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**PLANETE REFUGIES
DROITS DE L'HOMME**



IHEI
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INTERNATIONALES



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Planète Réfugiés-Droits de l'Homme (PRDH): Planète Réfugiés-Droits de l'Homme is a non-partisan, independent, impartial, not-for-profit organisation, and aims at fostering the respect of the legal principle of equity in the framework of the refugee status determination by a thorough research on key aspects related to basic rights in countries of origin (torture, death penalty, enforced disappearances, access to justice, civil and political rights). PRDH currently develops an initiative aiming at the writing and adoption of international standards specifically related to the conditions of detention and treatment of people on death row in the world.

The Institute of Higher International Studies (IHEI, Paris-2-Assas University): Founded in 1921, the Institute of Higher International Studies represents a leading research center of international law studies in France. The Center of IHEI conducts research on a broad range of issues in international law. This includes areas such as: the development of international investment law, international dispute resolution, law of international peace and security after the Second World War, emerging issues of sources of international law in international and internal legal orders. The IHEI regularly organizes conferences related to contemporary issues in international law, and publishes many of its research projects in IHEI courses and researches of IHEI, in Pedone Editions, as well as in the IHEI library collection of Anthemis Publishing House. Contributors : Louise Astruc-Baciotti, Adèle Cordonnier, Eroglu Kardelen, Marie Gonzalez and Hadrien Kleiman, Legal Clinic, Institute of High International Studies, University of Paris-II-Assas.

The World Coalition Against the Death Penalty: the World Coalition Against the Death Penalty is an alliance of more than 159 NGOs, bar associations, local authorities and unions. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition. The World Coalition is striving to achieve these aims by supporting its member organisations, local, national and regional abolitionist forces; and by coordinating the international advocacy towards worldwide abolition of the death penalty.

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Introduction

1. Bangladesh is a State Party to eight out of nine core human rights treaties, namely, the International Convention on the Elimination of all forms of Racial Discrimination (ICERD, 1979), the International Covenant on Civil and Political Rights (ICCPR, 2000) and International Covenant and Economic, Social and Cultural Rights (ICESCR, 1998), the Convention on the Elimination of all Forms of Discrimination against Women (CEDAW, 1984), the Convention against Torture (CAT, 1998), the Convention on the Rights of the Child (CRC, 1990), the International Convention on the Protection of Migrant Workers and their families (ICMW, 2011) and the Convention on the Rights of Persons with Disabilities (CRPD, 2007).
2. Bangladesh has not acceded to the Convention for the protection of all persons from enforced disappearance (ICED).
3. Despite the fact the Bangladesh was re-elected as a member of the Human Rights Council in October 2018, the country still failed to submit its National Report to the United Nations Committee against torture (UNCAT). The first report is awaited for since November 1999¹.
4. Bangladesh is not a State party to the 1951 Convention relating the Status of Refugees and its 1967 Protocol, the 1954 Convention relating to the Status of Stateless Persons, nor the 1961 Convention on the Reduction of Statelessness. In the absence of a national asylum mechanism, the 1946 *Foreigner's Act* remains the key legislation governing the status of refugees.

Articles 1 & 4: Definition of torture. Torture as a criminal offence

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 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.

5. A *Torture and Custodial Death (Prevention) Act 2013* was passed in Parliament on October 24, 2013. The article 2(6) of this Act defines torture as “any act or omission which causes pain, whether physical or mental, to any person, in addition to (a) For the purposes of obtaining information or a confession from that person or some other person ; or (b)

¹ Office of the High Commissioner for Human Rights, (OHCHR), https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/countries.aspx?CountryCode=BGD&Lang=FR

punishing any person for any act of omission for which that person or some other person is responsible or is suspected of being responsible ; or (c) intimidating or coercing any person or some other person; or (d) on the basis of (...) provocation or consent or authority of any public officer on any governmental capacity. Any such Act shall also be considered as “Torture”;”

6. In view of these provisions, the Bangladeshi definition of torture is not fully in accordance with the international definition of torture as per Article 1 of the Convention against Torture. Whereas the domestic definition refers to “pain, physical or mental”, the international definition defines torture as “severe pain or suffering”. According to the international definition, the act should be intentional (legal principle of *mens rea*). This component of the international definition of torture is not reflected in the definition of torture in the Bangladeshi law. In addition, contrary to the international definition of torture, purposes of torture are limited and not cumulative in the Bangladeshi law. While defining what is a “government official and “law enforcement agencies”, the *Torture and Custodial Death (Prevention) Act 2013* fails to list and name some of them, such as the Directorate General of Forces Intelligence (DGFI), the Department of Narcotics Control as well as the Anti-Corruption Commission. Those legal gaps are not conducive for an effective protection of individuals against the practice of torture in Bangladesh, be they detainees under trial, convicted prisoners and death row prisoners. Therefore, the Bangladeshi definition of torture does not conform itself with the letter and the spirit of the international definition by restricting the purposes which characterize torture. This provision limits the domain of torture, which constitutes a risk for legal effectiveness.
7. Despite this Act and the provision in the Constitution of Bangladesh (1972) that prohibits torture or other cruel, inhuman, or degrading treatment or punishment (Article 35), there is no change in the actual situation and law enforcement agencies continue resorting to torture as a main vector to obtain confession. On November 10, 2016 the Appellate Division of the Supreme Court issued a 19-point guideline to judicial and law-enforcement officials regarding arrests without warrant and the procedure of remand. As the *Torture and Custodial Death (Prevention) Act 2013*, such guidelines are not disseminated nor implemented. Torture is rampant in Bangladesh, from the arrest and interrogation till the detention in a prison facility.

Recommendation

Amend the current Torture and Custodial Death (Prevention) Act 2013 so that Bangladesh law fully complies with the international definition of torture as per article 1 of the 1984 Convention against torture.

Article 2: Legislative, administrative and judicial measures to prevent torture

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 instability 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*

8. The Constitution of Bangladesh (1972) guarantees a number of fundamental rights with regards to arrest and detention. Article 32 of the Constitution, in light of the ICCPR,

guarantees the right to liberty and security of life or personal liberty. Article 33 delineates the safeguards as to arrest and detention. No person who is arrested shall be detained in custody without being informed of the grounds for such arrest, nor shall he/she be denied the right to consult and be defended by a legal practitioner of his/her choice. The Constitution also stipulates that “[e]very person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest, [...] and no such person shall be detained in custody beyond the said period without the authority of a Magistrate”. Section 328(a) of the *Police Regulations* (1943) reaffirms the duty of any police officer regarding the safety and security of all persons deprived of their freedom transferred to police custody »².

9. Officially, in several instances, political authorities did not clearly recall the obligations of the State regarding the prohibition of torture, the investigations of torture allegations, the duty to impose sanctions to fight impunity and the redress of the victims. In the course of April 2017, Prime Minister of Bangladesh stated during an official meeting with representatives of the Rapid Action Battalion (RAB), that law enforcement agencies, including RAB, should ensure that nobody is tortured or harassed unnecessarily³. On 23rd of January 2017, Police representatives requested a meeting with the Prime Minister, calling for the repeal of the *Torture and Custodial Death (Prevention) Act 2013*, and, as a consequence, to put an end to their obligations regarding fundamental rights enshrined in this Act.
10. There is no national NGO that has the right to visit and assess the conditions of detention and treatment of persons deprived of their freedom in Bangladesh. As Bangladesh is not a State Party to the Optional Protocol of the 1984 Convention against Torture, there is no obligation from the State authorities to create a National Mechanism for the Prevention of Torture (NMP). The National Commission of Human Rights in Bangladesh is not fulfilling this pivotal duty. In addition, there is no specific law protections witnesses of such violations nor any lawx protecting personal data.
11. Although the Constitution of Bangladesh and other laws prohibit torture and other cruel, inhuman, or degrading treatment or punishment, local and international human rights organisations and the media reported that security forces, including the intelligence services and the police, employed torture and cruel, inhuman, or degrading treatment or punishment. Security forces reportedly used torture to gather information from alleged militants and members of political opposition parties. Security forces reportedly used threats, beatings, kneecappings, and electric shocks. Odhikar reported in the course of 2017, 13 deaths were triggered by torture practices. As of October 2018, the same organisation documented 57 cases of death in detention⁴. Human rights organizations alleged that many instances of torture occurred during remand custody.
12. Torture acts committed by Indian Border Security Forces on Bangladeshi citizens, either in India or within the Bangladeshi territory. Those instances constitute a regular pattern reported almost on a weekly basis by the press in Bangladesh⁵. Those acts perpetrated by Indian BSF

² <http://oit.org/dyn/natlex/docs/ELECTRONIC/98772/117606/F-421690132/BGD98772.pdf>.

³ The Daily Star, « Don't torture. PM asks Rab to make sure nobody is tortured or harassed unnecessarily. », <https://www.thedailystar.net/frontpage/dont-torture-1397008>.

⁴ ODHIKAR, Rapport mensuel d'octobre 2018 sur les droits de l'Homme, <http://oit.org/dyn/natlex/docs/ELECTRONIC/98772/117606/F-421690132/BGD98772.pdf>, p. 4.

⁵ For example, a report from May 2016 by Odhikar states that four Bangladeshi boys were tortured in Chuandaga District (Bangladesh) near the border by Indian Border Security Forces members⁵. 7 BSF members were simply suspended after the events.

are frequent and left with total impunity. Bangladesh is not systematically ordering investigating, sanctioning and ordering compensation for its citizens when those acts occur⁶.

Recommendation

Remind officially, in a clear manner, the unconditional prohibition of torture in the country, and should held all law enforcement agencies accountable in case of non compliance.

Launch regular consultations with the Indian government both at central and regional levels in order to put an end to the torture and summary executions of Bangladeshi citizens crossing the border between the two countries. Bangladeshi authorities should make sure that its citizens receive appropriate compensation

Adhere to the Optional Protocol of the Convention against torture, and put in place a National Mechanism for the Prevention of Torture

Consider the writing and adoption a draft bill on the protection of complainants and witnesses during legal proceedings

Allow both international and local NGO to visit and assess the condition of detention and treatment of persons deprived of their freedom; without any hindrance.

Article 10: Training and Education on torture prevention

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.

13. The 2013 *Torture and Custodial Death (Prohibition)* remains silent on the State obligations regarding trainings and sensitization sessions on the prohibition against torture. Bangladeshi legislation therefore lacks a specific provision on the issue of training on torture prevention. There is no information available regarding Bangladesh's efforts to achieve the training objectives set out in the international Convention against torture, as Bangladesh did not submit any official report on torture prevention at the United Nations level yet.

Recommendation

Provide precise information regarding trainings performed on torture prevention for its staff (prison officers, representatives of law enforcement agencies, such as Special Branch, Directorate general of Forces Intelligence (DGFI) and Rapid Action Battalion (RAB) and relevant commissions, such as the Anti-Corruption Commission.

⁶ For further information, please refer to the following article published on the website of Vision Internationale regarding the human rights violations on the border between Bangladesh and India.

Articles 12 & 13: Prompt investigation and right to complaint

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.

13. The *Torture and Custodial Death (Prevention) Act* of 2013 tackles in details procedures of investigation and right to complaint. This Act provided clear deadlines for investigation (completion within 90 working days following the date of recording of the first complaint) and trials (within 180 days following the registration of the complaint) of allegations of torture or cruel, inhuman and degrading treatment or punishment. However, the Act is silent on sanctions in case of non-compliance with those deadlines. As there is no law affording protection of witnesses and data protection, victims and/or witnesses or torture or ill treatment cases are reluctant to go and lodge a complaint to the police or to relevant law enforcement agencies.
14. Part of the domestic law of Bangladesh is not offering due process of law to victims. *The Armed Battalions Ordinance* states for the Armed Police Battalions are exempted from any legal proceedings, provided that the alleged acts were committed « in good faith ». In addition, article 132 of the Code of Criminal Procedure recalls that no legal complaint could be lodged against of government officer, without the prior agreement of the government⁷. To date, there is no information available about the number of cases of torture allegations dealt with, the number of cases prosecuted, the decisions taken upon those cases, and the nature and length of the sanctions decided.

Recommendation

Provide disaggregated statistics on the number of cases of torture allegations dealt with, the number of cases prosecuted, the decisions taken upon those cases, and the nature and length of the sanctions decided, and make than available to the public in order to foster more transparency

Article 14: Measures for redress

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.

⁷ Code of Criminal Procedure, Section 132,
https://www.unodc.org/tldb/pdf/Bangladesh_Code_of_Criminal_Procedure_1898_Full_text.pdf.

2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.

15. As a State Party to the Convention against Torture, State authorities have the duty to offer adequate redress to victims of torture or cruel, inhuman and degrading treatment or punishment. Upon accession to the Convention in 1998, Bangladesh made a declaration, arguing that the country will fulfil this legal requirement « according to domestic law »⁸. In addition to that, Bangladesh also addressed the following reservation on article 14 of the International Covenant on Civil and Political Rights, to which Bangladesh is also a State Party. « *So far as the provision of legal assistance in paragraph 3(d) of Article 14 is concerned, a person charged with criminal offences is statutorily entitled to legal assistance if he does not have the means to procure such assistance. The Government of the People's Republic of Bangladesh, notwithstanding its acceptance of the principle of compensation for miscarriage of justice, as stipulated in Article 14, paragraph 6, is not in a position to guarantee a comprehensive implementation of this provision for the time being. However, the aggrieved has the right to realise compensation for miscarriage of justice by separate proceedings and in some cases, the court suo moto grants compensation to victims of miscarriage of justice. Bangladesh, however, intends to ensure full implementation of this provision in the near future.* »⁹. Legal aid is often a mere condition for the effective realisation of redress.

16. The *Torture and Custodial Death (Prevention) Act* of 2013 does not provide for full reparation of victims. This issue of reparation is only tackled as a financial compensation¹⁰, which is one of the avenues of reparation for victims of human rights violations. Reparation also include measures of restitution, satisfaction and guarantees of non repetition, in accordance with resolution 60/147 of the United Nations General Assembly (16 December 2005)¹¹. Therefore, Bangladeshi domestic law is limiting avenues for effective rehabilitation. As the country did not accept upon accession to the Convention against torture the article 22 (possibility to address complaints to the United Nations Committee against torture), victims of torture or cruel, inhuman or degrading treatment or punishment in Bangladesh can not resort to this mechanism.

Recommendation

Amend the 2013 Torture and Custodial Death (Prohibition) Act in order to ensure that all avenues for rehabilitation (ie physical and psychological rehabilitation, measures of restitution, satisfaction and guarantees of non repetition, as per resolution 60/147 of the United Nations General Assembly (16 December 2005) are part of the domestic law, and that victims of torture or cruel, inhuman and degrading treatment or punishment are entitled, know and have access to those rehabilitation measures.

⁸ United Nations Treaty Collection, « *The Government of the People's Republic of Bangladesh will apply article 14 para 1 in consonance with the existing laws and legislation in the country.* »

⁹ United Nations Treaty Collection, https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-4&chapter=4&lang=en#EndDec

¹⁰ Pursuant to Article 15, in addition to imprisonment or monetary penalty, a person found guilty under this act must be punished with “another compensation amounting 25,000 Taka to be paid to the victim/aggrieved person/persons” or a minimum of 200,000 Taka when the victim dies as a result of such torture.

¹¹ As an example, *Uganda's Prevention and Prohibition of Torture Act 2012*, which provides in Article 6 that in addition to other penalty, courts can order for restitution such as “(i) the return of any property confiscated, (ii) payment for harm or loss suffered, (iii) payment for the provision of services and restoration of rights; or (iv) reimbursement of expenses incurred as a result of victimisation”. Courts can also order for compensation for any economically assessable damage such as “(i) physical or mental harm [...] (ii) lost opportunities [...] (iii) material damage and loss of earnings [...] (iv) costs required for legal or expert assistance, medicines, medical services, and psychological and social services”. Finally, rehabilitation can be ordered, which includes “(i) medical and psychological care; or (ii) legal and psycho-social services to the victim in case of trauma”. Here, the provisions protecting the victim and his family are precisely outlined. Moreover, by using the preposition “including” many times, Ugandan lawmakers have created a non-exhaustive list of protections which can be extended if necessary.

Article 15: Non-admissibility of statements obtained under coercion in legal proceedings

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.

17. In accordance with article 15 of the Convention against Torture, the *Evidence Act* of 1872 prohibits confessions obtained under coercion or threats of coercion¹². In the criminal justice system of Bangladesh, confessional statement is considered as crucial evidence for legal proceedings. Forced confessions are common, especially during interrogation, and forced confessions, despite the domestic law, are used by magistrates during hearings. Magistrates who consider forced confession during their hearings are not subject to disciplinary or criminal sanctions.

Recommendation

Amend the 2013 Torture and Custodial Death (Prohibition) Act in order to prohibit, as mentioned in the Evidence Act (1872) and in article 15 of the international Convention against Torture, the use and consideration of any confession within legal proceedings if case they is reasonable doubt that this confession was obtained under duress.

Put in place a mechanism whereby magistrates are sanctioned in case of non-compliance with the aforementioned provision.

Article 16: Prevention of cruel, inhuman and degrading treatment

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.

18. Contrary to the Convention against Torture and other cruel, inhuman and degrading treatment or punishment (article 16 aforementioned), the *Torture and Custodial Death (Prohibition) Act, 2013* fails to mention and prohibit the cruel, inhuman or degrading treatment or punishment. It also lacks, with regards to basic conditions of detention and treatment, the legal requirement related to the strict separation between male and female detainees, as well as between minors and adults, in accordance with the international human rights law, in particular the United Nations Standard Minimum Rules for the treatment of Prisoners (2015, Rule 11)¹³. This legal gap in this law is is clear contradiction with

¹² *Evidence Act of 1872*, art. 24, http://bdlaws.minlaw.gov.bd/sections_detail.php?id=24§ions_id=4778.

¹³ United Nations Standard Minimum Rules for the treatment of Prisoners (2015), https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf.

the provisions of the Constitution, in particular with article 35(5) of the Constitution of the People's Republic of Bangladesh that fundamentally prohibits the practice of torture, cruel, inhuman and degrading punishment and treatment¹⁴. Compounded with the fact that the domestic definition of torture is not in compliance with the international definition pursuant to the international Convention against Torture, the *Torture and Custodial Death (Prohibition) Act, 2013* fails to fulfil its objective of protection of all forms of cruel, inhuman, degrading treatment or punishment¹⁵.

19. Prison management in Bangladesh is ruled by the *Prisons Act (1900)* as well as the *Jail Code*¹⁶. With regards to conditions of detention and treatment of people deprived of their liberty, jails and detention facilities in Bangladesh are clearly over-crowded. Relatives of inmates alleged that prisoners could not sleep due to lack of space as a result of overcrowding. The total capacity of prisons across the country is 36,614 but there were 86,550 detainees as of 31 March 2019. 12 persons reportedly died in jail between January and March 2019. Among them, it was reported that 11 died due to alleged illnesses and one allegedly committed suicide¹⁷. There is no systematic medical check up upon entry in prison.

20. Many international and internal reports, including reports gathered by Planète réfugiés-Droits de l'Homme, report lack of effective access to health care and medical personnel. Out of 170 positions of medical doctors to fill in for the 68 prisons of Bangladesh, only a dozen of them are filled in. Lack of proper sanitation triggers major health hazard in prisons, including the death of detainees, be they awaiting trial or following their conviction. Corruption in prison is rampant. Food is of poor quantity and quality. Reprisals are reported as soon as prisoners report any complaint to the prison authorities.

21. People under trial, convicted prisoners, especially those facing the death penalty in Bangladesh do not systematically benefit from all the basic judicial guarantees they are entitled to, such as: the right of the accused person to be tried by an independent and impartial tribunal, and without undue delay; the right of the accused person to be informed of the nature and cause of the charges against them; the rights and means necessary for the defence, for example the right to have the assistance of a qualified defence counsel of one's choice; the right to the assistance of legal counsel free of charge, if the interests of justice so require (though legal aid is available, it is difficult to access); the right of the accused person to be assisted by an interpreter if necessary; the right of the accused person to communicate freely with their counsel; the right to have the time and facilities necessary for the preparation of the defence; the principle of the presumption of innocence; and the right of the accused person not to testify against himself or herself or to confess guilt. The fact remains that maintaining family links for people facing death row is extremely difficult due to social barriers and particular

Rule 11 « *The different categories of prisoners shall be kept in separate institutions or parts of institutions, taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment; thus:*

a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women, the whole of the premises allocated to women shall be entirely separate;

b) Untried prisoners shall be kept separate from convicted prisoners;

(c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;

(d) Young prisoners shall be kept separate from adults ».

¹⁴ Constitution of Bangladesh, art. 35(5), http://bdlaws.minlaw.gov.bd/sections_detail.php?id=367§ions_id=24583

¹⁵ The Uganda law, considered as a model law, includes a provision about cruel, inhuman or degrading treatments or punishment. Article 7-1: "Cruel, inhuman or degrading treatment or punishment committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official or private capacity, which does not amount to torture as defined in section 2, is a criminal offence".

¹⁶ Report of the Human Rights Commission of Bangladesh (JAMAKON), Human Rights Committee (HRC), March 2017, http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fIFL%2fBGD%2f23343&Lang=fr, p. 18.

¹⁷ ODHIKAR, Three-Month Human Rights Monitoring Report, January-March 2019, http://odhikar.org/wp-content/uploads/2019/04/HRR_January-March_2019_Eng.pdf, p. 16.

vulnerabilities. Violations of basic judicial guarantees could be tantamount to cruel, inhuman and degrading treatment in spite of the basic rights enshrined in the Constitution.

Recommendation

Amend the Torture and Custodial Death (Prohibition) Act, 2013 in order to include the strict prohibition of cruel, inhuman and degrading treatment and punishment.

Ensure the respect of basic judicial guarantees for all detainees, in particular those facing particular vulnerabilities in detention (women, minors, people facing death penalty) in order to foster the proper administration of justice.

Put in place, in a systematic manner, a medical check upon entry to prisons for all detainees, as per mentioned in the United Nations Standard Minimum Rules for the Treatment of Prisoners (2015).

Strengthen the presence of medical doctors in prison so as to reduce health hazard and decrease the number of deceased persons because of shortages in medical care, or torture.

Allocate a daily allowance per detainee that would allow the penitentiary system to cover, in a decent manner all needs of detainees (food, health and hygiene, bedding, recreational activities).

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