



**Joint submission to the Universal Periodic Review of Bangladesh by
ARTICLE 19 and Research Initiatives Bangladesh**

For consideration at the 30th Session
of the Working Group in May 2018

5 October 2017

Executive Summary

1. The submitting organisations welcome the opportunity to contribute to the third cycle of the Universal Periodic Review (UPR) of Bangladesh. This submission addresses the situation for the right to freedom of expression and information, and associated rights, focusing on the following:
 - Legal framework for freedom of expression;
 - Cooperation with international human rights mechanisms;
 - Creating a safe and enabling environment for media, human rights defenders and civil society;
 - Institutions promoting human rights;
 - Freedom of religion of belief and the protection of minorities;
 - Protecting freedom of expression online.
2. Overall, we find that despite Bangladesh accepting many recommendations related to the exercise of free expression, and associated rights, minimal progress has been made on their implementation. Of particular concern are the continued existence of laws, together with legislative proposals, that impose impermissibly broad limits on free expression online and offline; increasing attacks against journalists, bloggers and human rights defenders and ongoing impunity; and the continued targeting of religion and belief minorities.

Legal Framework for Freedom of Expression

3. During its second UPR, Bangladesh accepted the recommendations to “observe the balance between exercising individual rights including the right to freedom of opinion and expression, and the protection of rights and interests of others, including in terms of ensuring their security”.ⁱ
4. Bangladesh acceded the International Covenant on Civil and Political Rights (ICCPR) on 6 September 2000, and is therefore legally bound to respect and ensure the right freedom of expression as contained in Article 19. However, despite constitutional safeguards for this right, a range of laws raise serious freedom of expression concerns.

Constitution

5. The Constitution of Bangladesh, in Article 39,ⁱⁱ guarantees the right of every citizen to freedom of speech and expression and freedom of the press, subject to reasonable restrictions imposed by law in the matters of interest of the security of the State, friendly relations with foreign states, public order, decency, morality, contempt of court, defamation, and incitement to an offence.
6. This Constitutional guarantee is not fully aligned with the requirements of Article 19 of the ICCPR, because:
 - The standard of “reasonableness” does not reflect the requirement that limitations on the right to freedom of expression be both “necessary” and proportionate;
 - The allowance for limitations “imposed by law” does not meet the requirement that any limitation should have the quality of law, i.e. be sufficiently clear and precise, as well as accessible to the public;
 - The right should be guaranteed to all persons, regardless of citizenship status.
7. Article 39 of the Constitution therefore enables impermissibly broad limitations on the right to freedom of expression, against the requirements of international human rights law. The Human Rights Committee, monitoring Bangladesh’s compliance with the ICCPR, has raised concerns at the lack of information about national courts upholding the rights as protected in the covenant, recommending training and awareness raising in this regard.ⁱⁱⁱ

Other laws

8. Various other national laws and policies raise significant freedom of expression concerns, and are addressed in subsequent sections.^{iv}

Recommendations

- Train the judiciary, lawyers and prosecutors, to uphold rights under the ICCPR, in particular to ensure that Article 39 of the Constitution is interpreted in light of Bangladesh's international obligations under Article 19 of the ICCPR.

Cooperation with international human rights mechanisms

9. During its 2nd UPR, Bangladesh accepted recommendations to improve cooperation with UN human rights mechanisms, including by presenting outstanding reports and approving visits for special procedures.^v
10. ARTICLE 19 welcomes the role of the National Human Rights Commission (NHRC) in convening 10 thematic committees to engage in multi-stakeholder UPR consultations involving relevant government departments and civil society, launched on 26 May 2017. This shows a greater engagement at the national level with international human rights mechanisms.
11. However, Bangladesh has yet to issue a standing invitation to all special procedures of the Human Rights Council, as 119 other States have done. The Special Rapporteur on the right to freedom of opinion and expression requested a visit in 2014, but the government has not sought to arrange one, notwithstanding a UPR recommendation from Norway to this effect. In the period under review, only the Special Rapporteurs on freedom of religion or belief, and on violence against women, have visited the country.^{vi}
12. Following acceptance of recommendations to improve its engagement with UN treaty bodies, Bangladesh submitted, fourteen years late, its initial report on compliance with the ICCPR to the Human Rights Committee (HR Committee). The Concluding Observations (April 2017) reveal much needs to be done to bring national laws and practice into compliance with the Convention.^{vii}

Recommendations

- Fully implement the 2017 recommendations of the Human Rights Committee, in particular in relation to Article 19 of the ICCPR, in consultation with the NHRC, and with the full and effective participation of civil society;
- Respond positively to the UN Special Rapporteur on freedom of opinion and expression's 2014 request for a country visit;
- Implement the recommendations of the Special Rapporteur on freedom of religion or belief, following his country visit;
- Respond substantively to all individual communications of UN special procedures with a view to redressing all alleged human rights violations, in particular in relation to the right to freedom of opinion and expression;
- Continue regular engagement between the NHRC and thematic committees to guide implementation of recommendations accepted during the present UPR cycle.

Create a Safe and Enabling Environment for Media, Human Rights Defenders, and Civil Society

13. During its last UPR, Bangladesh accepted numerous recommendations related to creating a safe and enabling environment for media, human rights defenders, and civil society.^{viii}

Legal and policy framework for the media

14. **The Penal Code 1860^x** (PC) includes provisions on **criminal defamation** (Sections 499 – 502), punishable by imprisonment of up to two years and/or a fine, though defenses of truth and public

interest are available.^x Cases rarely reach trial or result in conviction. Nevertheless, ARTICLE 19 recorded eight cases initiated in 2013, ten each in 2014 and 2015, 78 in 2016 (a spike due to the Daily Star case, outlined below), and 14 in the first half of 2017 up to June. A significant number of these cases did not reach the courts.

15. Multiple suits for a single alleged defamatory incident are common, including against the media. For example, in 2016 Daily Star editor Mahfuz faced 83 separate cases,^{xi} including 66 criminal defamation cases brought by leaders and activists of the ruling Awami League and its affiliated bodies. The cases all concerned the publication of false information about alleged corruption issues in one report, which Mahfuz admitted was a lapse in editorial judgment.^{xii} He secured bail in the lower and High Courts; some cases are still pending, however.^{xiii} Other journalists, including the editor of the daily Prothom Alo were also targeted.^{xiv}
16. International standards are clear that imprisonment is an inherently disproportionate sanction for defamation, with various international human rights mechanisms recommending the repeal of criminal defamation laws entirely.
17. **The National Broadcasting Policy**,^{xv} approved on 5 August 2014, envisages the development of an "independent, pluralistic, accountable and responsible Broadcasting system in Bangladesh". The policy recommended the establishment of an independent broadcasting commission with the authority to formulate guidelines for a transparent and open licensing process, and programme and advertising codes, to be developed in consultation with stakeholders. While these purposes are positive, much of the substance in the policy actually increases government control over broadcast media.^{xvi} To safeguard media independence, international standards require broadcasting codes setting out content standards should be developed by independent professional bodies in consultation with relevant stakeholders, and not imposed by the government.
18. A subcommittee of the 38-member National Committee to implement the National Broadcast Policy have drafted a **proposed National Broadcasting Bill (2016)** with the participation of concerned civil society and the media. If adopted, it will prescribe the creation of a seven-member independent Broadcast Commission.^{xvii} The Broadcast Commission would formulate guidelines and a code of ethics for broadcasters, and also oversee the issuing of licenses to broadcasters, with approval from the government, raising independence concerns. The Commission will also enforce compliance with the guidelines, establishing a complaints mechanism. Violations of rules and regulations under the Bill may be punished by the courts with imprisonment of up to 7 years, and heavy fines of up to BDT 50 million (approx. 600,000 USD) on referral by the Commission.^{xviii} The Commission is empowered to cancel or suspend broadcasting licenses and issue administrative sanctions for violations of licensing terms and conditions.
19. ARTICLE 19 has concerns around the independence of the proposed Commission, and in particular the severity of sanctions, including criminal sanctions, that it is able to impose around regulations and guidelines that are, as yet, unformulated.

Recommendations

- Revise the National Broadcasting Policy 2014, to set out clear criteria for securing the independence of the Broadcasting Commission, and to rescind the content restrictions in Chapters 3-5, so that any code of conduct is determined by an independent body, with the full and effective participation of concerned stakeholders;
- Revise the draft National Broadcasting Act 2016, to ensure its compliance with international human rights law and freedom of expression standards, including to ensure the independence of the Broadcasting Commission, with powers to deliver sanctions limited to proportionate administrative sanctions;
- Decriminalise defamation by repealing sections 499-502 of the Bangladesh Penal Code 1860, ensuring that individuals' reputation rights can be vindicated through the civil law only;

Murders, threats, and attacks against journalists, bloggers, human rights defenders, and impunity

20. Physical attacks and harassment against journalists, bloggers and human rights defenders remain a serious concern in Bangladesh. Bangladesh also accepted numerous recommendations to end impunity for such violations.^{xix}
21. In the period under review, and up to June 2017, ARTICLE 19 has recorded 1159 violations against journalists, bloggers, and human rights defenders, including 20 murders, 10 cases of abduction, 167 cases of serious bodily injury, 253 cases of minor assault, 113 verified threats, 2 attempted killing, 126 cases of destruction of equipment, and 52 gender-based attacks.^{xx} Unwarranted application of the law also accounts for a large proportion of violations, with 120 criminal defamation cases, 89 other vexatious litigations, 115 cases under section 57 of the ICT Act 2006, and 92 cases of arrest and remand in police custody.
22. Review of year-by-year statistics shows a deterioration in security for the media, bloggers, and human rights defenders. ARTICLE 19 recorded 277 violations in 2013, 212 in 2014, and 214 in 2015. The total number of violations increased significantly in 2016, to 320 violations. Monitoring up to June 2017 showed a total of 136 violations documented so far. Five bloggers and writers were killed in a period of just eight months between 2015 and 2016. Each violation documented is believed to be connected to targeted individuals' work as journalists or bloggers, including in exposing corruption and the misappropriation of public funds, and for expressing unpopular or oppositional opinions, and while covering protests.
23. Approximately one in six violations attacks were perpetrated by state actors, and one in five perpetrated by non-state actors, including a substantial percentage comprising of cadres and activists of political parties, religious fundamentalists, and criminal groups. However, a significant number of the attacks are attributable to the cadres of the ruling party, who have been responsible for a rising proportion of attacks.^{xxi} Impunity for all such attacks is endemic.
24. Murders of journalists and bloggers, many of whom were also human rights defenders, markedly increased in the period under review, placing Bangladesh back on the Committee to Protect Journalists' Global Impunity Index of 'spotlight' countries.^{xxii} The cases since Bangladesh's last review include:
 - **Ahmed Rajib Haider**, a blogger and activist of the Shahbag movement against war crimes, murdered near his home in Dhaka returning from a Shahbag meeting on 15 February 2013. The trial eventually concluded in 2016, with the convictions of eight individuals upheld in February 2017 by the High Court.
 - **Shahidul Islam**, a cameraman for Bangladesh TV, found murdered in his office on 1 April 2013.
 - **Shahriar Rimon**, a photojournalist of online news site *focus bangla*, found dead in the river Padma in Rajbari on 4 August 2013. He had photographed the arrest of a local criminal and been threatened by the criminal's accomplices.
 - **Abu Raihan**, correspondent with Khulna-based daily *JanmaBhumi*, hacked to death by activists of Jamat Shibiron 4 August 2013.^{xxiii}
 - **Shah Alam Mollah**, killed on 4 March 2014.^{xxiv} The case has been closed due to lack of evidence.
 - **Delwar Hossain**, killed on 9 March 2014.^{xxv} His death appears to have been linked to the activities of local land grabbers, on which he had been reporting.
 - **Sardar Nipul**, a journalist covering the illegal selling of trees from land owned by railway authorities, found killed on 21 May 2014. A trial has commenced against the leader of the local political activists believed to be responsible.
 - **Avijit Roy**, founder of Bengali language blog *Mukto Mona* ("Of Free Mind"), well-known for his liberal secular writing, often challenging religious extremism, killed on 26 February 2015 in an attack by several unknown assailants in Dhaka. The police have yet to submit a final investigation report.
 - **Washiqur Rahman**, a blogger, killed by several assailants in connection with his critical postings on religious issues on 30 March 2015. The final investigation report has not been submitted.

- **Ananta Bijoy Das**, a blogger, participant in the Shahbag movement and contributor to *Mukto Mona* and *Somewhereinblog*, well-known for his secular views, killed on 12 May 2015. No final investigation report has been submitted;
- **Abu Sayem**, who reported on the sale of narcotics at the house of a preacher, murdered by a follower of the same preacher on 8 July 2015.^{xxvi} The suspect is currently facing trial.
- **Niladri Chakrabarti**, a secular blogger who wrote under the pseudonym “Niloy Neel”, killed on 7 August 2015 in a suspected religiously-motivated attack. No final investigation report has been submitted.
- **Mushfikur Rahman Tuhin**, district correspondent for Mymensingh-based weekly *Shathahik Aparadh Chitra*, stabbed to death on 8 October 2015.
- **Faisal Arefin Dipan**, an owner of *Shuddo Shor* publishing house, was killed in his Dhaka office on 31 October 2015. *Shuddo Shor* was involved in the publication of books written by Avijit Roy. A final investigation report is yet to be submitted by the police.
- **Mashiur Rahman Utsho**, whose body was recovered on 23 December 2015, tied to a tree beside the Dhaka – Rangpur highway and bearing stab wounds.^{xxvii} The police recorded it as a murder case.
- **Aurongozeb Sajib**, a correspondent covering Dhaka Medical College Hospital for various media outlets, found dead in the river Dhaleswari in Munshiganj on 23 December 2015.^{xxviii} He had unearthed irregularities in the running of the hospital.
- **Nazimuddin Samad**, shot dead on a busy road in the capital Dhaka on 6 April 2016. His facebook postings on dogmatic Islamic views are thought to be the reason he was targeted.
- **Xulhaz Mannan**, editor of the first LGBT magazine *Roopban* and organizer of the annual “rainbow rally”, murdered on 25 April 2016 in Dhaka, together with his friend **Khandaker Mahub Rabbi Tonoy**. The investigation report into the murders has yet to be submitted.
- **Abdul Hakim Shimul** was gunned down by the Mayor of Shahadzapur Municipality, Shirajganj, on 3 February 2017 in the north-eastern part of the country, whilst reporting on a clash between two factions of the student wing of the ruling party.^{xxix}

25. While the pace of investigations, and the rate of their conclusions, have slightly improved in the period under review as compared to previous periods, the length of investigations and difficulties in proceeding to trial is concerning. Several of the above investigations remain open after more than a year, and in several cases much longer.

26. Of the seven journalists killed in the previous UPR cycle, justice has been secured in only two of cases: in June 2013, after eight years, nine persons were convicted of the November 2005 murder of journalist **Goutam Das**, and, in November 2016, there were eight convictions for the murder of journalist **Manik Chandra Saha**, killed twelve years earlier.

27. While it is welcome that Bangladesh provided detailed responses to the UNESCO Director General’s request for information on the status of judicial investigations to murders against journalists in 2016 (all were recorded as unresolved or continuing), we note that no response was provided to the same request in 2015.^{xxx}

28. ARTICLE 19 has also recorded high rates of impunity and slow progress with investigations into cases of violent attacks against journalists. For example:

- On 6 November 2016, **Shakil Hasan**, crime reporter for *Jamuna Television*, and camera operator **Shahin Alam**, were filming illegal polythene production in Dhaka’s *Chawkbazar* district, when a group of factory owners attempted to kill Hasan by pouring some 25 liters of kerosene over his body. A case was lodged with local police, and suspects were arrested but subsequently released on bail.
- On 1 February 2015, **Najmul Huda**, a Dhaka University correspondent of the *Daily New Age*, together with a friend, recorded a police officer engaged in a traffic violation. He had his phone confiscated and was arrested and brutally beaten by numerous police officers while in detention. The investigation is still pending.
- On 3 February 2014, three journalists sustained injuries while covering a demonstration. **Ghulam Rabbani**, Rajshahi University correspondent of *Masranga TV*; **Nijam Mridha**, Rajshahi correspondent with *New Age*, and **Gulbar Ali**, university correspondent with the local *Nuton*

- Probhat*, were beaten by political activists from the ruling party and the police, sustaining serious injuries. No case was filed.
- On 21 July 2016, **Anis Mahmud**, photojournalist with *Prothom Alo*, **Shohidul Islam**, photojournalist with *Sakaler Khobor*, **Mamun Hossain**, photojournalist with *Jogo bheri* and **Yusuf Ali**, photojournalist with *Samakal*, were assaulted by prison guards in Sylhet after photographing an altercation between the prison guards and members of the Bangladesh Chattra League. 9 prison guards were transferred to different duties due to their involvement, but no criminal case was opened against them.
29. Threats against journalists also rarely receive investigation from the police, but are a serious concern affecting the media in Bangladesh and are systematically monitored by ARTICLE 19.
30. In relation to extra-legal forms of harassment, the government has pressured major companies in Bangladesh to cease advertising in two of the country's largest newspapers: the Prothom Alo and the Daily Star. There have also been forced closures of media outlets, including, in 2013, Diganta TV and Islamic TV.^{xxxi}
31. During its last UPR, Bangladesh accepted a number of recommendation including the continuation and stepping up efforts to address cases of violence against women and prevention of violence against women through proper enforcement of law.^{xxxii}
32. Hostility towards women journalists includes cases of gender-based harassment, physical violence, obstruction in securing roles in professional associations, as well as work-placed discrimination. Following are some illustrative examples, noting that such incidents are widely underreported:
- On 6 April 2013, **Nadia Sharmin**, of *Ekushey Television* was attacked by members of the Islamist group Hefajat-e-Islam, while she was on assignment reporting on a blockade in the Bijpynagar area of Dhaka. She was targeted for not wearing a hijab.
 - On 1 October 2006, five senior women journalists, **Nasimun Ara Huq Minu**, **Perveen Sultana Jhuma**, **Fatema Johura**, **Munwara Sultana** and **Shanta Maria**, were sacked without reason from the Dhaka-based *Daily Jono Kantha* newspaper. They sued the newspaper in 2014, and although a court ruled in favour of their claim for back-wages in 2015, the company ignored this order. The case is still pending.
 - **Anjuman Ara Bonya** (district correspondent for the daily *Amader Somoy* in Thakurgaon) and **Nargis Chowdhury** (from *The Nirvik Sangbad*, a local daily in Thakurgaon) faced huge obstacles and harassment when they sought representation and leadership positions in the local Press Clubs. They contested elections in the club's executive body but lost by a narrow margin. Soon after on 5 December 2014 they discovered they were expelled from the club without notice. In 2015 both women filed petitions to the High Court for violation of their rights to association and non-discrimination.
 - **Farzana Rupa** received death threats when her investigative report disclosed the identities of some of the perpetrators of a sexual assault during the celebration of the Bengali New Year of 1422 (14 April 2015), during a rally at the Dhaka University Campus.^{xxxiii}

Recommendations

- Ensure that public officials at all levels publicly condemn attacks against journalists, bloggers and HRDs commit to ensure justice for those targeted, especially where State actors are implicated;
- Ensure the availability of concrete protection measures for journalists, bloggers and HRDs identified as at risk of violence, tailored to the individual's specific needs;
- Provide training to law enforcement authorities in the safety of journalists, bloggers and HRDs, including how to ensure the protection of those at risk;
- Desist from pressuring private companies to withdraw advertising funding from media organisations.
- Revise guidance to investigating law enforcement authorities, to ensure that perpetrators of crimes against journalists and bloggers are swiftly identified and crucial evidence collected;
- Provide training on crimes against freedom of expression, including gender specific crimes, to relevant law enforcement officials, including the police, prosecutors and judiciary;

- Enact legislation to recognize an aggravated category of “crimes against freedom of expression”, where persons have been targeted for the exercise of this right;
- Collect and regularly publish data on the status of investigations and/or prosecutions in cases relating to crimes against journalists and bloggers, and share these with relevant international organisations and mechanisms, including by continuing to communicate information in response to requests from UNESCO.

Legal and policy framework for associations

33. During its last UPR, Bangladesh accepted recommendations to ensure human rights defenders can work free from hindrance.^{xxxiv} However, significant restrictions have been placed on the functioning of civil society organisations, including those working to promote human rights.
34. In particular, the **2016 Foreign Donations (Voluntary Activities) Regulation Act**,^{xxxv} limits the ability of non-governmental organisations (NGOs) to operate, including to seek resources for their work, in particular from foreign sources.^{xxxvi} Of particular concern is a new provision, added to the Act in the final stages of the legislative process, making it an offence to make “inimical” or “derogatory” remarks against the Constitution or a constitutional body. The mere existence of this provision^{xxxvii} has a considerable chilling effect on civil society.

Recommendations

- Urgently reform the Foreign Donations (Voluntary Activities) Regulation Act, in particular to remove Section 14, to ensure the law’s compliance with international human rights law on freedom of expression and association.

Institutions Promoting Human Rights

35. Bangladesh accepted a number of recommendations to work towards empowering the institutions that uphold the promotion of human rights, good governance and the rule of law, including to give powers to the National Human Rights Commission (NHRC) to effectively protect human rights, in accordance with the Paris principles.^{xxxviii}

National Human Rights Commission of Bangladesh

36. The NHRC was established as an independent statutory institution by the National Human Rights Commission Act 2009 (the NHRC Act). The NHRC was accorded “B” status by the International Coordination Committee on National Human Rights Institutions, as the NHRC Act is not consistent with the Paris Principles.^{xxxix}
37. Of the nine thematic sub-committees in the NHRC, none specifically include violations of the right to freedom of expression, which means that priority human rights concerns, including on the safety of journalists and freedom of expression online, are not addressed by the NHRC.

Information Commission

38. The Bangladesh Right to Information Act (RTI Act) 2009 established the Information Commission of Bangladesh (ICB). The RTI Act has increased the responsiveness of public officials to requests for information, with an increase in the number of requests received at the levels of local and central government.
39. The ICB is slowly moving towards making greater use of penalties against defaulting Designated Officers (DOs). Seven DOs were fined in 2016 alone, making up for more than half of the total number of penalties (12) since the ICB was established. Written decisions by the ICB on complaint cases have also become more developed, showing the potential for helpful jurisprudence.
40. Significant challenges remain, however: non-citizens are not covered by the Act, and political parties are not subject to its provisions. Long time-frames for public bodies to respond to information requests also mean that journalists have been reluctant to use the RTI Act, and awareness levels among the public of the Act and its potential utility in securing accountability remain low.

Recommendations

- Reform the NHRC Act in line with the recommendations of the new Commission^{xi} and analysis of the International Coordination Committee, to bring it line with the Paris Principles;
- Encourage the NHRC to establish a dedicated Sub-Committee to address violations of freedom of expression and information.
- Encourage the ICB to being more proactive in ensuring greater accountability of public officials and authorities.

Freedom of religion or belief, and protection of minorities

41. During its last UPR, Bangladesh accepted a number of recommendations to address religious intolerance and discrimination, as well as to protect minorities.^{xii}
42. ARTICLE 19 notes that the 15th Amendment to the Constitution in 2011 restored secularism as a “fundamental principle of State policy”, but retained Islam as a state religion, undermining attempts to protect freedom of religion or belief (protected in Article 2A, with guarantees against discrimination on the basis of religion or belief in Article 28(1)), in line with Article 18 of the ICCPR.

Penal Code

43. A variety of provisions in the Penal Code seek to protect the feelings of religious believers, including by prohibiting insults against a religion or religious beliefs as such:
- Section 295 criminalises defiling “any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such [...] defilement as an insult to their religion [...]”, providing for up to 2 years’ imprisonment and/or a fine;
 - Section 295A criminalises “outraging the religious feelings of any class of the citizens of Bangladesh” “with deliberate and malicious intention” and by insulting the religion or the religious beliefs of that class, providing for up to 2 years’ imprisonment and/or a fine;
 - Section 298 criminalises “uttering words [...] with deliberate intent to wound religious feelings”, providing for up to 1 year of imprisonment and/or a fine.
44. These provisions of the Penal Code do not adhere to international human rights law.^{xiii} The repeal of blasphemy and religious insult laws is supported by the Human Rights Committee,^{xiii} and recommended in the OHCHR-backed Rabat Plan of Action,^{xiv} and by numerous special procedures of the UN Human Rights Council.^{xv}
45. The policing of expression considered insulting to religion is not limited to the Penal Code, in particular for online expression, where analogous provisions in Section 57 of the Information Communications Technology Act are routinely relied upon (see below).
46. Despite Constitutional guarantees against discrimination on the basis of religion, the absence of legislation to enforce these rights is a significant barrier to ensuring redress for human rights violations. In 2014, the Law Commission submitted a draft anti-discrimination law to the Law Ministry, but it is yet to be passed by Parliament. This leaves minority religion or belief groups in a vulnerable situation, exacerbating their exclusion from public discourse and decision-making, and disempowering them from being able to speak out against hate speech and discrimination.
47. Violence targeting religious minorities in Bangladesh is also widespread, and frequently committed with impunity, with severe consequences for the religious and cultural expression of minorities. It is notable that the majority of murdered bloggers (above) were targeted for publicly promoting secular beliefs or questioning religious dogma. Influential individuals who have directly advocated discriminatory hatred constituting incitement to such violence, in line with the terms of Article 20(2) of the ICCPR and the Rabat Plan of Action, also enjoy relative impunity, with no examples of successful prosecutions.^{xvi}

Sexual Orientation

48. With regard to LGBTI rights Bangladesh noted the recommendation to abolish section 377 of the Penal Code which criminalises, “*sexuality against order of nature*”.

Recommendations

- Develop, with the full and effective participation of civil society and other stakeholders, a national road-map for implementing Human Rights Council Resolution 16/18 on combatting religious intolerance, and the Rabat Plan of Action, including by ending impunity for advocacy of hatred on the basis of religion or belief that constitutes incitement to violence;
- Reform the Penal Code, to remove any offences pertaining to religious insult (Sections 295A and 298, with necessary amendments to Section 295), in addition to relevant reforms to the Information and Communication Technologies Act (ICT Act, below);
- Enact a comprehensive anti-discrimination law, and equip the NHRC with the competencies to ensure its full implementation and enforcement.
- Abolish section 377 of the Penal Code, and institute measures to increase inclusion and build acceptance of diverse sexual orientations and gender identities.

Protecting freedom of expression online

49. Bangladesh accepted recommendations to take effective measures to ensure freedom of expression and a safe enabling environment for social media.^{xlvii}

The Information Communications Technology Act (2006)

50. The Information Communications Technology Act (the ICT Act), provides broad powers to the government that restrict freedom of expression online, including vague and unnecessary content-based restrictions that do not comply with Article 19 (3) of the ICCPR.^{xlviii}
51. In particular, Section 57 of the ICT Act criminalises several forms of online expression, duplicating prohibitions in the broadly applicable Penal Code, including: “false information”; “obscene materials”; “defamatory statements”; “expression likely to cause deterioration of law and order”; “expression which tarnishes the image of the state or of an individual”; “statements hurting religious sentiments”; and, “statements provoking individuals or organisations.”^{xlix}
52. Section 46 of the ICT gives almost limitless discretion to the government-appointed “controllers” to monitor and block content, rather than law enforcement authorities acting on the basis of court orders with judicial oversight.
53. In 2013 the Act was amended,ⁱ lifting a number of procedural restrictions on the ability of the authorities to arrest individuals without a warrant during the investigations of crimes under the Act, rendering it more prone to abuse. At the same time, applicable sanctions for offences under Section 57 were increased.ⁱⁱ
54. Since the last UPR, ARTICLE 19 has recorded 115 initiated cases under the Act. Of 47 cases so far recorded in 2017, 27 were against journalists, including the following, who were all subsequently released on bail:
- **Golam Muztaba Dhrubo**, who reportedly commented on social media regarding a member of the judiciary, resulting in his prosecution;^{lii}
 - **Afsan Chowdhury**, who commented on social media regarding the alleged involvement of a senior member of the armed forces in political activities during the 2007 care-taker government period, resulting in a case against him;^{liii}
 - **Azmal Haque Helal**, shared on social media a post on alleged corruption of a member of parliament resulting a case against him.^{liv}
55. Other notable cases include:
- On 15 February 2016, **Shamsuzzoha Manik**, **Shamsul Alam** and **Taslim Uddin Kajol** were arrested under section 57 of the ICT Act allegedly for hurting Islamic religious sentiments by

publishing a book titled *Islamic Bitorko* (“Debate on Islam”), which was available online. Previously, the police had shut down the stall of their publication houses in the National book fare. Shamsuzzoha was imprisoned for more than 8 months before he was granted bail in November.

- On 1 November 2016 **Rasraj Das** was arrested under Section 57 of the ICT Act for allegedly hurting Islamic religious sentiments with a Facebook post caricaturing Qaba.^{lv}
- On 1 September 2016, **Siddiqur Rahman Khan** was arrested for alleged defamation for publishing a report about the alleged corruption and irregularities of an ex-government official.
- On 16 August 2015, **Probir Sikder** a veteran journalist and editor of a news portal, *Uttoradhiker Ekattor News* in a Facebook status claimed that his life was under threat and named three persons who would be held responsible should anything happened to him, one being a cabinet minister. Sikder was arrested on grounds of tarnishing the image of the minister.
- **Refayet Ahmed**, the administrator of a popular social media entertainment page “*Moja Loss*” was arrested on 10 December 2015 for allegedly spearheading a campaign against the government and the state, the page was said to tarnish the image of the state and prominent public officials. The Facebook page had a large fan base and was well-known for its satirical content and campaigns on social justice issues.

The Draft Digital Security Act, 2016

56. The Draft Digital Security Act, approved in principle by the Cabinet on 22 August 2016, is in the process of being scrutinised by the Ministry of Law, Justice and Parliamentary Affairs.

57. ARTICLE 19 raised serious concerns with the first draft of law,^{lvi} in particular its broad content-based offences, ambiguous cyber-crime provisions, and broad investigative powers. While some of these concerns have been addressed by the third draft, concerns remain. While the more problematic provisions in Section 57 of the ICT Act would be repealed, various elements are reinstated through Sections 19 and 20 of the Draft Act, including on defamation, obscenity, and hurting religious sentiments. While criminal sentences have been reduced to be consistent with the Penal Code, they remain deeply problematic. Broad investigatory powers, and obligations on Internet Service Providers to cooperate with law enforcement authorities, also raise significant concerns.

Recommendations

- Fully protect the right to freedom of expression online, ensuring that any Digital Security Act repeals fully and does not replicate the content-based offences in Section 57 of the ICT Act 2006 (as amended);
- Cease the harassment of individuals under the ICT Act 2006 for exercising their rights to freedom of expression, quashing existing convictions for such cases, and dropping outstanding investigations and charges.

- i 129.102 (Russian Federation)
- ii “39. (1) Freedom of thought and conscience is guaranteed. (2) Subject to any reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence—
(a) the right of every citizen to freedom of speech and expression; and (b) freedom of the press, are guaranteed.” Available at: http://bdlaws.minlaw.gov.bd/pdf_part.php?act_name=&vol=XV&id=367
- iii Human Rights Committee, Concluding Observations on the initial report of Bangladesh, CCPR/C/BGD/CO/1, 27 April 2017 at paras 7-8; available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fBGD%2fCO%2f1&Lang=en
- iv Laws relating to criminal defamation, section 57 of the ICT Act, 2006 (amended in 2013), Proposed Digital Security Act, 2015, Broadcasting Policy 2014, Digital Security Strategy 2014
- v Recommendation 129.48 (Sierra Leone, Peru and Turkmenistan)
- vi Report of the Special Rapporteur on freedom of religion or belief on his country visit to Bangladesh, A/HRC/31/18/Add.2, 22 January 2016; available at: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/31/18/Add.2
- vii Human Rights Committee, Concluding Observations on the initial report of Bangladesh, CCPR/C/BGD/CO/1, 27 April 2017; available at: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fBGD%2fCO%2f1&Lang=en
- viii 129.77 (Austria), 129.103 (Canada), 129.72 and 129.104 (Norway), 28 (Australia and Netherlands)
- ix Available at: http://bdlaws.minlaw.gov.bd/pdf_part.php?act_name=&vol=I&id=11
- x Explanations to section 499 of PC
- xi During the period February 9-28, 2016
- xii <http://www.thedailystar.net/frontpage/more-cases-summons-against-mahfuz-anam-576499>
- xiii <http://www.benarnews.org/english/news/bengali/anam-delay-04112016132354.html>
- xiv <http://en.prothom-alo.com/bangladesh/news/95791/Criminal-charges-against-editors-clear-attempt-to>
- xv <http://www.moi.gov.bd/site/files/fcb6c7ec-1de7-40aa-bc06-d6cd45af9a50/%E0%A6%9C%E0%A6%BE%E0%A6%A4%E0%A7%80%E0%A7%9F-%E0%A6%B8%E0%A6%AE%E0%A7%8D%E0%A6%AA%E0%A7%8D%E0%A6%B0%E0%A6%9A%E0%A6%BE%E0%A6%B0-%E0%A6%A8%E0%A7%80%E0%A6%A4%E0%A6%BF%E0%A6%AE%E0%A6%BE%E0%A6%B2%E0%A6%BE>
- xvi Chapters 3, 4, and 5 contain a long list of 69 forms of content broadcasters must avoid, including in relation to harmful and offensive behaviour, crime and violent content, religion, obscenity, “protection of the history of the country, ideals and spirit of the independence war”, national security, and incitement.
- xvii This Commission will be selected by a five-member search Committee comprised of representatives of civil society, media, government officials, broadcasting specialists, technical experts
- xviii Broadcasting without having a license (section 19) of the draft Act
- xix 129.80 (Switzerland), 129.75 (United Kingdom), 129.68 (Netherlands), 129.78 (Vietnam), 129.81 (Singapore), 129.76 (USA), 129.33 (Indonesia), 129.79 (Cyprus), 129.82 (Czech Republic), 129.83 (Germany), 129.84 (Sweden), 129.85 (Costa Rica)
- Gender-based attacks includes instances when women journalists are targets of attack such as assault, or attempted killing due to their gender, as well as violations relating to sexual harassment.
- xxi 23.56% of total attacks in 2013; 33.69% in 2014; 48.32% in 2015 and 66.9% in 2016
- xxii Bangladesh is ranked at 11 of the thirteen “spotlight countries” where “killers go free”
- xxiii Student wing of extreme right political group
- xxiv A crime reporter employed in the weekly Aparadh Damon published from Dhaka,
- xxv Crime reporter of the now defunct Daily Destiny, working from Narayanganj an adjacent district to the capital Dhaka
- xxvi Correspondent of the “Daily Samakal”, Jibon Nagar sub-district of Chuadanga district
- xxvii Correspondent of the, “Daily Juger Alo” printed from Rangpur
- xxviii A freelance journalist
- xxix Sub-district correspondent of the, Daily Samakal” of the sub-district Shahzadpur
- xxx “The Safety of Journalists and the Danger of Impunity”, Report by the Director-General of UNESCO to the Inter-governmental Council of the IPDC, 7 October 2016, at page 27; available at: http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/CI/CI/pdf/IPDC/ipdc_council_30_4_en_02.pdf
- xxxi No official reason was provided for the closure of Diganta TV, however they continue to operate online. Islamic TV broadcasting has been shut down completely.
- xxxii 129.11 (Indonesia); 129.86 (Uruguay); 129.87 (Japan); 129.92 (Pakistan); 129.96 (Republic of Korea); 21 (Malaysia); 129.8 (Republic of Moldova); 129.9 (France)
- xxxiii On 18 April 2015
- xxxiv 129.104 (Norway)
- xxxv Passed by Parliament on 4 October in 2016, repealing the Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978 and Foreign Contributions (Regulation) Ordinance, 1982
- xxxvi Sections 6-8
- xxxvii Section 14 of Foreign Donations (Voluntary Activities) Regulation Act, 2016
- xxxviii 129.6 (South Africa); 5, 6 (Egypt); 7 (Netherlands and Australia); 129.32 (Sudan)
- xxxix Richard Carver, Review of the compliance of the NHRC Act with the Paris Principles 2013. Criticisms include inadequate definitions of human rights, limitations on the investigatory powers (Sections 16-18), in particular regarding violations committed by military and law enforcement agencies, as well as gaps in the procedure for selecting members and limitations on financial independence
- xl A newly constituted commission is in the process of preparing proposals to amend the NHRC Act.
- xli 18 (UK), 129.24 (Ecuador); 131.22 (Switzerland); 129.152 (Nicaragua); 129.117 (Vietnam); 29 (Italy)
- xlii Article 19(3) of the ICCPR does not permit limitations on freedom of expression to protect religions or belief from criticism, or to shield followers of a religion or belief from offence or insult. That is because such expression does not, per

se, intend to or have the likely consequence of advocating hatred against a group that constitutes incitement to hostility, violence or discrimination (per Article 20(2) of the ICCPR).

^{xliii} HR Committee, General Comment No. 34, *op. cit.*, para. 48.

^{xliiv} *Ibid.*

^{xliiv} Report of the Special Rapporteur on freedom of religion or belief, A/HRC/34/50, 17 January 2017; Report of the Special Rapporteur on freedom of expression, A/71/33, 6 September 2016; Report of the Special Rapporteur on minority issues, A/HRC/28/64, 2 January 2015; UN Working Group on Arbitrary Detention, Opinion No. 35/2008 (Egypt), 6 December 2008, para. 38. The UN Human Rights Council special procedures have also been supported by regional mandates, see: [Joint Declaration on defamation of religions, and anti-terrorism, and anti-extremism legislation](#), 9 December 2008.

^{xlivi} Targeted attacks against Hindus in Nasirnagar Brahmanbaria 2016. The attack started as a result of facebook hate campaigns; There were also reports against Santal Adivasis in Gobindagonj of Gaibandha district; Persons responsible for distributing various lists of bloggers in 2015

^{xliiii} 129.101 (Norway)

^{xlviii} ARTICLE 19, “Bangladesh: Information Communication Technology Act”, 10 May 2016; available at: <https://www.article19.org/resources.php/resource/38365/en/bangladesh-information-communication-technology-act>

^{xlix} For a full analysis of these provisions, see ARTICLE 19’s 2016 analysis, *op. cit.*

^l The Information and Communications Technology (Amendment) Act, 2013 (Act No. 42 of 2013)

^{li} Ranging from 7-14 years, replacing the previous maximum term of 10 years.

^{lii} Staff correspondent of BDNews 24.com, case lodged against him on 13 June 2017

^{liii} A veteran journalist and adviser to BDNews 24.com, case lodged against him on 3 June 2017

^{liiv} Senior staff reporter of Daily Shokaler Khobor, case lodged against him on 6 July 2017

^{liv} A holy structure for Muslims located in Mashjid Al Haram, Saudi Arabia, known for the Hajj pilgrimage

^{lvi} ARTICLE 19, “Bangladesh: Draft Digital Security Act”, [date]; available at:

<https://www.article19.org/resources.php/resource/38368/en/bangladesh-draft-digital-security-act>