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(2020 words)

**Contribution to the Committee against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment 67 Session (22 Jul 2019 - 09 Aug 2019) in the absence of a State report of Bangladesh[[1]](#footnote-1)**

*Presented by ODRI "Intersectional rights" - Office for the Defence of Rights and Intersectionality*

24 June 2019

ODRI "*Intersectional rights*" - Office for the Defence of Rights and Intersectionality appreciates the opportunity to address the Committee against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment in relation to their positive aspects and principal subjects of concern in the People's Republic of Bangladesh.

**Foreword**

We sincerely hope that this report will be helpful for the work of the Committee in the endeavour of the forthcoming constructive dialogue with the People's Republic of Bangladesh. ODRI authorizes the OHCHR to post this submission in the UN Treaty Body Database (https://tbinternet.ohchr.org). If additional information is required, ODRI may assist the Committee with ulterior submissions.

Some details of individuals or other information have been rendered anonymous or otherwise unidentifiable to protect the privacy of victims of torture and ill-treatment. Therefore, taking into consideration the general practice of the Committee, all names (including the ones that have been on public records) have been secured, de-identified and anonymized, without compromising the reliability and objectivity of the information submitted. ODRI thanks the different stakeholders consulted for doing this report and for providing the generous information we have received and been entrusted to protect.

1. **Incorporation of the Convention in the domestic legal order**

The People's Republic of Bangladesh has approved references to torture in national law. Therefore:

* Article 330 of the Penal Code (Act XLV of 6th October 1860), criminalizes acts against the personal integrity[[2]](#footnote-2).
* Article 35 (5) of the Constitution of the People's Republic of Bangladesh explicitly prohibits the acts of torture and cruel, inhuman, or degrading punishment or treatment[[3]](#footnote-3). Article 33 of the Constitution clarifies the fundamental legal safeguards for persons under detention[[4]](#footnote-4).
* Article 3 (a) of the International Crimes (Tribunals) Act (Act XIX of 20th July 1973) prohibits the act of torture as a crime against humanity[[5]](#footnote-5).

To implement the Convention against Torture, the *Jatiya Sangsad* Bangladesh National Parliament approved the Torture and Custodial Death (Prevention) Act, 2013[[6]](#footnote-6). Under this new regulation the Parliament incorporated into national law a definition of torture with some of the elements of article 1 of the Convention against Torture, along with other dispositions of this Convention. Moreover, it is important to note that the International Crimes Tribunal-1 [ICT-1], [Tribunal constituted under section 6 (1) of the Act No. XIX of 1973] has referred to the definition of torture under the article 1 of Convention against Torture in the cases 06-2015 and 07-2016. In the case 06-2015, the International Crimes Tribunal-1 referred to the jurisprudence of the International Tribunal for Rwanda in the *Akayesu* case to include acts of rape under the Convention against Torture[[7]](#footnote-7). Meanwhile, in case 07-2016, the International Crimes Tribunal-1 mentioned article 1 of the Convention against Torture to qualify as a crime of torture the acts against a civilian under detention in the Razahar Camp[[8]](#footnote-8).

ODRI considers that despite the advancement in its legislation and jurisprudence, the lack of incorporation of the Convention against torture for a long time since the Convention against Torture entered into force weakened the protection framework and constrained the possibilities of individuals to invoke the provisions of the Convention directly before the courts in terms with article 2 of the Convention. Moreover, the Torture and Custodial Death (Prevention) Act, 2013 does not incorporate fully the obligations of the Convention Against Torture, as it has no dispositions that address the obligations enshrined under articles 11, 14 and 16 of this treaty. Still more, the jurisprudence of the International Crimes Tribunal-1 and the Hight Court of Bangladesh has rendered decisions related to torture, ill-treatment, rape and inadmissibility of evidence obtained through torture and coercion without reference to the obligations of the Convention against Torture. In addition, members of police forces have raised their opposition against the Torture and Custodial Death (Prevention) Act, 2013, and have requested to several channels for its repeal to avoid prosecution on torture charges[[9]](#footnote-9).

Therefore, ODRI respectfully suggests that the Committee recommends Bangladesh:

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| *The Committee urges the State party to incorporate all the provisions of the Convention against Torture in its legislation and raise awareness of its provisions among members of the police, the armed forces, the judiciary and the public at large.*  |

1. **Effects of the Interpretative declaration/ reservation of the People's Republic of Bangladesh related to article 14**

The People's Republic of Bangladesh has recognized under national law the responsibility of superiors and the obligation of reparation of damages by armed officials. Article 66 of the Air Force Act of 1953, article 10(b) of the Bangladesh Rifles Order (President Order 148 of 15th December, 1972), and article 9(j) of the Armed police battalions ordinance, 1979 (Ordinance XXV of 31st March of 1979) recognize the responsibility of superiors to address acts of ill-treatment and human rights violations by subordinates through reparations to victims and report to authorities. If the superiors in command fail to comply with their duties, they are liable for those omissions[[10]](#footnote-10). There is little information related to the effectiveness of these dispositions in Bangladesh.

Moreover, upon its accession to the Convention Against Torture, the People's Republic of Bangladesh presented the following interpretative declaration/reservation: *“The Government of the People's Republic of Bangladesh will apply article 14 para 1 in consonance with the existing laws and legislation in the country”*. ODRI considers that the interpretative declaration/reservation blurs the relationships between national legislation related to the reparation for acts of torture and article 14 of the Convention against torture. Therefore, the full potential of article 14 of the Convention against Torture and its dispositions under national law are seriously debilitated.

Therefore, ODRI respectfully suggests that the Committee recommends Bangladesh:

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| *The Committee recommends the State party to take prompt measures towards the withdrawal of its interpretative declaration or reservation to article 14(1) within a specific time frame in light of the object and purpose of the Convention against Torture.* |

1. **Situation of lesbian, gay, bisexual, transgender and intersex persons**

The People's Republic of Bangladesh maintains a Criminal Code from 1860 that criminalized consensual sexual acts between same-sex couples under the prohibition of “unnatural behaviour”. This law that dates centuries stigmatises the sexual orientation and gender identity. Moreover, this disposition validates the acts of stigmatization, harassment and violence against lesbian, gay, bisexual, transgender and intersex persons.

During recent years, LGTBI activists were murdered by attackers associated with terrorist organizations, after having several threats by non-state actors. The investigations accused the perpetrators for terrorism charges and has not inquired for the acts covered by the Convention against Torture. Moreover, due to the threats against LGTBI rights defenders during Pride by extremists and terrorist organizations, their activities have been cancelled by the State police.

There are also reports related to harassment by law enforcement agencies that detained arbitrarily transgender women and sex workers. Transgender persons that require gender legal recognition are subjected to medical teams that perform intrusive medical exams to prove their feminization or masculinization.

ODRI respectfully suggests that the Committee recommends Bangladesh:

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| *The Committee recommends the State party to take all necessary measures to protect lesbian, gay, bisexual and transgender persons from threats and any form of violence, including hate crimes.* *The State party should adopt effective measures to protect lesbian, gay, bisexual, transgender and intersex persons from assault, ill-treatment and arbitrary detention at the hands of State officials and ensure that all cases are promptly, impartially and thoroughly investigated and the perpetrators prosecuted and punished, and that victims obtain redress.**The State party should take the legislative, administrative and other measures necessary to guarantee respect for the physical integrity and autonomy of transgender personas to ensure that no one is subjected to invasive procedures for the gender legal recognition. The State should also undertake investigation of instances of medical interventions or other medical procedures performed on transgender persons. It should also ensure that the victims are provided with redress including adequate compensation.* |

1. **Use of evidence obtained by torture**

As has been previously identified by the Concluding Observations on the initial report of Bangladesh to the Human Rights Committee, law enforcement or military personnel is widespread in the State party during interrogations to extract confessions. The jurisprudence of the High Court of Justice of Bangladesh has developed standards of exception to article 16 of the Convention against Torture, while the courts have interpreted section 342 of the Code of Criminal Procedure and their amendments.

ODRI has revised the jurisprudence of the High Tribunal and there are no references to article 16 of the Convention against Torture. Moreover, it appears that the High Court of Justice of Bangladesh lies the burden of proof on the admissibility of torture with the defendants or applicants. According to that, defendants must revoke their confessions under torture or coercion at early stages, even though they could continue to be coerced by police enforcement officials. The endorsement of a judge during the formal declaration of defendants annuls the possibility of the allegations, even though they could present bruises or signs of torture that were done before the deposition.

ODRI respectfully suggests that the Committee recommends Bangladesh:

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| *The Committee urges the State party to ensure that where there is allegation that a statement was made under torture, the burden of proof is on the State.*  |

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**About ODRI**

ODRI “Intersectional rights” - Office for the Defence of Rights and Intersectionality is a Lima-based NGO established in 2017. It is an apolitical and non-confessional. Among its principal goals is the introduction of intersectional approaches and the mainstreaming of the Sustainable Development Goals. To fulfil this goal ODRI currently submits reports assessing the respect of human rights in certain countries to United Nations Treaty Bodies and Special Procedures, and other fora. To see other contributions presented to the treaty bodies, you can visit our last submissions:

CEDAW. Contribution to the Committee on the Elimination of All Forms of Discrimination against Women in relation to the list of issues of Pakistan (75 Session (22 -26 Jul 2019)) <https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/PAK/INT_CEDAW_ICO_PAK_35194_E.docx>

CEDAW. Contribution to the Committee on the Elimination of All Forms of Discrimination against Women in relation to the consideration of the State report of Mozambique (73 Session (01 -19 Jul 2019))<https://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/MOZ/INT_CEDAW_CSS_MOZ_35248_E.docx>

CCPR. Contribution to the Human Rights Committee in relation to the adoption of the List of issues prior to the Fifth periodic report of Korea (8 to 26 July, 2019) <https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/KOR/INT_CCPR_ICS_KOR_34929_E.docx>

CED. Submission in view of the upcoming consideration of the List of issues in relation to the report submitted by Peru regarding the implementation of the International Convention for the Protection of All Persons from Enforced Disappearances at its 15th Session (05 Nov 2018 - 16 Nov 2018

<https://tbinternet.ohchr.org/Treaties/CED/Shared%20Documents/PER/INT_CED_ICO_PER_32073_S.pdf>

1. This report was made by Diego Ocampo, Marisa Paredes and Andrés Sifuentes. [↑](#footnote-ref-1)
2. A translation of the Penal Code is available at: http://bdlaws.minlaw.gov.bd/sections\_detail.php?id=11&sections\_id=3182 [↑](#footnote-ref-2)
3. Constitution of the People´s Republic of Bangladesh, article 33, substituted by section 3 of the Constitution (second amendment) Act 1973, p. 122-123. Available at: <http://bdlaws.minlaw.gov.bd/pdf/367_III__.pdf>. [↑](#footnote-ref-3)
4. Constitution of the People´s Republic of Bangladesh, article 35, p. 124. Available at: <http://bdlaws.minlaw.gov.bd/pdf/367_III__.pdf>. [↑](#footnote-ref-4)
5. Available at: <http://bdlaws.minlaw.gov.bd/pdf/435___.pdf>/ [↑](#footnote-ref-5)
6. Available at: <http://www.humanrights.asia/wp-content/uploads/2018/09/Torture-CustodialDeath-ActNo50of2013-English.pdf> [↑](#footnote-ref-6)
7. The Chief Prosecutor Versus 1. Md. Idris Ali Sardar[absconded], and 2. Md. Solaiman Mollah[ died at the stage of summing up of the case], para. 823. Available at: www.ict-bd.org/ict1/Judgment%202016/ICT%20No%2006.pdf [↑](#footnote-ref-7)
8. The Chief Prosecutor Vs (1) Sheikh Md. Abdul Majid alias Majit Moulana [absconded], (2) Md. Abdul Khalek Talukder [absconded], (3) Md. Kabir Khan [absconded], (4) Abdus Salam Beg [absconded] and (5) Md. Nur Uddin alias Raddin (absconded), para. 237. Available at: <http://www.ict-bd.org/ict1/Judgment%202019/07%20of%202016.pdf> [↑](#footnote-ref-8)
9. See for instance the following news: Police want amendment of custodial death prevention act of January 11th, 2018, available at: <https://www.dhakatribune.com/bangladesh/law-rights/2018/01/11/police-want-amendment-custodial-death-prevention-act/> [↑](#footnote-ref-9)
10. Available at <http://bdlaws.minlaw.gov.bd/print_sections.php?id=422&vol=&sections_id=18636>, <http://bdlaws.minlaw.gov.bd/pdf/422___.pdf>, http://bdlaws.minlaw.gov.bd/print\_sections.php?id=593&vol=&sections\_id=18560 [↑](#footnote-ref-10)