", as a Private Member's Bill, in the house on 10 September 2009 seeking to place the country into compliance with its international obligations.

The Asian Human Rights Commission welcomed the framing of a Bill to criminalize torture in Bangladesh, and believes that this is a key step to combating torture and the

impunity that currently accompanies it. However, this Bill is currently being held up in Parliament, which the political will to pass this significant measure apparently lacking at present despite the fact that the incumbent government has a three fourths majority in the house. Constructive action at this juncture could partially compensate for the ruling and opposition politicians' unfortunate silence concerning human rights in Bangladesh since they all pledge to protect people's rights.

If the government had the level of commitment concerning upholding human rights that it claims to have in its pledges as part of its election bid to the last general election in 2008 or are repeatedly claimed by its representatives to the international arena, this Bill would have been passed by now.

The Asian Human Rights Commission, on several occasions, had urged the authorities of Bangladesh including the country's national parliament as well as the Chairman of the Standing Committee on Private Member's Bill and Resolution to take all necessary measures to ensure that they comply with their international obligations, notably those under the Convention Against Torture, including by criminalizing torture. The tabled "Torture and Custodial Death (Prohibition) Bill-2009" presents a ready-to-go solution for this and the Parliament had been urged to consider this Bill without further delay. There is serious need to initiate necessary reforms to ensure a functioning complaints mechanism that is accessible to all victims of torture without any fear of reprisal, and for an independent investigation unit to be established that is separated from the regular police force.

Case-5:

Mr. Mokles Matbor, a 45-year-old cleaner, was arrested as a suspect of a murder and rape case by the Gosairhat Police Station in Shariatpur district on 29 August 2010. At the time of arrest the police did not produce any warrant either to Mr. Mokles or explain it to his relatives.

The Gosairhat police detained him in the police cell while the Officer-in-Charge (OC) Mr. Md. Ekram Ali Molla told Mikles's relatives that the police were under great pressure from 'high officials' to solve the murder of children and rape case of the woman and promised, "We will ask him questions relating to the case and then release him."

Later, the police demanded huge amount of bribe from Mokles's wife Mrs. Morsheda Begum on condition of keeping her husband safe in custody. Morsheda explained that they belong to an extremely poor family, which was maintained by Mokles as the breadwinner having a job of cleaner, cannot afford paying bribes. At 10pm on the same night, the police led by the OC and SI Abul Kalam allegedly stripped Mokles' clothes off

and hung a brick from his penis. He said, “We will test how much power you (Mokles) have in your penis”. The police officers ridiculed and forced him to move around in that condition inside the Goshairhat police station. The police also tortured him by beating him with sticks and kicking him, which Morsheda claims that she saw from a nearby distance.

On 30 August, SI Kalam sought seven days remand for Mokles from the Chief Judicial Magistrate’s Court of Shariatpur district. Mokles was not physically produced before the Court at that time as his condition was worse due to custodial torture he suffered the previous night. The Magistrate, Mr. Ashok Kumar Dutta, on 31 August, granted three days remand to the police custody although the petition for remand was not properly submitted on the prescribed B.P. Form No.90. Mokles was brought to Goshairhat police station in remand by around 5pm and he died in the police custody within few hours. The police claim that at around 7pm Mokles committed suicide by hanging himself by tying a blanket about his throat and hanging himself from the ventilator of the police cell.

The Goshairhat police registered a case of “Unnatural Death” after the death of Mokles. Mr. A. F. M. Alauddin Khan, the chief executive officer of the sub-district, as an Executive Magistrate, signed on an Inquest Report of the dead body, which was prepared by a police officer, on the same evening. The Inquest Report claimed that there was no sign of injury on the body of the deceased. The report attempted to establish that Mokles committed suicide in the police cell.

When the allegation of custodial death was verified by human rights it was found that the particular window is around 5 feet 8 inches off the ground while Mokles was at least 5 feet 6 inches in height. Given the disparity in the environment it was quite impossible for the victim to hang himself as, even if he had managed to tie the blanket securely the stretch in the material would have meant that his feet remained on the ground.

The Superintendent of Police (SP) of the Shariatpur district Mr. A K M Shahidur Rahman and other police officers allegedly tamed the administrative officials to make a “fake” Inquest Report to divert the case. The medical doctors of the Sadar Hospital of Shariatpur, namely Dr. Nirmal Chandra Das, Residential Medical Officer, and Dr. Rajesh Mazumder, a Medical officer of the hospital, collaborated with the police officers.

The dead body had a number of marks of injury and the male organ was abnormally swollen, which was excluded in the Inquest Report.

On 3 September, the police officers including Assistant Superintendent of Police (ASP) of Goshairhat Circle Mr. Abul Hasnat, the OC of the Goshairhat police Mr. Md. Ekram Ali

Mollah and a number of policemen, went to Mokles' house and offered BDT 1,000,000.00 (USD 14, 154) by saying that "We are ready to pay you, if you finish the matter (allegation of murder in custody). It is important to save the 'rizik' (livelihood) of police. So, if you help us, we shall help you"(For further details, please see: AHRC-UAC-167-2010²²).

Extrajudicial killing:

Extrajudicial killing has been made an integral part of the law-enforcement system of Bangladesh for many years. The ongoing trend of extrajudicial killing has few different methods of which killing criminal suspects with point blank gunshots and publicizing stories of so called "crossfire" or "encounter" with few other synonyms like "gun fight", "in the line of fire" etcetera.

Extrajudicial killings have been continued unabatedly because of the absolute and endless impunity provided by the executive authorities including the Prime Minister, Minister as well as State Minister for Home Affairs and the Minister for Law, Justice and Parliamentary Affairs. Persons of these highest portfolios have publicly endorsed their support, including parliamentary speeches, by not only denying the recurrence of extrajudicial killing, but also argued that the law-enforcing agents have right to protect themselves whenever they come under attack from miscreants.

Every sincere Bangladeshi citizen and minister is aware of the real method of extrajudicial killing but the problems of the politicians of the country is being hyper-sympathetic to fundamental human rights when they are in the opposition and abdicating its own authority to protect the people's rights as soon as they assume the governmental power. The ruling party politicians always believe that their mandatory responsibility is to protect the perpetrators of the State-agents for their crimes even at the cost of uncountable ordinary citizens right to life, liberty and safety and even by disregarding the Constitution and judiciary's image, which also very much fragile. The authorities advise the country's media and concerned human rights groups not to expose the incidents critically; they even threaten the media and rights watchdogs.

Few voices have been heard against extrajudicial killings as well. Mr. Hasanul Haque Inu, a Member of Parliament and an ally of the ruling party, demanded an end of crossfire killings and urged the government to bring the perpetrators to justice in a speech in the Parliament on 13 July 2010. He also demanded judicial probe into all the incidents of crossfire, secret killings and abduction by law-enforcing agents. The speech of this leftist parliamentary governmental ally was welcomed by the rights groups and aggrieved

22 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-167-2010/>

families; however, the government has not changed its obstinacy for continuing the lawlessness.

Case-6:

Babul Kazi, an auto-rickshaw mechanic cum operator, was accused of having involvement in a business of stolen three-wheelers vehicle in Dhaka by the Rapid Action Battalion. A team RAB-3 had seized an auto-rickshaw and the two drivers who used to drive the vehicles on shifts. The RAB-3 handed over the two arrested drivers and an autorickshaw to the Ramna police, who demanded BDT 200,000 (USD 2900) in bribes for their release from Ramna police custody.

On several occasions Babul paid bribes to police followed by bargaining with Sub Inspector (SI) Alataf, however, the two men namely Md. Karim and Md. Momin and the auto-rickshaw were not released.



On 28 June SI Alataf demanded more money from Babul, who had argued with the police officer after paying BDT 83,000.00 demanding that the men and the rickshaw be released. In the evening the police picked up Babul from his auto-rickshaw garage for more money. Within few hours news came that Babul was dead.

The witnesses observed that the dead body had sustained head injuries when he attempted to jump from the vehicle. They were told to look for him at the Dhaka Medical College Hospital (DMCH).

At the DMCH SI Alataf told the Nasima, Babul's wife, that she would find her husband at the morgue. He repeated the escape story, and said that Babul had been dead on arrival at the hospital.

The intimidation of Nasima by the Deputy Commissioner (DC) of Dhaka Metropolitan Police is unfortunately a stock response among Bangladeshi law enforcers, rather than an exception; it is also typical of Mr. Roy's work ethic. On 3 July the DMP formed an inquiry committee to look into this case, headed by the Additional Deputy Commissioner Mr. Seyed Nurul Islam and comprising Assistant Commissioner Ms. Monalisa Begum of the of Motijheel Zone of the DMP. However the AHRC has no faith in the motives or the mandate of this team. Based on past experience we assert that it will be used to exhaust, intimidate and quiet the victims in the face of any other more credible investigation, conducted by probe committees, human rights organizations or media. Nothing has so far happened aiming to provide reparation to the victims.

Constitutional rights remain valueless to law-enforcing agents:

Under Bangladeshi law it is possible for persons to be arrested without a warrant for small misdemeanours, such as creating public disorder, which allows them to be held for 24 hours and fined. The AHRC suspects that this charge is being presented to Magistrates to explain cases of illegal arrest in which they do not want to admit error, nor create stronger fabricated charges. This would explain the small fine that Ali was asked to pay to the court. The AHRC would like access to the arrest records of Mr. Ali to determine whether his nine day detention was recorded, and on what legal grounds he was detained.

It should be noted that his detention is in violation of Article 33 (2) of the Constitution of Bangladesh and Section 61 of the Code of Criminal Procedure-1898, which obliges arrested persons to be produced before a Magistrate within 24 hours. The disappearance of Salim is violation of Articles 31, 32 and 33 (2) of the Constitution, which guarantees the right to the protection of law, the right to life and personal liberty and acts as safeguards against arbitrary arrest and detention.

Enforced Disappearances:

There have been serious concerns expressed and criticisms made by many local and international human rights organizations about a range of human rights issues in Bangladesh, including mass arbitrary arrests, endemic torture and widespread extra-judicial killings. It has been noted that there is a new trend that is of serious concern: an increase in the number of forced disappearances being reported in the country. It is understood that due to increased local outcry and international attention being given to the hundreds of extra-judicial killings that have been committed by Bangladesh's law-enforcement agencies, they are now increasingly resorting instead to forced disappearances, as this practice makes it harder to find those killed, identify the methods used to kill them or those responsible. In a justice system already crippled by impunity, the practice of forced disappearance makes it even harder for justice to be served.

The Asian Human Rights Commission has documented several recent cases of disappearances that speak to the increase in this practice. These examples should serve as an early warning concerning a problem that, if unchecked, will likely flourish, taking on the dimensions of other related grave abuses such as extra-judicial killings, in the country. The Human Rights Council is there urged to take appropriate action to ensure that Bangladesh puts a halt to this practice and ensures that the whereabouts of the disappeared are located, accompanied by adequate punishment to the perpetrators and redress for the victims and their families.

Case-7:

Mr. Mohammad Salim Mian, a fruit-trading businessman, was picked up by the members of the Rapid Action Battalion (RAB) from Salim's relative's house at Pirojpur village under the jurisdiction of the Kapasia police of the Gazipur district early in the morning of February 19, 2010 along with two other persons. The members of the paramilitary RAB force handcuffed and blindfolded the three persons and took them away in vehicles. The three persons were detained in unidentified places for several days without any publicly available official record of their arrest. Later, the other two co-detainees, Mr. Mainul and Mr. Mohammad Ali Hossain, stated that Salim had been held in the custody of the 4th Battalion of the Rapid Action Battalion (RAB-4) at Paikpara, in the Dhaka Metropolitan city jurisdiction.

On February 28, the RAB-4 officials handed over Hossain to the Kafrul police, who fabricated a case against Hossain before producing him before the Chief Metropolitan Judicial Magistrate Court of Dhaka, which released him on payment of a monetary penalty. Mr. Mainul was handed over to the Cantonment police, who charged Mainul in murder and illegal arms possession cases and detained him in prison.

Salim's whereabouts remain unknown. Upon repeated refusal by the local police to record a formal complaint regarding the incident, a Habeas Corpus writ case (Petition No. 2851 of 2010) was registered by Salim's wife Ms. Nazma Begum with the High Court Division Bench of the Supreme Court of Bangladesh regarding the disappearance of her husband.

The Habeas Corpus Petition claims that Mr. Salim Miah disappeared after the Rapid Action Battalion (RAB) arrested him on 19 February 2010 from the Kapasia area under the jurisdiction of Kapasia police station of Gazipur district. The petitioner has asked the court that: "A direction upon the respondents to bring the detenu before the Hon'ble High Court Division so that the Hon'ble Court can be satisfied that the detenu is not being held in custody without lawful authority or in an unlawful manner".

The respondents of the petition were the Secretary of the Ministry of Home Affairs, Inspector General of Police, Director General of Rapid Action Battalion (RAB), Commander of the RAB-4, Deputy Commissioner of Gazipur district, Superintendent of Police of Gazipur district and the Officer-in-Charge (OC) of Kapasia police station of Gazipur district. The petition was supplemented by another petition supported by an affidavit from Mr. Mohammad Ali Hossain, who was also arrested from the same place along with the Mr. Salim.

A Division Bench comprising Justice A H M Shamsuddin Chowdhury and Justice Md. Delwar Hossain heard the case once on 15 April. The country's Attorney General's office

claimed before the Court that according to the official records of the RAB-4, Mr. Salim was not arrested or detained by them. After hearing both parties the Court issued a rule against the government and ordered seven respondents to explain the matter before the court within three weeks. However, the case has not been heard again and Mr. Salim remains disappeared to date.

The Attorney General's office claimed before the Court that "the Rapid Action Battalion (RAB) did not arrest Salim according to their official records". The High Court's Division Bench accepted the Habeas Corpus petition after hearing both parties and issued a rule against the seven respondents. It asked as to why a Rule for Habeas Corpus²³ should not be issued upon the respondents. The Court also had directed the Commander of the RAB-4 to explain within three weeks as to whether they rounded up any person named Salim Miah.

Meanwhile, the lawyers have collected the documents regarding the detention of Mr. Mohammad Ali Hossain, a cousin of the disappeared person; and one of the detainees who were arrested and taken under the RAB-4 custody together with the disappeared victim. (For further information, please see: AHRC-UAC-043-2010²⁴).

According to the documents, Assistant Sub Inspector (ASI) of the Kafrul police station of the Dhaka Metropolitan Police (DMP) had produced Mr. Mohammad Ali Hossain before the Chief Metropolitan Judicial Magistrate's Court of Dhaka in a case registered with the Kafrul police on 25 February 2010 along with 28 others. It was learned that the police had brought charges of suspicious movement at the area of the Bangladesh Road Transport Authorities (BRTA). The police claim that such movement was a crime under Section 84 of the Dhaka Metropolitan Police (DMP) Ordinance-1976 and arrested the 29 persons under Section 100 of the same law. The police requested the Court to conduct a non-FIR (First Information Report) prosecution of the case. The Court released the detained persons, including Mohammad Ali Hossain, upon punishing them for the alleged crime and receiving a penalty of BDT 100.00 (USD 1.30), which is the punishment under Section 84 of the DMP Ordinance-1976. Ali Hossain later told that prior to producing before the Court the police suggested all of the 29 accused to "confess" the crime as the charge brought against them if the detainees were willing to get out of the case and the detainees followed the instructions of the police officers.

On 17 May, the lawyers of the Habeas Corpus petition told the AHRC that none of the seven respondents have responded to the Rule of the High Court Division Bench since the Rule was issued on 15 April asking them to respond within three weeks.

23 <http://www.urgentappeals.net/pdf/AHRC-UAU-020-2010-01.pdf>

24 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-043-2010>

Case-8:

Mr. Sujon, a businessman and political activist, was allegedly kidnapped by the members of the RAB-2 from a Dhaka city street on March 24, 2010 and remains disappeared to date. When the family attempted to register a case after learning of his abduction, the police refused to record the complaint as the allegations were against the members of the RAB-2, which enjoys impunity by default in the country. Later, following changes to the complaint, in which the RAB was no longer mentioned, a complaint was registered against unidentified persons.

According to the police investigation, three officers of the RAB-2 including Lieutenant Farhad, who was deputed to the RAB-2 from the Bangladesh Navy, and two Deputy Assistant Director (DAD) Rafique and Samsu used a prostitute to lure Sujon to a restaurant in the Farmgate area of Dhaka Metropolitan City, where they arrested, leading to his disappearance.

The police investigation found that from March 19 to 25 the prostitute had 25 conversations with Lieutenant Farhad, 17 conversations with DAD Masud and 3 calls to DAD Samsu's official cell phone numbers. After the allegation Lt. Farhad was sent back to the Bangladesh Navy, however, the issue has not proceeded any further. The police were allegedly forced to stop their investigation regarding this matter, according to anonymous sources within the police. The family of the disappeared person has not yet received any information regarding the whereabouts of Sujon.

Case-9:

Two brothers, Mr. Jalal Uddin and Mr. Lal Babu, were arrested by heavily armed the members of the RAB-4 at around 2 am on March 18, 2010, from an area known as Bihari Camp, where so-called "Stranded Pakistani" families are housed in the Dhaka Metropolitan City. The RAB-4 members cordoned the whole neighbourhood, according to the eye-witnesses of the scene of arresting Jalal Uddin and Lal Babu. The arrests were made without any explanation or the production of any arrest warrants. The local police refused to record a formal complaint by the victims' family members regarding the arrest and disappearance of the two brothers, stating that they "had nothing to do with the complaints against the RAB."

Case-10:

On March 19, 2010, at around 4:30 pm, timber-trader Mr. Akbor Ali Sharder was arrested along with one of his business partners, Mr. Bipin Chandra Sarker, from a sawmill in Thakurgaon district town by plain-clothed persons who identified themselves

as being members of the RAB-5. When Akbor's wife, Ms. Parvin, went to the Thakurgaon police station to file a complaint the police detained her and blamed Akbor's business partner Bipin for kidnapping Akbor. Later, the police forced Bipin's younger brother, Mr. Robin Chandra Sarker, to file an abduction case against Akbor and claimed that they had detained Parvin as the spouse of a suspected criminal.

The following morning Bipin returned home and described that 13 plain-clothed persons arrested him and Akbor. The abductors blindfolded them and tied their hands behind their backs and transported them away in a microbus. The conversations among the plain-clothed persons reportedly identified them as being members of the RAB-5. The abductors demanded 3 million BDT (around 43,000 US\$) from Akbor and Bipin.

Akbor remains disappeared to date. Akbor's elder brother, Mr. Ayub Ali Sarder, has told the AHRC that he has lodged a petition case with the Chief Judicial Magistrate's Court of Thakurgaon district and has addressed special complaint letters to high-ranking officials of the government, including the Ministry of Home Affairs and the Inspector General of Police. However, the authorities have not taken any visible actions regarding the disappearance of Akbor.

Ayub Ali reportedly held press conferences on two occasions accusing the RAB of having abducted his brother. According to eyewitnesses, Ayub Ali and a business partner, Mr. Abdur Rahman, were arrested on May 19, 2010, from Banosree area by a group of persons wearing black uniforms that resemble the uniform of the RAB, and also remain missing to date.

Case-11:

Mr. Chowdhury Alam, a counsellor of the Dhaka City Corporation, was stopped by a group of plain clothed persons at around 8:30pm on June 25, 2010. The plain clothed persons introduced themselves as members of the RAB. Alam was dragged out from his car and taken away in a microbus.

When Alam's son went to the local police to register a case regarding the abduction by the members of the RAB, the police recorded the compliant without including the name of the RAB. As Alam has remained disappeared, a Habeas Corpus writ petition was filed by Alam's son; however, as there was no official record found in favour of the incident of arrest by any of the law-enforcement agencies of the country, the Habeas Corpus was not accepted in the High Court Division of the Supreme Court of Bangladesh.

None of the above-mentioned cases have been credibly investigated by the authorities. The law-enforcement agencies, particularly the Rapid Action Battalion that is thought to

be responsible for many of the abductions, continue to enjoy impunity. There has been no official record made publicly available regarding the arrests and detention of victims; all the allegations of abduction or arrest have been denied by the RAB; the police have refused to register formal complaints against the RAB regarding the disappearances and have further harassed the complainants and recorded erroneous information regarding the incidents. This obstructs attempts by relatives to locate their loved ones and seek justice concerning these abuses. Habeas Corpus applications cannot be registered, as the law-enforcement agencies do not maintain or provide any official records regarding the abduction or arrests, detention and whereabouts of the persons.

As there is no information or evidence regarding the victims' deaths, including dead bodies, the relatives cannot file murder charges against the perpetrators. If petition cases are registered with Magistrate's courts, they are investigated by police officers who only cover up crimes by their colleagues. Given Bangladesh's seriously flawed criminal justice system, there is little hope of achieving justice concerning abuse perpetrated by state-actors for victims or their relatives.

Moreover, when the media and human rights defenders have attempted to document cases of enforced disappearances they have been seriously intimidated, obstructed and harassed by law-enforcement agencies and top officials of the government, including the office of Prime Minister, the Ministry of Home Affairs and the Ministry of Information, showing top-level complicity in the growing problem of forced disappearances. The field level human rights defenders come under non-stop surveillance for their works in support of the families of the victims of disappearances Bangladesh has failed to show adequate cooperation with the HRC's Special Procedures, including by failing to grant requests for country visits, inter alia, by the mandates on the independence of judges and lawyers, on extra-judicial killings or on the freedom of expression, all of which have had requests pending for several years. The Human Rights Council is urged to take all necessary steps to ensure that its membership improve their cooperation with its mechanisms.

Bangladesh must be urged to halt the growing phenomenon of enforced disappearances and show its commitment to do so by ratifying the International Convention for the Protection of All Persons from Enforced Disappearance without delay and producing and implementing in full domestic legislation in line with the provisions of this instrument.

Urgent necessity for a witness protection mechanism:

Bangladesh does not have any Witness Protection Mechanism. The victims of crimes committed by State as well as non-state actors and the witnesses of crime scenes and cases face serious intimidation and threats from the alleged perpetrators, interested parties and

their hired men continuously. They remain highly unsecured as well as in an indecisive mental condition and unprotected atmosphere in their individual community and society. This situation compels the witnesses, ultimately, to withdraw from the procedure of the criminal justice system depriving the judiciary to ensure justice for the society and the nation as a whole.

The absence of a Witness Protection Mechanism endangers the lives of the victims of heinous crimes, especially those who suffer human rights abuses perpetrated by the State-agents and witnesses the incidents. The severity of the problems deep-rooted in absence of an effective witness protection mechanism has been ignored by the authorities as well as the civil society in Bangladesh.

Case-12:

A group of four plain clothed members of the Detective Branch (DB) of the Dhaka Metropolitan Police led by Sub-Inspector (SI) Mr. Golam Kibria forcibly took Mr. Md. Zahirul Haque Babul, a 55-years-old businessman, from his private business office at Manda area of the Dhaka City into a police vehicle. The vehicle reached an open-air field of a public housing estate. While in the vehicle he was beaten with sticks and kicked.

Assistant Commissioner (AC) of the DB police, Mr. Motiur Rahman, approached to him from coming out of another private car and introduced himself. SI Kibria demanded 2 million Taka (USD 29,000.00) from Babul, who refused to pay saying that it was unaffordable for him. SI Kibria then showed a box containing 67 Yaba tablets, a Burmese drug which has recently become available and popular among addicts in Bangladesh. The policemen threatened him that if the demanded amount is not paid the police would fabricate a drug trading case against him and will be produced before the Court on the following morning. When Babul again expressed his inability to pay the bribe the police officers blindfolded and handcuffed him and took him by a police vehicle to another open-air field. They again punched and kicked him before attempting to remove Babul's fingernails and toenails and to crush his male organ with nose-pliers. They pointed a pistol at his head and threatened to kill him on the pretext of a "crossfire". Having been scared for his life Babul agreed to pay the demanded ransom to save his life.

His relatives immediately brought BDT 100,000.00 (USD 1,450.00) after Babul's telephonic request. The police took the money from Babul's son-in-law taking him inside a police vehicle. The police dropped Babul onto a street near the Ramna police station of the city of Dhaka at around 2am on 19 May on the condition that Babul withdrew money from his bank to pay the remaining BDT 400,000.00 (USD 5,800.00) by around 11am of the same date. The police forced Babul to sign blank pieces of paper before releasing him.

SI Kibria called Babul's wife's number at noon and demanded the "due" amount asking Babul's relatives to go immediately to the front gate of the DB Police Office at Minto Road to hand over the money to the police. Having no affordable means of paying Babul and his relatives went to the Sabuzbag police station to lodge a complaint regarding the kidnapping and extortion of ransom by the DB police officers. The Officer-in-Charge (OC) of the Sabuzbag police Mr. Asaduzzaman refused to register the complaint saying that "We cannot record a complaint against any police officer without permission from the DC (Deputy Commissioner of the relevant jurisdiction of the DMP)". However, the police kept a copy of the complaint.

Meanwhile, the DB police officers, who were allegedly involved in kidnapping Babul, learned from the Sabuzbag police that Babul went to the station to register a complaint against them. They then repeatedly threatened Babul over the phone saying they would kill him in a "crossfire" if the demanded money not was paid and if there is any attempt to lodge any complaint on this regard.

On 21 May at 10:30pm, the DB Assistant Commissioner (AC) Mr. Motiur Rahman went to Babul's house accompanied by Mr. Mosaraf Hossain Bahar, general secretary of Bangladesh Awami League's Sabuzbag unit, Mr. Mohammed Lutfur Rahman, publicity secretary, and Mohammed Samidul Huq Goga, secretary of Manda union unit. The police officer and the ruling party politicians threatened to kill Babul if he complains about the incident. The AC took Babul's picture with his mobile phone camera as part of intimidation. The police officer also warned Babul's relatives not to take the incident any further.

On 23 May, Babul filed a petition case with the Chief Metropolitan Judicial Magistrate's Court of Dhaka regarding the incident. The Magistrate ordered a judicial probe headed by a Metropolitan Magistrate, however, he did not issue any warrant of arrest against the alleged police officers. Later, it was revealed that Metropolitan Magistrate Ms. Shamima Parvin was assigned to conduct the judicial probe. The head of the one-member judicial probe committee Ms. Shamima Parvin issued a notice to the complainant and all the witnesses of the case, filed by Babul, to appear before the Metropolitan Magistrate's Court No.13 of Dhaka on 14 June to testify.

Since the complaint was registered with the Court the police officers had increased their death threats against Babul via mobile phones and through local leaders of the ruling political party. Due to these continuous death threats Babul had gone into hiding in an undisclosed location (For further details, please see: AHRC-UAC-081-2010²⁵).

25 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-081-2010/>

Case-13:

Mr. Mizanur Rahman, a photo-studio businessman in Gulshan area of Dhaka, was illegally arrested and shot dead in the pretext of a so called “gunfight” while in Gulshan police custody. Mr. Mohammad Manik, who was detained together with Mizan in the same custody and received bullet injury in his leg, told that Sub Inspector (SI) Anisur Rahman of the Gulshan police shot at the left legs of Mizan and Manik when both were taken out from the police cell early in the morning of 1 July 2010. The police then asked both wounded persons to run away. Mizan followed the instructions of the police and as soon as attempted to run the police fired at his other leg and he fell to the ground. However, Manik did not run to avoid Mizan’s consequence and survived as he was only shot in one leg. Mizan’s death was due to continuous bleeding without any treatment after both of them were taken to the Dhaka Medical College Hospital (DMCH) where Manik gave an interview before camera.

Meanwhile, a High Court Division Bench of the Supreme Court of Bangladesh on 5 July 2010, four days after Mizan had been killed, ordered the Ministry of Home Affairs to form a committee to probe three custodial deaths including the death of Mizan within seven days since the Bench passed the order. The Division Bench ordered the government not to include any member from the police in the probe committee. It also ordered to inform the Court that what measures had been taken as per the Code of Criminal Procedure (of 1898) following the deaths and what initiatives had been adopted in order to prevent deaths under the custody of the law-enforcing agencies and security forces. The High Court Bench passed this order following a public interest writ petition (No. 5241/2010) filed by two human rights organisations. The Court directed the ministerial probe committee to record the statements of the eyewitnesses of the incidents of custodial deaths and submit the opinions regarding the said custodial deaths expressed by prominent columnists that were published in the media beforehand. It issued a rule against the respondents – the secretary of the Home Ministry, Inspector General of Police, Commissioner of the Dhaka Metropolitan Police and the Officers-in-Charge of Dar-Us-Salam, Ramna and Gulshan police stations – asking them appear before the Court within two weeks and explain about the custodial deaths. The Court asked the Dhaka Medical College Hospital to submit the post-mortem reports of the three custodial deaths. It also made a panel of 11 prominent lawyers and jurists to assist the Court as *amici curiae* regarding the issue.

After the Court’s order the Ministry of Home Affairs formed a two-member-probe-committee comprising Mr. Shawkat mostofa, joint Secretary (Law) and Mr. Mozakker Ali, Deputy Secretary (Law) of the Ministry of Home Affairs to inquire into the incident. However, the committee did not visit the crime scene or talked to the family of the victims of custodial death or any of the eye-witnesses in more than a month. Later,

instead, the members of the probe committee insisted the widow of custodial killing victim Ms. Taslima and the witnesses to go to the Ministry of Home Affairs to give testimony. The high-ranking bureaucrats, who have luxurious official vehicles to travel for their official works such as probing the cases, insist the victims and witnesses, who are financially poor and unable to afford their dire necessities let alone the transportation costs, to travel without paying any allowance for transportation (For further information, please see: AHRC-UAC-107-2010²⁶).

In Bangladesh nobody expects sincerity and compassion from the officials of the Ministry of Home Affairs other than the judges of the Supreme Court, which itself fails to realize the depth of the problems and have been wasting years after years unsuccessfully to stop custodial deaths, particularly the so called “crossfire” and all other synonymous killings.

The police pretend to obey the High Court’s order through its press release. But, in fact, they not only utterly disrespect the order of the court but also manipulate the whole investigation process by creating panic through harassing the witnesses and the family of the victim as they have done in the case of Mizan after the extrajudicial murder.

The Dhaka Metropolitan Police (DMP), in one hand, resisted the family to speak to the media and human rights defenders by snatching the mobile phone of Taslima and seizing her deceased husband’s life insurance-related documents, and on the other they intimidate the family as well as tempt them by offering money. The money receipt²⁷, which was given by the police to Taslima, shows that money was deposited to the Trust Bank on 19 July 2010 under the National Savings Schemes for five years (Registration No. 51/10) and will be payable jointly to Taslima and her sister-in-law Ms. Farida. Both of the co-recipients have nominated Liza Akhter, Taslima’s daughter, for the whole amount. The document contains photos of Taslima, Farida and Liza. The police also engaged the local political activists to insist the victim’s family to hide the truth related to the murder of Mizan for the sake of saving the job of the alleged policemen, which means that the job of police is more precious than human life, rule of law and justice in the country.

Taslima alleged that the police officers were doing silly jokes with her family regarding the orphanage of her child. One the very first day when the police picked up Taslima, her daughter, her mother-in-law Mrs. Samsun Nahar (deceased Mizan’s mother) to the office of AC of Gulshan Zone Mr. Nurul Alam out of several such occasions. Samsun Nahar met the AC and asked him, “You (police) have killed my son (Mizan). Now, my grandchild has been an orphan at this minor age. Whom shall the child call ‘father?’” The police officer replied, “You don’t have to worry about this. The child can call me ‘father!’”

26 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-107-2010/>

27 <http://www.urgentappeals.net/images/2010/AHRC-UAC-035-2010.jpg>

Offering a sum of money he said, “We cannot bring the man back to life. But, we will pay you money that will give you a better life.” The policeman also took the thumb print of Shamsun Nahar on a paper, which has not been shared with them. The police, in fact, prove how mean they are!

The experiences of the victims of custodial abuses further create a question relating to the protection of the witnesses of criminal offences, particularly the state-sponsored abuses, in Bangladesh. There is no witness protection mechanism, which multiplies the problems of the families and witnesses of the custodial abuses, in the country that cultivate a culture of impunity for the perpetrators.

The long absence of the probe committee formed by the Ministry of Home Affairs to hear the pains of the family as a result of the extrajudicial death of their breadwinner and in the midst of continuous harassment by the police and their allies raises question regarding its purpose. The High Court Division directed the Home Ministry believably to help the victims as well as to the judiciary for finding out the truth. In reality, the Ministry of Home Affairs, which has been failed to control the law-enforcement agencies for decades for its flawed and anti-rule of law policy of extending impunity to the perpetrators, appears to be reluctant to respond to the call for justice even though it is from the highest court of the country.

The Ministry of Home Affairs has emerged as widow-makers, instead of its original position of a superior administrative body; it is not a human being having common sense and rational knowledge. It appears that the Ministries of Bangladesh does not consist of, or operated by, human beings at all. Because, the policy-level bodies like the Ministry of Home Affairs promote extrajudicial killings and protect the killers with its utmost capacities. The Ministry does not have minimum rational sense to count that how many human lives have been finished due to its lawless actions? How many mothers of the country have been lamenting over the untimely murders of their sons and daughters in the name of law-enforcement and cursing the policymakers of the Ministry? How many women have been compelled to be widow for the dull-brained and irresponsible Ministry? What are the latest numbers of state-made-orphans, as achievements of the Ministry? How much grieves have been pouring on the soil and how dense is the sigh in the air of the country? Do the citizens have faith on the Ministry for any lawful cause? Does the Ministry have any credibility to anyone? Does the Ministry have any ability to increase public trust on the criminal justice system by placing law at the barrel of the guns of the police and Rapid Action Battalion? The nation must think about these questions that the victims always ask to the people who try to listen to them.

Shameless political impunity destroys everything:

Bangladesh has ever been prudent to make pledges on human rights issues in the international arena where diplomats of various nations maintain their professional modesty by mostly avoiding harsh criticism to any country for its alienated rhetoric. In its standstill race of promoting human rights the country's representatives boast of its achievements and success.

Bangladesh's Foreign Minister Ms. Dipu Moni told the international community at the UN Human Rights Council on 3 February 2009 during the session of Universal Periodic Review on Bangladesh that "Pursuant to Constitutional obligations and provisions in the CEDAW, the government has been consistently striving to improve women's status in both private and public spheres." (For further details, please see: Paragraph-23, Page no. 6 at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/168/33/PDF/G0816833.pdf?OpenElement>)

But, the reality on the ground does not match with the rhetorical statements when the government itself ensures impunity to the people associated with the ruling party in shameless manner.

Case-14:

A nine-year-old handicapped girl was raped by man on 2 August 2010 in an abandoned building of Balua Hospital under the jurisdiction of the Gaibandha Sadar police station in Gaibandha district. After the rape the alleged perpetrator was seen suspiciously leaving the place by pedestrians and onlookers rescued the girl in senseless condition. The girl's paternal aunt lodged a complaint of rape with the Gaibandha police, who sent the girl to the Gaibandha Sadar Hospital for a medical examination.

The alleged rapist was a nephew to the local leader of the ruling political party – Bangladesh Awami League. At the time of medical examination the ruling political party leaders intervened into the process and ensured a negative medical report regarding the allegation of rape. Moreover, Ms. Mahbub Ara Gini, Member of Parliament from that constituency, insisted the police not to arrest the alleged perpetrator and obstructed the investigation of the rape case.

Around four hundred people including inhabitants of the neighbourhood, girl-students of the local schools and human rights defenders spontaneously protested in the area. They demanded arrest and prosecution of the alleged rapist by holding a human chain. A number of social activists spoke against the police inaction. On the contrary, the lady parliamentarian Ms. Mahbub Ara Gini repeatedly intimidated the organizers of

the human chain and protest against the rape. She ordered over mobile phone to stop protesting against the rape. At one stage of the telephonic conversation, the raped girl's father, who was personally acquainted with the parliamentarian and had a hope that if she recognizes him the political interventions will be stopped, asked Mahbub Ara Gini that whether she really wanted to obstruct the case's investigation despite knowing that it was his daughter. Over telephonic conversation the lady recognized the girl's father, who requested not to stop the investigation of the case as the victim of rape was his daughter. The Member of Parliament replied to him, "It is your daughter, so what?" The case has not been investigated by the police till this report has been released.

Meanwhile, the family members had received threats from various groups pressuring them to abandon the complaint or face consequences, including the threat of evicting the complainant's family from the area. Several of the girl's relatives and witnesses of the complaint have been threatened with death and of being expelled from their resident locations. They had been living in fear in the midst of continuous threats from the local leaders of the ruling political party.

The incident reveals the way in which the criminal justice process is hampered by political pressure. Even the rape of a minor girl becomes a matter of politics and the suspects are protected as a priority. The existence of morality can hardly be exposed among the power-centered politicians and the functionality of law in Bangladesh is seriously undermined. The MPs and influential political leaders control the local police stations, criminal investigations, medico-legal examinations and do and undo their bests to destroy the possibility of keeping hope for justice from the available limited options. The ruling party enjoys its power in many ways to keep its own government "stable". If issues like rape, which is a heinous crime, are taken seriously the political "stability" will suffer a great setback. A father outraged by the rape of his minor child should not be allowed to damage the political survival of a member of the parliament. The father's concern for his daughter was of no concern to her as it is her party supporters who are expected to guarantee her success in the next elections. Even being a woman the respect to a girl's dignity does not exist when everything is centered to politics. Aggrieved fathers must learn to control their emotions by burying the aspiration for justice and not disturb the political wellbeing of the MP. If one of the active party men wants protection against criminal prosecution for rape, it is her duty to provide that. Getting or snatching impunity for whatever crimes are committed when the party in power - that is what elections have come to mean in Bangladesh.

This is not the sole method of ensuring impunity in Bangladesh; there are many other ways protect the ruling political party's activists! Apart from the illegal methods of extending impunity as it has been illustrated above there are legal ways at the hands of the ruling political parties.

Code of Criminal Procedure enables rulers to ensure impunity:

The governments of Bangladesh in all regimes regardless of its politically elected or non-political dictatorial identities have been using provisions of the Code of Criminal Procedure to provide impunity on their political choices. One of the best tools for ensuring impunity is Section 494 about “Effect of Withdrawal from Prosecution”, a provision made by the British colonial authorities for its cunning purpose of rule the territory by repression. Section 494 reads:

“Any Public Prosecutor may, with the consent of the Court, 1[* * *] before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried; and upon such withdrawal,-

(a) if it is made before a charge has been framed, the accused shall be discharged in respect of such offence or offences;

(b) if it is made after a charge has been framed, or when under this Code no charge is required, he shall be acquitted in respect of such offence or offences.”

This provision is in wholesale practice at the hands of the ruling political parties whoever takes over the power. The government, as it has been mentioned in previous reports, traditionally announces that it wishes to unburden the judiciary from the “politically motivated” cases that had been allegedly filed by its predecessors aiming to ease the process of administration of justice. Then, the authorities start withdrawing cases. The hidden agenda behind this decision is to protect the ruling group’s own musclemen from the prosecution for criminal charges. As days go on everyone of Bangladesh becomes clear about the purpose of the government. Because, only the petitions from persons associated with the ruling political party containing stronger recommendations from the pro-government influential leaders and parliamentarians are entertained with privilege whereas the similar petitions from someone, who belongs to the opposition, gets zero attention in the long run.

The politicians scrutinize the petitions to double check that their own party men get the benefit of the withdrawal of cases. After selection of the cases and potential beneficiaries the government assigns its bureaucrats to send formal letters instructing the Public Prosecutors and Special Public Prosecutors, of whichever jurisdictions the cases might be, to withdraw either certain persons’ names from the prosecution or the whole case is withdrawn from the prosecution regardless of the stage of the case. The prosecutors, who are also politically appointed as a hire and fire basis, recommend the concerned courts or tribunals’ judge to remove the names from the charge or close the whole case. The judges of the country nod their heads and approve the recommendations for withdrawal. The incumbent government has withdrawn cases.

Such withdrawal is considered as blessings of remaining attached to the ruling political party and a further inspiration to commit crimes more in number and severity as well. It benefits everyone around the vicious cycle of lawlessness – it enables the top politicians to keep “control” on the field level activists compelling them to obey whatever instructions come up; the police, who are the mechanics of criminal complaints and investigation, serve the political masters’ purpose to earn undeserving benefits like quick promotion and lucrative posting to make money through “chain of corruption”; the field level beneficiaries enjoying committing crimes one after another again enabling the police to earn money by registering more criminal case; more case enables the police to arrest more people who pay more money for escaping torture and harassments; more case opens the window of opportunity to do more corruption on each of the steps at the court’s proceedings; the helpless victims get ruined physically, financially and morally after suffering endless injustice; the poor become poorer emptying their courage to fight for justice; and again the political players continue play their games of grabbing power.

Abuse of President’s office to ensure political impunity:

The President of Bangladesh is ornamentally Head of the State since the 11th Amendment of the country’s Constitution was passed in 1991 reducing the power of this office to the utmost minimum level. The power of the President has been stipulated in Article 48 (3), which reads:

“In the exercise of all his functions, save only that of appointing the Prime Minister pursuant to clause (3) of article 56²⁸ and the Chief Justice pursuant to clause (1) of article 95²⁹, the President shall act in accordance with the advice of the Prime Minister:

Provided that the question whether any, and if so what, advice has been tendered by the Prime Minister to the President shall not be enquired into in any court.”

In reality, the President consents to the appointment of the Chief Justice and Judges of the Supreme Court after the candidates are chosen by the ruling political party’s most powerful segments followed by the unofficial approval by the Prime Minister, who remain behind the curtain. Ultimately, the President survives as the Head of the State without any actual power over the state machineries.

The political parties having majority in the parliament only nominates a person as a candidate for Presidential post considering the potential candidates’ level of “unconditional loyalty” to the head of the respective political party as the politics in

28 http://bdlaws.minlaw.gov.bd/sections_detail.php?id=367§ions_id=24605

29 http://bdlaws.minlaw.gov.bd/sections_detail.php?id=367§ions_id=24652

the country is centered to the heads of the party concerned instead of the practice or norms of democracy within the parties. The incumbent President, who served as the General of Secretary and Member of Presidium of the Bangladesh Awami League on several occasions in the past, has a reputation for his unquestionable loyalty to the head of the party, which enabled him to be the best choice for the office. Traditionally, the persons having strong personality and moral capacity to debate and establish a separate view differing with that of the Prime Minister, who occupies (understood as “owns”) the political party, are not good choice for the office of President. In the past, there had been an instance of forcing the President to resign from the office within less than eight months during the last regime led by the Bangladesh Nationalist Party (BNP), which is the main opposition in the 9th Parliament at the moment.

The Office of the President has been used as tool to extend political impunity as the President is empowered to grant pardon according to Article 49 of the Constitution. It reads:

“Prerogative of mercy: 49. The President shall have power to grant pardons, reprieves and respites and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.”

Case-15:

Mr. Sabbir Hossain Gama, a leader of the youth wing of the BNP in January and a nephew to a central leader of the same party, was hacked and shot dead in Natore district on 7 February 2004 when the BNP was in power. The ruling party leaders accused their political opponents as the perpetrators and filed murder charge against 21 activists of the Awami League. The Noldanga police submitted investigation report charging all 21 accused in the case. The case was tried in the Speedy Trial Tribunal-3 of Dhaka. The Judge Mr. Md. Firoz Alam convicted all 21 accused giving death penalty, on 24 August 2006, in a 95-pages judgment. The authorities, meanwhile, detained 5 accused while the rest had become fugitive but later, except one of them, were caught and imprisoned.

The defendants appealed to the High Court Division of the Supreme Court challenging the verdict of the Speedy Trial Tribunal-3 of Dhaka in the same year. When the appeal was pending before the High Court Division there had been change in the country’s governmental power – Bangladesh Awami League assumed to office after a huge victory in the general election held in December 2008. The defendants withdrew their appeals from High Court before it had finished its procedure.

On 6 September 2010, the country’s media came to know that President of Bangladesh Mr. Md. Jillur Rahman had pardoned 20 convicts by exercising his prerogative power

of clemency and subsequently the order had been implemented immediately. When the media enquired into the matter they learned that the Ministry of Law, Justice and Parliamentary Affairs recommended the President to grant pardon after scrutinizing the Speedy Trial Tribunal's verdict, evidence and documents. Quoting the Law Minister Mr. Shafique Ahmed, who is a barrister by profession but not a Member of Parliament, argued that the President has absolute power to grant clemency in any case and also admitted that his Ministry recommended the President for clemency. "It also considered the convicts' age and financial condition of their families," he added while speaking to the media.

The politicians, particularly the government of Bangladesh recommends for mercy only on behalf of their own political parties even without completing, or going through, the judicial procedure for the sake of saving lives of the convicts, as it happened in the case of Gama murder. At the same time, the politicians do not accept the need of abolishing death penalty as an inhuman and unacceptable form of punishment, in compliance with the Optional Protocol to the Convention Against Torture neglecting consistently made requests by the human rights groups and international community. The nation should have its own conviction about the reality and be inspired to initiate thorough reforms of its criminal justice system so that everyone's right to life is protected instead of abusing the office of the President undermining and bypassing the rule of law institutions.

Constitutional provisions enabling impunity:

The Constitution of Bangladesh empowers the government to extend immunity from prosecution to any state officer on any grounds in Article 46, which reads:

"Notwithstanding anything in the foregoing provisions of this part, Parliament may by the law make provision for indemnifying any person in the service of the Republic or any other person in respect of any act done by him in connection with the national liberation struggle or the maintenance or restoration or order in any area in Bangladesh or validate any sentence passed, punishment inflicted, forfeiture ordered, or other act done in any such area), to make the above-mentioned law."

Originally, at the time of adopting the Constitution, this provision was inserted with reference to the 1971 war for independence from Pakistan, it is now being randomly used to protect police, paramilitary and security forces and other operations units from prosecution for human rights abuses. Notably, the Joint Drive Indemnity Ordinance 2003 removed from the hands of victims and their families the right to take legal action against soldiers, police and other security forces responsible for the gross abuses that occurred from 16 October 2002 to 9 January 2003 under Operation Clean Heart.

The incumbent Awami League Government has also established complete impunity to the armed forces that usurped the power by compelling the President to impose a State of Emergency on January 11 in 2007 to put the nation in an unconstitutional militarized rule for two years. The current government has not taken a single step to punish the perpetrators of gross human rights abuses during the emergency regime.

The most unfortunate part is that the civil society organizations, human rights groups and political critiques who frequently talk about constitutional inconsistencies always miss or ignore the provision of Article 46, which is useless after almost four decades of the country's war of independence. The Constitution of Bangladesh must be freed from any kind of provision that may grant impunity of any forms to any person or groups within or beyond its jurisdiction.

Irresponsible political parties fail to speak out against land grabbing by the military:

In Bangladesh the armed forces, particularly the army is accepted by the politicians as the “controller of power” despite the fact the army had records of disregarding the country's Constitution and undermining democracy in many occasions. The politicians regardless whether they belong to the ruling or the opposition camps, rarely and, superficially criticize the perpetrators of the armed forces, if they are personally attacked or victimized. However, they never attain the courage of prosecuting the perpetrators for the crimes. Rather, both – the incumbent government and the opposition – have always ensured impunity to the perpetrators of the armed forces whenever they had been in power with people's mandate and constitutional obligation to ensure justice to the victims.

Scenario-1:

The officers of the Bangladesh Army planned to ensure house for them. They chose a place, which is separated from the Dhaka Metropolitan City by the Shitalakkha river, situated under the jurisdiction of Rupganj police station in Narayanganj district in order to implement their project named “Army Housing Scheme” in four villages on the riverbank. The army established a “site office” of the “Army Housing Scheme” in a building in front of the local office of the Land Registry. The army established four temporary camps in Tanmushri, Purbagram, Ichhapur villages and Rupganj town adjacent to the land registry to monitor the purchasing lands from the owners of the lands. The army deployed few hundred solders in those camps despite the fact that the housing project was an unofficial and private project of the officers. The local leaders of the ruling political party reportedly mediated between the army and the land-owners as brokers in certain cases.

On 23 October 2010, around six months after the beginning of purchasing of lands under the surveillance of the army from the camps, there had been protest from the villagers against the army. The soldiers opened fire against the protestors leaving around 50 persons injured by gunfire. Three persons allegedly died in the incident while one person's dead body was handed over to the relatives but two of the bodies – namely Mr. Masum (15) and Mr. Anwar (22) – remained disappeared as per the relatives claim when contacted by the Asian Human Rights Commission. When the bullet injured victims were taken to the Dhaka Medical College Hospital (DMCH) for treatment the Director of the DMCH, a Brigadier of Bangladesh Army, appeared at the main gate of the Emergency Unit to deny media professionals' access to the hospital for information regarding the condition of the victims. Later, the army claimed that two persons "fled from the hospital".

The agitated villagers attacked the army camps, which was later withdrawn when the people set fire to one of the camps and an army vehicle. The police and Rapid Action Battalion filed criminal cases accusing around 3,000 unidentified villagers with the Rupganj police regarding the incident. However, the police registered "Unnatural Death" case regarding the death of Mr. Mostofa Jamal Haider, who was killed by soldiers, instead of a fresh murder case against the army men.

The inhabitants, who had been hiding since the incident, claim that the original market price of land in the areas of four selected villages was around from BDT 3,000,000.00 to 5,000,000.00 for per Bigha (33 decimal). But the army was forcing the land-owners to sell their lands by paying from BDT 1,200,000.00 to BDT 1,500,000.00. In order to compel the villagers to sell their lands only to the Army Housing Scheme project the officers of the army not only intimidated the officials of the land registry department but also they remained physically present in the land registry office to stop any registration of land, which had been targeted for the project. The officers allegedly insisted the high ranking government officials to obey their instructions regarding the land registration. A land-owner alleged that when he attempted to sell his land for managing some money for joining the Hajj pilgrimage an army officer tore off the deed of his land. He alleged that it was land grabbing in the name of purchasing it by the army.

The political parties – both the ruling and the opposition – remained silent about this incident other than a rhetoric made by the State Minister for Home Affairs that the case will be investigated. Referring to the silence from the Prime Minister, who also holds the portfolio of the Ministry of Defence, and her government for six months after deploying the soldiers for a private housing project the inhabitants asserted that nobody believed that any credible investigation would be conducted regarding the brutality and lawless actions of the army.

Scenario-2:

Former Prime Minister and current Leader of the Opposition in the Parliament Mrs. Khaleda Zia had been living in a house, which was allotted to her for 99 years in 1981 after her husband Ziaur Rahman (a military General turned to a politician) was assassinated in a military coup, for around 38 years. The then BNP government led by Justice Abdus Sattar, which was recommended by army chief General Hussain Muhammad Ershad allotted the house at the cost of a token money on political, emotional and “humanitarian” considerations (General Zia reportedly left no visible assets or money for his widow and two minor children; the house was General Zia’s preferred one, where he started residing as a Deputy Chief of Army Staff during the mid 1970s; Zia reportedly liked the house for his personal emotion attached to it as he was confined in this house during military-coup and counter-coup by his colleagues in 1975; he considered it as a historical place of good luck for him and continued staying there avoiding much better official residences even after he became the Chief of Army Staff and the President of the country).

The 2.72 acre house’s allotment was cancelled by the Cantonment Board, which was the originally owner, after the Awami League’s current government initiated a move of cancellation in the Cabinet and Parliament in 2009. The authorities ordered to vacate the house by serving a notice, the legality of which which was challenged in the High Court Division in a Writ Petition. A Division Bench, on 13 October 2010, rejected the petition by observing that the allotment itself was unauthorized, and, suggested the Government allow 30 days before evacuating Mrs. Khaleda Zia, who filed a further “Leave to Appeal” petition, which had been set for hearing by the Appellate Division of the Supreme Court on 29 November 2010. However, on 13 November, the government deployed law-enforcement agencies and security forces who broke open the house including its main door and Khaleda Zia’s bedroom door and evicted her from that house despite that fact that the matter was pending before the highest court of the country.

Immediately, the opposition called a hartal (general strike) on the following day, 14 November, which was just three days before the Eid (second most important religious festival for the Muslims marked with sacrifice of animals). The strike severely affected the people’s homebound rush for meeting their relatives in a poor-managed transportation system for 150 million population as well as the highly-required pre-Eid commercial activities across the country. However, the opposition party, which is more concerned for the dignity of the leader of the opposition and possession of her house while facing vindictive political decisions of its political opponent in the ruling party, was unable to comprehend the potential public agonies before its decision of calling for the strike. The opposition protest against the government’s intolerant actions at the cost of tremendous

sufferings of millions who literally get zero benefit of the political programmes. Similarly, the ruling party, which enjoyed its governmental power of evicting even before a final judgment from the court, establishes its hypocrisy by making rhetorical speeches in favour of the rule of law but it always undermines the due process of law and norms of democracy whenever they go for action.

In reality, the politics is confined within the circle of the lust for power and properties controlled by a few privileged individuals. The political parties are more serious to protect their top leaders' undeserving benefits and uncontrollable insanity of repressing critiques, banishing commitment to promote the means for survival of the ordinary poor, who are still the majority of the population, in the country. It, ultimately, fails to help the people in general as it hardly helps democratization and the establishment of a society of justice.

Incapacity of the judiciary to provide justice in criminal cases:

Bangladesh's criminal justice system has manifold problems that expose the system as incapable of establishing justice. Instead, the criminal justice system of the country can merely pass judgments. The system itself has entrenched problems such as:

- a. There is an absence of fairness and transparency in its complaint mechanism. The police arbitrarily control the complaint mechanisms, which are subverted by political interference and a chain of command dominated by corruption from the bottom to the top, resulting in abuses of power and injustices in determining who will be charged and for what crime. The fabrication of cases by the police officers for the purpose of extorting money from targeted persons and/or in order to set the real offender free is a common practice. The police deliberately distort facts related to crimes at the time of recording of complaints, which obstructs the already limited avenues available to the victims seeking justice and redress.
- b. Equal treatment before law – as a constitutionally enshrined fundamental right and basic norm of justice – does not exist in any level of the judicial procedures of the country at all.
- c. Criminal investigations are conducted by the police using primitive methods without acceptable levels of professionalism and efficiency or credibility. As a corrupt and political subservient entity, the police force is mostly used as hired gunmen of the ruling political and other authorities and elites.
- d. The prosecutorial system is politicised, inefficient, disposable by nature, and incapable of assisting the judiciary to establish justice at the end of the trial. Every political party recruits their own activists cum lawyers as prosecutors, based on their loyalty to the ruling authorities rather than their knowledge of the law, jurisprudence and commitment to the rule of law. Moreover, the prosecution at the Courts of Judicial Magistrates, where around 70 per cent of the country's criminal cases are disposed

whereas around 90 per cent cases start with, is controlled by the police in a highly corrupted process.

- e. The judiciary does not enjoy independence as far as the administration of justice is concerned in terms of logistics, manpower, integrity and the adjudication of the cases. Besides, there is a serious lack of judicial competence and commitment to upholding the rule of law among many judicial officers.
- f. The country's medico-legal system remains archaic and far off internationally acceptable standards and modern methods required to effectively assist the judicial process in determining rights or wrongs and forensic evidence accurately.
- g. The legal profession is degraded and consists mainly of persons hunting cases to make the maximum money for their professional practices, rather than to assist the judicial procedures to ensure justice to both victims and the defendants in trials in the country's courts.
- h. The State's entrenched system designed to protect the perpetrators of gross human rights abuses through and extensive culture of impunity, creates serious grievances and a loss of faith in the justice institutions for victims of, for example, illegal arrests, arbitrary detention, custodial torture, extra-judicial killings and disappearances, as well as for their and the wider public who also live in a climate of fear.
- i. The absence of interpersonal respect for each other and adequate cooperation among professionals, including the police that register the complaint, investigators, prosecutors, lawyers, medico-legal experts and supporting staff of the judiciary seriously hamper the effective and timely conduct of trials and administration of justice.
- j. Inadequate remuneration and facilities for relevant professional experts as well as their supporting staff, poor infrastructure for maintaining material evidence, and the failure to recruit persons with the required educational, moral and ethical background, or to provide adequate training contributes to the further deterioration of the criminal justice system.

Case-16:

The Dumuria police of Khulna district arrested Mr. Sohrab Hossain, who was visiting his relatives, from Atharomile Bazar, on 7 January 2010, at around 8 pm, without any lawful reason. The police released him after about an hour's interrogation in their custody.

Soon after, another police team of the Tala police station comprising of four unidentified police constables and an officer arrested him along with two other persons: Mr. Hamidur Rahman and Mr. Selim Morol. These two arrested persons were allegedly involved in several cases including murder, robbery, possession of illegal arms and violence against women. At the time of arrest, the police tortured Sohrab in public and claimed that they had arrested Sohrab, who is an inhabitant of Takia village under the Paikgachha police

station in Khulna district, because of his identity as a stranger under the jurisdiction of the Tala police of the Satkhira district. They beat him with sticks, fists, and boots. Although the police later admitted that they wanted the two other persons except Sohrab, who did not have any complaint against him.

The police detained Sohrab overnight at the Tala police station while Sub Inspector (SI) Mr. Md. Lutfor Rahman snatched Sohrab's mobile phone and money. Later, SI Lutfor communicated with the Paikgacha police station under the Khulna district in order to get information regarding the involvement of Sohrab Hossain in criminal offences. The Paikgacha police informed SI Lutfor that there was a person named Mr. Sohrab Par, son of Mr. Abdur Rauf Par, who was from Takia village, who had murder and robbery cases against him (Sohrab Par). Three policemen, then, tortured Sohrab Hossain in custody during the night asking him to confess the crimes. They beat him with sticks on the soles of his feet. As a result, Sohrab's feet were swollen and he was unable to walk. The police did not provide any food to him while in detention.

On 8 January, the Tala police fabricated a pending robbery case against Sohrab before sending him to the Judicial Magistrate's Court of Satkhira. The police handcuffed him and tied a rope about his waist at the time producing before the Court. The police wanted the Court to place Sohrab under police remand for seven days. The Court, however, ordered to detain Sohrab in jail fixing up the 13 January for the hearing on the petition of the police for remand. Accordingly, upon hearing the remand petition the Court ordered that Sohrab be handed over to police remand for two days.

Meanwhile, after having been informed Sohrab's relatives went to the Tala police and saw him unable to walk at Satkhira jail. Sohrab and the two co-detainees were handcuffed and legs were locked with iron rods at the time of commuting to, and from, the Tala police station. The police tortured all three detainees, with sticks on two occasions during the two days' remand. Sohrab's condition deteriorated during the two days in police remand when he was forced to starve.

On 16 January, the police directly sent Sohrab to prison without producing him before any Court. The police officers forced Sohrab's relatives to pay bribes one after another for various reasons. The Court rejected his bail petitions on two occasions without going into the depth of the case and without passing any order for arranging treatment of his injuries or even without checking his wounds (For further details, please see: AHRC-UAC-028-2010³⁰). Instead of protecting Sohrab's right to liberty and safety as per law the Courts accepted whatever the police wanted the Magistrate to do for the illegal arrest and arbitrary detention. He remained in detention until he was bailed by the Court of

30 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-028-2010/>

Sessions Judge of Khulna on 12 April. The police failed to produce any evidence before the court against Sohrab, who altogether remained in detention for more than three months.

It was the Magistrate's legal responsibility to follow Section 344 of the Code of Criminal Procedure-1898 as he was not produced before the Court after 16 January. Section 344 (1) reads:

“If, from the absence of a witness, or any other reasonable cause, it becomes necessary or advisable to postpone the commencement of, or adjourn any inquiry or trial, the Court may, if it thinks fit, by order in writing, stating the reasons there for, from time to time, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time.”

This provision clarifies that bringing every detained person physically before the Court within each 15 days, in case the period of detention is longer, is mandatory for the magistrates and judges. In fact, detaining Sohrab for more than 65 days in a row is a clear violation for which the Magistrates concerned of the Satkhira district should be held accountable immediately.

The higher judiciary turns a blind eye to hundreds of similar cases in Bangladesh where the victims languish in jail for many months and years without any legality.

The Asian Human Rights Commission (AHRC) has documented cases on how the police illegally arrest persons and do the business of bribery by detaining arbitrarily and torturing the persons before an incapable judiciary of the country. The AHRC's publication *Disconnected policing and the trade of justice in Bangladesh* and the *Urgent Appeals* expose the details of the chain of corruption in the policing system of Bangladesh³¹. Similar cases like AHRC-UAC-157-2009³² and AHRC-UAC-138-2009³³.

Death Penalty:

Bangladesh has not yet ratified the Optional Protocols to the ICCPR and also does not comply with the international law aiming at the abolition of the death penalty. The

31 <http://www.article2.org/mainfile.php/0801/335/>

32 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-157-2009/>

33 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-138-2009/>

country has not only executed its citizens for decades, but officials, including Ministers, Parliamentarians and Judges also advocate publicly in favour of this practice, which denies people's right to life, often as the result of trials that do not meet the internationally recognized standards of fair trial.

According to a reliable Home Ministry source who requested anonymity, that there are around 407 convicts currently being detained in prisons across the country that face execution in the upcoming periods. Among the convicts, around 107 are being detained in Dhaka Central Jail, with the rest being detained in the country's other main prisons. The high profile cases of execution to have taken place in Bangladesh include the death by hanging of five convicts on 28 January 2010 for the assassination of Bangladesh's founder, President Sheikh Muzibur Rahman, who was killed by members of the Bangladesh Army along with almost all of his family members on 15 August 1975. In another case, six members of militant groups were hanged after being sentenced to death for the killing of two judges in suicide bomb attacks in Jhalkathi district in 2005. Since its establishment in 1971 the Bangladeshi State has executed by hanging over 250 convicted criminals.

The country's Penal Code-1860 has several provisions that allow the death penalty for capital punishment: Section 121: waging war against Bangladesh; Section 132: abetment of mutiny, if mutiny is committed; Section 194: giving or fabricating false evidence with intent to procure conviction of capital offence; Section 302: murder; Section 305: abetment of suicide of child or insane person; Section 307: attempted murder by life-convicts; and Section 396: robbery with murder.

There are several other laws in Bangladesh that also provide for the death penalty. The draconian Special Powers Act-1974, provides the death penalty for the offences of sabotage under Section 15, counterfeiting currency notes and Government stamps under Section 25A, smuggling under 25B, and adulteration of, or sale of adulterated food, drink, drugs or cosmetics under Section 25C. It is evident from the above that the death penalty is awarded for crimes that do not meet Bangladesh's obligations under the ICCPR's Article 6(2) to ensure that death sentences "may be imposed only for the most serious crimes."

The *Nari o' Shishu Nirjaton Daman Ain-2000* [Women and Children Repression (Prevention) Act-2000] further provides for the death penalty to be awarded as punishment for offences or attacks committed using corrosive, combustible or poisonous substances that cause burns or physical damage leading to the death of the victim, under Section 4; for trafficking of women and children, as per Sections 5 and 6 respectively; for ransom, according to Section 8; for sexual assaults resulting in the death of any woman or child who dies consequently, as per Section 9(2); causing death for dowry, in Section 11; and maiming or mutilation of children for begging, under Section 12. The Acid Crime

Control Act-2002's Section 5 (KA) also includes the death penalty for acid attacks on women if the victim's eyes, ears, face, chest or sexual organs are fully or partially damaged.

The legislative authorities of Bangladesh argue that the death penalty is necessary for maintaining control over serious crimes in the country and to transmit a message to potential offenders that committing murder will ultimately incur the death penalty. Pro-death penalty advocates in the country claim that the death penalty helps the nation to establish peace and justice in its society as part of upholding the rule of law. This alleged deterrent is shown to be not working effectively, as incidents of serious crimes rise each year. For example, according to the statistic contained in the website of the Bangladesh Police, there were 3592 murders during 2005 and 4219 murders in 2009.

Human rights groups have been opposing the death penalty under all circumstances as a cruel practice that is shown to be an ineffective deterrent and open to serious abuse. No legal system in the world functions well enough to guarantee that errors in awarding the death penalty can be totally avoided, and in countries with deeply flawed criminal justice systems such as Bangladesh and most others in the Asian region, the use of the death penalty gives rise to serious travesties of justice and arbitrary, unjust and irrevocable violations for the right to life.

The reality regarding the criminal justice system must be understood to evaluate how dangerous the use of the death penalty can be in Bangladesh. Realistic policies followed by prompt actions must be in place in order to reduce the recurrence of crimes that are currently punished by the death penalty instead of continuing with this failed deterrent.

Bangladesh's constitution's Article 35 (5) prohibits "torture, cruel, degrading or inhuman punishment or treatment". There can hardly be any debate that the death penalty does not amount to cruel punishment, which is prohibited in the country's supreme law. In fact, such cruel punishment comprises a violation of the Constitution by undermining the natural dignity of human beings.

The Asian Human Rights Commission and its sister organization have previously urged the government of Bangladesh to abolish the death penalty immediately and to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and bring its domestic legislation and practices in line with obligations under this instrument. The Bangladeshi authorities should immediately initiate thorough reforms of the country's criminal justice system, in order to establish the rule of law and the enjoyment of rights, justice and peace in its society.

Media pays price for freedom of expression:

Bangladesh's media have been facing a tremendous challenging tenure at the moment when they aspire for freedom of expression and opinion, as one of the most important fundamental rights of human civilization. The government of Bangladesh's Awami League, which pledged in its election manifesto to protect freedom of expression and opinion, came down very harshly on the media and its professional whenever it expressed different views conflicting the interests of the ruling political party's leaders as well as the members of their families. Television channel and newspapers have been banned arbitrarily by the government while the editor of a newspaper and a journalist had been jailed in contempt of court case.

Moreover, journalists have been routinely threatened, intimidated, physically attacked by both – the activists, leaders and lawmakers as well as the law-enforcing agents, security forces and intelligence agencies. In most cases, the attackers completely failed to control their temperament when their bad deeds were exposed in the media although it was very little exposure in comparison to the reality of the ongoing abuse of political and governmental power.

Case-17:

Mr. Saidul Islam Alamgir, a journalist of state-run news agency - Bangladesh Shangbad Shangstha (BSS) in Rangpur district, was brutally beaten by the police writing against the illegal activities of the local political leaders of the ruling party in collaboration with the police. Alamgir, on 10 January 2010, wrote reports criticizing unauthorised gambling at a trade fair occupying school ground for extended period depriving the students to go to their classes. His report included the identities of the public officials, political leaders and businessmen. The report highlighted that how the poor people were being tempted to gamble and were cheated by the hosts of the trade fare in collaboration with the local police and civil administration, who were all making huge money out of the gambling.

The musclemen of the leaders of the ruling political parties and the representatives of the local Chamber of Commerce Association physically attacked on Alamgir, who lodged a complaint about it with the Kotowali police of Rangpur town. The Kotwali police did not immediately record the subsequent complaint as a First Information Report (FIR); it was registered the following morning.

On 12 January, Mr. Abdur Rashid Sarker, the Officer-in-Charge (OC) of the Kotowali police station, phoned Mr. Saidul Islam Alamgir and asked to visit him at his office at 9pm that evening. Alamgir went to meet the OC, who was at the trade fair dealing with a case of public disorder (regarding lottery prizes which had not been awarded).

On his way back Sub Inspector (SI) Mr. Rajendra Chandra Sheel and SI Shariful Islam (the Second Officer of Kotwali police station) called him from behind. After Alamgir reached to the police van he was manhandled into the back of the van, where other officers beat him with their guns, sticks, their boots and their fists. Though all of the officers kept their faces covered with scarves at the time of the attack, Alamgir recognized SI Mustafizur Rahman, SI Nur Alam, Havilder Abdus Sabur and Constable Mehedi Hassan.



The police continued to torture Alamgir between 12:15am and 1:45am while driving around the town of Rangpur. During the ordeal, Constable Mehedi Hassan pressed Alamgir's throat and tried to reach into his mouth to tear out his tongue; several other officers tried to blind him by pushing a stick into his right eye. The police threatened to kill him in a 'crossfire', and he sustained severe injuries to his right eye, both thighs, his right hand, right waist, both shoulders and right leg due to the beatings.

The Kotowali police detained Alamgir in an overcrowded cell with about 35 other detainees. The police cell was soiled with human excreta. Though his arrest had not been explained to him, at 4am SI Shariful Islam visited the cell with two draft complaints containing fabricated dates and times. To Alamgir's questions about the nature of his crime, SI Shariful Islam reportedly responded: "Don't ask questions! Journalism will be pushed through your anus."

The detained were not served any food in the police cell. When Alamgir's condition deteriorated inside the cell the police allowed him to come out of the cell and be cleaned and fed by his colleagues. Later, police took him to the emergency department of the Rangpur Medical College Hospital (RMCH) for first aid.

At 4pm he and other detainees were taken to the building of Judicial Magistrate's Court of Rangpur but were not produced physically before the magistrate as is legally mandated. Without examining or observing the condition of the detainees, the magistrate ordered him to be further detained in Rangpur Central Jail. On 14 January, after a large group of lawyers from the Rangpur District Bar Association appealed bail for him, informing the court of his torture and need for medical treatment; this was granted. (For further details, please see: AHRC-UAC-008-2010³⁴)

34 <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAC-008-2010/>

Extra-legal punishment by the highest court's judges for the race of political office

The Amar Desh, a national Bangla language daily newspaper based in Dhaka, published a report on 21 April 2010 with a title "Chamber bench means stay order in favour of the government". The report exposed how the Office of the Attorney General influenced the Court of Chamber Judge of the Supreme Court of Bangladesh stay the legal remedies provided by the Division Benches of the High Court Division of the Supreme Court referring a number of orders of the courts – both the High Court Division and the Chamber Judge's Court.

On 5 May, two lawyers of the Supreme Court Bar Association filed contempt petition with the Appellate Division regarding the report published in the Amar Desh. The Appellate Division, which is the highest branch of the judiciary, of the Supreme Court of Bangladesh on 2 June issued a contempt rule against the acting editor of the Amar Desh Mr. Mahmudur Rahman, its publisher Md. Hashmat Ali, Deputy Editor Seyed Abdal Ahmed, New Editor Muztahid Faruki and the writer of the article Mr. Oliullah Noman directing them to show cause as to why they shall not be proceeded with for contempt of court for publishing the report.

On the same day, the government cancelled the declaration of the newspaper and arrested Mahmudur Rahman in a case filed by the newspaper's publisher Md. Hashmat Ali, who alleged that he was forced by the intelligence agencies to do so, regarding the authorization of the publisher, which was supposed to have shifted to Mahmudur from Hashmat but was held by the government despite all procedures had been followed by the time. Before and after arrest, Mahmudur was fabricated in a number of criminal charges and was detained in those cases as the police showed him arrested in all the cases he was yet to receive bail from the courts.

The Appellate Division of the Supreme Court conducted all together five hearings on the contempt case. On 19 August, the Full Bench of the Appellate Division chaired by the then Chief Justice Mohammad Fazlul Karim, comprising Justice Md. Abdul Matin, Justice Shah Abu Nayeem Mominur Rahman, Justice A. B. M. Khairul Haque, Justice Md. Muzammel Hossain and Justice Surendra Kumar Sinha convicted three persons and forgave two of them. Mahmudur was given an unprecedented maximum penalty for contempt of court with a simple imprisonment for six month with a fine of BDT 100,000.00 and default to suffer simple imprisonment for one month more; writer of the article Oliullah was imprisoned for one month with BDT 10,000.00 fine and in default to suffer simple imprisonment for seven more days; and Hashmat was sentenced to pay fine of BDT 10,000.00 and in default to suffer simple imprisonment for seven days. The verdict was passed by 5:1 majority of the Full Bench of the Appellate Division. A short

order was circulated by the Supreme Court after the verdict had been passed directing the prison authority to execute the order with immediate effect. For further details, please see a copy of the short order here: <http://www.humanrights.asia/countries/bangladesh/cases/Bangladesh%20Supreme%20Courts%20Short%20Order%20on%20Contempt%20of%20Court%20against%20Journalists%20of%20Amar%20Desh.pdf>.

The judgment passed by the Full Bench of the Appellate Division utterly failed to ensure justice to the convicts. Because, firstly, as a common law country the Contempt of Court Act of 1926 (http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=140) in effect in Bangladesh. Section 3 (3) of the Contempt of Court Act reads,

“a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine, which may extend to two thousand [Taka], or with both;

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the Court:

Provided further that notwithstanding anything else where contained in any law [the High Court Division shall not] impose a sentence in excess of that specified in this section for any contempt either in respect of itself or of a Court subordinate to it.”
http://bdlaws.minlaw.gov.bd/print_sections.php?id=140&vol=§ions_id=4647

The Appellate Division convicted Mahhumur with six months’ simple imprisonment and a fine of BDT 100,000.00, which was beyond legality as the law itself limits the monetary penalty as “Taka 2,000.00”. In same manner, Oliullah was punished with one month simple imprisonment and BDT 10,000.00 whereas Taka 8,000.00 was fined extra-legally. Similarly, Hashmat’s fine was also beyond the mandate of the law. The convicts were not granted a bail at the time the verdict was passed. Instead, Mahmudur was showed imprisoned since the verdict was announced and Oliullah was asked to surrender before the prison authority as soon as he receives a certified copy of the “short order” of the verdict. From 25 August to 30 September Oliullah served his imprisonment for 37 days as he did not afford the fine of BDT 10,000.00.

In principle of justice, as universally recognized, every defendant must have a right to challenge or review a verdict passed by any court of any country within its national jurisdiction. When Mahumudur and his colleagues were convicted by the highest branch of the judiciary of Bangladesh where no court exists above the Appellate Division and the convicts deserve a fundamental right to seek a review of the judgment, which primarily convicted them, upon the availability of the complete judgment, which did not happen in reality.

Meanwhile, on 29 September, the Chief Justice Mohammad Fazlul Karim went on retirement while government elevated A. B. M. Khairul Haque as the new Chief Justice superseding two senior judges of the Appellate Division. Immediately after the notification of the appointment of the Chief Justice the two superseded judges went on leave willingly withdrawing themselves from the judicial operations of the Supreme Court. All these happened before the complete judgment was prepared and signed by the judges, who participated in the hearings of the contempt of court in the Full Bench of the Appellate Division while Mahmudur and his colleagues' fate was determined by the highest judicial authority of the country.

It should also be mentioned that Bangladesh has a constitutional provision for forming a "Non-Party Care-taker Government" as per Article 58B of the Constitution of Bangladesh. According to Article 58C (3), "last retired Chief Justice" shall be appointed as the Chief Adviser, the head of the government in absence of an elected Prime Minister, by the President of country to hold a general election and will remain in power until a new Prime Minister assumes office. In the 13th Amendment of the Constitution in 1996, following a movement by the then opposition led by Bangladesh Awami League, this provision was introduced aiming to increase the credibility of the general election. Since the amendment was made the successive governments started choosing the most "loyal" candidate for the office of the Chief Justice of the country, always by supersession in the appointment process, aiming to with the upcoming general election.

The judges of the Supreme Court do not want to leave the race for assuming the office of the Chief Justice, as the subsequent calculation of the ages of the serving judges with their dates for retirement from the office have been important matter, in order to jump to the chair of the "Chief Adviser" of the "Non-Party Care-taker Government". The easiest way for the judges to put themselves in the "good book" of the ruling party's policymakers is to please them and sweeten process by passing rule, order and judgments that goes in favour of the ruling party and harming the opposition as grave as possible. As the *Amar Desh* exposed the level of illegal influence created by the Office of the Attorney General, which has been criticized by civil society and rights groups as having been degraded to the level of a political office instead of a State's attorneys' office, upon the highest judiciary, the newspaper has come under severe attack by the machineries of the State.

As a result of this Mahmudur and his colleagues were denied their fundamental right to have review of the conviction in violation of the universal norms and standards of fair trial and justice. Thus, like many other cases, the highest judiciary of Bangladesh has exposed its incapability of administering justice to the aggrieved persons. Through actions, behavior and judgments Bangladesh's judiciary itself abdicates its independent dignity and frustrates the country's citizens by transmitting a message that the judiciary is for the ruling-party-people only, the rest others do not have any right to get any remedy

from the judicial institutions. When the door of the judiciary is closed for the justice-seekers, which is believed to be the last resort for the victims of crimes, arbitrary actions and human rights abuses, the whole nation has only option to go- “Go to dog”!

Conclusion and recommendations:

The Asian Human Rights Commission (AHRC) once again reminds the incumbent government about its election pledge to improve the governance, human rights and rule of law, which has been largely deteriorated in last two years. The Bangladesh Awami League, as a political party, which promised to end the practice of extrajudicial killings in the pretext of “crossfire” after assuming the power of the government appears to have forgotten its election pledge as well as what the promised before the international community - bringing the perpetrators to book. Now, after two years in the government, several ministers and senior leaders including the Prime Minister have repeatedly endorsed the heinous crimes like “crossfire” and torture in public speeches and in the parliament.

The pledge of combating corruption has been placed in the deep freezer as the government has radically disarmed the Anti Corruption Commission by amending the law relating to the authority of the anti-corruption body. At the same time the withdrawal of innumerable corruption cases, including the cases of the Prime Minister and her relatives, and giving immunities to them, has made the pledges hollow.

The desperate politicization of public service, public development and the criminal justice and rule of law institutions, and the political and non-political office-bearers who actively played roles to make such things happen, should be blamed instead of outsiders, who are not part of the government or related to them in any way or other. The country is gripped under systematic deterioration where merit, honesty and commitment have been replaced by muscle power, political power, and corruption that have been contributing to the complete collapse of everything.

The AHRC strongly urges the nation to look back to the other nations that have already degraded their basic institutions for criminal justice and rule of law mechanism to the level of a phantom limb, which only exists in imagination not in reality. The civil society and professional groups should think very deeply about the existing serious problems of the country and find realistic methods to resolve the problems by initiating thorough reforms of the country’s system on the basis of priority to protect the rule of law.

As part of the process of reforms the Parliament of Bangladesh should begin with the legislation of the Torture and Custodial Death (Prohibition) Bill-2009, which has been pending before the Parliament for one and half a year, and its subsequent implementation with immediate effect.

Political interference must be stopped in the matter of criminal justice and rule of law and impunity should be ended with immediate effect.

The complaint mechanism must be made accessible, and free from intimidation and threats from the police, for the victims of the gross human rights abuses immediately.

Repeal or amend, as appropriate, the provisions contained in laws that allow for abuses and ensure impunity, such as the Article 46 of the Constitution of Bangladesh; Sections 46, 54, 132, 151, 156, 157, 161, 167, 190, 197 and 247 of the Code of Criminal Procedure-1898; the Joint Drive Indemnity Act-2003, the Mobile Court Act-2009 and the Special Powers Act-1974;

The ongoing extrajudicial killing, disappearance and torture in known and unknown torture-cells must be stopped without delay. All the past cases should be investigated by a competent probe committee headed by judicial officials of the superior judiciary and the pattern of those crimes as well as the detailed identities of the State-agents, who were responsible for the crimes, shall be exposed publicly so that the society can altogether think about the depth of the problems and find realistic solutions through discussions about the issues concerned. The victims and families should be afforded with justice and adequate compensation for their losses.

Separate prosecutorial and attorney service department should be established ensuring independence of the institution to assist the judiciary to uphold the rule of law beyond discrimination or politicization.

The recruitment and training system of the judges of all branches should be enhanced for establishing “judicial mindsets’ among the judicial officials. The required logistic and administrative supports, professional benefits and dignity of the judicial staffs should be improved so that they become capable of administering justice without any interference or constraint.

Effective Witness Protection Mechanism should be adopted in compliance with the international human rights norms and standards.

Issue a standing invitation to all UN Human Rights Council’s Special Procedures mandate holders, and ensure that the Special Rapporteurs on torture; extra-judicial and summary executions; and the independence of judges and lawyers are able to conduct country visits to Bangladesh as a priority and without delay or impediment.