



fidh

OUT OF CONTROL

Human rights and rule of law crises in Bangladesh

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Acronyms

BAF	Bangladesh Armed Forces
BCL	Bangladesh Chhatra League
BDT	Bangladesh Taka
BGB	Border Guard Bangladesh
BJSC	Bangladesh Judicial Service Commission
BNP	Bangladesh Nationalist Party
CAT	Committee Against Torture
CPC	Code of Criminal Procedure
DB	Detective Branch
DGFI	Directorate General of Forces Intelligence
DMP	Dhaka Metropolitan Police
DSA	Digital Security Act
GD	General Diary
ICC	International Criminal Court
ICT	Information and Communication Technology
IGP	Inspector General of Police
NGO	Non-governmental organization
NGOAB	NGO Affairs Bureau
NSI	National Security Intelligence
RAB	Rapid Action Battalion
SJC	Supreme Judicial Council
UN	United Nations
WGEID	Working Group on Enforced or Involuntary Disappearances

Executive summary

Bangladesh has been lauded for its humanitarian efforts in hosting approximately one million Rohingya refugees who have fled Myanmar since October 2016. However, beyond the Bangladeshi government's efforts to project the image of a country that is on the speedy path to development, repression of civil society and rampant human rights violations occur with impunity.

The rule of law operates in Bangladesh within deeply politicized institutional structures. As demonstrated in this report, the conditions that led to the rule of law crisis in Bangladesh are attributable to several factors stemming from deep rooted politicization, widespread impunity, corruption, repression of civil society, and stifling of dissent. With farcical elections that have kept the ruling Awami League in power for over a decade, the government has adopted strong measures to maintain its authority by undermining the opposition and creating submissive institutions that align with its political agenda.

Reports of human rights violations committed by state authorities in Bangladesh – including serious crimes such as enforced disappearances, torture, and extrajudicial killings – continue to be reported on a regular basis. These allegations are rarely, if ever, investigated, prosecuted, or punished, resulting in systematic impunity for state actors committing these crimes. The government has failed to take responsibility and acknowledge the severity of the occurrence of human rights abuses. As a result, law enforcement agencies act with impunity and continue to resort to torture methods, engage in extrajudicial killings and commit enforced disappearances as part of its routine measures for advancing “criminal justice.” While the government has claimed that it adopts a “zero-tolerance policy” towards human rights abuses, there have been only a few instances of accountability for such grave crimes. The lack of political will to hold those accountable and the denial of the recurrent occurrence of human rights violations indicate government complicity or, at the very least, acquiescence, in the commission of human rights violations.

Separation of power and independence of the judiciary are the bedrock of a thriving democracy governed by rule of law. However, the judiciary in Bangladesh is under immense pressure to serve the interest of the government. A constitutional amendment approved by the Awami League-controlled Parliament in September 2014 to allow Parliament to remove Supreme Court judges was an indication of the government's inclination towards increasing its stronghold on the judiciary. Former Chief Justice Surendra Kumar Sinha, who opposed the amendment, was forced to resign and fled the country. Public trust in the judicial system remains low, as the judiciary is not perceived to be neither independent from the executive branch of government nor fair and impartial in administering justice.

The space for civil society to operate is severely constrained due to repressive measures adopted by the government to curtail freedom of expression, freedom of assembly, and freedom of association. The Digital Securities Act is often used to arrest and charge anyone, including children, who expresses opinions critical of the government or the Prime Minister online. In addition, laws that regulate online news and the operation of NGOs have curtailed the freedom of journalists and civil society to hold the government accountable.

Methodology

Due to the novel coronavirus (COVID-19) pandemic, which resulted in severe restrictions that greatly limited international travel for most of 2020 and the first half of 2021, FIDH was unable to conduct field missions to Bangladesh in 2020 and 2021.

The information used in this report was collected through in-depth online interviews, using secure communication platforms. In total, FIDH conducted interviews with 20 individuals, including lawyers, journalists, academics, members of civil society organizations, and representatives of the United Nations and diplomatic missions. The names of all interviewees and other individuals who

have contributed to this report have been withheld for security reasons. The inability to conduct a field mission means that the research for this report could not be based on a larger and more diverse sample.

The interviews were supplemented by extensive desk research, including a review of applicable domestic laws, cases, policies, reliable news reports, and academic findings. The report's findings were also informed by two missions conducted by FIDH to Bangladesh to investigate enforced disappearances in 2016 and 2018, which resulted in a report published in April 2019 that concluded that enforced disappearances in Bangladesh could amount to crimes against humanity.¹

Rule of law in a nutshell

The rule of law is a layered concept that encompasses a set of principles and ideals for an orderly and just society to ensure that constitutional and institutional mechanisms are in place to curtail unfettered power. These include: equality of individuals before the law ("no one is above the law"); everyone is held accountable under the same laws; human rights are guaranteed for all; separation of powers between the executive, legislative, and judiciary; the law - and its administration - is subject to open and free criticism by the people; no one is subject to any action by any government agency that is not in accordance with the law; and the judicial system is effective, open, and provides a fair trial.

FIDH used a number of benchmarks to assess the situation of the rule of law in Bangladesh. These include indicators used by the World Justice Project's Rule of Law Index, under the thematic areas of: constraints on government power; absence of corruption; fundamental rights; order and security, including factors such as effective control of crime, political violence, and vigilante justice; assessment of the justice system; and the openness of the government, including civic participation mechanisms in furtherance of the right to freedom of opinion and expression.²

The report analyzes the multiple factors that undermine the rule of law in Bangladesh through its existing institutional and legal frameworks. In order to do this, this report assesses whether the following criteria are present: 1) whether a rule of law system is in place for Bangladesh to respect and protect core human rights; 2) whether there are effective checks and balances in place through an independent judiciary; and 3) whether there is an open space for dissent, citizen participation, and media freedom.

1. FIDH, *Vanished Without a Trace: The enforced disappearance of opposition and dissent in Bangladesh*, 2019; <https://www.fidh.org/en/region/asia/bangladesh/bangladesh-enforced-disappearances-amount-to-crimes-against-humanity>

2. World Justice Project, *Factors in the Rule of Law*; <https://worldjusticeproject.org/our-work/research-and-data/wjp-rule-law-index-2019/factors-rule-law>

1. Background

1.1 A history of violence - Brief political context

The Constitution of Bangladesh provides for a parliamentary form of government in which the executive power is assigned to the Prime Minister. The current Prime Minister, Ms. Sheikh Hasina, has been in power since 2009.

In Bangladesh's post-independence political history, many elections have been marred by widespread fraud and irregularities. Election-related violence has characterized polls at both the national and local level. Due to the disillusionment of citizens with regards to the democratic process, increasingly low voter turnouts have been recorded in recent elections. In February 2020, the Dhaka City Corporation polls recorded just over 27% of voter turnout, which is the lowest voter turnout in such elections in the country.³

The most recent general election, in December 2018, came under heavy criticism for numerous allegations of election fraud, irregularities, and incidents of deadly violence. After the polls, the United Nations (UN) called on the Bangladeshi government to carry out a credible investigation into incidents of reprisals against members of the political opposition, journalists, and human rights defenders.⁴ In these elections, Ms. Hasina's party, the Awami League, secured a victory for a third consecutive term by a landslide, winning 288 out of the 300 (95%) parliamentary seats at stake. The Awami League's main political opposition - the Bangladesh Nationalist Party (BNP) - rejected the outcome of the election and demanded fresh polls under a caretaker government.

Following the 2018 election, Bangladesh has become a one-party state, with virtually no opposition as a result of sustained methods of repression adopted by Ms. Hasina's successive administrations. Political criminalization to curtail the opposition has been a common feature in Bangladesh, where enforced disappearances, torture, and extra-judicial killings have been carried out by law enforcement agencies against opposition members and activists, with the complicity and acquiescence of the government. Khaleda Zia, the leader of the BNP, was jailed from February 2018 to March 2020 over two cases of alleged corruption. She was temporarily released to seek medical treatment amid the COVID-19 pandemic.⁵

1.2 Abusive law enforcement agencies

In Bangladesh, serious human rights violations, such as extrajudicial killings, torture, and enforced disappearances, have often been perpetrated by networks of law enforcement agencies. These include: the police (and its various divisions); the Rapid Action Battalion (RAB); the military and civilian intelligence agencies; the Border Guard Bangladesh (BGB – formerly known as the Bangladesh Rifles); and the Bangladesh Ansar. BGB and the Bangladesh Ansar are both paramilitary forces operating under the Ministry of Home Affairs.

1.2.1 Police

Operating under the control of the Ministry of Home Affairs, the operations and structure of the Bangladesh police are guided by the 1861 Police Act, last amended in 1973. The highest ranking officer of the police is the Inspector General of Police (IGP), who is appointed – and can be removed at any time – by the Minister of Home Affairs.

3. Daily Star, *Dhaka City Polls: Turnout under 20pc in one third of centres*, 6 February 2020; <https://www.thedailystar.net/frontpage/dhaka-city-elections-2020-vote-turnout-less-20-percent-1864021>

4. OHCHR, *Press briefing on Bangladesh*, 4 January 2019; <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24056&LangID=E>

5. Business Standard, *Khaleda's jail term suspension extended for 6 months*, 3 September 2020; <https://tbsnews.net/bangladesh/law-order/law-ministry-recommends-extending-khaledas-parole-127960>

The police have been repeatedly accused of serious human rights abuses, including torture, enforced disappearances, and extrajudicial killings. Particularly notorious is the Detective Branch (DB) of police, a unit of which is present in each Metropolitan and District police divisions. The DB, along with the Criminal Investigation Department and the Special Branch (both of which operate at the headquarters level), is responsible for gathering intelligence and conducting investigations.

1.2.2 Rapid Action Battalion (RAB)

The RAB is a joint task force composed of members of the police, army, navy, air force, border guards, and the Bangladesh Ansar, all of whom are seconded to the RAB from their respective units. It was formed in 2004 by the BNP government (initially as the Rapid Action Team), under an “anti-crime, anti-terrorism” mandate. The RAB derives its authority from the 2003 Armed Police Battalions (Amendment) Act. At the time of its creation, the Awami League, which was in the opposition, accused the government of creating a force to target its political opponents.

Over the years, the RAB has been notorious for operating in disregard of relevant international standards for the conduct of law enforcement and for being involved in the commission of egregious human rights violations. The RAB has been responsible for a large number of extrajudicial killings, arbitrary arrests, and enforced disappearances as part of operations it carried out. For example, in 2018, on the pretext of carrying out a “war on drugs,” the RAB was responsible for 136 extrajudicial killings.⁶ Some of the victims who were killed were first subjected to enforced disappearance. During unrest in February 2013, RAB personnel in Dhaka fired live ammunition on unarmed demonstrators, resulting in the death of 150 protesters.⁷

Members of the RAB are granted immunity under the 1979 Armed Police Battalion Ordinance for actions “done or intended to be done in good faith.”⁸



Members of Rapid Action Battalion (RAB) stand guard outside a militant hideout on 12 January 2018 in Dhaka. © Sony Ramany / NurPhoto via AFP

6. Odhikar documentation.

7. Human Rights Watch, *Bangladesh: End unlawful violence against protesters*, 3 May 2013; <https://www.hrw.org/news/2013/05/03/bangladesh-end-unlawful-violence-against-protesters>

8. Armed Police Battalions Ordinance 1979, Section 13.

1.2.3 Intelligence agencies

The two main intelligence agencies in Bangladesh are the Directorate General of Forces Intelligence (DGFI) and the National Security Intelligence (NSI). The DGFI and, to a lesser degree, the NSI have routinely committed politically motivated human rights abuses against suspected terrorists, members of the opposition, and civil society.⁹

The DGFI is the military intelligence arm of the Bangladesh Armed Forces (BAF), and operates under the BAF and the Prime Minister's authority. Its mandate is to collect information for the executive branch and the BAF. Members of the DGFI are drawn from the army, navy, and air force - the three branches forming the BAF. As an external secret service, the DGFI is empowered to collect, collate, evaluate, and disseminate all strategic and topographic intelligence about foreign countries' armed forces and to ensure counter intelligence and security measures for the BAF.

As a civilian intelligence service agency, the NSI is more focused on information gathering within Bangladesh, but some of its duties are fairly similar to those of DGFI. For instance, in 2018, the NSI engaged in harassment and surveillance of student protesters calling for reforms in the quota system [See below, *Double standards in the respect of the right to freedom of peaceful assembly*], even after the protests ended.¹⁰

9. US Department of State, *Bangladesh 2018 Human Rights Report*; <https://bd.usembassy.gov/wp-content/uploads/sites/70/Human-Rights-Report.pdf>

10. CIVICUS, *Bangladesh: Two years on, impunity for attacks against student protesters*, 9 June 2020; <https://www.civicus.org/index.php/media-resources/reports-publications/4433-bangladesh-two-years-on-impunity-for-attacks-against-student-protesters>

2. Law enforcement agencies' involvement in human rights violations

In Bangladesh, law enforcement agencies have often been responsible for undermining, rather than upholding, the rule of law. As documented by numerous reports of national and international NGOs, law enforcement agencies in Bangladesh engage in grave human rights violations – such as extrajudicial killings, torture, arbitrary detentions, and enforced disappearances – with nearly complete impunity. Human rights violations committed by law enforcement agencies have become especially prominent over the past decade. Successive Awami League-backed governments have used law enforcement agencies to quell and silence the political opposition and such agencies have become the ruling party's main tools to curtail dissent.

While the government has repeatedly claimed it has a “zero-tolerance policy” towards torture and serious human rights violations,¹¹ these statements have not translated into any form of accountability for abuses. The government has neither released statistics of killings by security personnel nor acknowledged the severity of rights abuses carried out by law enforcement agencies. Even though incidents of human rights abuse have been brought to the attention of the government, authorities have persistently failed to thoroughly investigate such allegations. In the few cases in which the government has brought charges against officers accused of human rights violations, those found guilty have only received administrative punishments.¹²

In general, the victims and victims' families do not have recourse to an effective remedy. Lack of victim and witness protection mechanisms have enabled law enforcement agents to harass and intimidate victims and their families to not seek justice. In addition, due to long delays in the justice system, there is reluctance by victims and their families, especially those who lack the necessary financial resources, to pursue legal action and lengthy criminal trials.

International concern over rampant human rights violations in Bangladesh

Despite numerous concerns raised by various UN human rights monitoring mechanisms, including the Committee Against Torture (CAT), the Working Group on Enforced or Involuntary Disappearances (WGEID), the Human Rights Committee, and various special procedures of the Human Rights Council, there continues to be a systematic failure to investigate, prosecute, and punish perpetrators of serious human rights violations in Bangladesh.

During Bangladesh's first-ever examination by the CAT in July 2019, the committee noted with concern that law enforcement authorities continued to consider it “necessary and acceptable” to engage in conduct amounting to torture and ill-treatment in the course of their work.¹³ The committee called on the Bangladeshi government to carry out independent and thorough investigations into all allegations of torture and ill-treatment, arbitrary arrests, unacknowledged detention, disappearances, and extrajudicial killings.

With respect to enforced disappearances, the CAT recommended that the government publish a list of all recognized detention sites and allow independent non-governmental organization (NGO) representatives to make unannounced visits.

11. Daily Star, *Extra-judicial killing to be stopped: FM*, 5 February 2009; <https://www.thedailystar.net/news-detail-74491>

12. US Department of State, *Bangladesh 2019 Human Rights Report*; <https://www.state.gov/wp-content/uploads/2020/02/BANGLADESH-2019-HUMAN-RIGHTS-REPORT-1.pdf>

13. *Ibid.*, para.7.

The lack of domestic action with regard to extrajudicial killings triggered an international response by the US Senate as well. On 27 October 2020, the US Senate Foreign Relations Committee issued a bipartisan letter that called on the US government to impose sanctions on senior members of the RAB for allegedly being responsible for more than 400 extrajudicial killings in Bangladesh since 2015.¹⁴ On 31 August 2021, during a hearing on enforced disappearances in Bangladesh, the Tom Lantos Human Rights Commission within the US House of Representatives highlighted the grave human rights violations committed by security forces in Bangladesh and discussed how Congress and the US government could contribute to ending these violations.¹⁵

2.1 Extrajudicial killings

2.1.1 Use of extrajudicial killings as an “alternative” to criminal justice

Some Bangladeshi law enforcement agencies have often committed extrajudicial killings of political opponents and individuals allegedly involved in trading illicit drugs. The use of extrajudicial killings as an alternative to criminal justice severely undermines the rule of law, because fair trial rights and due process are not followed.

Abundant documentation exists on the involvement of members of RAB, BGB, and the police in the commission of extrajudicial killings of individuals allegedly involved in the illicit drug trade.¹⁶ A nationwide “war on drugs” that began in 2018 has resulted in a surge of extrajudicial killings in Bangladesh.

According to the NGO Odhikar, from January 2018 to the end of June 2021, at least 1,134 people lost their lives as a result of extrajudicial killings.¹⁷ Most victims of extrajudicial killings were men. In 2020, victims of extrajudicial killings included 49 Rohingya refugees.¹⁸

Authorities have regularly dismissed allegations of extrajudicial killings and, in some cases, justified such methods as necessary in order to tackle crime. Authorities have often justified extrajudicial killings on the grounds that they occurred in “crossfire” situations with “wanted criminals” or “top terrors”¹⁹ during which security forces claimed the victims resisted arrests or the security forces said they acted in self-defense. The narrative has been often contradicted by the fact that, in many cases, victims were killed after being taken from their residence by members of law enforcement agencies.

14. Letter to US Secretary of State from the US Senate Committee on Foreign Relations, 27 October 2020; <https://www.foreign.senate.gov/imo/media/doc/10-27-20%20Letter%20to%20Pompeo%20and%20Mnuchin%20re%20Bangladesh%20RAB.pdf>

15. Tom Lantos Human Rights Commission, US Congress, *Enforced Disappearance in Bangladesh* virtual briefing, 31 August 2021; <https://humanrightscommission.house.gov/events/hearings/enforced-disappearance-bangladesh>

16. Business Standard, *Yaba trader killed in Cox's Bazar' gunfire*, 14 November 2020; <https://tbsnews.net/bangladesh/yaba-trader-killed-coxs-bazar-gunfight-157840>

17. Odhikar, *Total Extra-judicial killings (allegedly by few members of different agencies) from 2001-2020*, http://odhikar.org/wp-content/uploads/2020/07/01_Statistics_EJK_2001-June-2020.pdf, Odhikar, *Annual Human Rights Report, 2020*, http://odhikar.org/wp-content/uploads/2021/01/Annual-HR-Report-2020_Eng.pdf; Odhikar, *Three-month human rights monitoring report on Bangladesh (Reporting Period: April-June 2021)*, http://odhikar.org/wp-content/uploads/2021/07/HR-Report_April-June_2021_Odhikar_English.pdf

18. Odhikar, *Annual Human Rights Report 2020*, p.21.

19. Al Jazeera, *Rapid Action Battalion: Bangladesh's notorious paramilitary force*, 3 February 2021; <https://www.aljazeera.com/news/2021/2/3/what-is-the-bangladeshs-rapid-action-battalion-rab>



Students Federation of Bangladesh protest against extrajudicial killings in Dhaka on 5 June 2018. © Munir Uz Zaman / AFP

2.1.2 Inadequate government response to extrajudicial killings

The long delays in responding to, and complying with, rulings of the High Court in cases on extrajudicial killings have demonstrated the government's lack of political will to address this issue.

Over the past 15 years, the Bangladeshi judiciary has either failed to bring justice to victims of extrajudicial killings or its efforts have been frustrated by government inaction. Cases instituted several years ago are still pending due to the government's failure to respond to the courts. In addition, the High Court has issued four separate rulings questioning the legality of extrajudicial killings committed by law enforcement agencies but the relevant authorities are yet to comply with those rulings.

As a result of a newspaper report of two persons allegedly killed in a "shootout" by the RAB in November 2009, on the same month the High Court issued a ruling for the government to provide arguments to explain why extrajudicial killings by law enforcement agencies should not be declared illegal.²⁰ On 15 November 2009, the Attorney General was directed by the High Court to take action to ensure that such killings did not take place until the next hearing. As of July 2021, this case was still pending before the High Court and a new bench needs to be reconstituted for this case to be heard.

In another writ petition filed on June 2009, the High Court issued a ruling for the government to provide arguments within four weeks to explain why extrajudicial killings should not be declared illegal and why disciplinary and criminal action should not be taken against those involved.²¹ More

20. *State v. Major Kazi Waheduzzaman and Others* (24727/2009), Bangladesh Supreme Court (2009); <https://www.blast.org.bd/issues/trial/236>

21. Writ Petition No. 24152 of 2009 filed by ASK and BLAST.

than 11 years after this ruling, the case has not concluded, because the government is yet to reply to the High Court's ruling.

Similarly, the government has not yet replied to a ruling issued in 2006 on extrajudicial killings issued to the government and the RAB.²²

2.2 Enforced disappearances

2.2.1 Use of enforced disappearances to silence dissent

The Awami League-backed government has come under criticism for the use of enforced disappearance as a means of suppression of its political opponents and critics, and the commission of this particular crime has become a hallmark of Prime Minister Sheikh Hasina's rule.²³

Under successive governments of the Awami League from January 2009 to September 2021, there were at least 605 reported cases of enforced disappearances carried out by law enforcement agencies and security forces.²⁴ In the lead-up to, and in the aftermath of, the 2014 and 2018 general elections, there were increased incidences of enforced disappearance of opposition activists. Even during the COVID-19 pandemic, there were recorded cases of enforced disappearances.²⁵

Journalists, activists, and government critics have often been targeted as part of the government's ongoing crackdown on freedom of speech. Moreover, individuals have been targeted as part of the government's anti-terrorism policy.²⁶ In most cases, credible witnesses or family members stated that victims were taken away by law enforcement agents, such as officers of the RAB or DB police.²⁷

The government has continuously denied allegations of enforced disappearances at national and international forums.²⁸ It claimed that people who disappeared did so willingly, offering reasons such as running away from gambling debt or mistresses, or simply being kidnapped by criminals - despite no evidence of any of this.²⁹

In some cases, those who disappeared later resurfaced or reappeared. In these cases, victims and their families do not speak of the ordeal due to fear of reprisals. A journalist who has reported on incidents of enforced disappearances told FIDH: "When people are released, they do not share their experience with the media - they are too scared; the families also stop talking to the media."³⁰

22. New Age, *Extrajudicial killings on violating High Court ban*, 16 August 2020; <https://www.newagebd.net/article/113592/extrajudicial-killings-on-violating-high-court-ban>

23. Human Rights Watch, *"Where No Sun Can Enter" - A Decade of Enforced Disappearances in Bangladesh*, August 2021; https://www.hrw.org/sites/default/files/media_2021/08/bangladesh0821_web.pdf

24. Odhikar, *Annual Human Rights Report 2020*, p.73; Odhikar, *Three-month human rights monitoring report on Bangladesh (Reporting Period: July-September 2021)*.

25. FIDH and Odhikar, Written statement to the 45th Session of the UN Human Rights Council, *Enforced Disappearances and the struggle of the victims' families amid the COVID-19 pandemic*, 28 August 2020; <https://www.fidh.org/en/region/asia/bangladesh/enforced-disappearances-and-the-struggle-of-the-victims-families-amid>

26. FIDH, *Vanished without a trace*, p.38.

27. FIDH, *Vanished without a trace*, pp.40-42.

28. For example, during the review of the UN Committee against Torture, which took place from 29 July to 8 August 2019, when the government was questioned on the increasing cases of enforced disappearances and cases of torture, Bangladeshi Law Minister Anisul Huq told the committee, "We do not agree to the proposition that enforced disappearances occur in Bangladesh frequently." He went on to state that "there has been a tendency for quite some time to label all cases of missing [persons] with enforced disappearances. This is done with the obvious intention of maligning the government and its achievements." See, Diplomat, *Enforced Disappearances Met With Denials From Bangladesh*, 22 August 2019; <https://thedi diplomat.com/2019/08/enforced-disappearances-met-with-denials-from-bangladesh/>. In 2016, Home Minister, Asaduzzaman Khan Kamal, told *Voice of America* that the allegations of disappearances of political opponents were hiding on their own "to embarrass the government globally"; see, VOA, *Enforced Disappearances Rise in Bangladesh*, 1 November 2016; <https://www.voanews.com/east-asia-pacific/enforced-disappearances-rise-bangladesh>. More recently, in a letter sent to the Co-Chairs of the Tom Lantos Human Rights Commission of the US Congress on 30 August 2021, the Bangladeshi Ambassador to the US reiterated: "We are concerned that there has been a pattern for quite some time to label all cases of missing with enforced disappearance with obvious intention of maligning the government and its achievements."; <https://humanrightscommission.house.gov/sites/humanrightscommission.house.gov/files/documents/Letter%20to%20Co-Chairs%20of%20TLHRC.pdf>

29. FIDH, *Vanished without a trace*, pp.42-43.

30. Interview conducted on 19 June 2020 (interviewee #9).

The reluctance of victims to bring cases against the police and other law enforcement agencies contributes towards perpetuating a climate of impunity.

Enforced disappearances committed in Bangladesh since cases began to be systematically recorded in 2009 can be qualified as crimes against humanity in accordance with Article 7(1)(i) of the Rome Statute of the International Criminal Court (ICC), a treaty to which Bangladesh is a state party.³¹ The vast majority of the victims have been members of political opposition parties or individuals perceived to be political opponents to the government, and were targeted because of their political beliefs. As a result, the criminal conduct can also be qualified as persecution on political grounds, in accordance with Article 7(1)(h) of the Rome Statute.³²

2.2.2 Absence of a remedy for families of victims of enforced disappearances

Relatives of victims of enforced disappearances have no access to an effective remedy because the police often refuse to record complaints and carry out investigations into such allegations.³³ In most cases of enforced disappearances, the police do not allow families to file a General Diary (GD),³⁴ and only agree to file a GD if it does not record the involvement of law enforcement agencies.³⁵

“Family members cannot file General Diaries or cases – they fail to get any relief from the legal process. Families say they are being threatened and are told not to talk to the media,” a journalist related to FIDH.³⁶

Despite a high number of cases of enforced disappearances, perpetrators have not been held accountable. From the time enforced disappearances began to be recorded by human rights NGOs in 2009 to date, there has only been one case of enforced disappearance that resulted in a court conviction of the perpetrators. This was the case relating to the abduction of seven people by law enforcement officers, in Narayanganj on 27 April 2014. Their bodies were found three days later. The victims were a local Awami League leader, the Narayanganj City Corporation councilor, and five associates. In this case, on January 2017, the Narayanganj District and Session Judge Court found 35 people, including three RAB officials, guilty of the abduction and murder of the seven victims. The lower court imposed the death sentence on 26 of the convicted defendants, while the remaining nine were given varied jail terms ranging from seven to 17 years.³⁷

In August 2017, the High Court upheld the lower court’s convictions and death sentences of 15 people, commuted the death sentences of 11 others to life imprisonment, and upheld the jail sentences of the remaining nine.³⁸ The High Court decision was appealed to the Appellate Division of the Supreme Court, and the High Court ruling has not yet been implemented.³⁹ The case has dragged on for over six years and the families of the victims have alleged that they live in constant fear as they have been subjected to threats and harassment by those associated with the perpetrators.⁴⁰

31. Article 7(1) of the Rome Statute stipulates that enforced disappearances amount to a “crime against humanity” when they are part of a “widespread or systematic attack directed against a civilian population, with knowledge of the attack.”

32. FIDH, *Vanished without a trace*, p.48. In its Article 7(1)(h), the Rome Statute recognizes as a crime against humanity the crime of “persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender (...) or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court.”

33. See FIDH, *Vanished without a trace*, Chapter 5.

34. General Diaries are record-keeping books kept at police stations to record noteworthy events. Recording a GD is the simple method of reporting a crime or incident to the police.

35. FIDH, *Vanished without a trace* - p.55.

36. Interview conducted on 19 June 2020 (interviewee #9).

37. Daily Star, *Death for 15, life term for 11*, 23 August 2017; <https://www.thedailystar.net/frontpage/narayanganj-7-murder-verdict-high-court-bangladesh-death-reference-appeal-death-15-life-term-11-1452607>

38. Daily Star, *7-murder victims’ families unhappy with HC verdict*, 22 August 2017; <http://assetsds.cdndedge.bluemix.net/narayanganj7murder/7-murder-victim-family-unhappy-bangladesh-high-court-verdict-1452457>

39. New Age, *Victim families await early appeal disposal*, 12 September 2020; <https://www.newagebd.net/article/116094/victim-families-await-early-appeal-disposal>

40. Dhaka Tribune, *Six years on, Narayanganj 7-murder trial still awaits verdict*, 27 April 2020; <https://www.dhakatribune.com/bangladesh/nation/2020/04/27/six-years-on-narayanganj-7-murder-trial-still-awaits-verdict>

2.3 Torture

2.3.1 Routine use of torture for forced confessions and extortion

Torture has been considered an institutional practice by law enforcement officers within the criminal justice system in Bangladesh, irrespective of the government in power.⁴¹ Torture has been routinely used as a tool against political opponents as well as ordinary citizens. Even though the Bangladeshi Constitution states that no person shall be subjected to torture,⁴² it is a common practice for law enforcement agencies to extract confessions by resorting to torture methods.⁴³ The police have also extorted money from the families of those detained in remand custody on the undertaking that the arrestees will not be tortured.⁴⁴ There have also been cases of persons being tortured because they refused to pay bribes to police officers.⁴⁵

In 2013, a new trend of police brutality emerged in which the police and RAB began resorting to torture methods such as “kneecapping” – a practice in which a person is deliberately shot – of those who supported opposition parties.⁴⁶ Victims subjected to this method of torture were shot in custody by law enforcement officers who then falsely claimed that they acted in self-defense, in cross-fire situations with armed criminals, or during protests. Many of the victims who were shot in the leg or knee from close range had their leg amputated or the wounds resulted in life-long disabilities.⁴⁷

2.3.2 Ineffective legal mechanisms for the prevention of torture

Ongoing cases of torture in Bangladesh underscore that the existing legal and institutional framework has failed to deter the commission of acts of torture.

Bangladesh ratified the UN Convention against torture and cruel, inhumane or degrading treatment or punishment (UNCAT) on 5 October 1998. As part of the country's commitment to the UNCAT, in 2013 Bangladesh enacted the Torture and Custodial Death (Prevention) Act.⁴⁸ From the enactment of the law in 2013 to 2019, a paltry total of 18 torture cases were filed to the High Court under this Act.⁴⁹ This is mainly due to the fact that very few cases have been filed under the Act, because the victims and/or their families faced harassment and threats from the police and ruling Awami League party members. In addition, in many instances, victims and/or their families were forced to withdraw their cases out of fear after filing cases under the Act.⁵⁰

As of the time of publication of this report, there has only been one conviction under the Torture and Custodial Death (Prevention) Act. On 9 September 2020, six and a half years after the torture

41. OMCT and Odhikar, *Cycle of fear: combating impunity for torture and strengthening the rule of law in Bangladesh*, 2019, p.40; <https://www.omct.org/monitoring-protection-mechanisms/reports-and-publications/bangladesh/2019/07/d25475/>

42. Constitution of Bangladesh, Article 35(5).

43. FIDH et al., *Civil Society Joint Alternative Report on Bangladesh Submitted to the Committee against Torture*, 24 June 2019, https://www.fidh.org/IMG/pdf/fidh_-_joint_submission_for_un_cat_-_june_2019.pdf; BLAST et al., *Review of The Torture and Custodial Death (Prevention) Act, 2013*; [https://www.blast.org.bd/content/publications/Review%20of%20The%20Torture%20&%20Custodial%20Death\(Prevention\)%20Act,%202013.pdf](https://www.blast.org.bd/content/publications/Review%20of%20The%20Torture%20&%20Custodial%20Death(Prevention)%20Act,%202013.pdf)

44. Interview conducted on 25 May 2020 (interviewee #1).

45. Dhaka Tribune, *Barisal man tortured in police custody for refusing to pay bribe*, 10 May 2017; https://www.dhakatribune.com/bangladesh/nation/2017/05/10/man-tortured-police-bribe/?fb_comment_id=1368089013226299_136822023321317; Daily Star, *Cops torture youth for bribe*, 14 March 2019; <https://www.thedailystar.net/country/news/cops-torture-youth-bribe-1714795>

46. Human Rights Watch, *“No right to live.” “Kneecapping” and maiming detainees by Bangladesh Security Forces*, 2016; <https://www.hrw.org/report/2016/09/30/no-right-live/kneecapping-and-maiming-detainees-bangladesh-security-forces>

47. Al Jazeera, *Bangladesh accused of ‘kneecapping’ opposition members*, 29 September 2016; <https://www.aljazeera.com/news/2016/9/29/bangladesh-accused-of-kneecapping-opposition-members>

48. Torture and Custodial Death (Prohibition) Act No.50 of 2013.

49. FIDH et al. *Human Rights in Bangladesh: A Mid-term Assessment of implementation during the UPR 3rd cycle*; https://www.fidh.org/IMG/pdf/mid-term_upr_assessment_report_bangladesh_joint_submission_solidarity_group_for_bangladesh-final.pdf

50. Daily Star, *Custodial deaths: Law there, victims afraid to file cases*, 9 September 2020; <https://www.thedailystar.net/frontpage/news/custodial-deaths-torture-law-there-victims-afraid-file-cases-1958141>

and death of 28-year old Ishtiaque Hossain Jonny, the Dhaka Metropolitan Sessions Judge's Court pronounced the first court conviction under the Act.⁵¹

Problematic legal provisions, particularly Sections 54, 61, and 167 of the Criminal Procedure Code (CPC), which allow defendants to be arrested without a warrant and held in police custody for more than 24 hours when investigations cannot be completed within this period of time, put detainees at heightened risk of torture and ill-treatment.⁵²

In April 2003, in the case *BLAST v. Bangladesh*, the High Court ruled that Sections 54 and 167 of the CPC were incompatible with constitutional guarantees, and recommended a series of amendments to the CPC, the Police Act, the Penal Code, and the Evidence Act. The High Court also issued a set of 15 guidelines related to the exercise of police powers of arrest and remand.⁵³ These guidelines included, for example, a requirement that individuals who are arrested should be allowed to consult a lawyer of their choosing, that they should be given a reason for their arrests within three hours of being brought to a police station, and that police officers should disclose their identities to the persons being arrested or to witnesses to the arrests. According to people interviewed for this report, these guidelines are not being implemented, and, as of the time of publication of this report, no legislative amendments stemming from the guidelines have been passed. As one interviewee explained, "There is no political will to follow the directions of the highest court."⁵⁴

Within the criminal justice system, the Magistrate plays a pivotal role in ensuring that torture in custody does not occur. There have been reported cases in which Magistrates sent detainees back to remand even when there were clear signs of torture on their bodies.⁵⁵ In its Concluding Observations, the UN Committee Against Torture (CAT) noted that there were daily pressures on members of the judiciary to accept arrests without warrants and extend custody without judicial oversight, thus nullifying legally provided safeguards that are intended to protect detainees from torture.⁵⁶

2.4 Reasons for impunity for human rights violations

2.4.1 A relationship of co-dependence and politicized law enforcement

Successive Awami League-led governments have been criticized for using law enforcement agencies as a political tool to silence political dissent. Several interlocutors interviewed by FIDH asserted there existed a tacit *quid pro quo* between the government and law enforcement agencies, whereby the former would guarantee the latter – particularly RAB – impunity for human rights abuses committed against political opponents as part of the government's drive to silence any form of dissent.

One lawyer told FIDH that the government felt insecure about their power base because the December 2018 election was manipulated.⁵⁷ "The government has empowered the law enforcement agencies by buying votes: [law enforcement agencies are given] impunity in exchange for support [to the ruling party]," he told FIDH.⁵⁸

51. On 8 February 2014, Johnny and his brother were detained by the police after a wedding ceremony, following a vindictive complaint made by two police officers. Johnny was tortured in police custody and he died the next day. At the conclusion of the case, the court sentenced three police officers to life imprisonment, and two police informants to seven years' imprisonment each, along with fines and payment of compensation for the victims. See Daily Star, *A historic verdict: 3 policemen get life term for custodial death*, 9 September 2020; <https://www.thedailystar.net/city/news/custodial-death-jonny-3-policemen-get-life-term-2-get-7-years-jail-1958473>

52. Daily Star, *Protectors turn predators thru' loopholes of law*, 25 May 2016; <https://www.thedailystar.net/frontpage/protectors-turn-predators-thru-loopholes-law-1228912>

53. *BLAST and Other v. Bangladesh*, Writ Petition No. 3806 of 1998, 55 DLR (2003) 363; available at: <https://www.blast.org.bd/content/judgement/55-DLR-363.pdf>

54. Interview conducted on 27 May 2020 (interviewee #8).

55. OMCT and Odhikar, *Cycle of fear* - p.40.

56. UN Committee Against Torture, *Concluding Observations on the initial report of Bangladesh*, 9 August 2019, para.27; https://tbinetnet.ohchr.org/Treaties/CAT/Shared%20Documents/BGD/CAT_C_BGD_CO_1_35737_E.pdf.

57. Interview conducted on 17 November 2020 (interviewee #16).

58. Interview conducted on 20 May 2020 (interviewee #7).

Law enforcement agencies have also been misused by politicians, primarily those affiliated with the ruling party, to resolve their personal disputes. In March 2019, Prime Minister Sheikh Hasina's security advisor, Major General Tarique Ahmed Siddique, was accused of using DGFI agents to abduct and interrogate people involved in a personal business dispute with him.⁵⁹

2.4.2 Corruption of law enforcement agents

The misuse of authority is a systematic issue that runs through different law enforcement agencies. Corruption in the police and other law enforcement agencies is a widely acknowledged phenomenon in Bangladesh. The fact that bribes are paid to the police to discharge their duties has a direct impact in the deterioration of the rule of law.

The ability of the ruling party to use law enforcement agencies flexibly is attributed by some interviewed for this report to a widespread sense that public service jobs are meant for private profit – in other words, that while there is an expectation that public servants, including law enforcement agents, should do their jobs, there is also an assumption that they should be able to benefit from it. “Law enforcement agencies operate largely freelance; they are given impunity and allowed to do this. It’s a way for them to make a career, money, to establish links. Business people hire individual officers to do jobs for them. People with a government position are expected to help out their family, friends, relatives etc., - and they have extensive networks. It’s corruption but it’s just not corruption - it’s a deep positive sense of obligation towards your network,” an academic told FIDH.⁶⁰

Several studies have documented the normalized practice of corruption in the police in discharging their duties. One study exploring the factors that affect citizens’ trust in Bangladesh police found that the commonly experienced harassment of the general public by the police was the requirement to pay bribes, as the police only served those who can afford to pay extra money or have political connections.⁶¹ According to the Global Corruption Barometer for Asia 2020 conducted by Transparency International, in the country analysis of Bangladesh, a majority of respondents viewed that the police relied on bribery and political connections in discharging their duties.⁶² The study also found that the Bangladeshi police ranked higher as a corrupt institution in comparison to members of Parliament, judges and magistrates, government officials, and the Prime Minister.⁶³

2.5 Consequences of pervasive impunity

The pervasive levels of impunity for extrajudicial killings, enforced disappearances, and torture are a reflection on flaws in institutional and political structures that contribute to the deterioration of the rule of law in Bangladesh.

2.5.1 Instilling public fear

Numerous interlocutors interviewed for this report noted with concern the Bangladeshi people’s increasing reluctance to criticize the government. This trend is largely driven by the commonly shared understanding that speaking out can lead to serious consequences.⁶⁴ An academic told FIDH: “Just being interested in politics results in being targeted.”⁶⁵

Law enforcement officers have often threatened and intimidated activists and their family members in an attempt to silence dissent. In some cases, law enforcement and intelligence officers have

59. Al Jazeera, *Exclusive: Bangladesh top security adviser accused of abductions*, 20 March 2019; <https://www.aljazeera.com/news/2019/03/20/exclusive-bangladesh-top-security-adviser-accused-of-abductions/>

60. *Ibid.*

61. M. Rahman and A. Houssain, *Exploring the factors that affect citizen's trust in Bangladesh Police, in Democracy and governance contemporary issues in Bangladesh*, Public Policy and Governance Program, 2017.

62. Transparency International, *Global Corruption Barometer: Asia 2020*; <https://www.transparency.org/en/publications/gcb-asia-2020>

63. *Ibid.*, p.38

64. Interview conducted on 18 May 2020 (interviewee #4), interview conducted on 19 June 2020 (interviewee #13).

65. Interview conducted on 15 June 2020 (interviewee #12).

visited the homes of the relatives of human rights defenders in order to pressure the latter to stop criticizing the ruling party.⁶⁶ Authorities have also threatened and intimidated family members of human rights defenders who live in exile.⁶⁷

2.5.2 Law enforcement gone rogue

Over the years, members of law enforcement agencies have grown increasingly emboldened to commit human rights violations as a result of their complete lack of accountability.

Several individuals interviewed for this report stated that law enforcement agencies in Bangladesh act outside any sort of organized or centralized control. Individuals with knowledge of the Bangladeshi political system interviewed for this report expressed significant concerns over the increasing lack of control by the executive over numerous law enforcement agencies, which are now seen as operating outside of the law. "Law enforcement agencies can hardly be controlled anymore. The government doesn't know how to handle the police and especially the special forces, such as RAB, anymore. Nobody knows who actually controls the law enforcement institutions throughout the country," a foreign diplomat told FIDH.⁶⁸

The failure by the government to rein in and hold accountable law enforcement officers who are involved in human rights abuse is a contributing factor to impunity for abuses, which, in turn, results in the failure by law enforcement agencies to follow due process.

Bangladesh's lack of genuine investigations and prosecutions of international crimes in light of the International Criminal Court's complementarity assessment

The unwillingness and inability by both the government and the judiciary in Bangladesh to genuinely hold the perpetrators of international crimes to account, could trigger action by the International Criminal Court (ICC). As a court of last resort, the ICC is complementary to domestic courts.

Pursuant to the requirements of Articles 53(1)(b) and 17(1)(a)-(c) of the ICC Statute, the complementarity assessment relates to whether genuine investigations and prosecutions have been or are being conducted in the State concerned."⁶⁹

In its November 2013 Policy Paper on Preliminary Examinations, the ICC Office of the Prosecutor noted that the "absence of national proceedings, i.e. domestic inactivity," is a necessary requirement to make the case admissible. The document said that inactivity may be due to a number of factors: "the absence of an adequate legislative framework; the existence of laws that serve as a bar to domestic proceedings, such as amnesties, immunities or statutes of limitation; the deliberate focus of proceedings on low-level or marginal perpetrators despite evidence on those more responsible, or other, more general issues related to the lack of political will or judicial capacity."⁷⁰

66. UCA News, *Harassment of Bangladeshi blogger's family condemned*, 22 July 2020; <https://www.ucanews.com/news/harassment-of-bangladeshi-bloggers-family-condemned/88873>

67. Human Rights Watch, *Bangladesh: Stop Intimidating Activists, Victims' Families*, 24 October 2020; <https://www.hrw.org/news/2020/10/24/bangladesh-stop-intimidating-activists-victims-families>

68. Interview conducted on 16 July 2020 (interviewee #11).

69. Office of the Prosecutor of the International Criminal Court, *Policy Paper on Preliminary Examinations*, November 2013, para. 46, https://www.icc-cpi.int/iccdocs/otp/OTP-Policy_Paper_Preliminary_Examinations_2013-ENG.pdf.

70. *Ibid.*, para. 47-48.

Where there are, or have been, national investigations or prosecutions, the Court needs to “assess whether such national proceedings are vitiated by an unwillingness or inability to genuinely carry out the proceedings”.⁷¹ The Policy Paper on Preliminary Examinations notes that unwillingness may be assessed by looking at, *inter alia*, the independence of judicial proceedings, including “the extent to which appointment and dismissal of investigators, prosecutors and judges affect due process in the case; [...] political interference in the investigation, prosecution or trial; [...] and corruption of investigators, prosecutors and judges.”⁷²

In order to assess “inability to investigate or prosecute genuinely ...”, the Office will consider whether, due to a total or substantial collapse or unavailability of its national judicial system, the State is unable to collect the necessary evidence and testimony, unable to obtain the accused, or is otherwise unable to carry out its proceedings.”⁷³

71. *Ibid.*, para.49.

72. *Ibid.*, para. 53.

73. *Ibid.*, para. 56.

3. Absence of judicial checks and balances

In Bangladesh, numerous institutional and structural issues within the justice system have led to the systematic subservience of the judiciary to the executive branch, a phenomenon that has severely undermined the rule of law in the country.

“In the judiciary system, we don't find anything that can be called rule of law in our country. Since the last decade, the judicial system has collapsed and is highly politicized,” a lawyer told FIDH.⁷⁴

Court structure in Bangladesh

The Bangladesh Constitution, adopted in 1972, provides the structure of the Supreme Court, which comprises an Appellate Division and a High Court Division. The High Court holds the authority to interpret the Constitution and enforce fundamental rights.⁷⁵ The Appellate Division has the jurisdiction over appeals emanating from judgments, decrees, orders or sentences of the High Court Division.⁷⁶

Below the High Court Division of the Supreme Court, there are several subordinate courts and tribunals that have civil, criminal, and special jurisdiction. In the ordinary courts of criminal jurisdiction, criminal cases are heard in Courts of Sessions and Magistrate Courts. In metropolitan areas, the Courts of Sessions are named Metropolitan Courts of Sessions and the Magistrate Courts the Courts of Metropolitan Magistrates. In the civil jurisdiction, courts are classified as Courts of the District Judge, Courts of the Additional District Judge, Courts of the Joint District Judge, Courts of the Senior Assistant Judge, and Courts of the Assistant Judge. In addition, special laws have established *ad hoc* courts, such as Labor Courts, Juvenile Courts, and Administrative Tribunals.

In addition to the “traditional” court system, newer forms of adjudicatory justice have been implemented in Bangladesh in recent years: village courts and mobile courts. These courts have been established - often with the support of international donors - to address the huge backlog in cases in Bangladeshi courts, which leave defendants and claimants alike often waiting for years before their cases are adjudicated.

These forms of alternative justice have come under criticism by some for failing to respect basic tenets of fair trial rights and due process guarantees. According to the US Department of State's 2019 human rights report on Bangladesh, “mobile courts headed by executive branch magistrates rendered immediate verdicts that often included prison terms to defendants who were not afforded the opportunity for legal representation.”⁷⁷ This speedy alternative to resolving cases has also been used, according to people interviewed by FIDH, to “go against people you don't like,”⁷⁸ due to the comparative ease of filing cases and obtaining speedy verdicts.

The various ways in which the judiciary has become subservient to the executive, detailed in this chapter, have resulted in a situation in which judicial checks and balances are absent, particularly when it comes to seeking accountability and redress for grave human rights violations committed by law enforcement agencies.

74. Interview conducted on 18 May 2020 (interviewee #6).

75. Constitution of Bangladesh, Articles 101 and 102.

76. *Ibid.*, Article 103(1).

77. US Department of State, *Bangladesh 2019 Human Rights Report*, 11 March 2020, p. 9; <https://www.state.gov/reports/2019-country-reports-on-human-rights-practices/bangladesh/>.

78. Interview conducted on 18 May 2020 (interviewee #6).

3.1. Institutional subservience

In Bangladesh there is no effective separation of power between the judiciary and executive branches, and the executive exercises undue influence over the judiciary.

3.1.1 Supreme Court

Although Article 22 of the Bangladesh Constitution provides for the separation of the judiciary from the executive branch of government and Article 94(4) for the independence of the Supreme Court, these Constitutional safeguards have been rendered ineffective by successive governments in Bangladesh. This is made possible, in part, by the lack of effective safeguards that could prevent the arbitrary removal of Supreme Court judges. “The main obstacle [to reforms] is that the Supreme Court administration is in the hands of the Chief Justice, and he can’t work freely – there are always eyes on him. Even if there was will [to enact reforms] there, he can’t do anything,” a former Deputy Attorney General told FIDH.⁷⁹

The Constitution of Bangladesh originally provided for parliamentary removal of Supreme Court judges. After Parliament was stripped of this power by two constitutional amendments in the 1970s,⁸⁰ in 2014, Parliament, overwhelmingly controlled by the Awami League, approved the 16th Amendment to the Constitution, which re-introduced the original constitutional provision that provided for the parliamentary removal of judges.⁸¹ However, the constitutionality of the 16th Amendment was challenged before the High Court in the case of *Siddiqui v. Bangladesh*.⁸² On 3 July 2017, the Appellate Division of the Supreme Court, led by Chief Justice Surendra Kumar Sinha, upheld the decision of the High Court that stated that the removal of Supreme Court judges by Parliament was unconstitutional on the ground that it undermined the independence of the judiciary. Justice Sinha held that “essential to the rule of law in any country is an independent judiciary - the Judges not under the thumb of other branches of the government and therefore equipped with the armor of impartiality.”⁸³ The full text of the judgment was released on 1 August 2017, and contained remarks that were critical of the political culture, governance, and the Parliament of Bangladesh.

Following this ruling, Justice Sinha came under much criticism by government authorities. The judgment led to a heated debate over the respective powers of the legislature and the judiciary. Several Members of Parliament demanded that the Chief Justice resign.⁸⁴ On 13 September 2017, the Awami League-dominated Parliament unanimously passed a resolution to take steps to seek legal measures against the High Court ruling and to remove the Chief Justice’s “unconstitutional, objectionable and irrelevant” observations in the verdict.⁸⁵

In October 2017, the government stated that the Chief Justice would go on leave for a month due to poor health. By mid-October, Justice Sinha left the country and on 10 November 2017 flew to Canada, where he was later given asylum. On 11 November 2017, he tendered his resignation.

79. Interview conducted on 20 May 2020 (interviewee #7).

80. In 1975, the 4th Amendment to the Constitution transferred the power to remove Supreme Court judges to the President. In 1978, the 5th Amendment to the Constitution assigned this power to a Supreme Judicial Council (SJC). The SJC was comprised of the Chief Justice and two senior judges of the Appellate Division, and was given the mandate of investigating allegations of misconduct by judges and to remove judges if those allegations were proven.

81. According to Article 96(1) of the Constitution, a judge of the Supreme Court shall hold office until he or she reaches the age of 67; lifetime appointments are prohibited; and he or she can only be removed for office as a result of physical or mental incapacity, gross misconduct or “moral turpitude” based on the recommendation of the Supreme Judicial Council to the President. The 16th Amendment removed this power from the SJC and vested it with Parliament: the new Article 96(2) reads “A judge shall not be removed from his office except by an order of the President passed pursuant to a resolution of Parliament supported by a majority of not less than two thirds of the total number of members of Parliament, on the ground of proved misbehavior or incapacity.”

82. *Advocate Asaduzzaman Siddiqui v. Bangladesh* (Writ Petition No. 9989/2014); http://www.supremecourt.gov.bd/resources/documents/783957_WP9989of2014_Final.pdf

83. *Ibid.*, p.288.

84. Daily Star, *Chief Justice Steps Down*, 12 November 2017; <https://www.thedailystar.net/frontpage/chief-justice-steps-down-1489819>

85. Dhaka Tribune, *Parliament adopts resolution challenging 16th Amendment verdict*, 14 September 2017; <https://www.dhakatribune.com/bangladesh/2017/09/14/parliament-adopts-resolution-challenging-16th-amendment-verdict/>

According to an autobiography by Justice Sinha, he stated that he was threatened by the military intelligence agency, DGFI, and was forced to resign.⁸⁶

Many academics and legal practitioners who were interviewed for this report believed that the forced resignation of the Chief Justice from Bangladesh created a negative precedent in the country, as judges are now aware that they may face a similar fate as the former Chief Justice, if they were to issue a ruling that is not favorable to the ruling party. An academic told FIDH: “The independence of the judiciary is at the lowest level in Bangladesh history at a time when you can send the Chief Justice to exile.”⁸⁷

Presently, there is ambiguity as to the removal process of Supreme Court judges as a decision concerning the 16th Amendment to the Constitution case is pending review. Article 105 of the Constitution enables the Appellate Division to review any judgment or order made by it. However, following the departure of Justice Sinha, there has been reluctance by other judges of the Appellate Division of the Supreme Court to take up the review petition and issue a verdict.

Just as the absence of safeguards to prevent the arbitrary removal of judges has undermined the effectiveness of the Supreme Court, the absence of selection criteria for judicial appointments to the Supreme Court has also contributed to a system that is dependent on the political whims of the government.⁸⁸ Under successive governments, appointments and promotions made to the Supreme Court have regularly circumvented considerations of seniority and merit.⁸⁹ Instead, such appointments have been made on the basis of political considerations.

According to the Constitution, an advocate of the Supreme Court or a judicial officer with over 10 years of experience or has other such qualifications as may be “prescribed by law,” may be qualified for appointment as a judge of the Supreme Court; the Chief Justice is appointed by the President, while the other Supreme Court judges are appointed by the President “after consultation with the Chief Justice.”⁹⁰ However, successive governments have failed to pass legislation that sets out the qualifications required for the selection of Supreme Court judges.

“Irrespective of the government in power - whether it’s the Awami League, the BNP, or one led by the military - the government tends to appoint judges who are loyal to them. Recent appointments made to Supreme Court have high levels of politicization,” a law professor told FIDH.⁹¹

The fact that the Awami League has been in power for more than a decade has resulted in many judicial appointments being based on party loyalty. From 2009-2019, 79 out of 101 judges of the High Court Division were appointed by three successive governments led by the Awami League.⁹² In October 2019, President Abdul Hamid appointed nine Additional Judges to the High Court Division. The new appointments were based on political considerations and surpassed many other senior candidates.⁹³ Of the nine new appointees, two were presiding judges in politically sensitive corruption cases, including a case against BNP leader and former Prime Minister Khaleda Zia.

3.1.2 Lower courts

While the lower courts are theoretically independent from the executive, in practice, they remain under the control of the executive. This is due in part to the Constitution, including Article 115, which enables the President to make appointments to the subordinate courts, and Article 116, which gives

86. Justice Surendra Kumar Sinha, *A Broken Dream: Rule of Law, Human Rights and Democracy*, September 2018; <https://www.docdroid.net/EbyRVSE/a-broken-dream-rule-of-law-human-rights-pdf>

87. Interview conducted on 14 December 2020 (interviewee #19).

88. Interview conducted on 17 November 2020 (interviewee #17).

89. A.H. Mollah, *Independence of the judiciary in Bangladesh: an overview*, International Journal of Law and Management, Vol.54 No.1, 2012, p.66.

90. Constitution of Bangladesh, Article 95(2).

91. Interview conducted on 14 December 2020 (interviewee #19).

92. Richard Albert et. al., *2019 Global Review of Constitutional Law*, the I-CONnect-Clough Center, 2020, p.30.

93. Interview conducted on 16 December 2020 (interviewee #20).

the President, through the Ministry of Law and Justice, in consultation with the Supreme Court, the power to decide on the removal, promotion, and transfer of judges of lower courts.⁹⁴ This results in dual institutional control whereby both the Ministry of Law and Justice and the Supreme Court exerts control over the lower courts. Dual institutional control has not only created administrative conflict but also left room for political influence on judicial matters.⁹⁵

“Subordinate courts are under severe pressure and are harassed [...]. The real control of both lower and higher judiciary is with the executive. With the lower judiciary, it is the Law Minister that regulates the promotion, transfer aspects of judges,” a law professor told FIDH.⁹⁶

Historically, the lower courts in Bangladesh have not been independent from the executive. On 2 December 1999, the Appellate Division of the Supreme Court ruled that the executive must be separated from the judiciary for the purpose of establishing the rule of law and furthering citizens' rights.⁹⁷ As a result of this ruling, the Supreme Court instructed the government to implement a 12-point directive, which included the creation of an independent Bangladesh Judicial Service Commission (BJSC) that would oversee the appointment, promotion, and transfer of members of the judiciary. The Supreme Court held that members of the judiciary cannot have any ties to the civil, executive, or administrative service.⁹⁸

Eight years after the Supreme Court ruling, on 1 November 2007, the judiciary was formally separated from the executive through a declaration made by the caretaker government, which issued four sets of rules relating to the judiciary.⁹⁹ One of these, the Bangladesh Judicial Service Commission Rules, established the BJSC and introduced a selection process for candidates, including a preliminary, written, and oral examination.

Although the formation of the BJSC was a positive step in attempting to make the judiciary independent by ensuring that the recruitment of judges was done on a merit-based system, it has failed to fully address the politicized nature of the judiciary.

The absence of an independent judicial secretariat further undermines judicial independence in Bangladesh. Presently, the Ministry of Law and Justice serves as the judicial secretariat and exerts wide oversight over many organs of the justice system. The Ministry of Law and Justice controls the BJSC, the subordinate judiciary, the Office of the Attorney General, and other bodies. Given its political nature, the Ministry has often interfered in judicial matters.

3.2 Political influence undermines the justice system

Lawyers interviewed for this report noted that the partisan recruitment, promotions, and appointments entrenched polarization within the justice system in Bangladesh. Partisanship influences the type of cases that are filed before courts and prioritized. It also influences verdicts and sentences. Furthermore, the political affiliation of lawyers is outwardly acknowledged and has a bearing on how judges view cases. “In court, clients will ask ‘what are my chances since you are not affiliated to the ruling party?’ Twelve years back, no one would have even dared to ask this type of question,” a lawyer told FIDH.¹⁰⁰

94. MD Milan Hossain, *Separation of Judiciary in Bangladesh- Constitutional Mandates and Masdar Hossain Case's Directions: A Post Separation Evaluation*, International Journal for Court Administration 11(2), 2020, p.9.

95. Transparency International Bangladesh, *Subordinate court system of Bangladesh: Governance challenges and ways forward*, 2017. Full report in Bangla: https://www.ti-bangladesh.org/beta3/images/2017/lower_judiciary/final_PPP_Judiciary_30112017.pdf

96. Interview conducted on 16 December 2020 (interviewee #20).

97. *Secretary Ministry of Finance v. Mazadar Hossain* (1999) 52 DLR (AD) 82.

98. *Ibid.*, p.23.

99. The four sets of rules are: 1) Bangladesh Judicial Service Commission Rules; 2) Bangladesh Judicial Service (Pay Commission) Rules; 3) Bangladesh Judicial Service Commission (Construction of Service, Appointments in the Service and Suspension, Removal & Dismissal from the Service) Rules; and 4) Bangladesh Judicial Service (Posting, Promotion, Grant of Leave, Control, Discipline and other Condition of Service) Rules.

100. Interview conducted on 20 May 2020 (interviewee #7).

3.3.1 Outcome of judgments influenced by politics

The executive's influence over the promotion, transfer, and sanction of members of the judiciary gives rise to the impression that judges who do not rule in favor of the government will be transferred to less enviable benches or jurisdictions.¹⁰¹ Lawyers with experience in working on "political" cases – such as cases in which members of the political opposition, human rights defenders, or other critics of the government have been arrested, including under fabricated charges – told FIDH that salaries and assignments of judges are held hostage to court decisions.

"Even if all reforms are undertaken – more resources, more training, etc. – unless the political interference is addressed, nothing will change. Judges only do things they have been told to do," a lawyer told FIDH.¹⁰²

Although systematic data is not available, there is anecdotal evidence that judges who have ruled in favor of defendants in these cases, were later demoted, or transferred to less enviable benches or jurisdictions. As a result, there is significant pressure on the judiciary to rule in favor of the government to avoid adverse consequences. For example, Special Judges' Court-3's former judge Motahar Hossain, who acquitted BNP Senior Vice-President Tarique Rahman in a money laundering case on 17 November 2013, was forced to leave the country as a result of this ruling. Tarique Rahman, also the son of BNP leader Khaleda Zia, was acquitted of all charges levelled against him by the Anti-Corruption Commission under the Money Laundering Prevention Act.¹⁰³ In early January 2014, the judge left Bangladesh and eventually found exile in Malaysia.¹⁰⁴ In October 2018, Judge Hossain alleged that Law Secretary Jahirul Haque had appointed DGFI members to spy on him, and that other judicial officials and DGFI officers had attempted to put pressure on him to convict Tarique Rahman, including through issuing death threats and threatening to subject him to enforced disappearance.¹⁰⁵

Courts are also abused for political motives and the overstretched justice system is compelled to prosecute opposition leaders and activists.¹⁰⁶ In many cases, the fear of issuing judgments that would be seen as going against the wishes of members of the government and the ruling party results in cases lingering in the judicial system for years.

As one lawyer told FIDH: "Thousands of political cases [against the opposition] are pending before the lower judiciary. After two or three years, there is still no investigation report and no charge sheet. Because there is no evidence, they are just political cases aimed at trying to silence the opposition and critics."¹⁰⁷

Finally, cases are also often determined by how well-known or politically-connected a defendant's lawyer or legal team is. As one lawyer recounted to FIDH: "Just a few months ago, I worked on a murder case – there was no evidence but the lower court convicted [the defendant] anyway. Simultaneously, in the same court, in another murder case, defended by a high-profile lawyer, bail was granted even though there was solid forensic evidence [against the defendant]."¹⁰⁸

3.3 Loss of faith in the judiciary

3.3.1 Courts seen as a last resort

In Bangladesh, pervasive impunity and corruption, coupled with the chronic delays in judicial proceedings, have resulted in many people progressively losing trust in the criminal justice

101. M. Hossain, *Separation of Judiciary in Bangladesh*, p.12.

102. Interview conducted on 18 May 2020 (interviewee #6).

103. New Nation, *Former judge Motahar flees to Malaysia*, 24 January 2014; <http://thedailynewnation.com/news/1096/former-judge-motahar-flees-to-malaysia.html>

104. Daily Star, *Ex-judge now living in Malaysia*, 8 March 2015; <https://www.thedailystar.net/ex-judge-now-living-in-malaysia-8115>

105. JustNewsBD, *Judge faced death threat for not convicting Opposition Leader Tarique Rahman*, 13 October 2018; <https://www.justnewsbd.com/en/special-report/news/3750>.

106. International Crisis Group, *Political crisis, extremism and criminal justice in Bangladesh*, 2016; <https://www.crisisgroup.org/asia/south-asia/bangladesh/political-conflict-extremism-and-criminal-justice-bangladesh>

107. Interview conducted on 18 May 2020 (interviewee #6).

108. Interview conducted on 18 May 2020 (interviewee #6).

system and its ability to resolve cases and deliver justice to victims. This trend has contributed to the erosion of the rule of law in the country.

Although conducting a systematic study of the public's confidence in the judiciary is outside the scope of this report, many individuals interviewed by FIDH believed that people were increasingly seeing courts of law as a "last resort."

Instead of pursuing legal avenues through judicial mechanisms, many victims and victims' families have turned to call on the Prime Minister to bring perpetrators of crime to justice. As one interviewee told FIDH, without the intervention and influence by the executive in directing law enforcement agencies to carry out an investigation, the criminal justice system is not effective.¹⁰⁹ This trend also demonstrates that not all are equal before the law, as those with influence and connections to the Prime Minister's Office are better equipped in having their grievances addressed.

3.3.2 "Mob justice" and the erosion of the rule of law

As in other countries where the rule of law has been undermined and the public has lost confidence in law enforcement institutions or/and the judicial system, Bangladesh has witnessed frequent incidents of so-called "mob justice." Mob justice related incidents stemmed from an accumulation of existing prejudices, tensions, and frustrations based on a lack of trust in the rule of law and the justice system. "There is clear lack of trust in the criminal justice system that nothing will happen. The inefficiency of the criminal justice system creates an environment for mob justice," a professor of politics told FIDH.¹¹⁰

In recent years, many deaths resulting from mob justice attacks have been recorded. From January 2009 to September 2021 there were 1,238 deaths resulting from such attacks.¹¹¹ Odhikar reported 40 mob justice attack-related deaths in 2020.¹¹² Odhikar attributed this trend to a "dysfunctional" justice system, impunity of law enforcement agencies, and corruption, which have all eroded people's confidence in state and constitutional institutions.¹¹³

In many cases, people have taken matters into their own hands without handing over a suspect to the police. "People know that if they catch the criminal then the police will take a bribe and release him. So people beat them up," an interviewee told FIDH.¹¹⁴

Security forces have generally failed to intervene in cases of mob attacks and fulfill their duty in preserving law and order. Failure on the part of law enforcement agencies to arrest those responsible for such attacks and ensure accountability for those acts, have further eroded the rule of law in the country.

In many cases, attacks have targeted petty criminals, criminal suspects, and those involved in false rumors. For example, in October 2020, a man with a mental disability in Burimari, Lalmonirhat District, was lynched to death and his body was burned, after he had been charged with blasphemy.¹¹⁵ In September 2020, a truck driver in Puthia Upazi, Rajshahi District, was beaten to death by a mob after his truck ran over two goats.¹¹⁶

109. *Ibid.*

110. Interview conducted on 17 November 2020 (interviewee #17).

111. *Ibid.*

112. Odhikar, *Annual Human Rights Report 2020*, p.74.

113. *Ibid.*, p.30.

114. Interview conducted on 13 November 2020 (interviewee #14).

115. Al Jazeera, *Man lynched in Bangladesh for alleged Quran desecration: Police*, 30 October 2020; <https://www.aljazeera.com/news/2020/10/30/man-lynched-in-bangladesh-for-alleged-quran-desecration-police>

116. Daily Star, *Truck driver beaten to death by mob in Rajshahi for running over two goats*, 19 September 2020; <https://www.thedailystar.net/truck-driver-beaten-death-mob-in-rajshahi-1963817>

4. Growing intolerance of government criticism

4.1 Use of oppressive laws and judicial harassment to crush dissent

The government's systematic repression of the right to freedom of expression leaves little or no room for individuals to express any form of dissent and hold the authorities accountable.

The Information and Communication Technology (ICT) Act and the Digital Security Act (DSA) are the two primary legal tools that the authorities have frequently used to arrest government critics who used web and social media platforms.

While the ICT Act and DSA were purportedly enacted to provide legal frameworks to address cybercrimes, they have been used to repress the right to freedom of opinion and expression. Through these laws, many opposition leaders, journalists, human rights defenders, and academics have been harassed and arrested for expressing their views.

The ICT Act was enacted in November 2006 by the government of Prime Minister Khaleda Zia. In 2013, Prime Minister Sheikh Hasina's government amended the ICT Act by: removing the need for arrest warrants to apprehend defendants; increasing the maximum jail terms for offenses from 10 to 14 years; and making offenses under Section 57 of the ICT Act non-bailable. The ICT Act contains provisions that are overly broad, vague, and imprecise and are intended to criminalize the use of computer communications for a wide range of activities. Section 57 of the ICT Act authorizes the prosecution of anyone who publishes in electronic form material that is deemed fake and obscene, defamatory, or that "tends to deprave or corrupt its audience." It also allows for the prosecution of anyone who publishes any material that "deteriorates or creates possibility to deteriorate law and order, prejudice the image of the state or person or may hurt religious beliefs." From January 2012 to June 2017, police filed 1,417 cases on cybercrime charges.¹¹⁷

The DSA was enacted in October 2018 to reduce cybercrime and address some of the impacts of the problematic provisions of the ICT Act, such as the abuse of its Section 57. However, the DSA has resulted in an actual expansion of the problematic aspects of Section 57 of the ICT Act. Section 57 has been encapsulated in several different sections of the DSA concerning: publication of propaganda against the liberation war and the father of the nation;¹¹⁸ false, offensive, threatening information;¹¹⁹ defamatory information;¹²⁰ and deteriorating law and order.¹²¹

In addition, Section 25 of the DSA contains overly broad language that has been invoked to arrest human rights defenders that publish any material that is critical of the government. Section 25 criminalizes the use of a website or any other digital medium to transmit information that impacts "the image and reputation of the state or spreads confusion" or the publication of any data information "offensive, false or threatening in order to annoy, insult, humiliate or malign a person."

The DSA gives sweeping powers to the police to search any premises and computer, seize any computer network and its servers, and arrest anybody without a warrant.¹²² The DSA imposes penalties of 10 years' imprisonment, or life for repeat offenders.¹²³ DSA also provides immunity from prosecution for any person, entity or service provider who breaches the right to privacy or assists in surveillance "for the interest of investigation" under the Act.¹²⁴

117. Dhaka Tribune, *Number of ICT cases on the rise again*, 10 August 2018; <https://www.dhakatribune.com/bangladesh/law-rights/2018/08/10/number-of-ict-cases-on-the-rise-again>

118. Digital Security Act 2018, Section 21.

119. *Ibid.*, Section 25.

120. *Ibid.*, Section 29.

121. *Ibid.*, Section 31.

122. *Ibid.*, Section 43.

123. *Ibid.*, Section 17 (3).

124. *Ibid.*, Section 47.

The ICT Act and the DSA have been routinely used against all forms of criticism of high-ranking officials of the ruling Awami League party or their family members on social media. Supporters of the ruling party have used these laws to file multiple cases in different areas of the country to harass opposition party members, activists, and human rights defenders. Frivolous cases were pursued against citizens who merely liked or shared Facebook posts that criticized the Prime Minister and the government's policies, or posted "anti-government sentiments" on Facebook.¹²⁵ The DSA has also been used to detain children. In June 2020, a 14-year old student was detained in a juvenile correction facility for allegedly defaming the Prime Minister on Facebook, based on a post that was critical of the government's decision to impose an additional tax on mobile call rates.¹²⁶

During the COVID-19 pandemic, there was an upsurge in the number of arrests made under the DSA. Many journalists who were critical of the government's response to the pandemic or alleged embezzlement of COVID-19 relief funds were arrested and charged under the Act.¹²⁷ According to Odhikar, 142 persons were arrested under the DSA in 2020.¹²⁸ This was a 125% increase in the number of arrests made compared to the whole 2019, when 63 cases were recorded.¹²⁹ At a time when prison overcrowding is considered a health risk because of COVID-19, authorities have continued to use the DSA to detain those who used social media to criticize the government's response to COVID-19. These included several journalists, lawyers, academics, and cartoonists.¹³⁰ To make matters worse, bail applications made under the DSA were frequently rejected.¹³¹

The large number of cases brought on charges under the DSA or the ICT Act reflects the government's selective application of the law in pursuing justice. As stated in Chapter 2 of this report, charges against serious human rights violators are very rarely pursued by law enforcement agencies and courts. However, in many cases in which ordinary citizens exercise their right to freedom of expression, the police act speedily in making arrests and conducting investigations. An interlocutor told FIDH: "Comparing the number of torture cases to DSA cases shows you what the priorities of the government are. This shows how law enforcement agencies use laws for their own interest."¹³²

4.2 Restricted press freedom

On numerous occasions, the government has blocked several news agencies and imposed laws to restrict press freedom. Blocking and restricting access to independent news websites is a clear indication of the government's effort to control the media narrative while suppressing dissent.

Arrests for defamation under the DSA and ICT Act, together with the government's control over many media outlets, has resulted in many journalists resorting to self-censorship.¹³³ Journalists reported that they are not free to write on any topic due to fear of reprisals.¹³⁴ In December 2018, Matiur Rahman Chowdhury, Editor-in-Chief of the Bengali daily newspaper *Manabzamin*, stated: "As an editor, I feel sad when I kill a report that was the outcome of several days of exhaustive work by a reporter. But I take the decision purely to save the reporter, because I know the risks involved in publishing it."¹³⁵

125. Human Rights Watch, *No Place for Criticism: Bangladesh crackdown on social media commentary*, 9 May 2018; <https://www.hrw.org/report/2018/05/09/no-place-criticism/bangladesh-crackdown-social-media-commentary>

126. Dhaka Tribune, *9th grader arrested in DSA case, accused of defaming PM*, 22 June 2020; <https://www.dhakatribune.com/bangladesh/2020/06/22/schoolboy-arrested-in-digital-security-case>

127. Atlantic Council, *A pandemic of persecution in Bangladesh*, 11 May 2020; <https://www.atlanticcouncil.org/blogs/new-atlanticist/a-pandemic-of-persecution-in-bangladesh/>

128. Odhikar, *Annual Human Rights Report 2020*, p.33; http://odhikar.org/wp-content/uploads/2021/01/Annual-HR-Report-2020_Eng.pdf

129. Article 19, *Bangladesh: Increase in charges under DSA as government seeks to silence criticism*, 3 July 2020; <https://www.article19.org/resources/bangladesh-increase-in-charges-under-dsa-as-government-seeks-to-silence-criticism/>

130. Odhikar, *Annual Human Rights Report 2020*, p.33.

131. New Age, *Court turns down Didarul's bail plea again*, 10 August 2020; <https://www.newagebd.net/article/113113/court-turns-down-didaruls-bail-plea-again>

132. Interview conducted on 13 November 2020 (interviewee #14).

133. Reuters, *In fear of the state: Bangladeshi journalists self-censor as election approaches*, 13 December 2018; <https://www.reuters.com/article/us-bangladesh-election-media-insight-idUSKBN10C08Q>

134. Interview conducted on 19 June 2020 (interviewee #9).

135. Reuters, *In fear of the state: Bangladeshi journalists self-censor as election approaches*, 13 December 2018; <https://www.reuters.com/article/us-bangladesh-election-media-insight-idUSKBN10C08Q>

Bangladesh has a very low record for press freedom. It was ranked at 152 out of 180 countries - the lowest ranking among all South Asian countries - according to the World Press Freedom Index 2021.¹³⁶

Several news outlets have been banned for reporting allegations of corruption in the country. In December 2019, the *Nethra News* website was blocked in Bangladesh after it published a report alleging corruption involving Awami League Secretary General Obaidul Quader.¹³⁷ Similarly, access to international news websites such as *Al-Jazeera* and *The Wire* have been blocked by the government for publishing articles that investigated the alleged involvement of government officials in cases of enforced disappearances.¹³⁸ In 2018, the government blocked 54 news sites following an unspecified intelligence report by RAB and the National Telecommunication Monitoring Centre (NTMC), which raised "national security concerns."¹³⁹

The government has also imposed strict controls on online news by making registration mandatory for all newspapers, TV channels, and radio stations that operate online. In August 2020, the government approved an amendment to the National Online Media Policy 2017. Under the amendment, online newspapers are now required to register with the National Broadcast Commission, a new body established by the amendment to the Policy which had not been formed at the time of publication of this report, or the Information Ministry, if they are different from the printed version.¹⁴⁰ Radio and TV channels that operate online also have to register with the Ministry of Information, and, once it has been established, the National Broadcast Commission.¹⁴¹

Authorities are particularly aggressive in the suppression of content that is critical of the Prime Minister. "Newspapers are ordered not to publish any report that criticizes the Prime Minister or her family," a journalist told FIDH.¹⁴²

4.3 Double standards in the respect of the right to freedom of peaceful assembly

The government has applied double standards in its treatment of groups seeking to exercise their right to freedom of peaceful assembly. While some groups, including certain religious groups, are allowed to organize and hold rallies without hindrance, others, including those seeking redress for human rights violations, are met with hostility and resistance. For example, while the Awami League and its associates have been able to hold rallies unhindered, rallies organized by the political opposition have regularly faced several obstacles. The failure by law enforcement agencies to hold to account the perpetrators of violence against peaceful protesters is also an indication that the right to freedom of peaceful assembly is not respected in a fair and equal manner in Bangladesh.

136. Reporters Without Borders, *2020 World Press Freedom Index*, https://rsf.org/en/ranking_table

137. Al Jazeera, *Bangladesh blocks news website accusing minister of corruption*, 2 January 2020; <https://www.aljazeera.com/news/2020/1/2/bangladesh-blocks-news-website-accusing-minister-of-corruption>

138. Al Jazeera, *Bangladesh blocks access to Al Jazeera news website*, 22 March 2019; <https://www.aljazeera.com/news/2019/3/22/bangladesh-blocks-access-to-al-jazeera-news-website>

139. Dhaka Tribune, *54 news sites blocked based on intelligence report*, 14 December 2018; <https://www.dhakatribune.com/bangladesh/government-affairs/2018/12/14/54-news-sites-blocked-based-on-intelligence-report>

140. New Age, *Newspaper, TV, radio need registrations to run online news portals*, 1 September 2020; <https://www.newagebd.net/article/115007/newspaper-tv-radio-need-registrations-to-run-online-news-portals>

141. CIVICUS, *Suppression of journalists and activists by Bangladesh ruling party and supporters intensifying*, 9 September 2020; <https://monitor.civicus.org/updates/2020/09/09/suppression-journalists-and-activists-bangladesh-ruling-party-and-supporters-intensifying/>

142. Interview conducted on 19 June 2020 (interviewee #9).



Bangladeshi university students clash with police during a protest against the quota system used in government recruitment in Dhaka on 9 April 2018. At least 100 people are injured as police fire rubber bullets and tear gas at the protesting students. © AFP

For example, two separate waves of nationwide protests demanding reforms to the quota system for government jobs (in April 2018) and public transport safety (July-August 2018) were met with excessive force by law enforcement agencies.

The quota system protests were organized by university students calling for reforms in the quota system for government jobs. The road safety movement protests were spearheaded by high school and college students angered by the death of two classmates who were killed by a speeding bus. During both the quota system protest and the road safety protests, students were violently attacked by pro-government groups, such as the Bangladesh Chaatra League (BCL), with complete impunity.¹⁴³ The riot police used excessive force in order to disperse the protests, with more than 100 students injured during the quota reform protests in April¹⁴⁴ and approximately 50 in July 2018,¹⁴⁵ and hundreds during the road safety protests in July and August 2018.¹⁴⁶

143. Front Line Defenders et. al., *Crushing student protests: Bangladesh's repression of the quota reform and road safety movements*, June 2020; <https://www.frontlinedefenders.org/en/statement-report/crushing-student-protests-bangladeshs-repression-quota-reform-road-safety-movements>

144. Odhikar, *Human Rights Monitoring Report April 2018*; http://odhikar.org/wp-content/uploads/2018/04/human-rights-monitoring-report-April-2018_Eng.pdf

145. Odhikar, *Human Rights Monitoring Report July 2018*; http://odhikar.org/wp-content/uploads/2018/08/human-rights-monitoring-report-July-2018_Eng.pdf

146. Odhikar, *Human Rights Monitoring Report August 2018*; http://odhikar.org/wp-content/uploads/2018/09/human-rights-monitoring-report-August-2018_Eng.pdf

The government took several measures to curtail the road safety protests. The government blocked mobile internet connections to hinder the protests from organizing.¹⁴⁷ In order to control the state narrative and to silence critical voices, several journalists were assaulted and detained and the police filed multiple cases against many protesters. The police carried out raids to find students associated with the protests. Fifty-two private school students were arrested and charged, and their bail applications were denied several times.¹⁴⁸ There were also reported incidents of torture and ill-treatment of those detained while in police custody. One such case is that of renowned photojournalist Shahidul Alam, who was arrested and charged under Section 57 of the ICT Act and detained for more than 100 days for giving an interview to *Al Jazeera* on the road safety movement protest.¹⁴⁹ After the quota-system protests ended, many student activists faced surveillance, intimidation and harassment by members of the BCL, the ruling party, and the NSI.¹⁵⁰

With respect to political rallies, the exercise of the right to freedom of peaceful assembly has been subjected to double standards. This trend is reflective of a deeply politicized environment for the exercise of fundamental rights in Bangladesh. In Dhaka, prior permission is required from the Dhaka Metropolitan Police (DMP) for gatherings such as protests and demonstrations.¹⁵¹ On several occasions, the DMP denied the BNP permission to hold assemblies and rallies at Suharwardy Udyan – one of the large public places designated for political rallies.¹⁵² When the BNP was allowed to hold rallies, permission was granted by the DMP with strict conditions.¹⁵³ In contrast, the Awami League and its allies have been allowed to hold rallies at Suharwardy Udyan and other locations of their choice with no hindrance.

4.4 Shrinking civic space for NGOs

Restrictive laws have been used to curtail the rights to freedom of expression and freedom of association of NGOs operating in Bangladesh.

The NGO Affairs Bureau (NGOAB), which monitors activities of NGOs and their sources of funding, falls directly under the authority of the Prime Minister's Office.¹⁵⁴ The Foreign Donations (Voluntary Activities) Regulation Act, which came into effect on 13 October 2016, makes it an offense for foreign-funded NGOs to make any "malicious and indecent (derogatory and reproachful)" remarks at the Constitution and constitutional bodies - which would include the President, the Prime Minister, or the Supreme Court.¹⁵⁵ Accordingly, the NGOAB is authorized to cancel or withhold registration of an NGO that makes allegedly derogatory remarks at constitutional bodies.¹⁵⁶

Several human rights NGOs working in Bangladesh have faced restrictions on their operations imposed by the NGOAB. Since 2014, Odhikar has been applying to the NGOAB for the renewal of its registration, but, as of the time of publication of this report, its registration was yet to be renewed. The NGOAB has stopped approving projects of Odhikar and has suspended the organization's

147. VOA, *Bangladesh Cuts Mobile Internet to Quell Road Safety Protests*, 5 August 2018; <https://www.voanews.com/south-central-asia/bangladesh-cuts-mobile-internet-quell-road-safety-protests>

148. Front Line Defenders et. al., *Crushing student protests*, p.19.

149. TIME, *What the arrest of photographer Shahidul Alam Means for press freedom in Bangladesh*, 7 August 2018; <https://time.com/5359850/bangladesh-photographer-arrest-shahidul-alam-protests/>

150. Front Line Defenders et. al., *Crushing student protests*, p.14.

151. *Ibid.*, p.21.

152. In February 2018, the BNP was denied permission to hold a rally to demand Khaleda Zia's release from jail. In May 2017, the BNP was denied permission to hold a protest against the raid of Khaleda Zia's office.

153. Dhaka Tribune, *BNP gets permission for rally under 22 conditions*, 29 September 2018; <https://www.dhakatribune.com/bangladesh/politics/2018/09/29/bnp-gets-permission-for-rally-under-22-conditions>

154. CIVICUS, *The impact of Non-State Actors (NSAs) on civic space in Bangladesh, Palestinian Territories and Zimbabwe: How do resources influence NGO resilience?: Literature Review*, June 2019, p.26; <https://www.civicus.org/documents/ImpactOfNSAsOnCivicSpace.pdf>

155. The Foreign Donations (Voluntary Activities) Regulation Act No.8 of 2016, Section 14.

156. *Ibid.*, Section 15.

bank accounts.¹⁵⁷ In 2019, the NGOAB banned 41 NGOs providing aid to Rohingya refugees in the camps in Cox's Bazar District for their alleged role in instigating an anti-Rohingya repatriation campaign. In August 2019, the US-based NGO Adventist Development and Relief Agency (ADRA) and local organization Al Markazul Islami were ordered to immediately stop operations for organizing a rally on the second anniversary of Rohingya refugees fleeing Myanmar.¹⁵⁸

In addition to the restrictions on funding for NGOs, several human rights defenders associated with NGOs have been persecuted under the ICT Act and the DSA [See above, 4.1, *Use of oppressive laws and judicial harassment to crush dissent*]. The judicial harassment of, and recurring threats against, human rights defenders effectively hinders the work of NGOs, as organizations are forced to self-censor in order to avoid repercussions on their staff.

157. Odhikar, *Annual Human Rights Report 2020*, p.66.

158. Dhaka Tribune, *2 NGOs banned for backing anti-Rohingya repatriation campaign*, 4 September 2019; <https://www.dhakatribune.com/bangladesh/rohingya-crisis/2019/09/04/bangladesh-bans-two-ingos-for-financing-running-anti-repatriation-campaign-among-rohingyas>

Recommendations

To the government of Bangladesh

On combating impunity for human rights violations:

- Stop human rights abuses, including enforced disappearances, extrajudicial killings, and torture.
- Acknowledge the existence of enforced disappearances and disclose the fate or whereabouts of all victims of enforced disappearances.
- Publish official statistics of cases of enforced disappearances, extrajudicial killings, and torture, together with the number of active investigations, prosecutions and convictions of perpetrators.
- Carry out independent, impartial, and transparent investigations into all allegations of extrajudicial killings, torture and enforced disappearances, and prosecute all those responsible for these violations.
- Ensure the full implementation of all court rulings in pending cases of extrajudicial killings, torture, and enforced disappearances.
- Enact a victim and witness protection law.
- End the misuse of law enforcement agencies for political and personal gain.
- Amend the Armed Police Battalion Act and all other laws to remove provisions that grant immunity from prosecution to law enforcement agencies with regard to the commission of human rights violations.
- Ensure the full implementation of the *Blast v. Bangladesh* judgment and ensure that Sections 54 and 167 of the CrPC are consistent with the Constitution.
- Ratify the International Convention for the Protection of All Persons from Enforced Disappearance (ICPPED), and enact domestic legislation that criminalizes enforced disappearance in adherence with the provisions of the ICPPED.

On strengthening the independence of the judiciary:

- Carry out necessary legal reforms to ensure that the Supreme Court exercises sole institutional control and supervision of subordinate courts.
- Create an independent judicial secretariat.
- Promulgate necessary laws to give effect to Article 95(2) of the Constitution in prescribing the qualifications for the selection of judges of the Supreme Court.
- Refrain from instituting politically-motivated cases against members of the political opposition.
- Respect the decision of the Supreme Court relating to the 16th Amendment to the Constitution and withdraw its review application.
- Ensure that judges are appointed to the Supreme Court in accordance with established practices based on merit and seniority.

On respecting the rights to freedom of expression, freedom of peaceful assembly, and freedom of association:

- Amend the ICT Act and DSA to ensure their compliance with the ICCPR.
- Release all individuals detained on politically-motivated charges aimed at curtailing the rights to freedom of expression and freedom of peaceful assembly.

- Create an enabling environment for the free flow of information and media pluralism.
- Review the convictions of those prosecuted for their legitimate exercise of the rights to freedom of expression and freedom of peaceful assembly.
- Ensure the safety of journalists and media outlets.
- Ensure the exercise of the right to freedom of peaceful assembly by all in a fair and equal manner.
- Amend the Foreign Donations (Voluntary Activities) Regulation Act to bring it into line with relevant international standards and allow NGOs to operate freely without undue interference.

To the European Union, its member states, and other UN member states

- Urge the government to investigate ongoing human rights violations and hold perpetrators to account.
- Urge the government to carry out legal and institutional reforms to ensure the independence of the judiciary.
- Continue to raise issues of grave human rights violations, impunity for perpetrators of human rights violations, and the curtailment of the right to freedom of expression, freedom of peaceful assembly, and freedom of association during the next Universal Period Review of Bangladesh, EU bilateral dialogues, and other international human rights mechanisms.
- Consider imposing targeted sanctions – such as travel bans and asset freeze – for members of the government, ruling party and affiliated entities, law enforcement agencies, and the judiciary, who have been responsible for serious human rights violations.
- Contribute to the accountability efforts by investigating and prosecuting suspects of serious human rights violations committed in Bangladesh in cases in which the criteria for exercising universal or extra-territorial jurisdiction are met.



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Its primary beneficiaries are national human rights organisations who are members of the Movement, and through them, the victims of human rights violations. FIDH also cooperates with other local partner organisations and actors of change.

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FIDH is an
international human rights
NGO
federating 192 organisations
from 117 countries

fidh

ABOUT FIDH

FIDH takes action for the protection of victims of human rights violations, for the prevention of violations and to bring perpetrators to justice.

A broad mandate

FIDH works for the respect of all the rights set out in the Universal Declaration of Human Rights: civil and political rights, as well as economic, social and cultural rights.

A universal movement

FIDH was established in 1922, and today unites 192 member organizations in 117 countries around the world. FIDH coordinates and supports their activities and provides them with a voice at the international level.

An independent organisation

Like its member organizations, FIDH is not linked to any party or religion and is independent of all governments.