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Country: Bangladesh

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Questionnaire on the use of legislation, including criminal legislation, to regulate the activities and work of human rights defenders

It would be greatly appreciated if responses were brief. They may be submitted in bullet points if preferred. For non-governmental organizations, should they wish, their identity will remain confidential (only the country where they operate will be disclosed). Furthermore, they need only answer questions which are relevant to them, and may share information about defenders other than themselves.

- 1. a) Please indicate if your country has a specific legal framework, laws or regulations that aim to facilitate or protect the activities and work of human rights defenders. Please cite the names of any such laws or regulations in full.**

The concept of 'Human rights defenders' is relatively new in the context of Bangladesh. Therefore, at this moment, there is no specific legal framework, laws or regulations that aim to facilitate or protect the activities and work of human rights defenders but certain administrative measures are available under the National Human Rights Commission Act 2009. Under this act, the National Human Rights Commission of Bangladesh was reconstituted in 2009 as a national advocacy institution for the promotion and protection of human rights. The Penal Code also punishes crimes such as 'hurt', 'grievous hurt', 'wrongful confinement' and other such incidents which may be targeted at human rights defenders.

- b) Please indicate how these laws and regulations are in line with international human rights standards, including, but not limited to, the Declaration on Human Rights Defenders.**

Certain provisions of the National Human Rights Commission Act, 2009 unfortunately failed to meet the international standards set out under the Principles Relating to the Status and Functioning of National Institutions for Protection and Promotion of Human Rights (the "Paris Principles"), endorsed by the United Nations General Assembly in 1993, and falls significantly short of best international practice. For example, the NHRC has become a powerless institution as it has no specific jurisdiction to take action against the accused persons or law enforcement agencies. The Commission ought to have power to file cases to seek remedy for human rights violations; however, according to the Statute, the Commission can only give recommendations to the government, not to the Parliament, to take action against perpetrators. In addition, Section 11(1) (k) of the National Human Rights Commission Act, 2009 states that the Commission should encourage and coordinate the work of non-governmental organisations (NGOs) and institutions operating in the field of human rights. While it may be legitimate for the Commission to promote and encourage the activities of NGOs, it should not have a coordinating role. The independence and autonomy of NGOs must be respected and upheld.

c) Please also indicate what legal or administrative safeguards are put in place to prevent baseless legal action against and/or prosecution of human rights defenders for undertaking their legitimate work.

There is no specific administrative safeguard to prevent baseless legal action against and/or prosecution of human rights defenders due to absence of specific policies. However, regular criminal laws put up some safeguards for citizens of Bangladesh.

2. a) Please describe the measures taken, if any, to ensure that your country's national security-related laws (including laws on public order, public safety, respect for morals and counter-terrorism laws) are not used to unduly restrict the scope of activities of human rights defenders.

So far no measures have been taken by the Government of Bangladesh to prevent misuse of national security laws. Unfortunately, the state machinery is notorious for misusing such laws. One example of this is the persecution of Mahmudur Rahman, Acting Editor of the daily Amar Desh. Cases were filed against him under several laws, including the Anti-Terrorism Act 2009, for publishing reports that the government believed were anti-state.

b) Please also indicate in particular how these national security-related laws respect the human right to freedom of expression and opinion.

Immediately after the independence of Bangladesh, the Special Powers Act (SPA) of 1974 was enacted to curb left political organisations and ideology under the emergency provisions of the Second Amendment to the Constitution, which allows Parliament to pass national security legislation. The BNP-led coalition government enacted, the Bangladesh Telecommunication (Amendment) Act in February 2006, which added Section 97A to the Telecommunication Act 2001, allowing the Government to engage in telecommunication surveillance and intelligence gathering, such as tapping mobile or land phone lines, without judicial oversight. Section 97B of the Act allows information collected under Section 97A to be admissible evidence at trial under the Evidence Act of 1872. The Anti-Terrorism Ordinance, 2008 was promulgated by the military backed 'Caretaker' Government, an unelected military-backed interim government put in place following the cancelled elections and controversial anti-corruption drive in 2007. Based on the Ordinance, the Ninth Parliament enacted the Anti-Terrorism Act (also known as ATA) on February 24, 2009. Earlier, on February 19, 2009, the government, at a cabinet meeting, approved the Anti-Terrorism Bill to be made into law, without any public consultation. The definition of a 'terrorist act' is too wide and the law has been used against a cross section of people including Opposition party activists, teachers, journalists and human rights defenders.

3. a) Please describe the measures taken, if any, to ensure that provisions of the criminal code, or other national laws, are not ambiguous or too broad to allow their arbitrary use, thereby restricting the activities of human rights defenders.

No measures have been taken yet to reform or repeal the repressive laws or provisions of the criminal laws and other national security-related laws, which are ambiguous or too broad to allow arbitrary use of human rights defenders.

However, BLAST has undertaken public interest litigation to ensure that persons suspected of crimes are given due process of law and are not subjected to torture, arbitrary arrest, or summary execution by police officers. BLAST obtained a judgment, 55 DLR (2003) 363, in which the High Court determined that Sections 54 and 167 of the Code of Criminal Procedure (CrPC), which permit the police to arrest without warrant and magistrates to take persons into remand, were inconsistent with the Constitution of Bangladesh. The Court made specific recommendations to Parliament for amending these sections and issued guidelines to be implemented immediately by the law enforcing agencies and by magistrates to prevent misuse of the laws. The guidelines included measures intended to prevent death and injury during custody such as requiring police officers to take injured arrestees to the hospital and requiring police to conduct interrogations at the jail gate rather than in police remand. They also required the police when making arrests without warrant to inform the arrestee of the grounds of arrest, to inform a friend or relative of the arrest, and to provide them with an opportunity to contact a lawyer, among other requirements. But, many police officers and even some judicial officers remain uninformed of the constitutional limits on their authority, or unwilling to comply with the High Court's directives.

b) Please indicate what legal or administrative safeguards are in place in order to ensure that human rights defenders are not discriminated against in the administration of justice, be it through the handing down of disproportionate sentences, the unreasonable prolongation of criminal or other trials, or any other means.

The Constitution of the People's Republic of Bangladesh has provisions for administrative safeguards but they not implemented properly.

4. a) Please indicate if your country has specific laws or administrative rules governing the registration, functioning and funding of non-governmental organizations. Please cite the names of any such laws or regulations in full.

There is a series of regulations through which the government administers and oversees the operations of NGOs in Bangladesh. The legal framework can be categorised into two parts: a) laws that provide for legal status of the organisations and b) laws governing relationships with the government.

Laws Providing for Registration:

1. The Societies Registration Act, 1861
2. The Trust Acts 1882 governs charities and trusts.
3. The Waqf Ordinance, 1962
4. The Companies Act, 1994

Laws governing relationships between NGOs and the State

1. The Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961
2. Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978
3. Foreign Contributions (Regulation) Ordinance, 1982

However, on 19 January 2012, the NGO Affairs Bureau (NGOAB) drafted a controversial Bill on Foreign Donations Regulation by integrating the Foreign Donations (Voluntary Activities) Regulation Ordinance of 1978 and the Foreign Contribution (Regulation) Ordinance of 1982, which will further control the activities of the NGOs particularly the human rights organisations.

b) Please explain how these legal or administrative provisions comply with your country's international human rights obligations regarding the right to freedom of association.

None of the said Acts comply with international human rights obligations regarding the right to freedom of association.

- 5. a) Are there criminal or other legal or administrative sanctions for human rights defenders who undertake activities on an individual basis or while the association they are members of is unregistered?**

There is scope to criminalise or put legal and administrative sanctions on organisations that are believed to be engaged in unauthorized and unregistered activities by the NGO Affairs Bureau and the Social Welfare Department. For individuals or associations, the Special Powers Act 1974 and Anti Terrorism Act, 2009 are two repressive laws in Bangladesh.

b) If such a legal framework exists, does it restrict the type of activities that human rights defenders can undertake? If yes, please provide further details.

- Concerns regarding the freedom of association of NGOs were further heightened by efforts by the Government to amend the existing Foreign Donations Regulations Ordinance, 1978 to restrict NGOs from engaging in 'political activities' giving rise to fear that this restriction would be used to restrain development as activities relating to women's empowerment and the promotion of human rights if these are defined as 'political'.
- Under the Special Powers Act 1974, the definition of 'prejudicial acts' are not compatible with the principles of criminal law which bans retroactive punishment for actions that were not clearly defined before the commission of the act. Thus, it is not surprising that the SPA is denigrated by human rights activists and defenders as repressive law, allegedly used to harass and detain political opponents, union representatives, and members of the media.
- Under the Anti-Terrorism Act 2009, the definition of terrorism is quite broad and vague, opening up possibilities of abuse. Even legitimate protests exercising Constitutional rights, such as those by human rights defenders, could be perceived by the government as threats against the State and as such 'terrorism'.

6. Please indicate the measures taken, if any, to ensure that internal security and official secret-related laws are not used to deny freedom of information to human rights defenders and to prosecute them for their efforts to seek and disseminate information on the observance of human rights standards.

- The Government of Bangladesh adopted the Right to Information Act, 2009 in the first session of the ninth parliament on March 29, 2009, marking a significant step forward in fulfilling the constitutional pledge of the state of Bangladesh. In response to the Act of 2009 the government established an Information Commission on July 1, 2009 to provide information to the people. However, the exclusion of eight security and intelligence agencies from the purview of this Law — the National Security Intelligence, the Directorate General of Forces Intelligence, the Defence Intelligence Units, the Criminal Investigation Department of the Bangladesh Police, the Special Security Forces, the National Revenue Board’s intelligence cell, the Special Branch of Bangladesh Police and the Rapid Action Battalion’s intelligence cells — has provided them with impunity and unaccountability. Most of these agencies are accused of involvement in violations of human rights and they often exceed their jurisdictions.

7. a) Please indicate the measures taken, if any, to avoid the use of defamation, slander or blasphemy laws to unduly restrict the right to freedom of opinion and expression of human rights defenders.

The British colonial law, the Contempt of Court Act (CCA), 1926 with only three sections is still effective in Bangladesh, even though a new Bill on this matter is currently under scrutiny. The Act does not define what it is or amounts to a ‘contempt of court’. Actually the matter has been left to the discretion of the courts. So, any act that a judge thinks to be disgraceful for the court is ‘contempt of court’. This power is endowed to the court so that justice is not hampered by the disrespect and contumacy of people. It does not protect the judge as a person, rather safeguards the seat of justice. In addition, Section 505A of the Penal Code focuses on ‘prejudicial acts’ by words. It says whoever – (a) by words, either spoken or written, or by signs or by visible representation or otherwise does anything, or (b) makes, publishes or circulates any statement, rumour or report, which is, or which is likely to be prejudicial to the interests of the security of Bangladesh or public order, or to the maintenance of friendly relations of Bangladesh with foreign states or to the maintenance of supplies and services essential to the community, shall be punished with imprisonment for a term which may extend to seven years, or with fine, or with both.

b) How is it ensured that such laws, as well as laws on printing, publication and censorship, comply with international human rights standards and do not target human rights defenders carrying out their legitimate work.

- N/A

8. Please indicate if any other type of legislation is used to regulate the activities of human rights defenders in your country and how the application of the legislation mentioned affects the activities of human rights defenders. Please cite the names of any such legislation in full.

- N/A