National Human Rights Commission, Bangladesh

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March 2013

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Published: March 2013

Printed by:
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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

ACKNOWLEDGMENTS

This report is the outcome of the project on the Legal Compliance Study of the International Covenant of Civil and Political Rights conducted by the UNDP - Bangladesh National Human Rights Commission Capacity Development Project. But for such project, this report would have never seen the light of day. Therefore, I express my sincerest thanks and gratitude to the UNDP for engaging me as a National Consultant in the project.

The preparation of the report was possible because of the devotion and hard work of my research assistants – Ms. Aznin Aktar and Mr. Muhammad Salahuddin. I am thankful to them. For secondary data on State practice as to civil and political rights, we heavily relied on the relevant study reports of *Ain-o-Salish Kendro and Odhikar* – two national human rights organizations with international reputation, as well as Annual Human Rights Reports of the US Department of State. It would be less than fair if we do not thank them for making their reports public. I am also thankful to the Bangladesh National Human Rights Commission and the UNDP Country Office for their valuable comments on the draft of this report. However, the responsibility for any error is, of course, mine.

Last, but not the least, my sincerest gratitude to Ms. Mona M'Bikay Boin, Ms. Lubna Yasin, and Ms. Qumrunnesa Nazly of the BNHRC-Capacity Development Project Office of the UNDP. Their help proved instrumental in completing the project. I am thankful to them for extending their kind help and support to me in every possible way.

LIST OF ABBREVIATIONS

AD	Appellate Division [of the Supreme Court]
ADR	Alternative Dispute Resolution
AL	Awami League
ASK	Ain o Salish Kendro
BCWS	Bangladesh Centre for Workers' Solidarity
BDR	Bangladesh Riffles
BGB	Border Guards of Bangladesh
BLA	Bangladesh Labour Act
BLC	Bangladesh Law Chronicles
BLD	Bangladesh Law Decisions
BNP	Bangladesh Nationalist Party
BTRC	Bangladesh Telecommunications Regulatory Commission
CAT	Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment
CHT	Chittagong Hill Tracts
CrPC	Code of Criminal Procedure
DLR	Dhaka Law Reports
DMP	Dhaka Metropolitan Police
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]
OP-ICCPR	Optional Protocol to International Covenant on Civil and Political Rights
PC	Penal Code
PCJSS	*Parbattya Chattagram Jana Sanghati Samiti*
RAB	Rapid Actions Battalion
SB	*Santi Bahini*
SPA	Special Powers Act
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNDP	United Nations Development Program
UPDF	United Peoples Democratic Front
UPR	Universal Periodic Review
US	United States
WWI	World War I
WWII	World War II

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ABSTRACT

This report evaluates the legal architecture of the protection of civil and political rights in the context of Bangladesh. To this end, in juxtaposition of the International Covenant of Civil and Political Rights (ICCPR), this report critically examines the legal instruments guaranteeing civil and political rights as applicable in Bangladesh 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 these rights, and prescribes a set of recommendations for both legal reforms and law enforcement.

1. Introduction

The German philosopher Immanuel Kant back in the late eighteenth century asserted that a State is a union of an aggregate of men. The act by which the people constitute a State for themselves is the original contract, through which all individual members of the people sacrifice their freedom that exists in the state of nature, in order to receive civil rights in return.[1] Since all rights emanate from the legislative

[1] I Kant, "The Metaphysics of Morals (1797)," in *Kant's Political Writings,* ed. H S Reiss, trans. H B Nisbet (NY: Cambridge University Press, 1970), 140.

power, in so far as the laws reflect the will of individuals, the form of the State will be the one based on the principle of right.

In Kant's republican political structure, individuals, in their capacity as citizens, enjoy their freedom from the perils of an unjust war by remaining the lawmaker themselves: "For a citizen must always be regarded as a co-legislative member of the state (i.e. not just as means, but also as an end in itself), and he must therefore give his free consent through his representatives […]. Only under this limiting condition may the state put him to service in dangerous enterprises."[2] At the same time, given that law is the reflection of the will of the individuals, Kant's conclusion follows that laws cannot be unjust.[3] Fernando Teson claims that by 'republican', Kant means "what we would call today a liberal democracy, a form of political organisation that provides full respect for human rights".[4]

The Kantian vision of global peace, which linked the idea of democracy and individual human rights to peace,[5] has been extremely popular among liberal international lawyers,

[2] Ibid, 166–167. See also, Kant, "Perpetual Peace: A Philosophical Sketch (1795)," in Kant: *Political Writings,* 99–102.

[3] Kant, "The Metaphysics of Morals," 139.

[4] F Teson, "The Kantian Theory of International Law," *Columbia Law Review* 92 (1992): 61.

[5] See, Teson, "Kantian Theory of International Law." See also, Thomas Franck, "The Emerging Right to Democratic Governance," *American Journal of International Law* 86 (1992): 88.

especially after the collapse of the Soviet empire. In 1992, Thomas Franck in his pioneering article, *The Emerging Right to Democratic Governance,* claimed that in international law, a new norm was emerging that required democracy to legitimise the governance of the State. While governance has always been within the internal affairs of a State protected under its sovereign veil, Franck argues, this emerging law is becoming "a requirement of international law, applicable to all and implemented through global standards, with the help of regional and international organisations".[6]

The normative position in favour of democratic governance, which has been translated into international law as an 'entitlement' in recent years, is well accommodated in the Constitution of Bangladesh. The Constitution not only declares democratic governance as one of the fundamental principles of State policy,[7] but also stipulates that "[t]he Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed [...] and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured."[8]

[6] Franck, 47.

[7] See, article 8 (1) of the Constitution.

[8] Article 11 of the Constitution. See also, the preamble, and articles 7 (1) and 59 (1) of the Constitution.

The Constitution not only guaranteed a series of civil and political rights as fundamental rights of each citizen, but also granted those rights the status of the supreme law of the country. Thus, it is stipulated in the Constitution that the State shall not make any law inconsistent with any provisions of these fundamental rights, and any law, inconsistent with such rights, shall be null and void to the extent of such inconsistency.[9] In other words, derogation from the standard set forth in the provisions apropos the fundamental rights is not permissible under normal circumstances. Besides, the right to judicial remedy in case of violation of fundamental rights is also guaranteed as a fundamental right of any citizen.[10]

Yet, while the Constitution and other enforceable laws of Bangladesh guarantee a series of civil and political rights including the right to life and due process of law, various law enforcement agencies, on the other hand, continue to violate these sacred rights of the citizens 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 International Covenant on Civil and Political

[9] Article 26 of the Constitution.

[10] Article 44 of the Constitution.

Rights (ICCPR) is conducted.

2. Methodology

Given that the ICCPR covers a wide range of civil and political rights, we mainly dealt with the following key questions so that the width and the depth of the study remain in harmony: How free are all people from physical violation of their person, and from fear of it? How effective and equal is the protection of the freedoms of movement, expression, association and assembly? And, how secure is the freedom for all to practice their own religion, language or culture? In other words, in this report, we have studied the following civil and political rights: right to life; right to equality before the law and non-discrimination; protection against arbitrary arrest and detention, safeguard as to trial and punishment; the right to political participation in the forms of freedom of assembly and association, and freedom of expression; freedom of religion; and finally the right of access to justice. In this sense, the scope of our study on the ICCPR is rather narrow.

In studying the legal compliance of the ICCPR, 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

human rights provision.

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 concerned ourselves less with 'primary' knowledge-construction than with the analysis of key legal discourses in the field; hence the report is based mostly on secondary data.

3. Overview of the ICCPR

The post-WWII phase of international law was set for reaffirming faith in and promoting certain crucial values: fundamental human rights, dignity and worth of individuals, equal rights of men and women and of nations large and small, among others.[11] After the horrors of World War II, a broad consensus emerged at the worldwide level demanding that the individual human being be placed under the protection of the international community. Since the protective mechanisms at the domestic level alone did not provide sufficiently stable safeguards, as the lessons of the holocaust demonstrate, it became necessary to entrust a new world organisation – the United Nations – with assuming the role of guarantor of human rights on a universal scale.

[11] See, the Preamble of the Charter of the United Nations.

While the relationship between the State and the population living within its territory remained for a long time an internal affair of that State, the UN Charter internationalised this relationship for the first time in history by claiming that it is determined "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small."[12] The Charter contains references to human rights in the Preamble, among the purposes of the Organization,[13] and in several other provisions.[14] Thus, since the inception of the UN, an individualist notion of human rights has become the

Examples of Civil and Political Rights

- Right to life
- Equality before law and non-discrimination
- Freedom from arbitrary arrest and detention
- Freedom of assembly and association
- Freedom of movement
- Freedom of expression
- Right to effective judiciary
- Right to marriage and family
- Right to nationality
- Right to privacy
- Right to property
- Freedom of religion

[12] Ibid.

[13] Article 1 of the Charter.

[14] Articles 13, 55, 62 and 68 of the Charter.

dominant vocabulary through which the protection of human beings at the global level was conceived.

Immediately after the actual setting up of the institutional machinery provided for by the Charter, the new Commission on Human Rights began its work for the creation of an International Bill of Rights. In a first step, the Universal Declaration of Human Rights was drafted, which the General Assembly adopted on December 10, 1948. As Tomuschat writes in his introduction to the ICCPR, "[i]n order to make human rights an instrument effectively shaping the lives of individuals and nations, more than just a political proclamation was needed. Hence, from the very outset there was general agreement to the effect that the substance of the Universal Declaration should be translated into the hard legal form of an international treaty".[15] By Resolution 543 (VI) of February 4, 1952, the General Assembly directed the Commission on Human Rights to prepare a Covenant setting forth civil and political rights and also a parallel Covenant providing for economic, social and cultural rights. On December 16, 1966, the International Covenant on Civil and Political Rights, along with the

[15] Christian Tomuschat, "Introduction to the International Covenant on Civil and Political rights," available at: <http://untreaty.un.org/cod/avl/ha/iccpr/iccpr.html>.

[16] Resolution 2200 (XXI).

International Covenant on Economic, Social, and Cultural Rights (ICESCR), was adopted by the General Assembly by consensus, without any abstentions.[16]

The ICCPR comprises all of the traditional human rights as they are known from historic documents such as the First Ten Amendments to the Constitution of the United States (1789/1791) and the French Declaration of the Rights of Man and Citizens (1789). In perfect harmony with other International Bills of Rights, the Covenant consists of a preamble and fifty-three articles, divided into six parts. Part 1 (Article 1) recognises the right of all peoples to self-determination, including the right to "freely determine their political status," pursue their economic, social and cultural goals, and manage and dispose of their own resources. It recognises a negative right of a people not to be deprived of its means of subsistence, and imposes an obligation on those parties still responsible for non-self governing and trust territories (colonies) to encourage and respect their self-determination.

Part 2 (Articles 2–5) obliges parties to legislate where necessary to give effect to the rights recognised in the Covenant, and to provide an effective legal remedy for any violation of those rights. It also requires the rights be recognised "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status," and to ensure that they are enjoyed equally by women. The

rights can only be limited "in time of public emergency which threatens the life of the nation," and even then no derogation is permitted from the rights to life, freedom from torture and slavery, freedom from retrospective law, the right to personhood, and freedom of thought, conscience and religion.

Part 3 of the IC CPR (Articles 6–27) lists the rights themselves. For example, Article 6 (1) unequivocally declares that "[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." The Covenant goes further: "In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court."[17] Physical integrity, in the form of freedom from torture and other cruel, inhuman, or degrading treatment or punishment, is also guaranteed in the

[17] Clause 2, Article 6 of the ICCPR.

[18] See, Article 7 of the ICCPR. The gap between international and national legal regimes and the actual practice as an indication of deviations from such national and international standards apropos the prohibition of torture and other cruel, inhuman, or degrading treatment or punishment are discussed in Part II of this report.

[19] Article 10 (1) of the Covenant.

Covenant.[18] Such protection applies to arrested persons as well: "All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person."[19]

Liberty and security of the person, in the form of freedom from arbitrary arrest and detention, constitute one of the crucial elements of the ICCPR. Article 9 (1) clearly declares that "[e]veryone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law." Besides, anyone who is arrested has the right to be informed, at the time of arrest, of the reasons for his arrest, and to be promptly informed of any charges against him.[20] The Covenant also stipulates that anyone arrested on a criminal charge shall be brought promptly before a judge and shall be entitled to trial within a reasonable time or to release.[21] Besides, anyone who is deprived of liberty by arrest or detention has the right to take proceedings before a court.[22] The same Article also provides that anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.[23] The Covenant also guarantees procedural fairness in law, in the form of rights to

[20] Clause 2, Article 9 of the ICCPR.

[21] Clause 3.

[22] Clause 4.

[23] Clause 5.

due process, a fair and impartial trial, the presumption of innocence, and recognition as a person before the law. According to Article 14 (3), in the determination of any criminal charge against anyone, s/he shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing; (c) To be tried without undue delay; (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; (e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court; (g) Not to be compelled to testify against himself or to confess guilt.

Like liberty and security of the person, respect for religious, linguistic and cultural values as well as non-discrimination on such grounds also constitutes a significant element of the ICCPR. The very preamble of the Covenant affirms that

recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. In this light, Article 26 guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.[24] Alongside the general non-discrimination principle, the ICCPR also specifically guarantees the right to enjoy linguistic, religious and cultural freedom. Article 28 provides that everyone shall have the freedom of thought, conscience and religion, inclusive of freedom to have or to adopt a religion or belief of his choice, and freedom to manifest his religion or belief in worship, observance, practice and teaching.

However, such protection of law proves essential when religious and other groups of this kind constitute the minority within a given territory. The ICCPR addresses this need in the oft-cited Article 27: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.” This Article is often cited for its image as a pro-minority provision. Rights guaranteed to

[24] See also, Article 2 of the ICCPR.

members of minorities to enjoy their own culture, to profess and practise their religion, or to use their own language in community with other members of their group are certainly of a unique character given the silence on the minority issue in the previous UN human rights instruments. The phrase 'in community with the other members of their group' surely envisages the right-bearer in the context of a group. Nevertheless, the right-bearers are definitely the individual members of the groups, not the group as such, very much in conformity with the dominant philosophy – liberal individualism – of the UN regime. It was necessary, according to Capotorti, for three reasons: historical continuity, maintaining coherence with the overall individualist tone of the Covenant, and lastly and perhaps most importantly, mitigating the threat to territorial integrity and political independence of existing States as well as upholding the individual freedom of voluntary assimilation.[25]

Political participation, including the right to join a political party and the right to vote are also guaranteed in the Covenant. Article 25 establishes the right for everyone to take part in the running of public affairs of his or her country. With this provision, the ICCPR makes clear that State authorities require some sort of democratic legitimacy. In any society, democratic practice largely depends on the

[25] Francesco Capotorti, *Study on the Rights of Persons Belonging to E Article 19 of the ICCPR.thnic, Religious or Linguistic Minorities (1977),* UN Doc E/CN4/Sub 2/384/Rev1, 35.

extent of the freedom of expression that the general people and media enjoy in that society. In this light, the Covenant provides that everyone shall have freedom of expression, which includes freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.[26] With the same spirit, the Covenant not only provides for the right of peaceful assembly, but also stipulates that no restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society.[27] Similarly, the ICCPR also guarantees for everyone the right to freedom of association with others, including the right to form and join trade unions, without any restrictions imposed on the exercise of this right, unless such restrictions are prescribed by law and necessary in a democratic society in the interests of national security or public safety, public order, the protection of public health or morals or the protection of the rights and freedoms of others.

4. Overview of National Legislations Protecting Civil and Political Rights

[26] Article 19 of the ICCPR.

[27] Article 21 of the ICCPR.

[28] Tomuschat, "Introduction to the International Covenant on Civil and Political Rights," available at: <http://untreaty.un.org/cod/avl/ha/iccpr/iccpr.html>.

As Tomuschat claims, when today anywhere in the world a national constitution is framed, the ICCPR serves as the natural yardstick for the drafting of a section on fundamental rights.[28] In most countries, the ICCPR has been made part and parcel of the national legal order although there is no general rule of international law that would enjoin States to embrace a specific method of implementation. Since its inception, Bangladesh has been repeatedly underscoring, *albeit* theoretically, its commitment to the peremptory norms of international human rights law. The Constitution, adopted soon after independence, incorporates a number of civil and political rights in line with the Universal Declaration of Human Rights (UDHR) and International Covenant on Civil and Political Rights (ICCPR). Bangladesh has also committed itself to the international responsibility of protecting and promoting civil and political rights by ratifying and acceding to the ICCPR on September 6, 2000. The following is a glimpse of the rights incorporated in the Constitution in light of the ICCPR.

Right to Life:

Article 31 of the Constitution guarantees the right to life and personal liberty. As Mahmudul Islam notes, "'[l]ife' within the meaning of Article 31 means something more than mere animal existence;" it includes the right to live consistently with human dignity and decency, the right to the bare

[29] Mahmudul Islam, *Constitutional Law of Bangladesh* (Dhaka: BILIA, 1995), 163

necessities of life, and all that which gives meaning and content to one's life including his tradition, culture and heritage.[29] Article 32 of the Constitution provides that no person shall be deprived of life or personal liberty save in accordance with law. Although deprivation can be covered by interpreting Article 31 in right perspective, the framers of the Constitution, given the seriousness of deprivation, thought fit to include a separate article limiting the deprivation of human life.

Equality before Law and Non-discrimination:

The rights incorporated in the Constitution in accordance with the international instruments include, *inter alia,* equality before the law, non-discrimination on the grounds of religion, race, caste, sex or birth, and equality of opportunity in public employment. Article 27 of the

[30] Article 28 of the Constitution.

Selected Case References as to Equality before the Law and Non-discrimination

1. Dr. Nurul Islam –vs- Bangladesh , (1981), 33, DLR(AD) 201
2. Bangladesh NCTB –vs- Shamsuddin, (1996), 48 DLR (A), 184,189
3. Abdur Rahman –vs- Ministry of LGRD, (2005), 10 BLC (AD), 179
4. Delwar Hossain –vs- Bangladesh , (2007), 15 BLT (AD), 124
5. Farida Akhter –vs- Bangladesh , (2008), 16 BLT (AD), 206
6. Bangladesh –vs- Shamsul Hoque (2007), 59 DLR (AD), 54
7. Bangladesh –vs- A.K.Al-Mamun, 1997, BLD (AD), 77
8. Director General NSI –vs- Sultan Ahmed, (1996) 1 BLC (AD), 71
9. Syed SM Hossain –vs- Bangladesh , (2008), 60 DLR (AD), 76
10. Abu Taher Mondal –vs- BWDB, (2010), 15 BLC, 145
11. Secy. Aircraft Engrs. of Bangladesh –vs- Registrar of Trade Union, (1993), 45 DLR (AD), 122
12. Bangladesh Retired Govt. Employees Welfare Association –vs- Bangladesh , (1999), 51DLR (AD), 121
13. A.H.M. Mustain Billah –vs- Bangladesh, (2005) 57DLR (AD), 41
14. CCIE –vs- Faruk Ahmed, (2007), 12 BLC (AD), 44
15. Bangladesh Krishi Bank –vs- Meghna Enterprise, (1998) 50 DLR (AD), 194
16. Secretary, Ministry of Establishment –vs- Md. Jahangir Hossain, (1999), 51 DLR(AD), 148
17. Rajkumar Behani –vs- Bangladesh , (1994), 2BLT, 169

Selected Case References as to Equality before the Law and Non-discrimination

18. Dr. Abeda Begum & others –vs- Public Service Commission, (2007), 59 DLR, 182
19. Anisur Rahman –vs- Bangladesh , (2007), 12 BLC, 22
20. Bangladesh Krishi Bank –vs- Meghna Enterprise, (1998) 50 DLR(AD), 196
21. S.A. Sabur –vs- Returning Officer, (1989), 41 DLR(AD), 30, 35
22. Abdul Kader Mirza –vs- Bangladesh , (2008), 60 DLR(AD), 185
23. Abdus Sattar –vs- Bangladesh , (1993), 45 DLR (AD), 65
24. Bangladesh Retired Government Employees Welfare Association –vs- Bangladesh, (1994), 46DLR 426
25. Kudrat-e-Elahi Panir –vs- Bangladesh , (1992) 44DLR(AD), 319
26. Hamidul Huq Chowdhury –vs- Bangladesh , (1982), 34 DLR, 190
27. Bangladesh –vs- Azizur Rahman, (1994), 46 DLR (AD), 19
28. Khodeja Begum –vs- Sadeq Sarker, (1998), 50 DLR, 181
29. Sharmin Hossain –vs- Mizanur Rahman, (1997), 2BLC, 509
30. Muhibur Rahman Manik –vs- Bangladesh, (2003), 55 DLR, 363

Constitution guarantees that "[a]ll citizens are equal before the law and are entitled to equal protection of law." It is also provided that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, language,

religion, political or other opinion, national or social origin, property, birth, or other status.[30]

Arrest and Detention:

The Constitution recognises that to enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, and therefore, stipulates that no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.[31] It is also guaranteed in the Constitution that no person who is arrested shall be detained in custody without being informed of the grounds for such arrest, nor shall she be denied the right to consult and be defended by a legal practitioner of her choice.[32] 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".[33] The relevant provisions of the Code of Criminal Procedure (CrPC) as well as judicial decisions dealing with the rights of arrested persons conform to this constitutional standard.

[31] Articles 31 and 32 of the Constitution.

[32] Article 33 (1) of the Constitution.

[33] Article 33 (2) of the Constitution.

[34] *Abdur Rahman vs. the State,* 29 DLR 256 SC.

For example, Section 60 of the CrPC stipulates that a police-officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions relating to bail, take or send the arrested person before a judicial Magistrate or the officer-in-charge of a police station.[34] Similarly, Section 61 puts restriction on detaining any person for more than 24 hours, unless a judicial Magistrate issues a special order to extend the duration of the detention under Section 167. The detention mentioned in this section means continuous detention. When the 24-hours detention and the additional time necessary to bring an accused before a Magistrate allowed by this section and the 15 days additional detention allowed by Section 167 expire, an accused must either be released by the police upon security, or the accused must be forwarded under custody to a Magistrate who is empowered to take cognizance of the offence upon a police report.[35]

Under Section 167, when the Magistrate considers that further detention is necessary for investigation, she is required to apply her judicial mind to determine whether the circumstances justify detention of the accused in police custody. Police custody being an infringement of liberty should not be ordered as a matter of course. If detention in

[35] Section 167 of the CrPC only authorises the Magistrate to make an order with regard to detention of the accused in such custody as he thinks fit and that too for a term not exceeding 15 days on the whole. Unless the accused is brought before the Court, no remand order can be passed.

police custody is ordered, the Magistrate must record the reasons for such a decision. While in police custody, an accused is entitled to have interviews with legal advisers and also to have food and clothing supplied by relatives.

In cases of preventive detention, the Constitution prohibits the detention of a person for a period exceeding six months unless an Advisory Board consisting of three persons, of whom two shall be persons who are, or have been, or are qualified to be appointed as, Judges of the Supreme Court and the other shall be a person who is a senior officer in the service of the Republic, has, after affording him an opportunity of being heard in person, reported before the expiration of the said period of six months that there is, in its opinion, sufficient cause for such detention.[36] It is mandatory that the authority making the order of preventive detention shall, as soon as may be, communicate to the detainee the grounds on which the order has been made, and shall afford him the earliest opportunity of making a representation against the order.[37] These provisions are translated into the Special Powers Act, 1974.

Safeguard as to Trial and Punishment:

The Constitution also sets forth a number of protections in respect of trial and punishment. *Ex post facto* legislation is prohibited, in that according to Article 35, "no person shall

[36] Article 33 (4) of the Constitution.

[37] Article 33 (5) of the Constitution.

be convicted to any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than, or different from that which might have been inflicted under the law in force at the time of the commission of the offence". The same Article prohibits double jeopardy. Besides, the Constitution guarantees that every person accused of a criminal offence shall have the right to a speedy and public trial by an independent and impartial court or tribunal established by law; no person accused of any offence shall be compelled to be a witness against himself; and no person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.

So far as the trial of the juveniles is concerned, the Children Act 1974 categorically prohibits the trial of juveniles with adults. In the case of **State-Vs.-Deputy Commissioner, Satkhira and others,** a Division Bench of the High Court Division held that "no child is to be charged with or tried for any offence together with an adult. The Child must be tried in the Juvenile Court and not in the ordinary Court".[38] Similarly, in the case of **Shiplu and another –Vs.- The State,** it has been held that any order of conviction and sentence passed by the Trial Court not being a Juvenile Court in respect of an accused below the age of 16 years is liable to be set aside for want of

[38] Reported in 45 DLR (HCD) 643.

[39] Reported in 49 DLR (HCD) 53.

[40] See, Article 8 (1) of the Constitution.

jurisdiction, in view of the Children Act, 1974.[39]

Right to Political Participation:

The normative?? position in favour of democratic governance, which has been translated into international law as an 'entitlement' in recent years, is also well accommodated in the Constitution of Bangladesh. The Constitution not only declares democratic governance as one of the fundamental principles of State policy,[40] but also stipulates that "[t]he Republic shall be a democracy in which fundamental human rights and freedoms and respect for the dignity and worth of the human person shall be guaranteed [...] and in which effective participation by the people through their elected representatives in administration at all levels shall be ensured."[41] The Representation of the People's Order (Amendment) Ordinance 2008 significantly changed the electoral law that had been in place since 1972, in an attempt to address corruption in politics. The major political parties considered some of the new provisions in the bill, such as the abolition of students' and women's wings and foreign chapters, to be undemocratic, but they accepted the changes with some reluctance and revised their party constitutions. Under the amended Ordinance, candidates must reveal information about their education, wealth, and criminal records when they file to run for parliament. Election financing and campaign mechanisms are also to be

[41] Article 11 of the Constitution. See also, the preamble, and articles 7 (1) and 59 (1) of the Constitution.

closely monitored under this law. This legislation was enacted with the aim of bringing forward qualitative changes in politics, and thereby, create a culture of tolerance and a space for diversity – essential requisites for democracy in any society.

Freedom of Assembly and Association:

In conformity with the international standard, the Constitution also guarantees freedom of movement, freedom of assembly, and freedom of association. According to Article 36, every citizen shall have the right to move freely throughout the country, to reside and settle in any place therein and to leave and re-enter Bangladesh, subject to any reasonable restrictions imposed by law in the public interest. Subject to similar restrictions, every citizen is guaranteed the right to assemble and to participate in public meetings and processions peacefully.[42] Similarly, citizens also have the right to form associations or unions, subject to certain reasonable restrictions imposed by law.[43] These rights are crucial for maintaining a democratic political environment in any society. The Bangladesh Labour Act (BLA), 2006 consolidated laws from 25 separate acts into one comprehensive law. Under this law, the Director of Labour is responsible for the registration and dissolution of unions, while the Registrar of Trade Unions may deregister unions with the approval of the Labour Court. The law, however, affords unions the right of

[42] Article 37 of the Constitution.

[43] Article 38 of the Constitution.

appeal in the case of dissolution or denial of registration.

Freedom of Expression:

While the right to assemble or to form associations ensures active participation in any political as well as non-political social process, the freedom of thought and conscience and of speech often engenders the opportunity for creating the context and rationale for such participation. Accordingly, in light of the ICCPR, freedom of thought and conscience is guaranteed in the Constitution.[44] Besides, subject to reasonable restrictions imposed by law, freedom of speech and expression, and freedom of the press, are also guaranteed as fundamental rights of every citizen.[45]

Freedom of Religion:

Freedom of religion, in the form of the right to profess, practice or propagate any religion, and also to establish, maintain and manage respective religious institutions by every religious community or denomination, is also enshrined in the Constitution.[46] The same provision also protects all individuals from compulsory attendance in ceremony or worship, or compulsory education in any religion other than their own. However, paradoxically, the Constitution also establishes Islam as the State-religion. In February 2010, the Appellate Division of the Supreme Court

[44] Article 39 (1) of the Constitution.

[45] Article 39 (2a) of the Constitution.

[46] Article 41 of the Constitution.

ruled that the Fifth Amendment to the Constitution was unconstitutional. Ratified in 1979, the Fifth Amendment overturned a previous law banning unions, associations, or parties based on religion and stating that all citizens have a right to form a union, association, or party for whatever purpose they desire. The ruling returned avowed secularism to the Constitution and nominally banned Islamic political parties; however, the government made it clear that the ban would not be strictly enforced. Yet, the matter remained under debate at the highest levels of the government, and finally, after the Fifteenth Amendment, contrasting norms of Islam as the State-religion and secularism co-exist in the Constitution.

Besides this, under the Penal Code, any person who has a 'deliberate' or 'malicious' intention of hurting religious sentiments is liable to face imprisonment. In addition, the Code of Criminal Procedure states that "the government may confiscate all copies of a newspaper if it publishes anything that creates enmity and hatred among the citizens or denigrates religious beliefs."

Access to Justice:

While the notion of justice creates images of the rule of law, resolution of disputes and mechanisms for the enforcement of laws, intrinsic to the notion of justice is access to justice

[47] S. Khair, *Legal Empowerment for the Poor and the Disadvantaged: Strategies, Achievements and Challenges* (Dhaka: privately printed, 2008), 3.

[48] Ibid, 4.

and due process of law.[47] In her seminal work, Khair asserts that the fundamental purposes of providing access to justice are to ensure that every person is able to invoke the legal process for redress, irrespective of social or economic status or other incapacity; and also to ensure that every person receives just and fair treatment within the legal system.[48] However, the concept of access to justice developed through phases of reforms with shifts in focus. As Cranston traces, access to justice reforms to three distinct waves: the first wave began in the early 1960s involving the extension of legal aid; the second wave concentrated on the representation of diffuse or collective interests, for example, consumers and environmentalists, and involved standing rules, multi-party actions and so on, and the third wave, incorporating elements from the earlier waves, went on to expand legal representation and improve adjudicative procedures to accommodate different types of litigations and issues.[49] According to Khair, these initiatives, in essence, were concerned with ensuring 'social access' by making individuals and groups aware of their legal rights and enabling them to obtain legal services to invoke those rights.[50]

Ideally, the legal system is meant to operate as a premise

[49] R Cranston, "Access to Justice in South and South-East Asia," in Julio Faundez (ed), *Good Governance and Law, Legal and Institutional Reform in Developing Countries* (London: MacMillan Press Ltd., 1997), 233.

[50] Khair, *Legal Empowerment for the Poor,* 5.

from which the general populace can hold public officials and politicians to account, protect themselves from discriminatory treatment and exploitation and resolve conflicts at individual or collective levels. As conventional wisdom and global experience demonstrate, a well-functioning legal apparatus is one in which law is applied in a fair manner by judges and adjudicators, without undue delays or exorbitant costs, where judicial decisions are transparent and imparted on the basis of accurate assessment of the facts and circumstances and objective application of appropriate rules.[51] The Constitution of Bangladesh, with the same spirit, guarantees as a fundamental right that "[e]very person accused of a criminal offence shall have the right to a *speedy and public trial* by an independent and impartial court or tribunal established by law."[52] In 2004, the government enacted the Speedy Trial Act to expedite selected criminal cases of heinous nature.

The Constitution also recognises that all are equal before law[53] and are entitled to equal protection of law. In the case of **Dr. Neelima Ibrahim Vs. State,** it was held that the principle of *audi alterem partem* (hear the other party) unless expressly excluded by law or by the nature of the objects of any particular law is to be implied to have been

[51] See, ibid.

[52] Article 39 (3) of the Constitution. Emphasis added.

[53] Article 27 of the Constitution.

[54] 32 DLR (1980) 201.

proved in every statute.[54] However, given the prodigious number of people lacking necessary means to have recourse to law and legal system, materialization of this right is next to impossible in the absence of a free or state sponsored legal aid to get justice and fair trial. Keeping this in mind, Bangladesh has passed the Legal Aid Services Act in 2000, declared the Legal Aid Services Principles and the Legal Aid Giving Rules in 2001 to ensure access to justice for the poor and the disadvantaged. Bangladesh has a government legal aid fund to provide services to the citizens. According to section 2(a) of the Act, "Legal Aid" means to provide legal aid to people who are unable to get justice due to their financial position or due to different socio economic conditions such as the payment of lawyer's fees, etc. Thus, section 2 (a) of the Act broadly defines Legal Aid so as to include counselling, payment of lawyers fees and other incidental costs for expenses of litigation.[55]

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

Despite the fact that the national legal architecture of Bangladesh conforms in principle to the international standard regarding civil and political rights as prescribed in the ICCPR, there exist certain gaps between international

[55] For the purposes of the Legal Aid Act by the term financially incapable or poor means any person whose yearly average income is not more than BDT. 3000.00.

and national legal regimes protecting these rights. In the following sub-sections, we attempt to expose those gaps.

Right to Life:

Article 6 of the ICCPR guarantees the inherent right to life, and provides that the death penalty should only be used for the most serious crimes. It also lays down the right to seek pardon or commutation of a death sentence. Article 32 of the Constitution separately deals with the deprivation of life, although this could have been covered by Article 31. By treating this subject separately, the drafters of the Constitution demonstrated the importance that they attached to it. But our Constitution does not lay down any guidelines for the use of capital punishment and nor does it discourage the practice. Section 367 (5) of the CrPC, 1898 provided that if an accused convicted of an offence punishable with the death penalty is given a lesser sentence, the Court should state the reason for awarding the lesser sentence. In 1978, this section was amended requiring the court to assign reasons for passing the sentence, be it the death penalty or life imprisonment. This law, as it stands now, is more in conformity with Article 32 of the Constitution than it was previously.[56] However, the code of Criminal Procedure does not specify that capital punishment should be restricted to the most serious cases in accordance with the corresponding provision of the ICCPR.

[56] M Islam, *Constitutional Law of Bangladesh* (Dhaka: BILIA, 1995), 167.

Equality before the Law and Non-discrimination:

Article 27 of the Constitution says that all citizens are equal before the law and are entitled to equal protection of the law. Article 28 spells out the principle of non-discrimination in the following words: "[…] the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, or place of birth." These provisions in the Constitution reflects Article 2 of the ICCPR that provides that State parties undertake to respect and ensure to all individuals within its territory the rights recognised in the Covenant without discrimination on the grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth, or other status.

The grounds spelt out in the ICCPR are more expansive than that in the Constitution. For example, 'national origin' is not necessarily covered by 'place of birth,' nor is 'language' mentioned in the Constitution as ground for discrimination. The Constitution does not mention political discrimination either.[57] The list of grounds in the ICCPR is theoretically left open. The phrase – 'such as' – indicates that one can add to the list of possible grounds as long as they are consistent with the others. The list in the Constitution is exhaustive, but the classification made by the Parliament in its legislation has

[57] See, anonymous, "Comparison between the International Covenant on Civil and Political Rights and the Constitution of Bangladesh," in *Human Rights in Bangladesh: A Study of Standards and Practices* (Dhaka: BILIA, 2001), 17–18.

[58] Ibid, 18.

to be reasonable to fall within the ambit of the guarantee of equality before the law, enshrined in Article 27 of the Constitution. Moreover, Articles 27 and 28 of the Constitution are limited to citizens. However, in Article 31, the Constitution guarantees the protection of the law, without using the term 'equal protection', to non-citizens, in that the Constitution guarantees to any person for the time being within Bangladesh the right to be treated in accordance with the law.[58]

The international and national protection against discrimination on the basis of race, language, colour, *inter alia,* closely relates to protection of minorities within a legal regime of non-discrimination. To address the *de facto* economic and social disparity, the Constitution permits affirmative actions "in favour of women or children or for the advancement of any backward section of citizens".[59] Special measures for indigenous peoples have been justified under this constitutional provision since the inception of Bangladesh by putting them under the rubric of 'backward section of citizens'. It would be pertinent to mention here that during the British colonial rule too, the special characteristics of life and nature of the hill people of the Chittagong Hill Tracts were protected. The 1900 Regulation formulated by the British rulers is still considered the principal instrument for protecting hill people's rights.

[59] Article 28 (4) of the Constitution.

However, in the unitary State of Bangladesh, the Constitution avoided any mention of indigenous people; instead, limited as well as insufficient affirmative measures were given validity by calling them a backward section of society. No doubt, centuries of systematic oppression and discrimination made the hill people vulnerable, and economic affirmative action is badly needed to ameliorate their economic status. But perceiving this backwardness in terms of culture and tradition begs the proposition question. Besides, special arrangements to facilitate political participation of hill peoples, by restricting a number of human rights of majority Bengalis, contradict a number of fundamental rights guaranteed to all citizens of the country. On April 12-13, 2010, the High Court Division declared illegal some important sections of the 'Chittagong Hill Tracts Regional Council Act' and found the Accord, though a political issue, a violation of the spirit of the Constitution following two separate writ petitions filed by one Badiuzzaman and Advocate Tajul Islam. Later, a seven-member full bench of the Appellate Division led by the then chief justice gave an order of stay on the HC verdict until the appeal was dissolved.

Paradoxically, the legality of peace agreements under the Constitution or international law is not usually the prime concern of various contending parties in conflicts. Often, such agreements are the products of grave pragmatic needs in the absence of any better option. The CHT Peace Accord of 1997 is not any exception here. In the face of insurgency and the ensuing massive violation of human rights, as well as

various regional and international pressures on both the government and *Parbattya Chattagram Jana Sanghati Samiti* (PCJSS), such a peace accord was a demand of time. The peace process appeared complicated when the then opposition party – a right-wing nationalist party – vehemently opposed any concessions in favour of the indigenous people, as that would go against the unitary spirit of Bangladeshi nationalism as well as the territorial integrity of the country. The party in power at that time also consistently emphasized the nation-state character of Bangladesh *ab initio.* Therefore, the CHT Peace Accord mainly concentrated on bringing an end to insurgency by devolving a number of local governments, subject to newly established district and regional councils and rehabilitating the members of the *Santi Bahini* (SB), the military wing of the PCJSS without addressing the root causes of the conflict. Yet right-wing political parties declared this accord unconstitutional and vowed to repeal it once they assumed power, which they actually did not – again for pragmatic reasons. On the other hand, a section of the hill people also rejected the accord as a compromise and formed a political party – United Peoples Democratic Front (UPDF) – to carry on the struggle for 'full autonomy' of the CHT.[60] Under such delicate circumstances, no substantive progress has been

[60] A Mohsin, *Politics of Nationalism* (Dhaka: The University Press Limited, 1997), 215.

[61] Islam, *Constitutional Law of Bangladesh,* 171. See also, 174–178.

made in the implementation of the Accord.

Safeguards as 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. It is stated here that the arrested person shall not be detained without being informed as soon as may be of the grounds for his arrest. The phrase 'as soon as may be' means that the grounds for arrest should be communicated as reasonably practicable in the circumstances of the case.[61] Although the phrase provides a certain amount of flexibility which may be required, it is also open to abuse in the absence of any specific time limit or clear interpretation. The relevant provision of the ICCPR, in contrast, requires that the grounds of arrest be communicated 'at the time of the arrest'. Under the ICCPR, the arrested person also has to be 'promptly informed' of any charges against him; the Constitution is silent on this provision.[62]

While there are no provisions for preventive detention in the ICCPR, Section 3 of the Special Powers Act, 1974 provides for preventive detention within the limits of Articles 33 (4) and (5) of the Constitution, and in case of such detention, the

[62] Anonymous, "Comparison between the International Covenant on Civil and Political Rights," 19.

[63] Islam, *Constitutional Law of Bangladesh,* 168.

safeguards enshrined in Articles 33 (1) and (2) of the Constitution do not apply. Since its incorporation in the Constitution, the provisions for preventive detention have been used for political repression; hence, the Special Powers Act is often referred to as a 'black law.' A law providing for preventive detention must show that there is a compelling State necessity for such detention and the necessity cannot be fulfilled by any other reasonable means keeping at large the person sought to be detained. In other words, the grounds for detention must be substantively reasonable in relation to the demands of an ordered society and the security of the State.[63]

Moreover, the Constitution or other laws as applicable in Bangladesh do not provide for compensation for the victims of unlawful arrest or detention, while the ICCPR categorically states that "[a]nyone who has been the victim of unlawful arrest and detention shall have an enforceable right to compensation."[64] The English law concept of tort, which is hardly used in Bangladesh, is the only available legal measure to obtain compensation if one can show wrongful imprisonment.

Treatment of Prisoners:

There are no provisions relating specifically to the treatment of prisoners in the Constitution. Article 10 of the ICCPR, in contrast, states that those deprived of their liberty shall be

[64] See, Article 9(5) of the ICCPR.

treated with humanity and with respect for inherent dignity of the human person. Sub-section (2)(b) also provides that juveniles be separated from adults, a provision covered by the Children Act, 1974. Article 10 (3) of the ICCPR also stipulates that the main aim of the penitentiary system shall be the reformation and social rehabilitation of prisoners. On April 9, 2003, a High Court bench of Justice Amirul Kabir Chowdhury and Justice Nijamul Haque Nasim delivered a verdict, detailing a seven-point directive for the government in this regard. The court directed that no juvenile accused should be kept in jail and child inmates should be transferred to correction homes and other designated shelters from jails with utmost expedition. However, as prisons witnessed a gradual increase in the number of juvenile inmates, the High Court on March 4, 2007 issued a fresh suo moto rule on the government to explain why necessary action should not be taken against it for keeping children in jails in violation of the High Court's verdict delivered on April 9, 2003. An official of the task force said, the number of children in jails increased by 42 in a month after the High Court issued a fresh order on March 4, 2007.

The Constitution does prohibit torture or other cruel, inhuman, or degrading treatment or punishment in Article 35. However, the wording of Article 10 of the ICCPR seems to

[65] Anonymous, "Comparison between the International Covenant on Civil and Political Rights," 20.

[66] Ibid.

indicate that something more than mere abstention from torture, etc. is required. Treating prisoners with humanity may necessitate more positive steps.[65] However, all of this could come within the compass of Article 31, which states that no action detrimental to life, liberty, body, reputation or property of a person shall be taken except in accordance with the law. A prisoner, incarcerated according to the law, should be able to claim such rights within the prison environment.[66]

Freedom of Expression:

Article 39 of the Constitution provides for freedom of thought and conscience. Both the Constitution and the ICCPR state that this right is subject to certain restrictions. However, the Constitution says that 'friendly relations with foreign States' may be a reason for restriction. This is not mentioned in Article 18 and 19 of the ICCPR. Moreover, Article 19 of the ICCPR guarantees the "right to seek, receive, and impart information", as well as the freedom of expression. This may ensure that citizens have access to important information from government agencies or otherwise. It also guarantees that citizens or groups are allowed to circulate important information. This right to seek, receive, and impart information is not spelt out in the

[67] Ibid.

[68] *Namboodripad vs. Nambiar,* AIR (1970) SC 2015; *Daphtary vs. Gupta,* AIR (1971) SC 1132.

[69] *Rama Dayal vs. MP,* AIR (1978) SC 621.

Constitution.[67] And finally, Article 20 of the ICCPR prohibits war propaganda, which is not stipulated in the Constitution.

In South Asian jurisprudence especially, nobody is allowed to cause contempt of court in the exercise of her freedom of speech and expression.[68] The Constitution of Bangladesh specifically provided for the Supreme Court's power to commit for contempt of court. However, given that the contempt power constitutes a restriction on the freedom of speech and expression, this power should be cautiously and sparingly used.[69] In one case, the Supreme Court of Bangladesh stated that "[f]reedom of press being recognised in our Constitution, a Court is to suffer criticism made against it, and only in exceptional cases of bad faith or ill motive, it will resort to law of contempt."[70]

Derogations in Times of Emergency:

The ICCPR allows derogations from fundamental rights only in the time of public emergency if it threatens the life of the nation and is officially announced. It does not allow

[70] *Saleemullah vs. State,* 44 DLR (AD) 309.

[71] See also, anonymous, "Comparison between the International Covenant on Civil and Political Rights," 21.

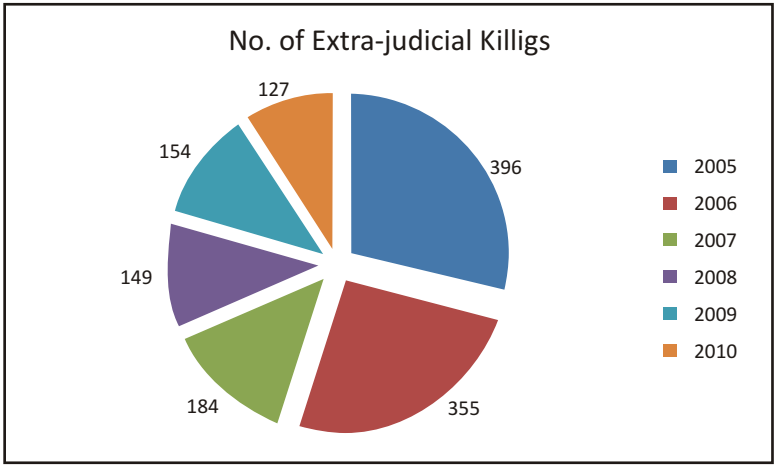
derogation from certain fundamental rights, such as, the provisions relating to torture, slavery, right to life, freedom of thought and religion, retroactive punishment, and recognition as a person before the law. In contrast, part IXA dealing with emergency provisions was added to the Constitution by the Second Amendment Act of 1973. Article 141A details the procedure to be followed before a proclamation of emergency can be declared. Article 141B provides for the suspension of fundamental rights, so that the freedom of movement, assembly, association, expression, the right to lawful occupation and enjoyment of religion may be disregarded by that State in passing a law or taking executive action during such an emergency period. [71]

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

While there remain gaps in the international and national standards apropos civil and political rights, the actual state practices often fall much below both the standards. The following is a snapshot of such deviations, illustrated by recent cases of national and international concern.

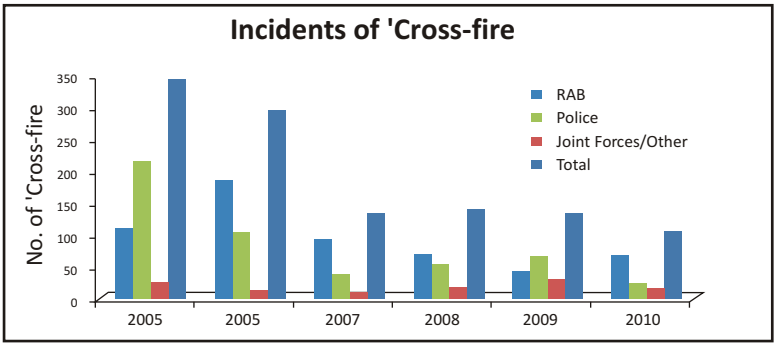
Right to Life:

Like the ICCPR, the Constitution of Bangladesh also guarantees the right to life and the due process of law apropos the arrest and trial of any individual. However, law



enforcement agencies in Bangladesh often fail to uphold the legal standard while dealing with suspects or convicts. The Rapid Action Battalion (RAB), an elite force, formed to ameliorate law and order situations, has committed numerous extrajudicial killings since its inception on March 26, 2004. Although the RAB achieved limited success in destroying the ring of outlawed underground groups as well as outlawed religious fanatic groups, in many instances the RAB ignored the due process of law while conducting its operations. The deaths, under some unusual circumstances, occurred during raids, arrests, and other law enforcement operations, or, in some cases, while the accused were in custody. The RAB often defends its actions by inventing

[72] US Department of States, *Annual Human Rights Reports,* Bangladesh Chapter (2005–2010), available at: <http://www.state.gov>.



stories that fit either 'crossfire' or 'encounter'.

During the period between June 2004 and December 2010, there were nearly 1,500 reported cases of extra-judicial killings, of which 1,200 were depicted as incidents of 'cross-fire'. Of these 'cross-fire' incidents, 614 were reported to have been committed by the RAB alone, while the rest had been conducted by police, other forces, or joint forces composed of police, RAB and BGB (Border Guards of Bangladesh) (formerly BDR – Bangladesh Rifles).[72] In most cases, the government did not take comprehensive measures to investigate cases, despite public statements by high-ranking officials that the government would show "zero tolerance" and would fully investigate all extrajudicial killings by security forces.

Thus, there were no developments in the May-2009 case, in

[73] 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>.

which police officers and RAB members allegedly shot and killed Sayeedur Rahman Sayeed in a 'crossfire' in Alamdanga, Chuadanga. The RAB and police claimed they were conducting a raid on a cemetery where Sayeed and his

Cases of Custodial Deaths

Case 1: On May 11, 2010 Mohammad Manik was arrested after being named in a theft case. While in custody in the Kotowali police station, Manik allegedly was tortured to death by the sub-inspector, Yunus Miah. Following the incident, the High Court ordered a full investigation. When the police commissioner failed to comply with the order, the High Court ruled the commissioner and the sub-inspector to be in contempt of court.

Case 2: On May 24, 2010 RAB officials detained Abul Kalam Azad and his son. They were interrogated separately at RAB headquarters, after which Azad died. Azad's son claimed that the RAB tortured his father to death.

Case 3: On June 29, 2010 the Dhaka metropolitan police detained Mohammad Mizanur Rahman, along with three other persons. While they were in custody, officials took the four individuals to a bridge in Gulshan, where a police sub-inspector, Anisur Rahman, interrogated and shot Mizanur and one other person. Doctors treated Mizanur at Dhaka Medical College Hospital, but he died as a result of his injuries. The Dhaka metropolitan police formed an inquiry committee to investigate the incident.

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

[74] Ibid.

accomplice were holding a meeting when the two men opened fire. The security forces allegedly returned fire, killing Sayeed. According to witnesses, no gunfight took place and the police and the RAB staged the incident. There were also no developments in the May-2009 case in which a team from the RAB allegedly killed two Dhaka Polytechnic Institute students, Mohammad Ali Jinnah and Mohsin Sheikh, in a shootout. Family members, fellow students, and teachers alleged Jinnah and Sheikh were members of the Bangladesh Chhatra League and did not have criminal records. The RAB alleged that the two students were 'criminals' and 'muggers'.[73]

According to the human rights organization Ain-O-Shalish Kendra (ASK), 133 deaths occurred in custody in 2010 alone, including 74 deaths in prison. Many of the deaths were allegedly the result of torture.[74]

Custodial Deaths in 2011

Administrative Divisions	Under Trial Prisoners	Convicted Prisoners
Dhaka	34	28
Chittagong	05	04
Rajshahi	16	10
Khulna	07	05
Barisal	02	03
Sylhet	01	01
Total	65	41

Source: *Documentation Unit, Ain o Salish Kendro*

[75] Ibid.

According to media reports, 59 BDR (Bangladesh Rifles) members arrested in the wake of the mutiny of February 2009 died in custody. Family members of the victims alleged that they died after being tortured. According to Odhikar, several BDR members taken into custody claimed the RAB and police physically assaulted and beat them, administered electric shocks, blindfolded them, and hung them upside down while in custody; NGOs alleged that army personnel also were involved in custodial deaths.[75] The government announced an investigation and promised to publish a report by July 2009 regarding the nature of the deaths but failed to publish any such report. The government investigation ruled that only two members died due to torture and that the others died because of illness or suicide. So far, the government has not taken any action regarding the deaths or allegations of torture of the BDR personnel.

Responsibility to Protect:

On the night of July 17, 2011, six college students were beaten to death at Amin Bazaar in Savar by a group of people following a false alarm from a mosque that a gang attacked their locality to commit a robbery. Later, the judicial enquiry commission formed to probe this case found that "[t]he victims were not robbers. They were completely innocent".[76] The probe body concluded that if the policemen had

[76] The Daily Star.

[77] The Daily Star, July 28, 2011.

performed their duties properly, the lives of six students could be saved. In some instances, police provoked the mob to beat the suspects. In one of these incidents, police let a mob beat a 16-year-old boy, Shamsuddin Milon, to death on suspicion of being a robber at Tekerhat in Noakhali on July 27, 2011. The boy was forced by the police to get off the van before the mob started beating him mercilessly. According to one witness, the policemen were repeatedly telling people to kill the boy. Following this incident, three policemen including a sub-inspector were suspended for negligence in duty after Milon's mother Kohinoor Begum filed a case against the policemen and two locals.[77]

According to the New Age, on July 18, 2010 a mob lynched six suspected robbers in the village of Enayetpur in Gazipur. Similarly, it was reported in the Daily Star that a mob beat two suspected kidnappers to death in Kushtia Sadar on August 30, 2010. Police were able to detain two members of the mob. In similar fashion, a mob killed a suspected robber in Naranpar village in Comilla in July 2009; a carjacker was beaten to death by a mob in the Pallabi area of Dhaka in September 2009; and an alleged regional leader of an outlawed faction of the Purbo Banglar Communist Party in Roypur village in Gangni upazila was beaten to death in November 2009.

Apart from these killings by the mob, inter-party as well as intra-party clashes frequently contribute to the increasing number of killings. According to information gathered by

Odhikar, a national human rights organisation, 220 persons were killed and 13,999 were injured in political violence in 2010 alone. There were also 576 incidents of internal violence in the Awami League (AL) and 92 within the Bangladesh Nationalist Party (BNP), in which 38 persons were killed and 5,614 persons were injured in AL internal conflict, and seven persons were killed and 1,146 persons were injured in internal BNP violence.

Secret Killings:

In its well-informed observation on the human rights situation in Bangladesh in 2011, ASK expressed its concerns that in recent years, especially since 2011, 'disappearance' or 'secret killing' emerged as a new trend of crime, the rate of which is very alarming compared to any previous point of time. "The decomposed bodies of some of the victims of secret killing, with visible marks of torture such as tied hands and legs, uprooted finger nails have been found and many still remain traceless." According to the ASK reports, throughout the year of 2011 different media reported the news of dead bodies of the disappeared persons lying at different places of the country. In some cases, the relatives of

[78] "A review of ASK on Human Rights Situation in Bangladesh 2011," report presented in a press conference by ASK on January 1, 2012.

[79] Quoted in ibid.

[80] 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>.

the disappeared or persons killed alleged that the law enforcing agencies, particularly the elite force RAB is involved with such activities.[78] The Chairman of the National Human Rights Commission told the media with frustration that "the strategy of extrajudicial killing has now been changed. Previously there was crossfire, now citizens are picked up and then no trace of those is found. In many cases, their families cannot even find the dead bodies at all."[79]

Disappearance:

Disappearances and kidnappings, allegedly by the security services and law enforcement agencies, are increasing significantly in the country, though precise figures are unavailable.[80] The disappearance of senior BNP leader Elias Ali this year has been one of the most-discussed issues in national and international media regarding Bangladesh in 2012. Elias is not the first to fall victim. According to *Prothom Alo,* on February 28, 2010 RAB officials picked up Mohammad Selim, a fruit vendor in Gazipur; still, his whereabouts are unknown. According to *Odhikar,* on March 19, 2010 RAB officials detained Mohammad Akbar Ali Shorder in Thakurgaon. He has not been seen or heard from since, and the RAB denied detaining him. His wife filed a kidnapping case, but there was no progress so far. On June

[81] Ibid

25, 2010 a group of men in a microbus abducted Mohammad Chowdhury Alam, a BNP city councillor in Dhaka. According to *Odhikar,* police foiled a previous attempt to abduct Alam earlier that month and detained the abductors. Odhikar's report stated that in detention the abductors identified themselves as agents of the RAB and subsequently were released. Several days later, a group of men in plainclothes pulled Alam from his car and placed him in a microbus. Both *Odhikar* and his family believed that the same group was involved in both the incidents.[81] Alam's location is yet to be known. According to the *Shamakal,* in June 2010 a group of nine persons identifying themselves as officers of the RAB arrested Jahir Raihan Hiron at his house in Dhaka. The individuals wore uniforms and carried RAB identity cards. The group told Hiron and his family that he was being taken to the Dhanmondi Police Station for questioning. His whereabouts were unknown since then.

Equality before the Law and Non-Discrimination:

The Chittagong Hill Tracts (CHT) – a case of discrimination on the basis of ethnic origin:

[82] UN Office for the Coordination of Humanitarian Affairs, published on the IRIN website: <http://www.irinnews.org/report.aspx?reportid=93640>. The UNHCR puts the number at around 1.5 %. See, <http://www.unhcr.org/refworld/topic,463af2212,469f2ca62,49749d5841,0.html>.

[83] According to the census report of 1991.

According to Bangladesh's now disputed 2011 census, of the country's more than 142 million inhabitants, just 1.2% are described as indigenous *(adibashis)*.[82] Most of these live in the Chittagong Hill Tracts (CHT), while some live in the so-called plains areas of Bangladesh and are more integrated into communities dominated by the majority. There are approximately thirteen indigenous communities in the CHT (Rangamati, Bandarban and Khagrachari Hill Districts); they are: Chakma, Murma, Tangchangya, Tripura, Murang, Mrung, Bawm, Pangkhua, Lushai, Khumi, Khyang, Mru, and Sak.[83] However, the Constitution of the People's Republic of Bangladesh does not recognize the existence of any other communities other than the dominant Bengali majority. Immediately after attaining independence, when the war-ravaged Bangladesh Government was preparing to adopt a constitution, a hill peoples' delegation led by Manobendra Narayan Larma called on Bangabandhu Sheikh Mujibur Rahman on February 15, 1972 demanding autonomy for the CHT with its own legislature. But this demand was utterly rejected; he rather insisted that there could be only 'one nation' in Bangladesh. Bangabandhu therefore reportedly

[84] M Rahman and T H Shawon, eds., *Tying the Knot: Community Law reform and Confidence Building in the* CHT (Dhaka: ELCOP, 2001), 10.

[85] Ibid.

[86] W Van Schendal, "The Invention of 'Jumma': State Formation and Ethnicity in Southeastern Bangladesh," *Modern Asian Studies* 26, part. 1 (1992): 95.

[87] The CHT Commission, *Life is not Ours' Land and Human in the CHT Bangladesh* (Denmark & the Netherlands, 1994), 8.

asked the hill people to forget their separate identity and "become Bengalis".[84]

After the brutal assassination of Sheikh Mujibur Rahman on August 15, 1975, martial law was imposed all over Bangladesh; this was a crucial event in the history of Bangladesh. During the regime of the military ruler General Ziaur Rahman, the CHT Development Board headed by military personnel was formed in 1976. The Board undertook a devastating programme of settlement of hundreds of thousands of poor Bengali people in the CHT. From 1980 to 1984, as many as 400,000 Bengalis were made to settle in the CHT, and over 50,000 Chakmas were reported to have fled to the Indian state of Tripura.[85] In 1947 the Bengali population in the CHT was 2.5%. It rose to 10% in 1951 and 35% in 1981.[86] The Bengali population became almost 50% in 1991. In the Bandarban and Khagrachari hill districts, Bengalis are in the majority where they account for 53 % and 52% of the total population respectively.[87]

This effort of forced assimilation is not limited to demographic calculations only; hill people are being suppressed culturally as well. Bengali, the state language of the country, is used as the only language in the schools in the CHT. In this nation building process, a number of indigenous

[88] M Guhathakurta, "Overcoming Otherness and Building Trust: the Kalpana Chakma Case," in *Living on the Edge: Essays on the Chittagong Hill Tracts,* ed. S Bhaumik (Kathmandu: SAFHR, 1997).

[89] Ibid, 182–184.

languages are being wiped out. Massacre of indigenous people, burning of their houses, arbitrary arrests, torture, extra-judicial executions and 'disappearances' reportedly perpetrated by or with the connivance of the military and law enforcement agencies during the years of armed conflict, depict the human rights situation in the region. In 1990, information from one refugee camp in India indicated that one in every ten of the total population had been a victim of rape in the CHT, and over 94% of the alleged cases of rape of the hill women were by security forces.[88] Arbitrary arrest and inhuman and degrading treatment of the hill people was a routine occurrence during the period of insurgency. These were planned actions as a part of a macro objective of nation building through forced assimilation and forced expulsion. Since 1980 there have been eleven major instances of massacre of the hill people by Bengali settlers and security personnel in which around 2000 hill men died.[89]

On the other hand, the PCJSS through its ideological and organizational framework undertook to organise the hill people on a nationalistic agenda. The persecution in the CHT led to the demand by the PCJSS for a separate nationhood for the hill people. This party, formed in the wake of Sheikh Mujib's refusal in 1972 to recognise the hill people as a community distinct from Bengalis, had since the mid 1980s been referring to the hill people as the 'Jumma nation'.[90] The party's nationalistic agenda has been explicitly spelt out in its

[90] Schendal, "The Invention of Jumma," 121.

manifesto, where it states that the party's main objective is to achieve the right of self-determination of the various small nationalities in the CHT with a separate entity status of the CHT with a constitutional guarantee. It recognises that the CHT is the homeland of various multi-lingual nationalities, who together have been referred to as the Jumma people. The nostalgia for the past, on the one hand, creates images of 'outsiders' and 'insiders' among the hill people, and on the other, provides them with a sense of community and unity.

With a view to realising Jumma nationalism by way of autonomy for the hill people, during the period of insurgency the PCJSS set out a number of demands: i) the Constitution of Bangladesh shall recognise the CHT as a special administrative unit, with regional autonomy. The three districts of the CHT shall be merged into one unit, and the region shall be renamed Jummaland; ii) Jummaland shall be administered by an autonomous Regional Council, which shall be elected directly by the people on the basis of adult franchise. The Council shall be responsible for 30 subjects including, *inter alia,* general administration, law and order, police, land, education, forestry, local government institutions, and cultural affairs; iii) all lands in the CHT, except some important government establishment, shall be placed under the jurisdiction of the Council. A constitutional

[91] *Dabeenama* (Charter of Demands of the PCJSS to the Government of Bangladesh), JSS Publications, 1992 and 1996.

ban ought to be put on the purchase of land in the CHT by 'outsiders'. Deeds made to lease out land to Bengalis for rubber plantation and forestry shall be cancelled and the lands shall be placed under the Council's jurisdiction. The Constitution must ban Bengali settlements in the region. All 'outsiders' who have settled in the area since August 17, 1947 shall be withdrawn from the region; iv) service rules shall be relaxed for the hill people. Special quotas shall be reserved in government civil services for the hill people; v) parliament seats of this constituency shall be reserved for the hill people only; vi) an autonomous indigenous Police Force constituting solely of the hill people shall be formed. Quotas should be reserved in the defence services for the hill people. The region shall be demilitarised; vii) a constitutional recognition shall be given to all the small nationalities of the area; and finally, viii) all international and internal Jumma refugees should be properly rehabilitated. Members of the SB and all individuals who have been implicated for association with the former should be properly rehabilitated.[91]

This power-sharing demand of the PCJSS as a whole was perceived as a threat to national security by military and conservative political elites. The political government in 1993 rejected the power-sharing demand by holding that

[92] Special Affairs Division, *A Report on the Problems of Chittagong Hill Tracts and Bangladesh: Responses for their Solution* (Dhaka: Government of Bangladesh, 1993), cited in Mohsin, *Politics of Nationalism,* 201.

"Bangladesh is an integrated and homogenous society bound by common language and rich cultural heritage. […] Bangladesh is a unitary state with a democratic Constitution that extends to the entire territory without exception".[92]

This official position perceives Bangladesh as a nation-state. By claiming Bangladesh a homogenous society, this position denies the existence of other cultural groups, and justifies various assimilative actions taken by successive governments. However, the situation changed in 1997 with the re-emergence of Awami League to power after a long period. During this time, the government made sincere efforts to bring an end to the insurgency by initiating dialogues with the PCJSS. The government also sought cooperation from India who allegedly provided the SB with arms and other supports during the whole period of the insurgency. This considerably influenced the PCJSS to soften its demand for regional autonomy; instead, during the negotiations with the government, it accepted the government position that the three hill districts of the CHT – Rangamati, Khagrachari, and Banderban – will form a regional council.[93] Following closed-door negotiations, the CHT Peace Accord between the National Committee on CHT Affairs formed by the Government of the People's Republic

[93] Mohsin, *Politics of Nationalism,* 201–202.

[94] Bengalis who legally possesses land in the Hill District and generally lives at a certain address in the Hill District are also permanent residents of the CHT according to the Peace Accord.

of Bangladesh and the PCJSS appeared on December 2, 1997. On behalf of the government, the Convenor of the National Committee Hasanat Abdullah and on behalf of the inhabitants of the CHT, the president of the PCJSS Bodhipriya Larma alias Shantu Larma signed the Accord.

The Peace Accord responded, though half-heartedly, to the issues of local governance, rehabilitation, land, and general amnesty. The Accord provides for three Hill District Councils, wherein only the permanent residents of the CHT will be members.[94] There is a provision for a Regional Council in coordination with these District Councils. The Chairman of this Council shall be elected indirectly by the elected members of the District Councils. The Regional Council shall be formed with 22 members of whom two-thirds will be elected from among the 'tribals'. The Regional Council is given the responsibility of supervising and coordinating the subjects vested under the Hill District Councils. It is to be noted here that some major subjects like general administration and law and order, education, cultural affairs, information and statistics, population control and family planning that directly relate to autonomy and preserving indigenous culture were not vested under the Hill Districts. However, it was provided that the government and elected representatives shall make efforts to maintain separate cultures and traditions of the tribals, and the government in order to develop the tribal cultural activities at the national level shall provide necessary patronisation and assistance.

Regarding pending land issues, the Accord stipulates that no land within the boundaries of the Hill District shall be given in settlement, purchased, sold and transferred, including giving lease without prior approval of the Council. Some government establishments are kept outside this restriction. The Accord also prohibits any acquisition and transfer of land within the boundaries of the Hill District by the government without consultation and consent of the Hill District Council. Provisions for rehabilitation, amnesty along with compensation were made in the Peace Accord.

However, to the dissatisfaction of the hill people, the Accord remained silent apropos their constitutional recognition. Instead, the term 'tribal' (the Bengali version of this word – Upajati – meaning sub-nation) was used to describe the indigenous peoples. The preamble to the Accord categorically mentions that the parties of this Accord arrived at an agreement "under the framework of the constitution of Bangladesh".

Since the signing of the 1997 Peace Agreement, the government had withdrawn 212 camps, leaving approximately 235 camps. During the year, indigenous leaders continued to protest the army's presence and called publicly for its removal. In 2007, the government withdrew 16 temporary camps of security forces in the Rangamati area of the Hill Tracts. The government reconstituted the CHT Land Commission, which announced its decision to conduct a land survey beginning in October 2009; however,

indigenous rights groups have criticized this decision since they believe Bengali settlers will be able to obtain false documents detailing ownership of traditionally indigenous lands. The National Committee for Implementation of the CHT Peace Accord was also reconstituted, with Deputy Leader of Parliament Sajeda Chowdhury as chairman. On December 27, the National Committee for the Implementation of the Chittagong Hill Tracts Peace Accords suspended the activities of the land commission pending further review, the government ceded some key functions, such as primary education, to local authorities, but it did not cede responsibility for other key functions, such as land use and natural resources as the accord specified. Law and order problems and alleged human rights violations continued, as did dissatisfaction with the implementation of the Peace Accord.

According to NGO and press reports, there were a number of skirmishes between Bengali settlers and indigenous communities in Baghaihat in the CHT on February 19 and 20,

[95] Indigenous communities in other areas continued to report loss of land to Bengali Muslims. The government neither cancelled work on national park projects on land traditionally owned by indigenous communities in the Moulvibazar and Modhupur forest areas, nor did it undertake any new activities. In addition indigenous communities, local human rights organizations, and churches in the area continued to claim the government had yet to withdraw thousands of false charges the Forestry Department filed against indigenous residents. See, 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>.

2010. According to a report by the CHT Commission, ethnic Bengali settlers attacked ethnic minorities in Baghaichhari Upazila, beating people and setting fire to approximately 500 minority homesteads and a Buddhist pagoda. At least three people died in the attacks, including two members of minorities. Fleeing for their lives, more than 500 families, accounting for more than 1,800 individuals, fled into the forest seeking refuge from further attack. According to the report, security forces were present during the attacks and did nothing to stop the violence.[95] The government investigated these allegations and made some staffing changes to the military command in charge of security for the area; however, there were no arrests.

More recently, the government questioned the very indigenous character of the people living in the CHT. Briefing foreign diplomats and UN agencies in Dhaka on July 26, 2011, Foreign Minister Dipu Moni said Bangladesh is concerned over attempts from some quarters at home and abroad to identify the ethnic minority groups as indigenous people in the CHT region. In her effort to clarify some "recent misconceptions" about the identity of the people in the CHT, she claimed that people in the CHT are "ethnic minorities" and they should not be called "indigenous". Given that neither the Bangladesh Constitution nor any international law recognises these people as indigenous, she also urged the editors and senior journalists from print and electronic media to take note of it. She argued that the tribal people

most certainly did not reside or exist in the CHT before the 16th century and were not considered 'indigenous people' in any historical reference books, memoirs or legal documents; rather, the CHT people were late settlers on the Bengal soil and the CHT region, compared to the Bangali native ethnic vast majority residing here for more than 4,000 years, she pointed out. This latest stance of the government on this issue will certainly shake the very confidence of the indigenous communities that the CHT Peace Accord was designed to boost.

Arrest or Detention:

The Constitution prohibits arbitrary arrest and detention; however, the Criminal Procedure Code and the Dhaka Metropolitan Police Ordinance authorize the detention of persons on suspicion of criminal activity without an order from a magistrate or a warrant, and the government regularly use such provisions. But in such cases, it is stipulated that law enforcement agencies as well as the Judicial Magistrates must follow the procedure, specified by law. Human rights organisation - ASK and media outlets estimate that the authorities made more than 2,000 routine

[96] Ibid.

[97] Ibid.

arrests daily in 2010.[96] The majority of those arrested would be released after payment of bribes. It is to be noted that unlike the previous regime, the present AL government has not carried out any mass arrests since taking office in early 2009.

Under the existing Special Powers Act, 1974, subject to certain conditions, the government or a District Magistrate may order to detain a person for 30 days to prevent the commission of an act that could threaten national security; however, authorities often hold detainees for longer periods. Many detainees taken into custody during the last military-backed caretaker government's anticorruption drive were held under this Act, and during the period the government sought and received numerous detention extensions from the Advisory Boards, constituted under the Constitution as well as the Act. However, the use of the provisions of the Special Powers Act declined in 2010 and 2011. Arbitrary and lengthy pre-trial detention is another problem of grave concern. There are an estimated two million pending civil and criminal cases; a 2008 estimate from the International Centre for Prison Studies found nearly 70 percent of prison inmates were in pre-trial detention.[97]

Freedom of Assembly and Association:

The Constitution provides for freedom of assembly and association, and governments generally respect these rights in practice; however, at times governments limit freedom of assembly. Governments generally permit rallies to take place

but on occasions use the infamous Section 144 of the Criminal Procedure Code to prevent opposition political groups from holding meetings and demonstrations. The Code authorizes the administration to ban assembly of more than four persons, subject to certain conditions. According to ASK, the administration used this provision at least 93 times in 2010. At times, police or ruling party activists or both use force to disperse demonstrations. On July 28, 2010 the Dhaka Metropolitan Police issued an order banning all student protests in certain areas of the city, citing traffic concerns.

The law provides for the right of every citizen to form associations, subject to 'reasonable restrictions' in the interest of morality or public order, and unlike the martial law regimes, political governments generally respect this right. Individuals are free to join private groups; trade unions are generally able to conduct their normal activities. However, the law made it nearly impossible to form new trade unions in many sectors, such as the ready-made garment industry. Civil service and security force employees are legally prohibited from forming unions. Since 2006, new categories of workers, including teachers and NGO workers, are permitted to form unions; however, due to the broad limitations on union-organising during the state of emergency, these regulations were not formally instituted.

[98] Ibid.

As of 2010, the total labour force in Bangladesh is approximately 50 million, of whom approximately 1.9 million belonged to unions, many of which were affiliated with political parties.[98] The law recognized the right to strike; however, many restrictions on this right remained. For example, 75 percent of union membership must consent to a strike before it can proceed. The government can shut down any strikes lasting more than 30 days and refer the matter to labour courts for adjudication. In addition, strikes are banned for the first three years of commercial production or if the factory was built with foreign investment or owned by a foreign investor. In practice, few strikes follow legal requirements, which are cumbersome; strikes or walk-outs often occur based on the spontaneous decisions of workers. The government filed cases against some striking labour leaders and workers for destruction of property, blocking roads, or for labour unrest, stemming from the June and December minimum wage-related protests in 2010. These cases remain unresolved, as of now.

In recent years, labour organizers reported acts of intimidation and abuse, as well as increased scrutiny by security forces and the National Security Intelligence Agency. Sporadic, occasionally intense, labour unrest occurred throughout the country, particularly in the ready-made garment sector. Labour organizers also reported

[99] Ibid.

arbitrary lockouts, firing of employees, and increased scrutiny by security forces. Authorities sometimes arrested labour organisers for destruction of property and other charges, in what some NGOs considered repression of labour rights activists. In June 2010, the NGO Affairs Bureau did not renew the foreign donation approval of the Bangladesh Centre for Workers' Solidarity (BCWS) asserting that the BCWS had violated its terms of registration. In August of the same year, three BCWS leaders were arrested for alleged involvement in the violent unrest following the ready-made garment minimum wage announcement.[99] They were released on bail keeping the trial pending.

Freedom of Expression:

The Constitution provides for freedom of speech and press, but the government frequently fails to respect these rights in practice. Although public criticism of the government is common in Bangladesh, newspapers have to depend on government advertisements for a significant percentage of their revenue. As a result, self-censorship practice by newspapers is not uncommon. Although there are improvements over the past years in this regard, newspapers critical of the government still experience pressure in various forms, and journalists perceived to be critical of the government and those aligned with the opposition party

[100] Ibid.

[101] Ibid.

allege harassment from unspecified wings of the security forces and members of the ruling party.[100]

Torture on Journalists in 2011	
Types of Torture on Journalists	**No. of Victims**
Torture/threat/harassment/false cases by law enforcement agencies	50
Torture/attack/threat/harassment by terrorists	53
Threat on life	35
Cases for publishing reports	69
Attack/torture/harassment by activists of the ruling party (AL)	47
Attack/torture by activists of the opposition party (BNP)	05
Harassment/threat/torture by government officials	18
Total	**214**
Source: *Documentation Unit, Ain o Salish Kendro*	

For example, in May 2010, the Information Minister met the owners of private television channels and suggested that they refrain from broadcasting content critical of the government. Shortly thereafter, the Bangladesh Telecommunications Regulatory Commission (BTRC) used a technicality in the communications law to shut down a private television station, Channel One; the Channel is still closed. On June 1, the deputy commissioner of Dhaka

[102] Ibid.

District ordered the closure of *Amar Desh,* and the detention of its editor, Mahmudur Rahman, ostensibly for fraudulent editorial practices. *Amar Desh* remained closed for more than a month. The newspaper is now publishing under a stay ordered by the Appellate Division, pending a final verdict on its status. Also on August 19, a second editor of *Amar Desh,* Waliullah Noman, was sentenced to one month in prison for an unrelated article criticizing the neutrality of two judicial appointments. According to the Attorney General, this was the first time that the Appellate Division of the Supreme Court sentenced journalists to prison for contempt of court.[101] In recent years, publishers and editors of a good number of popular newspapers had to appear before the Supreme Court for their alleged contempt of the Court.

Frequent attacks on journalists are a serious threat to freedom of expression. There is an increase in individuals affiliated with the government or ruling party harassing, arresting, or assaulting journalists. According to *Odhikar* and media watchdog groups, at least four journalists were killed, 118 were injured, two were arrested, 43 were assaulted, 49 were threatened, and 12 had cases filed against them in 2010 alone.[102] On September 1, 2010, activists from the Rajshahi

[103] Ibid.

[104] See, US Department of State, International Religious Freedom Report, July–December 2010 (released on 13 September 2011), at <www.state.gov/g/drl/irf/rpt>.

University branch of the Chhatra League used sticks to attack a reporter from the *Daily Star,* over reports critical of the organisation's campus activities. Similarly, On September 25, 2010 an unknown assailant targeted the Rangpur correspondent of the *Daily Jugantor* and stabbed him in the back. The correspondent had published an article on manipulation of tenders by AL activists in the area. In both cases, the assailants remained at large.[103]

Freedom of Religion:[104]

Traditionally, Bangladesh is a moderate Muslim country, wherein every citizen has the constitutional right to profess, practise or propagate any religion, and every religious community or denomination has the right to establish, maintain and manage its religious institutions. However, although governments publicly support freedom of religion, in recent years, attacks on religious and ethnic minorities continue to be a problem since religious minorities are often at the bottom of the social hierarchy and, therefore, have the least political recourse. Ahmadia Jamaat – a religious group – has been threatened by Islamic extremists, and successive governments were under pressure from those Islamic groups to declare the followers of Ahmadia Jamaat non-Muslims. There are reported attacks on institutions of the Ahmadia Muslim Community and there have been isolated

[105] Ibid.

[106] Ibid.

instances of harassment against them.[105]

In 2001, the High Court ruled all legal rulings based on *Sha'ria,* known as *fatwas,* to be illegal. After a lengthy judicial review, the Appellate Division upheld the ban as part of a broader ruling against all forms of extrajudicial punishment. Despite this ban, human rights groups and press reports indicate that vigilantism against women accused of moral transgressions often occur in rural areas, and include cruel, inhuman and degrading punishments, such as, whipping. On July 9, 2010 the High Court issued a ruling formally banning *fatwas* and empowered local officials to combat the issue.

Many members of the Hindu community have been unable to recover landholdings lost because of discrimination under the defunct Vested Property Act. The Vested Property Act was an East Pakistan-era law that allowed the government to expropriate 'enemy' (in practice Hindu) lands. Under the law,

Violations of Religious Freedom in 2010 at a Glance

Attacks against the Hindu community continued in 2010, although the number of attacks dropped significantly from the previous year. Most of the land seizures took place in the districts of Natore, Pirojpur, Chittagong, Narsingdi, Bagerhat, Barisal, Manikganj, Tangail, Satkhira, Pabna, Manikganj, and Munshiganj. In July, The Daily Star reported that 'land-grabbers' had encroached on the properties of all three Hindu cremation grounds in the Dhaka metropolitan area. On August 12, the Amar Desh reported that criminals broke into a Hindu temple in the Sutrapur area of Old Dhaka and broke several idols before evicting fifteen Hindu families who lived on the premises. Another paper, the daily Ittefaq, reported that over one hundred minority families living in Sutrapur had been forcibly evicted by land grabbers during the year. Both papers alleged that local Awami League leaders were involved in the evictions. On March 20, according to the Daily Star, a clash over a land dispute involving a Christian church in the Mithapukur upazila resulted in injuries to 20 of the involved parties. The church purchased some adjacent land that was previously used as a school playground. Local MPs worked to defuse the tension and managed to avert further violence. There were approximately 100,000 Ahmadis concentrated in Dhaka and several other locales. Throughout the year, attacks directed at the Ahmadia community in Tangail resulted in physical injuries and significant property damage. The attacks happened in three waves in June, August, and October. The attacks consisted of small groups entering Ahmadi neighborhoods with weapons, beating Ahmadis they encountered and vandalizing several houses before leaving. The authorities made no arrests, but a few local figures issued statements about the need to live in harmony.

Source: *US Department of State, International Religious Freedom Report, July-December 2010 (September 13, 2011)*

the government seized approximately 2.6 million acres of land, affecting almost all Hindus in the country. According to a study, nearly 200,000 Hindu families lost approximately 40,667 acres of land since 2001, despite the annulment of the act in the same year by the then Awami League government.[106] In April 2001, parliament passed the Vested Property Return Act, stipulating that land remaining under government control that was seized under the Vested Property Act should be returned to its original owners, provided that the original owners or their heirs remained resident citizens. The law required the government to prepare a list of vested property holdings by October 2001. In 2002, the parliament passed an amendment to the Act that allowed the government unlimited time to return the vested properties and gave control of the properties, including the right to lease them, to local government officials. It is on November 29, 2011 that the Vested Properties Return (Amendment) Bill, 2011 was passed in the parliament with the objective of a smooth return of vested properties to the genuine owners. The proposed bill has provisions to prepare district-wise lists of such vested properties and publish those through gazette notifications within 120 days of the

[107] Kahir, *Legal Empowerment for the Poor,* 43.

[108] Ibid, 43–58.

[109] M R Anderson, *Access to Justice and Legal Process: Making Legal Institutions Responsive to Poor People in* LDCs (Sussex: Law and Democracy Development Series, IDS Working Paper No. 178, 2003), 1.

execution of the Act.

Access to Justice:

While impediments to access to justice are grounded in structural inadequacies and deficiency in governance, the situation is augmented by the absence of a sound knowledge base about rights and entitlements amongst disadvantaged groups and a lack of capacity to deal with the systemic problems they encounter in their daily lives.[107] Khair identifies the following as the major barriers to access to justice in Bangladesh: Absence of legal awareness and knowledge, legal ambiguities and procedural complexities, threats to judicial independence, delays and costs, lack of information on administrative processes, indifference of actors in governance, corruption and absence of good governance and accountability, conflicting socio-cultural and religious norms.[108]

Access to justice is not only central to the realisation of constitutionally guaranteed rights, but also to broader goals of development and poverty reduction.[109] As Shihata observes, legal and regulatory frameworks are increasingly being viewed as a fundamental element, not only in the realm of protecting property and contractual rights and ensuring a fair and quick settlement of disputes but also in

[110] I Shihata, *The World Bank in a Changing World* (The Hague: Martinus Nijhoff, 1999), 234.

[111] Section 6 (1) of the Act.

ensuring flexibility and stability required for the investment environment.[110] Perhaps, due to this economic argument in support of access to justice as a concept, rather than a right-based approach to access to justice, we have observed a renewed emphasis on access to justice, but mostly in civil matters. While the government is adding more weight to Alternative Dispute Resolution (ADR) mechanisms in the form of legislation, training, and so on, criminal cases are still stuck in century old criminal procedure. Although the Speedy Trial Act was passed in 2004 to address the delay in criminal cases, the Tribunals constituted under this Act were designed to hear only a limited number of cases, selected on the basis of the 'sensational' nature of the crimes in question. This raised a vital question regarding the constitutionality of the Act. From the outset, the Act was given a limited life; in February 2012, the Parliament passed a bill to keep the Act in force for another two years, until April 2014.

Regarding legal aid, pursuant to the Legal Aid Services Act of 2000, a National Legal Aid Services Board has been

[112] Section 6 of the Act.

[113] Section 7 of the Act.

[114] S Muralidhar, *Law, Poverty and Legal Aid. Access to Criminal Justice* (New Delhi: Lexis Nexis Butterworth, 2004), 359.

[115] Khair, *Legal Empowerment for the Poor,* 225.

established, which is chaired by the Minister for Law, Justice and Parliamentary Affairs.[111] Although this Board has a cross section of people on its executive board that apparently reflects the government's acquiescence to having a transparent system in place, the law allows the government to remove any of the members without citing any reason.[112] The situation is similar with regard to the District Legal Aid Committees, which are meant to supplement the functions of the National Legal Aid Board. The law provides that the treasury of the Legal Aid Board shall be made up of various government grants, aid from international donor agencies or resources contributed by organizations, companies or any other source.[113] The Board allocates resources to the District Legal Aid Committees. There are allegations that a large percentage of the funds available remain unspent, mostly due to the highly bureaucratized system and non-responsiveness of the subordinates of judges and lawyers. It is pretty obvious that a person who is eligible to receive legal aid, i.e. a person whose annual income is less than BDT. 3,000 will not have easy access to the District and Sessions Judges, who chair the District Legal Aid Committees. The inclusion of the Chairman and 14 members in *Upazila* and Union legal aid committees increases the vulnerability of legal aid seekers many of whom are victimised by these very local government functionaries.[115]

[116] See also, Human Rights Committee, CCPR General Comment No. 6 on the Right to Life (Art. 6), Sixteenth session, April 30, 1982.

7. Recommendations

7.1 Legal Reform

Right to Life[116]

As per Article 6 of the ICCPR, the State parties, which are not obliged to abolish the death penalty totally, are obliged to limit its use and, in particular, to abolish it for other than the 'most serious crimes'. In this context, the government should consider reviewing the criminal laws as applicable in Bangladesh in order to restrict the application of the death penalty to the 'most serious crimes'. Besides this, the expression 'most serious crimes' must be read restrictively to mean that the death penalty should be a quite exceptional measure and can only be imposed in accordance with the law in force at the time of the commission of the crime and not contrary to the Covenant. The procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal. These rights are applicable in addition to the particular right to seek pardon or commutation of the sentence.

The extent of inflicting capital punishment is quite high in Bangladesh. This phenomenon is closely related to the economic and social circumstances in the country. People's

[117] See also, Human Rights Committee, CCPR General Comment No. 18 on Non-discrimination, Thirty-seventh-session, November 10, 1989.

perception of justice is also very important here. So far, Bangladesh is not a party to the Optional Protocol to the International Covenant on Civil and Political Rights (OP-ICCPR). There is reason to believe that abolition of the death penalty will significantly reduce the acceptability of extra-judicial killings of even heinous criminals in people's perception. Given that the infliction of the death penalty in a number of cases failed to create any deterrence, the long pending issue of signing and ratifying the OP-ICCPR should be seriously considered by the government.

Equality before the Law and Non-Discrimination:[117]

The Government should identify the remaining problems of discrimination which are practiced either by public authorities, by the community, or by private persons or bodies and should take legislative and administrative measures directed at diminishing or eliminating such discrimination.

However, the principle of equality sometimes requires affirmative action in order to diminish or eliminate conditions which cause or help perpetuate discrimination prohibited by the Covenant. For example, in a State where the general conditions of a certain part of the population

[118] See also, Human Rights Committee, CCPR General Comment No. 23 on the Rights of Minorities (Art. 27), Fiftieth session, April 8, 1994. CCPR/C/21/Rev.1/Add.5 (1994).

prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time, to the part of the population concerned, certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination, it is, in fact, a case of legitimate differentiation under the Covenant. However, to minimise the legal incompatibility of such affirmative measures within the individualist legal framework of the Constitution, the government should take necessary measures to specifically recognise the existance of various religious and ethnic groups in the country.

Minority Rights:[118]

The Constitution should specifically mention the existing ethnic minorities in Bangladesh, and guarantee them the protection of their culture, religion and language. The government should also take measures to establish the right that is conferred on individuals belonging to minority groups and which is distinct from, and additional to, all the other rights which, as individuals in common with everyone else, they are already entitled to enjoy under the Covenant. The right of individuals belonging to a linguistic minority to use their language among themselves, in private or in public, should be distinguished from the general right to freedom of expression.

Even if Article 27 is expressed in negative terms, it,

nevertheless, recognizes the existence of a 'right' and requires that it shall not be denied. Consequently, the State should ensure that the existence and the exercise of this right are protected against their denial or violation. Positive measures of protection are, therefore, required not only against the acts of the State itself, whether through its legislative, judicial or administrative authorities, but also against the acts of other persons within the State.

With regard to the exercise of cultural rights, it is to be noted that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, (such as traditional activities like cultivation or hunting) especially in the case of indigenous peoples. The enjoyment of those rights requires positive legal measures of protection, and measures to ensure the effective participation of members of minority communities in decisions which affect them. The government should take the necessary measures to enable the protection of cultural rights to the fullest possible extent.

Although the rights protected under Article 27 are individual rights, they depend in turn on the ability of the minority group to maintain its culture, language or religion.

[119] See also, Human Rights Committee, CCPR General Comment No. 8 on the Right to Liberty and Security of Persons (Art. 9), Sixteenth-session, June 30,1982; also, Human Rights Committee, CCPR General Comment No. 21 on the Humane Treatment of Persons Deprived of Liberty (Art. 10), Forty-fourth session, April 10, 1992.

Accordingly, positive measures by the State may also be necessary to protect the identity of a minority and the rights of its members to enjoy and develop their culture and language and to practise their religion, in community with the other members of the group. In this connection, such positive measures must respect the provisions of Articles 2.1 and 26 of the Covenant as regards both the treatment between different minorities and the treatment between the persons belonging to them and the remaining part of the population. However, as long as those measures are aimed at correcting conditions which prevent or impair the enjoyment of the rights guaranteed under Article 27, they may constitute a legitimate differentiation under the Covenant, provided that they are based on reasonable and objective criteria. Yet, this proposition is a subject of serious scholarly debate.

Arrest and Detention:[119]

The right to liberty and security of persons has often been narrowly understood by the State. It is applicable to all deprivations of liberty, whether in criminal cases or in other cases, such as, mental illness, vagrancy, drug addiction, educational purposes, immigration control, etc. The guarantee, such as the right to control by a court of the legality of the detention, which applies to all persons deprived of their liberty by arrest or detention, should be ensured. The government also has to ensure that an effective remedy is provided in other cases, in which an

individual claims to be deprived of his liberty in violation of the Covenant.

The State must take measures to ban the torture or other cruel, inhuman or degrading treatment or punishment on the persons who are particularly vulnerable because of their status as persons deprived of liberty. It should also take initiatives to guarantee respect for the dignity of such persons under the same conditions as for that of free persons.

Concrete measures should be taken by the competent authorities of the government to monitor the effective application of the rules regarding the treatment of persons deprived of their liberty. The government must also take action to develop a system for supervising penitentiary establishments, to prevent torture and cruel, inhuman or degrading treatment, and ensure impartial supervision.

The government should take measures to ensure the application of the following United Nations standards relevant to the treatment of prisoners: the Standard Minimum Rules for the Treatment of Prisoners (1957), the

[120] See also, Human Rights Committee, CCPR General Comment No. 10 on Freedom of Expression (Art. 19), Nineteenth-session, June 29, 1983.

[121] See also, Human Rights Committee, CCPR General Comment No. 22 on the Right to Freedom of Thought, Conscience and Religion (Art. 18), Forty-eighth session, July 30, 1993. CCPR/C/21/Rev.1/Add.4 (1993).

Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), the Code of Conduct for Law Enforcement Officials (1978) and the Principles of Medical Ethics relevant to the Role of Health Personnel, particularly Physicians, in the Protection of Prisoners and Detainees against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1982). In-depth study on these instruments should be conducted for this purpose.

Freedom of Expression:[120]

Although the Constitution of Bangladesh guarantees freedom of expression, the government must establish rules which either define the scope of freedom of expression or which set forth certain restrictions, as well as any other conditions which in practice affect the exercise of this right. The government should ensure by making necessary legislations that freedom of thought and the freedom of conscience are protected even in time of public emergency. Besides, while imposing certain restrictions on the exercise of freedom of expression, the State must not put in jeopardy the right itself.

Freedom of Religion:[121]

The terms 'belief' and 'religion' are to be broadly construed by the State, and therefore, Article 18 should not be limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices

analogous to those of traditional religions. Any tendency to discriminate against any religion or belief for any reason, including the fact that they are newly established, or represent religious minorities that may be the subject of hostility on the part of a predominant religious community, should be addressed by appropriate legislation and effective enforcement of relevant laws. The government should also enact laws to the effect that no one will be compelled to reveal her adherence to a religion or belief.

Ensuring Legal Accountability in the Policing Service:
Policing gains its legitimacy by performing a legal rather than a political function, and by serving the law rather than partisan politics. Keeping this in mind, laws governing policing in Bangladesh should be designed to:

- outline the nature, philosophy and practices expected of the police;
- clearly define the remits of all those involved in providing policing to make sure that effective accountability can be ensured;
- delineate powers as well as functions;
- impose a statutory recruitment on the police and

[122] See also, Human Rights Committee, CCPR General Comment No. 6 on the Right to Life (Art. 6), Sixteenth session, April 30, 1982.

[123] See also, Human Rights Committee, CCPR General Comment No. 23 on the Rights of Minorities (Art. 27), Fiftieth session, April 8, 1994. CCPR/C/21/Rev.1/Add.5 (1994).

relevant agencies to consult effectively with and be influenced by the community, and provide appropriate guidelines to facilitate such communication and involvement;

- require police officers to report any misconduct or breach of law by their colleagues.

7.2 Law Enforcement

Right to Life:[122]

The right to life as enunciated in Article 6 of the Covenant is the supreme right from which no derogation is permitted even in time of public emergency. The protection against arbitrary deprivation of life by the authorities of the State is a matter of paramount importance. Thus, the government should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by its own security forces. In this respect, the law must strictly control and limit the circumstances in which a person may be deprived of his life by such authorities.

The State should also take specific and effective measures to prevent the disappearance of individuals, something which unfortunately has become all too frequent and leads too often

[124] See also, Human Rights Committee, CCPR General Comment No. 9 on the Humane Treatment of Persons Deprived of Liberty Right to Life (Art. 10), Sixteenth session, July 30, 1982. See also, Human Rights Committee, CCPR General Comment No. 21 on Humane Treatment of Persons Deprived of Liberty (Art. 10), Forty-fourth session, April 10, 1992.

to arbitrary deprivation of life. Furthermore, it should establish effective facilities and procedures to investigate thoroughly cases of missing and disappeared persons in circumstances which may involve a violation of the right to life.

Minority Rights:[123]

Sometimes, the government claims that it does not discriminate on grounds of ethnicity, language or religion, and on that basis wrongly contends that it has no minorities. The existence of an ethnic, religious or linguistic minority in the State does not depend upon a decision by the State but requires to be established by objective criteria. The government must develop mechanisms and also adopt measures that will ensure the survival and continued development of the cultural, religious and social identity of the minorities concerned, thus enriching the fabric of society as a whole. Accordingly, these rights must be protected as such and should not be confused with other personal rights conferred on one and all under the Covenant.

Arrest and Detention:[124]

Concrete legal measures designed to protect the right - all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person - should be taken. The mandatory implementation of national legislation concerning humane treatment and respect for the human dignity of all persons deprived of their liberty must be monitored by the competent State organs in this regard.

The application of the standard of humane treatment and respect for the dignity of all persons deprived of their liberty must not depend entirely on material resources. However, although the modalities and conditions of detention may vary with the available resources, they must always be applied without discrimination.

The government must take practical steps to promote the reformation and social rehabilitation of prisoners, by, for example, education, vocational training and useful work. Allowing visits, in particular by family members, is normally also such a measure which is required for reasons of humanity.

The State should ensure that this principle apropos humane treatment of persons deprived of liberty is observed in all institutions and establishments where persons are being held (such as in prisons, hospitals - particularly psychiatric hospitals, detention camps or correctional institutions or elsewhere) within its jurisdiction.

Training programmes should be undertaken for personnel who have authority over persons deprived of their liberty. And there should be a mechanism to monitor whether they are strictly adhered to by such personnel in the discharge of their duties. Besides, it is to be assured that arrested or detained persons have access to such information and have effective legal means enabling them to ensure that those rules are respected, to complain if the rules are ignored and to obtain adequate compensation in the event of a violation.

The segregation, save in exceptional circumstances, of accused persons from convicted ones must be ensured to emphasize their status as unconvicted persons who at the same time enjoy the right to be presumed innocent. The treatment of the accused persons should differ from that of the convicted persons, in this regard.

Child Imprisonment:

Full implementation of the Children Act 1974 is a must. Though enacted in 1974, the Act contains progressive provisions regarding juvenile justice administration. The government should play a proactive role in ensuring frequent jail visits by concerned officials as well as facilitating such visits by national and international non-government agencies. It is also recommended that the government follow the 'zero tolerance' principle in bringing the violators to the due process of law in relation to juvenile justice administration.

Capacity-building and Technical Assistance:

Government initiatives will have little chance of success if the need for sensitizing various government officials is overlooked. Therefore, capacity building initiatives must be taken at various levels. Capacity building on the State's compliance with international treaty obligations and the implementation of the recommendations of human rights treaty bodies ; capacity building on treaty reporting for government agencies; capacity building for the law enforcement agencies to respect human rights norms while

discharging day to day activities; capacity building for judges, prosecutors, lawyers and others who are directly involved in the investigation, prosecution, trial and resolution of human rights cases; capacity building for the legislatures to ensure that laws are formulated within a human rights framework; and capacity building for all relevant stakeholders who may be involved in the reporting process under the ICCPR or CAT, such as the Universal Periodic Review process, in order to ensure a more effective and meaningful assessment of the country. The measures listed above are some of the essential areas to be addressed.

Ensuring Democratic Accountability in the Policing Service: Mechanisms for democratic accountability complement the legal framework in ensuring that the police provide the quality and type of service stipulated by law, and the possibility of redress if they do not do so. Community involvement of the police will ensure that individuals and groups in society become more than simply the 'policed' but have an active role in designing and supporting the policing function. Clearly defining the power of the police and involvement of civic oversight bodies can ensure democratic accountability of the police department. To this end, legislation governing law enforcement agencies in Bangladesh should be measured against the following criteria:

- explicit reference must be made to the philosophy of policing and its responsibility in international and domestic law to protect human rights;

- protection of officers choosing to disobey illegitimate commands should be enunciated;
- mechanisms to ensure police accountability, particularly in the use of force, should be provided for;
- the respective remits of the different bodies involved in overseeing policing should be clear and unambiguous;
- in particular, potentially amorphous concepts such as operational autonomy should be defined, as should oversight mechanisms;
- it should be made a statutory requirement on the police and relevant agencies to consult effectively with the community, and provide appropriate guidelines for such consultations.

Most importantly of all, perhaps, is the need for changes in the policing to be seen in the wider context of institutional, and even social, change. Measures addressing recruitment, promotion, working environment or training will not, on their own, have a significant impact on either the make-up or ethos of the police. There is a need to challenge outmoded views as to what policing is, should, and could be, so that legal and social reforms can form part of an overall package of change.

8. Concluding Remarks

In a message given on the eve of the commencement of the

Bangladesh National Human Rights Commission Ordinance on September 1, 2008, the then UN Resident Coordinator and the UNDP Resident Representative in Bangladesh Ms. Renata Lok Dessallien rightly asserted that "[t]oday, we celebrate the coming into force of the Bangladesh National Human Rights Commission Ordinance, which represents a further step towards protection of the rights of the citizens of the country". The people of Bangladesh too look forward to moving forward to a just and equitable society with this spirit. Although successive governments officially adhered to this vision, the actual State-practice, as we have seen before, demonstrates negative indicators of overall human rights performance.

However, this Legal Compliance Study Report does not need to be concluded with pessimism for a number of reasons. The Bangladesh National Human Rights Commission (NHRC), since its reconstitution on June 23, 2010, has been effectively intervening in the incidents of extra-judicial killings, an effort that caused the reduction of such incidents in recent times. Following almost all incidents of such killings, the NHRC not only publicly criticised the incident but also wrote to the Ministry of Home Affairs demanding acceptable and credible investigations. While such initiatives have the potential to create pressure on the relevant government agencies, they are by no means sufficient. Here remains a grave need for a culture of democratic governance in which the rights of each individual will be respected and protected. Unfortunately, however, the democratic process

in this country has been undermined by successive military interventions in different forms and names.

On this score, it would be pertinent to mention that on February 2, 2010, the Appellate Division of the Supreme Court upheld a 2005 High Court order nullifying the Fifth Amendment to the Constitution, which had legitimised martial law as proclaimed by Khandker Mushtaq Ahmed. The Supreme Court, however, retained the Fifth Amendment provisions that restored multiparty democracy, freedom of the press and the judiciary, and validated the routine government actions carried out by that government. In a similar judgment on August 26, 2010, the High Court Division nullified the Seventh Amendment to the Constitution, which had legitimised the seizure of power by the then army chief of staff, HM Ershad, from an elected government and his government's activities under the martial law.

While the universally recognised civil and political rights, as enshrined in the ICCPR and the Constitution of Bangladesh, specifies democracy as an inherent human right of all human beings, democratic governance ensures the very enjoyment of such human rights, in return. In this sense, democracy and human rights are intertwined. 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

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Annexure

International Covenant on Civil and Political Rights

[Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976, in accordance with Article 49]

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and 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 these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms, Realizing that the individual, having duties to other individuals and to the

community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant, Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.
3. Each State Party to the present Covenant undertakes:
   (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
   (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by

the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.
2. No derogation from articles 6, 7, 8 (paragraphs I and 2), 11, 15, 16 and 18 may be made under this provision.
3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United

Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.
2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the

time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.
4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.
5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.
6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.
2. No one shall be held in servitude.
3.

   (a) No one shall be required to perform forced or compulsory labour;

   (b Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

   (c) For the purpose of this paragraph the term "forced or compulsory labour" shall not include:

      (i) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

      (ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

      (iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.
4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2.

   (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

   (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

2. Everyone shall be free to leave any country, including his own.

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a

democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

   (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

   (b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

   (c) To be tried without undue delay;

   (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance

assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law,

unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.
2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, or correspondence, nor to unlawful attacks on his honour and reputation.
2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
   (a) For respect of the rights or reputations of others;
   (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of

national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.
2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.
3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.
2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.
3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.
2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.
3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.
2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.
3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.
4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.
2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. 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 terms of nine 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 nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.
2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.

2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.
2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.
3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

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 the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.
2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

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) Twelve members shall constitute a quorum;
   (b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:
   (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
   (b) Thereafter whenever the Committee so requests.
2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.
3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.

4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.
5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant 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 the present Covenant. Communications under this article may be received and considered 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 received by the Committee 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 to the present Covenant considers

that another State Party is not giving effect to the provisions of the present Covenant, 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 only after it has ascertained that all available 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;

(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 human rights and fundamental freedoms as recognized in the present Covenant; (f) In any matter referred to it, 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 in 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 ten States Parties to the present Covenant have made declarations under paragraph I 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 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 42

1.

(a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made

available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

   (a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

   (b) If an amicable solution to the matter on tie basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

   (c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, 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 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the

constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.

5 The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.

2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that 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 to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations

and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.

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

Article 52

1. Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

   (a) Signatures, ratifications and accessions under article 48;

   (b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

Supported by:

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