National Human Rights Commission, Bangladesh

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment: A Study on Bangladesh Compliance

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FOREWORD

Human rights as a concept are normative in essence, capturing a bundle of rights reflecting the interests most fundamental to any human being. It is not without reason that the understanding of human rights has become a critical component of modern legal systems. Human rights have experienced momentous growth during the post-World war II era. At the international, state and local levels, human rights laws, declarations, charters, and covenants have multiplied and endorsed a recurring core of rights and obligations linked to the protection of fundamental human dignity, equality and justice. Nevertheless, there has been a growing concern that simply ratifying or legislating human rights conventions and laws does not lead to the effective enjoyment of human rights in the daily lives of millions of individuals. What really is necessary are initiatives that would translate these broad and abstract human rights norms and standards into the vernacular of everyday life, transplanting these norms into ordinary human relations where they can truly achieve their transformative potential.

Human rights, in the way they have been classically captured in legal standards, protect the individual against oppression by the state. Built on the painful experiences of abuses at the hands of governments, human rights thus correspond to a series of obligations imposed upon the state, including

either duties to abstain from interfering within a protected zone shielding every individual, or duties to provide everyone with the opportunity to develop and realize their full potential. Human rights have transformed the way in which we conceive of the place of the individual within the community and in relation to the state in a vast array of disciplines, including law, politics, philosophy, sociology and geography. The published output on human rights over the last five decades has been enormous, but on the whole bound tightly to a notion of human rights that links individuals and groups directly to the state.

However, over the last two decades, there has been a gradual enlargement of the scope of human rights, moving them beyond claims against the state to contest human rights violations by non-state actors. Initially spurred by feminist critiques of the exclusion of domestic violence as a human rights concern, a move to reinterpret human rights has meant that more and more rights can be claimed to protect victims from abusers which have no relation to the state. Examples include the rise of individual criminal responsibility for war crimes and crimes against humanity. Such application of human rights nevertheless by and large remained anchored in a positivist understanding of law, calling for the state to remain centrally involved as arbiter or enforcer. This has been, till date, the prevailing view with regard to civil and political rights as well as rights popularly defined as “group rights” (e.g. women rights, child rights, rights of the excluded communities etc).

The situation is somewhat more complicated with regard to economic, social and cultural rights (ESC rights). Economic and social rights are increasingly under threat worldwide as a result of government retrenchment in social spending for both pragmatic and philosophical reasons. Government indebtedness increased rapidly during the 1980s and early 1990s, and the response was to cut deeply into social programmes. And further government retrenchment would seem inevitable in the coming decade, as the recession- and the massive stimulus spending to counter it- has pushed governments back into deficit positions. In many countries, the earlier cuts in social programmes were imposed by the international financial institutions (notably the IMF and the World Bank) through structural adjustment programmes that became part of every loan package. The cumulative effect of these changes on the social safety net as a whole compounded the effect of cuts to individual strands.

Philosophically, a neoliberal, or market-based, approach to governance has been promoted by international lending institutions and others since at least the late 1980s, and is now followed in many countries including in Bangladesh. The effect of this two-pronged approach- imposing social spending cuts in the context of a market-based governance strategy- on the economic and social rights of the most vulnerable is increasingly questioned. But how to protect economic and social rights is difficult to conceptualise, as their legal effect is a matter of debate. The debate focuses mainly on the *recognition* of rights (i.e. their source and

content) and their *enforcement* (i.e. justiciability), and the relationship between the two. However, this focus tends to have an interim step, that of the *implementation* of rights.

ESC rights are recognized, either explicitly or implicitly, at both the international and domestic levels. Explicit recognition is found in a variety of international instruments ranging from hard- law treaties through to soft-law documents. Treaty examples of recognition of such rights include, at the universal level, the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and, at the regional level, the *European Social Charter.*

Implicit recognition occurs through a process by which economic and social rights are "read into" international instruments dealing with civil and political rights. This is notably the case with the *European Convention on Human Rights,* where for example, the right to adequate housing has been read into the right to protection against inhuman and degrading treatment and the right to respect for private and family life. It is also the case with the *African Charter on Human and People's Rights,* where a right to housing or shelter has been read into the combined effects of the rights to property, health and protection of the family.

ESC rights are also recognized explicitly and implicitly at the domestic level. This recognition is strongest when it is found in constitutional documents, as in the 1996 South African constitution, but it might also be found in ordinary legislation although this is more vulnerable to changing

political agendas. A recent legislative example is France's *Loi instituant le droit au logement opposable,* which recognizes a right to "decent and independent" housing guaranteed by the State and enforceable by mediation and court action.

"Reading in" also occurs at the national level, either constitutionally as in India where a right to adequate housing has been read into the constitutional guarantees of the right to life and mobility rights, or legislatively as in the United Kingdom where the Human Rights Act gives domestic effect to the European Convention.

These legal regimes- international and domestic- can and often do intersect in two different ways. A first is in regard to content, as international rights are often incorporated into domestic legislation either by reference to the international instrument or in identical or substantially similar terms to it. A second is in regard to enforcement, as domestic courts often have regard to international instruments either to enforce them directly in monist jurisdictions where this is permitted or to use them as aids in interpreting and applying domestic rules in dualist jurisdictions where direct enforcement is not permitted.

The enforcement of ESC rights is hotly contested and is intertwined with the issue of recognition. Rights are often regarded in black and white terms, as being either fully justiciable or simply aspirational. Because economic and social rights are justiciable with difficulty at best, they are

often placed in the aspirational category and thus not recognized as “rights”.

The justiciability of ESC rights is questioned on the grounds that they are too vague to have clear legal content, too costly to implement and thus too political for judicial decision, and too positive to be amenable to court supervision. These are the reasons why ESC rights are recognized e.g. “to the extent provided by law”. And these are the reasons why both the ICESCR and the European Social Charter were, for so long, monitored through state reporting procedures rather than complaints procedures like their sister treaties, the ICCPR and the European Convention on Human Rights.

The U.N. Committee on Economic, Social and Cultural Rights (CESCR), the monitoring body of the ICESCR, has responded to the enforcement critique in a number of ways. One response has been to modify the enforcement mechanisms so that judiciarisation can now be said to be supplementing dialogue. One change was to sharpen the reporting system itself to make it more adversarial in nature. It did this by encouraging the submission of “shadow reports” from national non-governmental organizations and by issuing rather pointed public “Concluding Observations” on the individual national reports.

A second response has been to counter the objection of vagueness by issuing a number of documents clarifying the content of rights. In this vein, the Committee has issued *General Comments* on various rights guaranteed in the

ICESCR; it has had *Special Rapporteurs* named to study particular rights; and it has held "days of general discussion" on individual rights.

A third response has been to address justiciability arguments based on cost and positive nature by clarifying the nature of State obligations under the Covenant. In its General Comment No.3, the Committee defined them as comprising obligations to take steps towards *realizing* the rights (albeit progressively), to avoid any unjustifiable backsliding (i.e. deliberately regressive measures) in their realization, and to assume a minimum core obligation in regard to each right. The Committee has also endorsed a "typology" of State obligations which disaggregates them into (1) the obligation *to respect* (i.e. to refrain from interfering with the rights of individuals), (2) the obligation *to protect* (i.e. to protect individuals from interference with their rights by others), and (3) the obligation to *fulfill* (i.e. to provide the object of the right, such as adequate food or housing etc.).

This well-known typology goes some way to responding to objections of justiciability: an obligation to respect is essentially negative in nature and does not require the use of State resources, an obligation to protect might require State action (such as adopting legislation) but does not place undue strain on State resources; it is only the obligation to fulfill that raises the two obligations – costliness and positive nature – most acutely.

Another way of phrasing the Committee's typology is in terms of State roles rather than State obligations. In this way, the obligations to respect, protect and fulfill suggest that the State can play a negative role as perpetrator of a violation of a right, and positive roles as enabler and a provider of the subject of a right. A focus on the roles played by a State emphasizes the implementation of rights. It also provides a framework through which to analyse rights in a disaggregated way.

The notion of indivisibility of human rights and their universality make it almost absurd to erect any artificial glass wall between civil and political rights on one hand and the ESC rights on the other. Additionally, this unnecessary and ill-conceived debate creates an environment where in the danger of diluting the significance and immediate nature of the ESC rights looms large. The National Human Rights Commission, Bangladesh (NHRC) deems its statutory obligation to closely monitor and report back to the government on the status of state compliance with international human rights treaties and conventions at least to the extent signed and ratified by Bangladesh. It is in this connection that the NHRC has undertaken a project to review the status of a number of international human rights instruments ratified by Bangladesh. The first in this sequel are compliance status reports on ICCPR, CAT, ICESCR, CEDAW, Convention on the Rights of the Persons with Disabilities (CRPD) and an Analysis of decisions on Arrest and Detention and Women Rights, etc. On the basis of these

studies the NHRC would like to make concrete recommendation to the government directed towards improving the human rights situation in the country by way of implementation of its international obligations.

It is quite significant that most of the civil and political rights under the ICCPR have been guaranteed in the Constitution of Bangladesh as fundamental rights. Bangladesh has also acceded to the ICCPR in 2000. However, Bangladesh has made some reservations and declarations to the ICCPR to limit the application of ICCPR.

Similarly, Bangladesh has ratified ICESCR in 1998 along with some other instruments in recognition of its constitutional commitment to human rights. However, our review study reveals that the country remains far behind in realization of the rights and fulfillment of obligations under ICESCR. Government is yet to undertake adequate legal framework and necessary administrative measures for adequate realization of ESC rights. Reservations made by Bangladesh to some important provisions of the Covenant also have severely limited its implementation at the domestic level.

Identical problems of either making reservations to certain fundamental provisions of other international Conventions to which Bangladesh is a party or not signing the Optional Protocol/s to many of these international human rights instruments have cast some doubts about the otherwise honest intention of the government to improve the human rights situation in the country.

It is believed that this series of review studies conducted by the NHRC will reveal truths, both known and unknown, about impediments to proper implementation of international legal obligations with regard to human rights in Bangladesh. These 'truths' will have real meaning only when they are heeded to and concrete actions taken by all stakeholders, primarily the Government, to rectify the loopholes, remove the obstacles and create an enabling atmosphere where the 'dignity and worth' of every individual will be protected in all its dimensions.

The NHRC will continue to play its expected role in this direction.

Professor Dr. Mizanur Rahman Dhaka, March 2013
Chairman
National Human Rights Commission, Bangladesh

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LIST OF ABBREVIATIONS

AD	Appellate Division [of the Supreme Court]
AL	Awami League
ASK	Ain o Salish Kendro
BDR	Bangladesh Rifles
BGB	Border Guards of Bangladesh
BLC	Bangladesh Law Chronicles
BLD	Bangladesh Law Decisions
BNP	Bangladesh Nationalist Party
CAT	Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
CrPC	Code of Criminal Procedure
DAD	Deputy Assistant Director [of RAB]
DLR	Dhaka Law Reports
DMP	Dhaka Metropolitan Police
ECtHR	European Court of Human Rights
FR	Fundamental Rights
GA	General Assembly
GOB	Government of Bangladesh
HCD	High Court Division [of the Supreme Court]
HR	Human Rights
ICCPR	International Covenant on Civil and Political Rights

ICESCR	International Covenant on Economic, Social and Cultural Rights
INGO	International Non Governmental Organization
IOs	International Organizations
NGO	Non Governmental Organization
NHRC	National Human Rights Commission [of Bangladesh]
NITOR	National Institute of Traumatology, and Orthopedic Rehabilitation
NPM	National Preventive Mechanisms [under the OP-CAT]
OP-CAT	Optional Protocol to the Convention against Torture, and Other Cruel, Inhuman, and Degrading Treatment or Punishment
PC	Penal Code
RAB	Rapid Action Battalion
SPA	Special Powers Act
SPT	Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Program
UPR	Universal Periodic Review
US	United States
WWII	World War II

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ABSTRACT

This report evaluates the legal architecture of protection against torture and other cruel, inhuman or degrading treatment or punishment in the context of Bangladesh. To this end, in juxtaposition to the International Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, this report critically examines the legal instruments, as applicable in Bangladesh, prohibiting and penalising torture in order to identify the gap between international and national standards in this regard. The report also elucidates the non-compliance of international and national standards in state practice concerning torture and other cruel, inhuman or degrading treatment or punishments, and prescribes a set of recommendations for both legal reforms and law enforcement.

Introduction

On March 23, 2011, a team of the Rapid Action Batallion – 8 (RAB-8) stopped 16-year-old Limon Hossen, who was a student of Kathalia P G S Multilateral High School and College at Jhalkathi and an examinee of the Higher Secondary Certificate. On that day, Limon was asked by his mother to bring the family's cattle from the bank of the Sondha river where three cows were left for grazing. At around 4pm, while

returning home Limon was stopped by the RAB team. Md. Lutfor Rahman, Deputy Assistant Director (DAD) of the Crime Prevention Company No. 01 of the RAB-8 based in Barisal city, asked Limon's name and started beating him and accusing him (Limon) to be a 'terrorist'. Limon, who used to manage his tuition fees by working as a part-time labourer at a local brick factory due to his family's poverty, claimed that he was a student and gave the name of his college. DAD Lutfor and his colleagues refused to accept Limon's statement and attempted to kill him by pointing a gun at him. Limon cried out in fear and requested the RAB personnel not to kill him. Suddenly, DAD Lutfor shot him, pointing the gun at his left thigh. Limon fell on the ground and lost consciousness . Later, in the evening, when he regained consciousness, Limon found himself at the Sher-E-Bangla Medical College Hospital in Barisal city . Late that night, DAD Lutfor filed two criminal cases (No. 10 and 11) with the Rajapur police station accusing Limon and seven others claiming an incident of encounter between a so called group of terrorists and the RAB-8. The second case (First Information Report- FIR No. 11 of the Rajapur police station, dated March 23, 2011) was registered under Sections 322, 353, 307 and 34 of the Penal Code-1860 for obstructing the law-enforcement agencies in discharge of their duties and attempted murder.

As a result of this deliberate shooting, the left leg of Limon had to be amputated on March 27 by the doctors of the National Institute of Traumatology, and Orthopedic

Rehabilitation (NITOR) as all the tissues were found completely damaged. The members of the RAB cordoned off the hospital after Limon had been taken to the NITOR and continued surveillance. On April 6, a leading national daily newspaper published a detailed report about the incident with a picture of Limon's amputated leg. After the media report, the RAB and police forced the authorities of the NITOR to lock the hospital ward where Limon was admitted. All the doors of the ward were locked from inside expelling the relatives of other patients and denying entry to visitors at that ward. The journalists, human rights defenders and lawyers were refused entry to the hospital by the uniformed and plain-clothed members of the RAB and the police.

The Chairman of the National Human Rights Commission (NHRC) of Bangladesh, Dr. Mizanur Rahman, was prompt to visit Limon after reading the newspaper report. The NHRC Chairman advised the parents of Limon to file complaints to seek justice from the court of law. But most importantly, the very presence of the NHRC Chairman as well as his assurance to Limon that the Commission would take up this case and offer all possible support to him, brought this incident to a level where, ostensibly, a common voice was raised to condemn the extra-judicial killings and acts of torture and cruel, inhuman or degrading treatment by the RAB with impunity.

The Limon incident is not an isolated one. While, on the one hand, the Constitution and other enforceable laws of

Bangladesh guarantee protection against torture and other cruel, inhuman and degrading treatment or punishment, on the other hand, various law enforcement agencies continue to violate this sacred safeguard in complete deviation from international and national standards. Again, certain national laws are designed in such a way that serves narrow political interests, but undermine the internationally accepted standard of human rights. It is in this context of the gap between law and practice as well as the gap between international and national standards that this Compliance Study on the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) is conducted.

2. Methodology

In studying the legal compliance of the CAT, we have first explained the international standards, followed by a sketch of the national standards with reference to the Constitution and other relevant laws. These two standards are then juxtaposed to identify the gap between international and national legal regimes. This juxtaposition of international and national legal norms is followed by an in-depth scrutiny of the gap between law and practice to underscore the negative indicators of the actual implementation of the provisions prohibiting torture. The report also provides a set of recommendations on both legal reforms and law enforcement, developed in consultation with the Bangladesh National Human Rights Commission (BNHRC)

and the BNHRC – Capacity Development Project. To meet the doctrinal thrust of this project, throughout the report, we have focused less on 'primary' knowledge-construction than on the analysis of key legal discourses in the field; hence the report is based mostly on secondary data.

3. Overview of the CAT

Torture is universally condemned, and whatever its actual practice, no country publicly supports torture or opposes its eradication.[1] Therefore, one of the most fundamental aspects of human rights law is the universal proscription of torture. This sentiment is well-reflected in the ICCPR.[2] The General Assembly of the UN adopted in 1975 the Declaration on Protection of All Persons from Being Subjected to Torture and other Cruel, Inhuman, or Degrading Punishment[3] and later, in 1977 the General Assembly (GA) mandated the UN Commission on Human Rights to draft a convention against torture.[4] Accordingly, the drafting commenced in 1978, and finally in 1984, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment

[1] M Rahman and S Islam, "Obligation of Bangladesh under Article 4 of the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," *Bangladesh Journal of Law* 10, no. 1 & 2 (2006): 119.

[2] Article 7 of the ICCPR

[3] GA Res. 34/52, UN GAOR, 39th session, Supp. No. 34, UN Doc. A/10034 (1975).

[4] See, GA Res. 32/62, UN GAOR, 32nd session, supp. No. 45, UN Doc. A/32/355 (1977).

(CAT) was adopted.[5] The CAT is the first binding international instrument exclusively dedicated to the struggle against torture.

Definition of 'Torture' in the CAT, Art. 1:

'Torture' is any act by which severe pain or suffering, whether *physical or mental,* is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

While drafting the CAT, the issue as to what constitutes 'severe pain' was elaborately discussed by the Working Group of the Commission on Human Rights. However, the framers of the Draft Convention for the Prevention and Suppression of Torture[6] did address the problem and offered explanation to the effect that "[t]he scope of 'severe'

[5] GA Res. 39/46, UN GAOR, 39th session, Supp. No. 51, at 197, UN Doc A/39/51 (1984).

[6] For the text of the Draft Convention, see, the Draft Convention for the Prevention and Suppression of Torture, submitted by the International Association of Penal Law, UN Doc. E/CN4/NGO/213 (1978).

encompasses prolonged coercive or abusive conduct which in itself is not severe, but becomes so over a period of time."[7]

The CAT, like other conventions referring to torture, also includes the prohibition of 'mental torture' within the scope of the prohibition of torture.[8] A non-exhaustive list of examples of mental pain or suffering amounting to torture includes prolonged mental harm caused by or resulting from the intentional infliction or threatened infliction of severe physical pain or suffering; the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality of the victim; the threat of imminent death; or the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly his or her senses or personality.[9]

In 1997, the Committee against Torture concluded that "methods of interrogation [including]: (i) restraining in very

[7] A Boulesba, *The UN Convention on Torture and Prospects for Enforcement* (Dordrecht: Martinus Nijhoff Publishers, 1999), 17.

[8] Nigel Rodley, the former UN Special Rapporteur on torture, has emphasised that the prohibition of torture relates not only to acts that cause physical pain but also to acts that cause suffering to the victim, such as intimidation or other forms of threats. Similarly, Theo Van Boven, another former UN Special Rapporteur on torture, observes that prolonged solitary confinement may amount to mental torture. The mere fear of physical torture may itself constitute mental torture. See, E/CN4/ 2001/66, para. 4–11.

[9] Boulesba, *The UN Convention on Torture,* 19.

painful conditions, (ii) hooding under special conditions, (iii) sounding of loud music for prolonged periods, (iv) sleep deprivation for prolonged periods, (v) threats, including death threats, (vi) violent shaking, (vii) using cold air to chill […] constitute torture as defined in Article 1 of the CAT."[10] The then UN Special Rapporteur on torture, Peter Kooijamans, in his 1986 report, provided a detailed catalogue of those acts which involve the infliction of suffering severe enough to constitute the offence of torture, including: beating; extraction of nails, teeth, etc.; burns; electric shocks; suspension; suffocation; exposure to excessive light or noise; sexual aggression; administration of drugs in detention or psychiatric institutions; prolonged denial of rest or sleep; prolonged denial of food; prolonged denial of sufficient hygiene; prolonged denial of medical assistance; total isolation and sensory deprivation; being kept in constant uncertainty in terms of space and time; threats to torture or kill relatives; total abandonment, and simulated executions.[11]

The most important aspect of torture, apart from cruelty to the victim, is that it is an exercise of power and, from a legal point of view, an exercise of official power.[12] Therefore, the

[10] See, Human Rights Committee, General Comments No. 20 (1992), para. 3, and No. 29 (2001), para. 7. See also, Official Records of the General Assembly, 52nd session, Supp. No. 44 (A/52/44), para. 257.

[11] UN Doc. E/CN 4/1986/15, para. 119.

[12] W P Nagan and A Lucie, "The International Law of Torture: From Universal Proscription to Effective Application and Enforcement," *Harvard Human Rights Journal* 14 (Spring, 2001): 105–106.

definition of torture in Article 1 of the CAT has sketched it as an official act. This is a reflection of the problem which the Convention is meant to address, namely, that of torture in which the authorities of a country are themselves involved and in respect of which the machinery of investigation and prosecution might therefore not function normally.[13] However, the element of official sanction is stated in very broad terms and extends to officials who take a passive attitude, or who turn a blind eye to torture committed against opponents of the government in power, be it by unofficial groups or by the authorities.[14] The Committee against Torture makes it clear that the failure of the State authorities to react to torture amounts to unlawful acquiescence, which falls under the definition of torture.[15] Moreover, the UN Special Rapporteur on Torture, apropos the notion of "with the consent or acquiescence of a public official," noted that "[under international law, this element of the definition makes the State responsible for acts committed by private individuals which it did not prevent from occurring or, if need be, for which it did not provide appropriate remedies."[16] Therefore, States must be held

[13] H J Burgers and H Danelius, *The United Nations Convention against Torture: A Handbook on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (Dordrecht, Martinus Nijhoff Publishers, 1988), 120.

[14] N Rodley, *The Treatment of Prisoner under International Law* (Oxford: Oxford University Press, 1999), 100.

[15] CAT/C/29/D/161/2000, Communication No. 161/2000.

[16] UN Doc. E/CN 4/2001/66/Ad. 1.

responsible not only for intentional acts, but also for negligence.

The CAT not only defines torture and its various elements, but also puts the contracting parties, according to Article 4, under the obligation of ensuring that all acts of torture, attempt to torture and complicity or participation in torture are punishable by appropriate penalties, which take into account their grave nature.[17] Moreover, Article 12 of the CAT stipulates that "[e]ach State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction." The CAT also puts the States parties under the obligation to take necessary measures to ensure that the complainants and witnesses of any incidence of torture are protected against all ill-treatment or intimidation as a consequence of her complaint or any evidence given.[18] Most importantly, the CAT provides for compensation for torture: "Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation."[19]

[17] Article 4 of the CAT.

[18] Article 13 of the CAT.

[19] See, Article 14 of the CAT.

The CAT is also quite explicit concerning the cruel, inhuman and degrading punishments, which do not fall under the rubric of 'torture' as defined in Article 1. Article 16 (1) of the Convention stipulates that each State Party shall undertake to prevent such cruel, inhuman or degrading treatment or punishment not amounting to torture, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. State responsibility to prevent and investigate such acts as well as to compensate the victims of such acts is also enunciated in the same Article.

However, the line dividing torture, on the one hand, and other cruel, inhuman or degrading treatment or punishment, on the other, is very thin. Many describe torture as the highest point of a continuous development, which comprises cruel, inhuman or degrading treatment.[20] As a result, a cruel, inhuman or degrading treatment could be considered as a form of ill treatment that is not sufficiently serious as to constitute torture. Under such a threshold, once a certain level of gravity is reached, an act qualifies as degrading treatment. Degrading treatment, when it reaches a certain severity can be re-classified as inhuman treatment which, in turn, if particularly serious can be classified as torture.[21] The distinction between these concepts depends on the circumstances and on the gravity of each case.

[20] OMCT, *Save the Children* (London, 2000), 13.

[21] Rahman and Islam, "Obligation of Bangladesh under Article 4 of the UN Convention Against Torture," 126–127.

In the case of **Ireland vs. United Kingdom,** the European Court of Human Rights held that the level of pain and suffering is the distinguishing factor between torture and other cruel, inhuman or degrading treatment.[22] However, the UN Special Rapporteur Manfred Nowak, in his first report to the Committee on Human Rights in 2005, observed that the decisive criteria for distinguishing torture from other cruel, inhuman or degrading treatment may best be understood to be the purpose of the conduct and the powerlessness of the victim, rather than the intensity of the pain or suffering inflicted, as argued by the European Court of Human Rights and many scholars.[23]

4. Overview of National Legislation Penalising Acts of Torture

Since the independence of Bangladesh, long before the appearance of the CAT, the Constitution of Bangladesh as the supreme law of the country has guaranteed protection from torture and other cruel, inhuman or degrading punishment or treatment for any individual within its territory. Article 35 (5) of the Constitution specifically stipulates that "no person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment". This protection is guaranteed as one of the fundamental rights, derogation from which is not permissible under normal circumstances.

[22] ECt.HR, *Ireland vs. United Kingdom,* January 18, 1978, sec. 162.

[23] E/CN 4/2006/6.

The language of this Article is taken verbatim from Article 5 of the Universal Declaration of Human Rights (UDHR). It reflects Bangladesh's endorsement of an international standard prohibiting torture. Later, Bangladesh explicitly exhibited its international commitment by acceding to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) on October 5, 1998.

As we have seen earlier, under Article 4 of the CAT, each State Party to this Convention must ensure not only that all acts of torture as well as attempts to commit torture are offences under its criminal law, but also they are punishable under appropriate laws. Although the prevailing laws in Bangladesh do not have any precise definition of torture, there are a number of laws that penalise conduct amounting to torture. For example, the Police Act of 1861[24] provides that every police officer who shall offer any unwarrantable personal violence to any person in his custody shall be liable to a penalty not exceeding three months' pay or to imprisonment, with or without hard labour, for a period not exceeding three months or to both.[25] However, this provision does not apply to Dhaka Metropolitan area,[26] Chittagong

[24] Act No. V of 1861.

[25] Section 29.

[26] See, Dhaka Metropolitan Police Ordinance, 1976 (Ordinance No. III of 1976), Section 3.

Metropolitan Area,[27] Khulna Metropolitan area,[28] and Rajshahi Metropolitan area.[29] Alternatively, the respective Metropolitan Police Acts for these metropolitan areas provide that a police officer offering personal violence and threats against any person in his custody shall be punished with imprisonment for a term, which may extend to one year and/or with a fine which may extend to two thousand taka.

Similarly, the Penal Code of 1860[30] – the principal penal legislation of the country – criminalises wrongful confinement of a person to extort from him or from any other person interested in him any confession, which may lead to the detection of an offence or misconduct.[31] The prescribed punishment for this offence is imprisonment, either simple or rigorous, for a term, which may extend to three years and fine. Herein no limit of fine is prescribed and as such the amount of fine[32] to which the offender is liable is unlimited though it shall not be excessive.

[27] See, Chittagong Metropolitan Police Ordinance, 1978 (Ordinance No. XLVIII of 1978), Section 3.

[28] See, Khulna Metropolitan Police Ordinance, 1985 (Ordinance No. LII of 1985), Section 3.

[29] See, Rajshahi Metropolitan Police Act, 1992 (Act No. XXIII of 1992), Section 3.

[30] Act No. XLV of 1860.

[31] Wrongful confinement means restraining a person in such a manner as to prevent that person from proceeding beyond certain circumscribing limits. See, Section 340.

[32] Section 348.

Besides, the Penal Code criminalizes acts causing hurt and grievous hurt to any individual. The Code defines 'hurt' as an act, which causes bodily pain, disease or infirmity to any person.[33] According to the same law, some kinds of hurt are designated as 'grievous hurt.'[34] The Penal Code provides that voluntarily causing hurt, unless caused in consequence of grave and sudden provocation, is punishable with imprisonment, either simple or rigorous, for a term which may extend to one year or with fine which may extend to one thousand taka or with both.[35] The punishment of this offence, when caused in consequence of grave and sudden provocation, is imprisonment, either simple or rigorous, for a term which may extend to one month or fine which may extend to five hundred taka or both.[36] The punishment of voluntarily causing hurt, when caused by dangerous weapons or means and not in consequence of grave and sudden provocation, is imprisonment, either simple or rigorous, for a term which may extend to three years or fine or both.[37]

[33] See, The Penal Code, 1860, Section 319.

[34] See, ibid, Section 320. For example, (a) emasculation (b) permanent privation of the sight of either eye (c) permanent privation of the hearing of either ear (d) privation of any member or joint (f) permanent disfiguration of the head or face (g) fracture dislocation of a bone or tooth and (h) any hurt which endangers life or which causes the sufferers to be during the space of twenty days in severe bodily pain, or unable to follow his ordinary pursuits.

[35] See, Section 323 of the Penal Code.

[36] Section 334.

[37] Section 334.

Similarly, the Code penalises acts of grievous hurt. According to Section 325, voluntarily causing grievous hurt, unless caused in consequence of grave and sudden provocation, is punishable with imprisonment, either simple or rigorous, for a term which may extend to seven years and also with fine. The punishment of this offence, when caused by dangerous weapons or means and not in consequence of grave and sudden provocation, is imprisonment, either simple or rigorous, for a term which may extend to ten years as well as the imposition of a fine.[38]

Voluntarily causing hurt with the intention to extort property or to constrain to an illegal act is punishable with imprisonment, either simple or rigorous, for a term which may extend to ten years and also with fine.[39] Similarly, voluntarily causing grievous hurt with this intention is punishable with imprisonment for life or with imprisonment, either simple or rigorous, for a term which may extend to ten years and also with fine.[40] Voluntarily causing hurt with the intention to extort confession or to compel restoration of property is punishable with imprisonment for a term which may extend to seven years and also with fine.[41] Similarly, voluntarily causing grievous hurt with this intention is

[38] Section 326.

[39] Section 327.

[40] Section 329.

[41] Section 330.

punishable with imprisonment for a term which may extend to ten years and also with fine.[42]

Given that the concept of 'torture' includes mental sufferings, acts of 'criminal force,' 'assault,' and 'criminal intimidation' are also criminalised under the Penal Code. Criminal force is defined as an intentional use of force[43] to any person, without that person's consent, in order to commit any offence, or with the intention or knowledge of causing injury, fear or annoyance to that person.[44] The Code provides that the commission of assault or criminal force, unless caused in consequence of grave and sudden provocation, is punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred taka or with both.[45] Assault or criminal force to a person in attempting to wrongfully confine that person is punishable with imprisonment for a term which may extend to one year or with fine which may extend to one thousand taka or with both.[46] Assault or criminal force on a woman with the intention of violating her modesty is punishable with imprisonment for a term which may extend to two years or with fine or with both.[47]

[42] Section 331.

[43] See, Section 349 of the Penal Code for the definition of 'force'.

[44] Ibid, Section 63.

[45] See, Section 352.

[46] Section 357.

[47] Section 354.

Likewise, the Penal Code criminalizes 'criminal intimidation'. In criminal jurisprudence, intimidation means threatening a person with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with an intention to cause harm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat.[48] The punishment for criminal intimidation is imprisonment for a term, which may extend to two years and/or fine.[49] When the threat, constituting criminal intimidation, is of causing death or grievous hurt or of causing destruction of any property by fire or of causing an offence punishable with death or imprisonment for life or imprisonment for a term which may extend to seven years or of imputing unchastity to a woman, the offence of criminal intimidation is punishable with imprisonment for a term which may extend to seven years and/ or fine.[50]

[48] Section 503.

[49] Section 506, para. 1.

[50] Ibid, para. 2.

National Legislation Prohibiting Torture at a Glance

Article 35 (5) of the Constitution stipulates that "no person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment".

Section 29 of the Police Act of 1861 provides that every police officer who shall offer any unwarrantable personal violence to any person in his custody shall be liable to a penalty not exceeding three months' pay or to imprisonment, with or without hard labour, for a period not exceeding three months or to both.

Section 340 of the Penal Code of 1860 criminalises wrongful confinement of a person to extort from him or from any other person interested in him any confession, which may lead to the detection of an offence or misconduct.

Sections 323 and 324 of the Penal Code criminalizes acts causing hurt and grievous hurt to any individual.

Acts of 'criminal force' and 'assault' are also criminalised under the Penal Code. **Section 352 of the Code** provides that the commission of assault or criminal force, unless caused in consequence of grave and sudden provocation, is punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred taka or with both.

Section 506 of the Penal Code criminalizes 'criminal intimidation', which means, according to section of 503 of the Code, threatening a person with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with an intention to cause harm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat.

Given that an attempt to commit an offence is generally punishable under the Code with half of the punishment provided for the offence,[51] it may be inferred that an attempt to commit torture is punishable under the laws of Bangladesh, but only to the extent that torture is addressed as a criminal offence under enforceable laws. Similarly, according to the Penal Code, complicity or participation in an offence, depending on the circumstances of a case, can be punished as a joint liability or abetment of the offence. The principle of joint liability states that when a criminal act is done by several persons, in furtherance of the common intention of all, each of such persons is liable for that act in the same manner as if it were done by him alone.[52] On the other hand, abetment of an offence means instigating any person to do the offence or engaging with one or more other person or persons in a conspiracy to commit the offence or intentionally aiding a person to commit the offence.[53] When an offence is committed, its abetment is punishable with punishment provided for the offence.[54] Therefore, complicity or participation in torture is punishable under the laws of Bangladesh only to the extent that torture is addressed as a criminal offence under the laws of Bangladesh.

[51] Section 511.

[52] Section 34.

[53] Section 107.

[54] Section 109.

5. Analysis of the Gap between International and National Legal Regimes

Although the penal provisions, as applicable in Bangladesh, criminalise the acts of torture and other inhuman or degrading punishment and treatment, and provide punishments of various kinds for each category of offence amounting to torture, these provisions are yet to conform to the international standard, as set by the CAT. For example, if we look at the provisions of the Penal Code, dealing with hurt and grievous hurt, we see that these offences are widely categorised for the purpose of punishments.[55] All these offences may in certain circumstances cover the offence of torture as defined by the CAT. But these cannot exhaustively deal with torture since these penal provisions are not relevant when dealing with torture inflicted by mental pain or suffering. So far as punishment for hurt and grievous hurt

[55] Different categories of hurt and grievous hurt consist of, *inter alia,* (i) voluntarily causing hurt not in consequence of grave and sudden provocation; (ii) voluntarily causing hurt with dangerous weapons or means; (iii) voluntarily causing hurt in consequence of grave and sudden provocation; (iv) voluntarily causing hurt with the intention to extort property or to constrain to an illegal act; (v) voluntarily causing hurt with the intention to extort confession or to compel restoration of property; (vi) voluntarily causing grievous hurt not in consequence of grave and sudden provocation; (vii) voluntarily causing grievous hurt with dangerous weapons or means; (viii) voluntarily causing grievous hurt in consequence of grave and sudden provocation; (ix) voluntarily causing grievous hurt with the intention to extort property or to constrain to an illegal act; and (x) voluntarily causing grievous hurt with the intention to extort confession or to compel restoration of property.

are concerned, the maximum punishment, i.e., imprisonment for life or imprisonment for a term which may extend to ten years plus fine, is prescribed for "voluntarily causing grievous hurt with the intention to extort property or to constrain to an illegal act". This offence may in certain circumstances cover the offence of torture. If it is so, the punishment is adequate as per the obligation of Bangladesh under Article 4 of the CAT. But in Bangladesh most of the occasions of torture fall under the offences of "voluntarily causing hurt with the intention to extort confession or to compel restoration of property" and "voluntarily causing grievous hurt with the intention to extort confession or to compel restoration of property". The former offence carries a punishment of maximum seven years' imprisonment plus fine whereas the latter carries a punishment of maximum three years' imprisonment plus fine. The definition of grievous hurt, as stated before, being very restrictive, most occasions of torture fall under the offence of 'voluntarily causing hurt with the intention to extort confession or to compel restoration of property'. The punishment for this offence is very limited and falls remarkably below the international standard set in Article 4 of the CAT.

Similarly, certain acts of torture can be punished under the penal provision dealing with wrongful confinement to extort confession.[56] However, this provision is very difficult to apply

[56] Section 348 of the Penal Code.

when the act of torture is committed in legally authorised custody. Besides, an act of torture committed with a purpose other than the purposes mentioned in this penal provision cannot be addressed under this provision. Moreover, punishment for wrongful confinement does not take into account the gravity of the offence of torture.

So far as the provisions of the Penal Code relating to criminal force are concerned, the term 'criminal force' includes what in English Law is called 'battery'.[57] On the other hand, the offence of assault is defined as an act of making any gesture or any preparation with the intention or knowledge of causing any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person.[58] It is to be noted here that in light of the relevant provisions of the Penal Code, mere words do not amount to an assault, unless the words used by a person give to his gestures or preparations such a meaning as may make those gesture or preparations amount to an assault.[59] Looking analytically at the penal provisions of Bangladesh concerning 'criminal force' and 'assault', it is evident that these provisions, being very limited in application, are not wide enough to deal with the offence of torture although on some occasions certain aspects of torture can be punished

[57] R Ranchhoddas and D K Thakore, *The Indian Penal Code* (Nagpur: Wadhwa and Company, 1996), 395.

[58] Section 351.

[59] See, ibid. Explanation to Section 351.

under these provisions. The punishment of criminal force and assault are so negligible that it will betray the international obligation of Bangladesh as committed in Article 4 of the CAT, if the cases of torture are prosecuted under these penal provisions.

Similarly, torture arising primarily out of severe mental pain or suffering may fall under the offence of criminal intimidation, but torture arising out of physical pain or suffering is foreign to the penal provisions of Bangladesh concerning criminal intimidation. Moreover, punishments prescribed for criminal intimidation are not as grave as the punishment for torture should be. In this sense, Bangladesh cannot claim the offence of criminal intimidation as the discharge of her international obligation under Article 4 of the CAT.

The same is true for the penal provision prohibiting personal violence or threats by a police officer against any person in his custody. Although inflicting personal violence upon any person in custody may amount to torture under the laws regulating the police forces, the definitions of these offences do not fully cover the definition of torture as given in Article 1 of the CAT. Moreover, the punishments prescribed for these offences are also trivial. Therefore, in this context, it would be odd to claim that Bangladesh has complied with Article 4 of the CAT by merely making this offence punishable.

The foregoing analysis of the gap between the international and national legal regimes dealing with torture

demonstrates that the laws relating to torture in Bangladesh do no fully comply with the international treaty obligation on the part of Bangladesh to criminalise and penalise the acts of torture under the CAT. As a ratifying State of the CAT, Bangladesh has yet to enact specific legislation making torture as a criminal offence.

6. State Practice: Deviations from the International and National Standards

Like in many other post colonial societies, torture by law enforcement agencies is not a recent phenomenon in Bangladesh. The organisational structure and all activities of the police force in Bangladesh have long been regulated by the Police Act of 1861, a legislation made by the British colonial rulers. This law was meant for maintaining law and order situations which existed hundreds of years ago and most importantly, for protecting the vested interests of the colonial power. This trend was prevalent even sixty years after the British rulers had left the Indian sub-continent. In independent Bangladesh also, successive political governments exercised unrestricted and unauthorised power over law enforcement agencies for political gains. As a trade off, various law enforcement agencies enjoyed opportunities to conduct a series of gross violations of human rights with impunity that amounted to torture and other cruel, inhuman and degrading treatment in violation of the Constitution and other national and international laws.

Although the Constitution prohibits torture and other cruel, inhuman, or degrading treatment or punishment, security forces including the RAB, and the police frequently employ torture and severe physical and psychological abuse during arrests and interrogations in recent years. Abuse consists of threats, beatings, and the use of electric shock. According to human rights organizations, security forces tortured at least 22 persons in 2010.[60] The government rarely charged, convicted, or punished those responsible, and a climate of impunity allowed such abuses by the RAB and police to continue.[61]

The Criminal Procedure Code contains provisions allowing a Magistrate to place a suspect in interrogative custody, known as remand, during which the suspect could be questioned without his or her lawyer present. Most abuses occur during the periods of remand.

[60] US Department of States, *Annual Human Rights Reports 2010,* Bangladesh Chapter (released on April 8, 2011), available at: <http://www.state.gov/g/drl/rls/hrrpt/2010/sca/154478.htm>.

[61] Ibid.

Torturing Methods in the Police Custody:

- Beating indiscriminately with a baton is known as General Therapy (*sa-re-ga-ma*).
- In another method of torture, both the hands and legs of arrested persons remain handcuffed, while they are placed like a bat on a piece of rod, put between two tables. In such inhuman condition, victims are then beaten under their feet. This method of torture is known as Bat Therapy (*Badur Dholai*).
- In the Snake Therapy, the prisoners are mercilessly beaten while they are kept hanging with a hook from the ceiling and their wrists are tied up with a rope.
- In the torture methods such as Water Therapy or Water Polish, the prisoner is kept lying on the floor, and then, water is poured into his/her mouth and nostrils, stuffed with a piece of cloth, so that s/he feels suffocated. This process continues for a considerably long period of time with little pauses. In some incidences, the victim falls severely ill, as water enters the lungs during this torturing process.
- In another method of torture, generally known as the Penis Therapy, a piece of brick is hung from the penis of the victim with a string, and then the victim of torture is asked to walk.
- In another commonly used method of torture in the custody, wired metal rings are put into the fingers of the prisoners to execute electric shocks. This method – known as 'Dancing Torture Method' – is named after the reaction of the victim, receiving such electric shocks.

Source: *Information gathered in an interview with a police constable in a police station in Sylhet District.*

According to *Prothom Alo,* on January 21, 2010 a police assistant sub-inspector in Rangamati sexually assaulted and attempted to rape an under-aged girl. The police in the area only accepted the case after human rights organizations intervened. As of now, no charges were filed, and the officer was suspended but not terminated. There were no new developments in the February 2009 case of a member of an

Case 1:

On January 24, 2010 RAB officers arrested Mohammad Mohiuddin Arif and took him to the Pallabi police station. While in custody, officers moved him to the Dhaka Medical College Hospital for treatment and, at that time, he told his father that members of the RAB had beaten him on his chest and legs. Officers later took Arif back to the Pallabi police station, but he died after suffering from further injuries, received during subsequent interrogations. An unnatural death case was filed, but there was no arrest so far.

Case 2:

On May 12, 2010 Rabiul Islam Khokon was tortured in remand, under court-ordered investigative custody, by sub-inspector Abdul Mannan of the Noakhali Chatkhil police station. Khokon allegedly was beaten with metal rods, burned with cigarettes, stabbed with needles, and had several of his joints broken. After the torture, officials took Khokon to the hospital where he died of his injuries. Officials arrested Abdul Mannan on the charge of murder, and put under trial.

Source: *US Department of States,* ***Human Rights Reports*** *(2010) and* ***Odhikar***

ethnic minority woman in the Chittagong metropolitan area who was gang-raped by four police constables.[62]

Although a draft Police Ordinance was formulated in 2007 to replace the century-old laws and ensure a certain degree of accountability, the draft did not see the light of day. The most important characteristic of the proposed law is that it tends to make police accountable to citizens, not to rulers. Under this proposed Ordinance, it is obligatory for each member of the police service to respect and protect the democratic and constitutional rights of all citizens. The draft provided for an independent authority to investigate any charge of abuse of power, violation of human rights, corruption, or non-performance of duty.[63] One very important task of this independent authority would be to monitor and investigate all incidents of death and rape in police custody. This would be the first ever institutional mechanism in Bangladesh for non-departmental independent investigation of offences committed by anyone in public service.

The Case of Abdul Kadar:

On July 16, 2011 at around 1:30 am, Khilgaon police on suspicion picked up Abdul Kadar, a student of biochemistry and molecular biology at Dhaka University, as he was walking back to his dormitory from a relative's house. He was later implicated in three cases, including one in connection with possession of

[62] Ibid.

[63] Section 71 of the proposed Ordinance 2007.

The Case of Abdul Kadar:

illegal arms. He was tortured brutally in police custody. According to a witness' deposition, the officer-in-charge (OC) of Khilgaon Police Station, Helal Uddin, was apparently unsound and intoxicated when he injured Kadar's left thigh with a cleaver. On July 28, the bench of Justice AHM Shamsuddin Manik and Justice Jahangir Hossain in a suo moto rule directed the law secretary and the IGP to conduct separate investigations into the incident. OC Helal Uddin, Sub-inspector Alam Badsha, and Assistant Sub-inspector Shahidur Rahman were closed on July 29 in line with the same order. Kadar was released on bail on August 3. Ashish Ranjan Das, secretary (in-charge) to the law ministry, who conducted the judicial investigation, found that Kadar had been arrested and tortured in police custody on false allegations by a miscreant. The cases against Kadar were filed erratically, without any enquiry or taking his statement, the judicial probe report said, adding that police exhibited extreme negligence and an unjust attitude in accusing a person on this particular occasion. He recommended termination of the services of Khilgaon OC Helal Uddin over the latter's inflicting torture on Kadar in custody. He also suggested some remedies to prevent repetition of such incidents. The suggestions include strict directives from police high-ups to personnel about focusing on primary evidence before accusing a person, not to torture a suspect and so uphold the country's law and court directives, making sure that a case is framed based[64] on facts and that the accused was really involved in the allegations brought against him.

Source: *Series reports of the* ***Prothom-Alo*** *and the Daily Star*

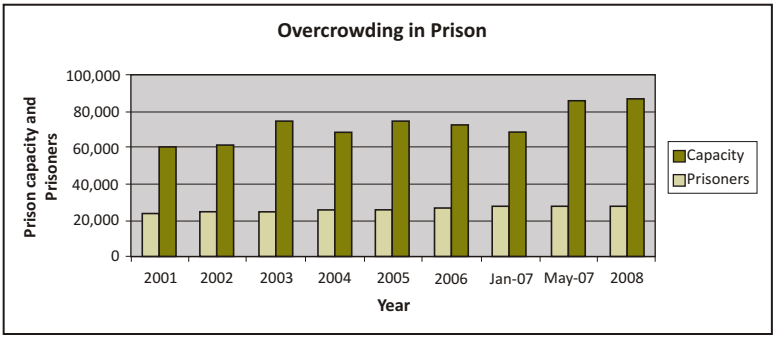
[64] Section 82 of the proposed Ordinance 2007.

The proposed Police Ordinance also formulated a 'Code of Conduct' for the members of police service for the first. This Code sets the human rights standard to be upheld while conducting arrest, search, detention or interrogation. Any deviation from this standard is to be considered as a departmental and in some cases, penal offence. This measure promises to curb the extent of torture and other cruel, inhuman or degrading treatment during interrogation. However, there is no clear indication that this proposed legislation will be enacted in the near future.

Prison and Detention Centre Conditions:

According to *Odhikar,* 46 persons died in prison and 109 persons died in the custody of police and other security forces in 2010 alone. Apart from directly inflicted torture on inmates, prison conditions at times appear life threatening due to overcrowding, inadequate facilities, and lack of proper sanitation. According to the government, the existing prison population in 2010 was nearly 89,650, or more than over 200 percent of the official prison capacity of 29,240. In 1981, the country's prisons had a capacity for housing 16,381 inmates while the number of prisoners was 20,301. But since then, the number of prisoners has increased steadily, though the capacity of the prisons to accommodate the increased number of prisoners hardly changed. During the period between 2001 and 2008, the capacity in 67 prisons increased from 23,942 to 27, 451 while the number of prisoners

increased from 60,887 to 87,011.[65] In such a situation, prisoners are packed like sardines. The only good news is that a couple of new prisons are under construction and they will house a couple of thousand prisoners in the next 2/3 years. However, at least 10 new prisons are needed for a permanent solution of this problem.



Of the entire prison population, approximately one-third of the detainees had been convicted. The rest were either awaiting trial or detained for investigation. Due to the severe backlog of cases, individuals awaiting trial often spent more time in jail than if they had been convicted and served a maximum sentence. In most cases, prisoners sleep in shifts because of the overcrowding and do not have adequate bathroom facilities. In 2010, the government ordered the release of 1,000 prisoners to help ease overcrowding.[66]

[65] The Daily Star, July 26, 2008.

[66] Ibid.

Conditions in prisons varied widely often within the same prison complex as some prisoners were subject to high temperatures, poor ventilation, and overcrowding while others were placed in 'divisional' custody, which featured better conditions such as increased family visitation and access to household staff. Political and personal connections often influenced the conditions that a prisoner would be placed in. All prisoners have the right to water access and medical care; however, human rights organizations and the media stated that many prisoners did not enjoy these rights.[67]

One of the key specific functions of the Bangladesh National Human Rights Commission (NHRC) is visiting prisons and other institutions (where persons are detained) to observe the living conditions of the inmates and to make recommendations for improvement.[68] However, the irony is that the Chairman of the Human Rights Commission, Dr Mizanur Rahman, was not allowed to visit Sylhet Central Jail on September 29, 2011, despite waiting at the jail gate from 9 am to 11 am. Jailer Nesar Alam Mukul quoted the Inspector General (Prisons) as saying that without prior permission from the home ministry, one cannot visit the prison. However, as per the 2009 Act that established the Commission, the Commission staff can visit any place including prisons without any prior approval. The NHRC

[67] Ibid.

[68] See, the Bangladesh National Human Rights Commission Act, 2009.

Chairman claimed that by not letting him into the prison, the Inspector General of Prisons violated NHRC Act 2009 and for that he should be removed. The government is yet to take any action to this effect, an omission that might encourage more such violations of the law in future. The State Department Reports on Human Rights reveal that in general the government did not permit prison visits by independent human rights monitors, including the International Committee of the Red Cross. Government-appointed committees composed of prominent private citizens in each prison locality monitor prisons monthly but do not publicly release their findings. The same is true for the District judges, who occasionally visit prisons but rarely disclose their findings to the public.[69]

Use of Bar Fetters:

In response to a writ petition[70] of Ain o Salisk Kendro (ASK) in 1997 challenging the use of fetters for a continuous period of 33 months on a convicted prisoner, Hafizur Rahman, the High Court Division gave a judgment on 18 October 2006 upholding the constitutionality of the use of bar fetters on prisoners. The Court stated that the persons in authority who had been responsible for the imposition of bar fetters on Rahman for such a prolonged period should be brought to justice by way of appropriate departmental proceedings. However, it held that applicable laws including Section 56 of

[69] The Daily Star, July 26, 2008.

[70] ASK v Bangladesh , Writ Petition No. 2852 of 1997.

the Prisons Act set clear guidelines limiting the application of the provisions on use of bar fetters, and as such their use did not amount to an infringement of the fundamental right to prohibition on cruel and degrading treatment or punishment.[71]

Inhuman Condition in Prison Vans:

There are 19 prison vans in the capital to transport prisoners to and from courts. Together, these vans have the capacity to carry 84 prisoners. Of these 19 vans, 4/5 are out of service almost everyday; meaning, only 15 vans with a capacity of about 65 prisoners are used to carry more than 600 prisoners everyday in the capital.[72] The numbers here give a clear picture of inhuman treatment that the prisoners experience.

7. Recommendations

7.1. Legal Reform[73]

1. Bangladesh is under legal obligation to make the offence of torture punishable as an offence under its criminal law, in accordance, at a minimum, with the elements of torture as defined in Article 1 of the Convention, and the requirements of Article 4. Given that the offence of torture is distinct from

[71] *ASK v Bangladesh,* Writ Petition No. 2852 of 1997, per Justice Nazrul Islam Chowdhury and Justice Md. Rezaul Haque. See also, ASK Annual Human Rights Reports (2006).

[72] The Daily *Shomokal*, July 24, 2008.

[73] See also, the General Comment of the Committee Against Torture on Article 2 of the CAT. See, CAT/C/GC/2 (January 24, 2008).

common assault or other crimes, the government should directly advance the Convention's overarching aim of preventing torture and ill-treatment. Although a number of national laws penalize certain acts amounting to torture, there is no specific legislation dealing with 'torture' *per se*. Naming and defining this crime will promote the Convention's aim, *inter alia,* by alerting everyone, including perpetrators, victims, and the public, to the special gravity of the crime of torture. Codifying this crime will also (a) emphasise the need for appropriate punishment that takes into account the gravity of the offence, (b) strengthen the deterrent effect of the prohibition itself, (c) enhance the ability of responsible officials to track the specific crime of torture and (d) enable and empower the public to monitor and, when required, to challenge State action as well as State inaction that violates the Convention.

2. Discrepancies between the Convention's definition and that incorporated into domestic law create actual or potential loopholes for impunity. In some cases, although similar language may be used, its meaning may be qualified by domestic law or by judicial interpretation. Thus, it is advisable to ensure that all branches of the the government adhere to the definition set forth in the Convention for the purpose of defining the obligations of the State.

3. At the same time, broader domestic definitions also advance the object and purpose of this Convention so long as they contain and are applied in accordance with the

standards of the Convention, at a minimum. In particular, the Committee against Torture emphasises that elements of intent and purpose in Article 1 do not involve a subjective inquiry into the motivations of the perpetrators, but must rather be objective determinations under the circumstances.[74] It is essential to investigate and establish the responsibility of persons in the chain of command as well as that of the direct perpetrator(s).

4. Under the CAT, States bear international responsibility for the acts and omissions of their officials and others, including agents, private contractors, and others acting in an official capacity or acting on behalf of the State, in conjunction with the State, under its direction or control, or otherwise under cover of law. Accordingly, the government should take legal measures to prohibit, prevent and redress torture and ill-treatment in all contexts of custody or control, for example, in prisons, hospitals, schools, institutions that engage in the care of children, the aged, the mentally ill or disabled, in military service, and other institutions as well as contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm.

5. The protection of certain minority or marginalized individuals or populations especially at risk of torture is a part of the obligation to prevent torture or ill-treatment. Bangladesh must, therefore, ensure the protection of

[74] Ibid.

members of groups especially at risk of being tortured because of their ethnicity, indigenous status, gender, sexual orientation, transgender identity, age, religious belief or affiliation, political or other opinion, national or social origin, mental or other disability, health or economic status.

6. Under Article 14 of the CAT, all States Parties are required to "ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible."[75] The government should take necessary measures in this regard. For this matter, a mechanism should also be developed for ensuring the participation of the victim in the reparation process, and the restoration of dignity of the victim should be the overarching objective in the provision of redress.

[75] See, section 1 of the Working Document of the Committee against Torture on Article 14 (46th session, May 9 - June 3, 2011) The Committee against Torture considers that the term "redress" in article 14 encompasses the concepts of "reparation" and "effective remedy". Victims are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute violations of the Convention. A person should be considered a victim regardless whether the perpetrator of the violation is identified, apprehended, prosecuted or convicted. According to the working document of the Committee against Torture, the term 'victim' also includes the immediate family or dependants of the victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimisation.

7. The national legislation should establish concrete mechanisms and programmes for providing rehabilitation to a victim or survivor of torture or ill-treatment. It is necessary to ensure that the domestic laws, to the extent possible, provide that a victim who has suffered violence or trauma should benefit from special consideration and care to avoid her re-traumatisation in the course of legal and administrative procedures designed to secure justice and reparation.

7.2. Law Enforcement[76]

1. Like any States Party to the CAT, Bangladesh is obliged to adopt specific as well as effective measures to prevent public authorities and other persons acting in an official capacity from directly committing, instigating, inciting, encouraging, acquiescing in or otherwise participating or being complicit in acts of torture as defined in the Convention. Thus, effective legal measures should be adopted to prevent such authorities or others acting in an official capacity or under cover of law, from consenting to or acquiescing in any acts of torture. The Committee against Torture has concluded that States parties are in violation of the Convention when they fail to fulfil these obligations.

2. The Committee against Torture has emphasised new methods of prevention of toture, such as having same sex

[76] See also, the Working Document of the Committee against Torture on article 14 (46th session, May 9 - June 3, 2011).

guards when privacy is involved, videotaping all interrogations, utilizing investigative procedures such as the Istanbul Protocol of 1999, or new approaches to public education or the protection of minors.[77] The legal environment prohibiting torture in Bangladesh should take into account such legal innovations to expand the scope of measures required to prevent torture.

3. Bangladesh is under the preventive obligations as per the CAT to ensure that a victim is provided with the services and care necessary to re-establish her situation before the violation of the Convention was committed, taking into consideration the specific circumstances of each case. However, the victim receiving such restitution must not be placed in a position where she is at risk of repetition of torture or ill-treatment.

4. As the Committee against Torture suggests, monetary compensation alone is not sufficient redress for a victim of torture and ill-treatment; compensation awarded to a victim should be sufficient to compensate for any economically assessable damage resulting from torture or ill-treatment, such as: reimbursement of medical expenses paid and provision of funds to cover future medical or rehabilitative services needed by the victim to ensure as full rehabilitation as possible; material and moral damage resulting from the physical and mental harm caused; loss of earnings and

[77] Ibid.

earning potential due to disabilities caused by the torture or ill-treatment; and lost opportunities such as employment and education.[78] In addition, adequate compensation awarded by the State to the victim of torture or ill-treatment should provide for legal or specialised assistance, and other costs associated with bringing a claim for redress.

5. The means for full rehabilitation for anyone who has suffered harm as a result of a violation of the Convention should include medical and psychological care as well as legal and social services. Rehabilitation should be directed towards the restoration of function or the acquisition of new skills required by the changed circumstances of a victim in the aftermath of torture or ill-treatment. It should enable the maximum possible self-sufficiency and function for the individual concerned, and should involve adjustments to the person's physical and social environment.

6. In order to fulfil its obligations to provide a victim of torture or ill-treatment with the means for as full rehabilitation as possible, the concerned agencies should ensure that specialised services for the victim or survivor of torture is available at multiple levels. These should include: a procedure for the assessment and evaluation of an individual's therapeutic and other needs, based on, among others, the Istanbul Protocol; and may include a wide range of measures, such as medical, physical and psychological

[78] Ibid.

rehabilitative services; re-integrative and social services; family-oriented assistance and services; vocational training, education etc.

A holistic approach to rehabilitation, which also takes into consideration the strength and resilience of a victim, is of the utmost importance. Furthermore, victims and survivors may be at risk of re-traumatisation and have a valid fear of acts which remind them of the torture or ill-treatment they endured. Thus, there should be a high priority placed on the need to create a context of confidence and trust in which assistance can be provided.

7. The government must ensure that effective rehabilitation services and programmes are established in the country and are accessible to all victims. In light of the obligation in Article 14 to provide for the means for as full rehabilitation as possible, concerned government agencies should establish not only rehabilitation programmes but also methods for assessing the effectiveness of such programmes and services by developing relevant indicators and benchmarks. Given the possible financial constraints, the agencies should develop working relationship with other public and private sector organizations, inclduing NGOs and IOs.

8. To guarantee non-repetition of torture or ill-treatment, concerned agencies should undertake measures such as the following, aimed at generally ensuring effective civilian control over military and other security forces; ensuring that all judicial proceedings abide by international standards of

due process, fairness and impartiality; strengthening the independence of the judiciary; protecting human rights defenders; providing, on a priority and continued basis, training for law enforcement officials as well as military and security forces on human rights laws and proving specific training on the Istanbul Protocol for health and legal professionals as well as law enforcement officials; promoting the observance of international standards and codes of conduct by public servants, including law enforcement, correctional, medical, psychological, social service and military personnel; reviewing and reforming laws contributing to or allowing torture and acts of cruel, inhuman or degrading treatment or punishment. The training of the police, prison staff and medical personnel is fundamental to ensure effective investigations.

9. It is important to affirmatively ensure that victims and their families are adequately informed of their right to pursue compensation. In this regard, the procedures for seeking compensation should be transparent. The government agencies should, moreover, provide assistance and support to minimise the hardship to complainants and their representatives.

10. The Government should provide adequate legal aid to victims lacking the necessary resources to bring complaints and to make claims for redress. It should also make readily available to the victims all evidence concerning acts of torture or ill-treatment upon the request of the victims, their

legal counsel, or a judge. Any failure to provide evidence, such as records of medical evaluations or treatment, can unduly impair victims' ability to lodge complaints and to seek redress, compensation, and rehabilitation. Besides, judicial bodies should refrain from applying doctrines that impede or preclude them from considering the merits of claims for redress made by victims of torture or ill-treatment.

11. The Government should also take measures to prevent interference with victims' privacy and to protect victims, their families and witnesses against intimidation and retaliation at all times before, during and after judicial, administrative or other proceedings that affect the interests of the victims. Failure to provide witness protection stands in the way of witnesses and victims filing complaints, and thereby violates the right to seek and obtain redress and remedy.

12. The government should ensure that judicial and non-judicial proceedings apply gender sensitive procedures which avoid re-victimisation and stigmatisation. With respect to sexual violence and abuse (such as rape, marital rape, domestic violence, female genital mutilation, and trafficking) and access to due process and an impartial judiciary, complaint mechanisms and investigations require specific positive measures which take into account gender aspects in order to ensure that victims of abuses are able to come forward and seek redress.

13. Amnesties for torture and ill-treatment pose impermissible obstacles to a victim in her efforts to obtain

redress and contribute to a climate of impunity. When impunity is sanctioned by law or exists de facto, it bars the victim from seeking redress as it allows the violators to go unpunished and denies the victim her rights. Therefore, it is important to remove any amnesties for torture or ill-treatment.

14. The government should seriously consider the ratification of the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), 2002.[79] The objective of this Protocol is to establish a system of regular visits undertaken by independent international and national bodies to places where people are deprived of their liberty, in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.[80] The OPCAT stipulates that a Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Committee against Torture (SPT) shall be established and shall carry out the functions laid down in the Protocol.[81] The SPT has an operational function which consists in visiting all places of detention in States parties, and an advisory function which consists in providing assistance and advice to

[79] Adopted on December 18, 2002 at the fifty-seventh session of the General Assembly of the United Nations by resolution A/RES/57/199, and entered into force on June 22, 2006.

[80] Article 1 of the OPCAT.

[81] Article 2 (1) of the OPCAT.

both States parties and National Preventive Mechanisms ("NPM").

Under the OPCAT, the SPT has unrestricted access to all places of detention, their installations and facilities and to all relevant information. The SPT visits police stations, prisons (military and civilian), detention centres (e.g. pre-trial detention centres, immigration detention centres, juvenile justice establishments, etc.), mental health and social care institutions and any other places where people are or may be deprived of their liberty. The contracting parties are under obligation to grant the SPT access to have private interviews with the persons deprived of their liberty, without witnesses, and to any other person who in the SPT's view may supply relevant information including Government officials, NPMs, representatives of national human rights institutions, non-governmental organizations, custodial staff, lawyers, doctors, etc. This added layer of monitoring is expected to put more checks on the incidents of state-sponsored torture in custodies.

8. Concluding Remarks

Adrien Wayi, a journalist from the Congo, was held for 12 days in October 1997 in the Bacongo area of Brazzaville by one of the warring militias in the Republic of Congo. To express his experience in the cell, he tells: "I was taken, blindfolded, to the entrance to my cell where the 'Panther' was waiting for me […] He took off the blindfold and started

beating me […] I was stripped naked and taken into a small room, about three metres square; more than 30 people were crowded into the room. This was where I learned what human beings can do to one another […]"[82] Similarly, in a letter smuggled out of a Syrian prison in January 2000, one of the inmates informs us about methods of torture: "Stretching the body on a ladder; suspension from the wrists; electric shocks; pulling out the finger nails; dripping acid on the feet; the insertion of a broken bottle into the anus; prolonged flogging […] We have, or have seen those who have, all experienced such blind methods of torture. Bodies of some of the victims took years to recover from the effects of torture, but the bodies of others have permanent disabilities."[83]

These stories of torture sound familiar around the globe, in every continent, in one form or the other. Torture is a global phenomenon with variation in degrees; hence, measures to combat torture demand internationally and nationally concerted efforts. The purpose of this study was to demonstrate to what extent the national standard prohibiting torture in Bangladesh conforms to the international standard principally set by the CAT. The study also exposed state practice in deviation of both international and national standards, and recommended measures to be

[82] Amnesty International, *Take a Step to Stamp Out Torture* (London: Amnesty International, 2000), 9.

[83] Ibid, 4.

taken to ensure compliance of the accepted treaty obligations under the CAT.

As the study highlights, acts of torture in most cases are results of the violation of legal norms, rather than absence of laws. Although weaknesses in the existing legal framework contribute to torture and hence require reforms, what make people more vulnerable to torture are lack of accountability and a culture of impunity – together they undermine all the legal guarantees against torture and other cruel, inhuman and degrading treatment or punishment. It is for this reason that democratic governance is crucial for combating torture by asking for more accountability and ensuring more publicity of both rights and their violations.

Yet, democratic governance as a matter of right is somehow excluded from the discourse on democratic governance in Bangladesh. This omission of the legal dimension of democratic governance facilitates the exclusion of the governed in the process of governance, despite occasional arrangements for target group consultations on certain issues. In a systematic manner, this exclusion turns 'citizens' into the 'subjects' of the State, in which they are put under all forms of regulation in the name of greater public interest without any proper opportunity of being consulted. The lack (rather ignorance) of a well-articulated legal basis for democratic participation in governance leaves citizens with few options to intervene in this process of exclusion. As a result, the fragile political structure coupled with 'low

intensity democracy', often expressed through electoral rituals, paved the way for the acquisition of political powers by the political, military and business elites, among others, at the very cost of democracy itself.

In this context, we propose that a right-based approach to democratic governance would uplift the relevance of democracy and democratic governance in Bangladesh to a much higher legal and philosophical level by relating individual human rights of citizens to the legitimacy of the governance under a given regime. This right-based legitimacy discourse on democratic governance has the potential to rearticulate the whole understanding of democratic governance in the country and thereby pave new ways to implement this long-standing agenda. However, this will need a well-defined and well-researched legal framework within which a right-based approach can be accommodated.

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Annexure

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

[Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, entry into force 26 June 1987, in accordance with article 27 (1)]

The States Parties to this Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that those rights derive from the inherent dignity of the human person,

Considering the obligation of States under the Charter, in particular Article 55, to promote universal respect for, and observance of, human rights and fundamental freedoms,

Having regard to article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,

Having regard also to the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly on 9 December 1975,

Desiring to make more effective the struggle against torture and other cruel, inhuman or degrading treatment or punishment throughout the world,

Have agreed as follows:

PART I

Article 1

1. For the purposes of this Convention, the term "torture" means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.
2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.

Article 2

1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.
2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political in stability or any other public emergency, may be invoked as a justification of torture.
3. An order from a superior officer or a public authority may not be invoked as a justification of torture.

Article 3

1. No State Party shall expel, return ("refouler") or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
2. For the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.

Article 4

1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.

2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.

Article 5

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:
   (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
   (b) When the alleged offender is a national of that State;
   (c) When the victim is a national of that State if that State considers it appropriate.
2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.
3. This Convention does not exclude any criminal jurisdiction exercised in a ccordance with internal law.

Article 6

1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in

article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.

2. Such State shall immediately make a preliminary inquiry into the facts.

3. Any person in custody pursuant to paragraph I of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.

4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.

Article 7

1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in

article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.

2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.

3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.

Article 8

1. The offences referred to in article 4 shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention as the legal basis for extradition in respect of such offences. Extradition shall be subject to the other conditions

provided by the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.
4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

Article 9

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences referred to in article 4, including the supply of all evidence at their disposal necessary for the proceedings.
2. States Parties shall carry out their obligations under paragraph I of this article in conformity with any treaties on mutual judicial assistance that may exist between them.

Article 10

1. Each State Party shall ensure that education and information regarding the prohibition against torture are fully included in the training of law enforcement personnel, civil or military, medical personnel, public officials and other persons who may be involved in the

custody, interrogation or treatment of any individual subjected to any form of arrest, detention or imprisonment.

2. Each State Party shall include this prohibition in the rules or instructions issued in regard to the duties and functions of any such person.

Article 11

Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.

Article 12

Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

Article 13

Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint

or any evidence given.

Article 14

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

Article 15

Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.

Article 16

1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article I, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall

apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

PART II

Article 17

1. There shall be established a Committee against Torture (hereinafter referred to as the Committee) which shall carry out the functions hereinafter provided. The Committee shall consist of ten experts of high moral standing and recognized competence in the field of human rights, who shall serve in their personal capacity. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution and to the usefulness of the participation of some persons having legal experience.
2. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. Each State Party may nominate one person from among its own nationals. States Parties shall bear in mind the usefulness of nominating persons who are also members of the Human Rights Committee established

under the International Covenant on Civil and Political Rights and who are willing to serve on the Committee against Torture.

3. Elections of the members of the Committee shall be held at biennial meetings of States Parties convened by the Secretary-General of the United Nations. At those meetings, for which two thirds of the States Parties shall constitute a quorum, the persons elected to the Committee shall be those who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

4. The initial election shall be held no later than six months after the date of the entry into force of this Convention. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the States Parties inviting them to submit their nominations within three months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the States Parties which have nominated them, and shall submit it to the States Parties.

5. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the term of five of the members elected at the first election shall expire at the end of two years; immediately after the first election the names of

these five members shall be chosen by lot by the chairman of the meeting referred to in paragraph 3 of this article.

6. If a member of the Committee dies or resigns or for any other cause can no longer perform his Committee duties, the State Party which nominated him shall appoint another expert from among its nationals to serve for the remainder of his term, subject to the approval of the majority of the States Parties. The approval shall be considered given unless half or more of the States Parties respond negatively within six weeks after having been informed by the Secretary-General of the United Nations of the proposed appointment.
7. States Parties shall be responsible for the expenses of the members of the Committee while they are in performance of Committee duties.

Article 18

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:
   (a) Six members shall constitute a quorum;
   (b) Decisions of the Committee shall be made by a majority vote of the members present.
3. The Secretary-General of the United Nations shall

provide the necessary staff and facilities for the effective performance of the functions of the Committee under this Convention.

4. The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.

5. The States Parties shall be responsible for expenses incurred in connection with the holding of meetings of the States Parties and of the Committee, including reimbursement to the United Nations for any expenses, such as the cost of staff and facilities, incurred by the United Nations pursuant to paragraph 3 of this article.

Article 19

1. The States Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this Convention, within one year after the entry into force of the Convention for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

2. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

3. Each report shall be considered by the Committee which may make such general comments on the report as it

may consider appropriate and shall forward these to the State Party concerned. That State Party may respond with any observations it chooses to the Committee.

4. The Committee may, at its discretion, decide to include any comments made by it in accordance with paragraph 3 of this article, together with the observations thereon received from the State Party concerned, in its annual report made in accordance with article 24. If so requested by the State Party concerned, the Committee may also include a copy of the report submitted under paragraph I of this article.

Article 20

1. If the Committee receives reliable information which appears to it to contain well-founded indications that torture is being systematically practised in the territory of a State Party, the Committee shall invite that State Party to co-operate in the examination of the information and to this end to submit observations with regard to the information concerned.
2. Taking into account any observations which may have been submitted by the State Party concerned, as well as any other relevant information available to it, the Committee may, if it decides that this is warranted, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.
3. If an inquiry is made in accordance with paragraph 2 of

this article, the Committee shall seek the co-operation of the State Party concerned. In agreement with that State Party, such an inquiry may include a visit to its territory.

4. After examining the findings of its member or members submitted in accordance with paragraph 2 of this article, the Commission shall transmit these findings to the State Party concerned together with any comments or suggestions which seem appropriate in view of the situation.

5. All the proceedings of the Committee referred to in paragraphs I to 4 of this article shall be confidential, and at all stages of the proceedings the co-operation of the State Party shall be sought. After such proceedings have been completed with regard to an inquiry made in accordance with paragraph 2, the Committee may, after consultations with the State Party concerned, decide to include a summary account of the results of the proceedings in its annual report made in accordance with article 24.

Article 21

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under this Convention. Such communications may be received and considered according to the procedures laid down in this

article only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be dealt with by the Committee under this article if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party considers that another State Party is not giving effect to the provisions of this Convention, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation or any other statement in writing clarifying the matter, which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it under this article only after it has ascertained that all

domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for the obligations provided for in this Convention. For this purpose, the Committee may, when appropriate, set up an ad hoc conciliation commission;

(f) In any matter referred to it under this article, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered by the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b),

submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned

has made a new declaration.

Article 22

1. A State Party to this Convention may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications from or on behalf of individuals subject to its jurisdiction who claim to be victims of a violation by a State Party of the provisions of the Convention. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration.
2. The Committee shall consider inadmissible any communication under this article which is anonymous or which it considers to be an abuse of the right of submission of such communications or to be incompatible with the provisions of this Convention.
3. Subject to the provisions of paragraph 2, the Committee shall bring any communications submitted to it under this article to the attention of the State Party to this Convention which has made a declaration under paragraph I and is alleged to be violating any provisions of the Convention. Within six months, the receiving State shall submit to the Committee written explanations or statements clarifying the matter and the remedy, if any, that may have been taken by that State.
4. The Committee shall consider communications received under this article in the light of all information made available to it by or on behalf of the individual and by the

State Party concerned.

5. The Committee shall not consider any communications from an individual under this article unless it has ascertained that:

   (a) The same matter has not been, and is not being, examined under another procedure of international investigation or settlement;

   (b) The individual has exhausted all available domestic remedies; this shall not be the rule where the application of the remedies is unreasonably prolonged or is unlikely to bring effective relief to the person who is the victim of the violation of this Convention.

6. The Committee shall hold closed meetings when examining communications under this article.

7. The Committee shall forward its views to the State Party concerned and to the individual.

8. The provisions of this article shall come into force when five States Parties to this Convention have made declarations under paragraph 1 of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the

subject of a communication already transmitted under this article; no further communication by or on behalf of an individual shall be received under this article after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party has made a new declaration.

Article 23

The members of the Committee and of the ad hoc conciliation commissions which may be appointed under article 21, paragraph I (e), shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 24

The Committee shall submit an annual report on its activities under this Convention to the States Parties and to the General Assembly of the United Nations.

PART III

Article 25

1. This Convention is open for signature by all States.
2. This Convention is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 26

This Convention is open to accession by all States. Accession

shall be effected by the deposit of an instrument of accession with the Secretary General of the United Nations.

Article 27

1. This Convention shall enter into force on the thirtieth day after the date of the deposit with the Secretary-General of the United Nations of the twentieth instrument of ratification or accession.
2. For each State ratifying this Convention or acceding to it after the deposit of the twentieth instrument of ratification or accession, the Convention shall enter into force on the thirtieth day after the date of the deposit of its own instrument of ratification or accession.

Article 28

1. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not recognize the competence of the Committee provided for in article 20.
2. Any State Party having made a reservation in accordance with paragraph I of this article may, at any time, withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 29

1. Any State Party to this Convention may propose an amendment and file it with the Secretary General of the United Nations. The Secretary General shall thereupon communicate the proposed amendment to the States

Parties with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposal. In the event that within four months from the date of such communication at least one third of the States Parties favours such a conference, the Secretary General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted by the Secretary-General to all the States Parties for acceptance.

2. An amendment adopted in accordance with paragraph I of this article shall enter into force when two thirds of the States Parties to this Convention have notified the Secretary-General of the United Nations that they have accepted it in accordance with their respective constitutional processes.

3. When amendments enter into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of this Convention and any earlier amendments which they have accepted.

Article 30

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to

arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.

2. Each State may, at the time of signature or ratification of this Convention or accession thereto, declare that it does not consider itself bound by paragraph I of this article. The other States Parties shall not be bound by paragraph I of this article with respect to any State Party having made such a reservation.

3. Any State Party having made a reservation in accordance with paragraph 2 of this article may at any time withdraw this reservation by notification to the Secretary-General of the United Nations.

Article 31

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Denunciation becomes effective one year after the date of receipt of- the notification by the Secretary-General.

2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under this Convention in regard to any act or omission which occurs prior to the date at which the denunciation becomes effective, nor shall denunciation prejudice in any way the

continued consideration of any matter which is already under consideration by the Committee prior to the date at which the denunciation becomes effective.

3. Following the date at which the denunciation of a State Party becomes effective, the Committee shall not commence consideration of any new matter regarding that State.

Article 32

The Secretary-General of the United Nations shall inform all States Members of the United Nations and all States which have signed this Convention or acceded to it of the following:

(a) Signatures, ratifications and accessions under articles 25 and 26;

(b) The date of entry into force of this Convention under article 27 and the date of the entry into force of any amendments under article 29;

(c) Denunciations under article 31.

Article 33

1. This Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of this Convention to all States.

Supported by:

Schweizerische Eidgenossenschaft
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