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The Observatory
for the Protection
of Human Rights Defenders

BANGLADESH

HUMAN RIGHTS DEFENDERS TRAPPED IN A POLARISED POLITICAL ENVIRONMENT

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OMCT SOS-Torture Network

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LIST OF ACRONYMS

AC	Assistant Commissioner
AL	Awami League
ATA	Anti-Terrorism (Amendment) Act
BCWS	Bangladesh Centre on Workers' Solidarity
BEPZA	Bangladesh Export Processing Zones Authority
BGIWF	Bangladesh Garment and Industrial Workers Federation
BJSD	Bangladesh Jatiyatabadi Sramik Dal
BNP	Bangladesh Nationalist Party
BTA	Bangladesh Telecommunications (Amendment) Act
CCA	Contempt of Court Act
CCPR	United Nations Human Rights Committee
CEACR	ILO Committee of Experts on the Application of Conventions and Recommendations
CEDAW	Convention on the Elimination of Discrimination against Women
CMLA	Chief Martial Law Administrator
CMM	Chief Metropolitan Magistrate Court
DB	Detective Branch of Police
DC	Deputy Commissioner
EC	Election Commission
EPZ	Export Processing Zone
EU	European Union
EWWAIRA	EPZ Workers Welfare Association and Industrial Relations Act
FIDH	International Federation for Human Rights
GD	General Diary
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICT	Information and Communication Technology (Amendment) Act / or International Crimes Tribunal
ILO	International Labour Organisation
ITUC	International Trade Union Confederation
JI	Jamaat-e-Islami
MP	Member of Parliament
NGO AB	NGO Affairs Bureau
NGOs	Non-Governmental Organisations
OMCT	World Organisation Against Torture
RAB	Rapid Action Battalion
RMG	Ready-Made Garment
TI	Transparency International
UN	United Nations
WPC	Workers' Participation Committee
WWA	Worker Welfare Association

INTRODUCTION

Alerted by reports from various non-governmental organisations (NGOs), including their Bangladeshi member-organisation Odhikar, the International Federation for Human Rights (FIDH) and the World Organisation Against Torture (OMCT) decided to send an international fact-finding mission to Bangladesh in the framework of their joint programme, the Observatory for the Protection of Human Rights Defenders.

The objective of the mission was to investigate and analyse the political and legal environment in which human rights defenders operate in Bangladesh in order to better understand the challenges and trends of repression faced by civil society, both legally and in practice. The mission also aimed at identifying and assessing the responsibility of the various actors responsible for violations of the rights to freedoms of expression, assembly and association of human rights defenders in Bangladesh. Special attention was paid to the state of freedom of association of trade unions and their leaders. The mission also aimed to identify recommendations to the Government of Bangladesh, the international community and other relevant stakeholders.

The mission was composed of four representatives: Ms. **Marie Guiraud**, lawyer (France), Ms. **Kwanravee Wangudom**, lecturer at the Institute of Human Rights and Peace Studies, Mahidol University (Thailand), Mr. **Jens Tinga**, trade union expert (The Netherlands), and Mr. **Hugo Gabbero**, Observatory Programme Officer at FIDH (France). The mission took place from November 13 to 22, 2012.

Requests for meetings were sent to a number of Government officials in conformity with a well-established practice of the Observatory, and notably to the Cabinet of Ms. Sheikh Hasina, Prime Minister; Mr. Mohiuddin Khan Alamgir, Minister of Home Affairs; Barrister Shafique Ahmed, Minister of Law, Justice and Parliamentary Affairs; Mr. Khandaker Mosharraf Hossain, Minister of Labour and Employment; and Mr. Mohammad Nurunnabi Talukder, Director General, NGO Affairs Bureau. Among those authorities, only Barrister Shafique Ahmed accepted to meet with the Observatory delegation.

The mission also met with the Chairman of the National Human Rights Commission, representatives of a number of embassies based in Dhaka, as well as a broad range of representatives of non-governmental organisations (NGOs), journalists, lawyers, and trade union leaders.

Those meetings could be arranged thanks to the valuable support of Odhikar and Ain-o-Salish Kendra (ASK).

FIDH and OMCT would like to thank all the persons met by the mission, as well as Odhikar and ASK for their constant support and availability throughout the mission.

Furthermore, Mr. **Yves Berthelot**, OMCT President (France), and Mr. **Max De Mesa**, Chairperson of the Philippine Alliance of Human Rights Advocates (PAHRA) and a member of OMCT General Assembly (The Philippines), led an Observatory solidarity mission in Dhaka from October 5 to October 9, 2013.

The delegation met with representatives of civil society, the media, diplomatic community as well as the Minister of Information, the Minister of Law, Justice and Parliamentary Affairs, the Chairman of the National Human Rights Commission and the Attorney General of Bangladesh.

The delegation was also able to attend the bail hearing of Mr. **Adilur Rahman Khan**, Secretary of Odhikar and a member of OMCT General Assembly, before the High Court Division of the Supreme Court on October 8, 2013.

The delegation wishes to thank all those that it met during the course of the mission.

EXECUTIVE SUMMARY

With the polarised political context in place in Bangladesh and increasing tensions ahead of the upcoming end 2013/early 2014 general elections in the country, Bangladeshi human rights defenders are put at further risk of human rights violations. While laws have become a tool used by the State to hinder the work of and suppress dissident voices through judicial harassment, a lack of proper judicial safeguards and remedies has allowed a culture of impunity for systematic patterns of human rights violations to continue.

In Bangladesh, **extra-judicial killings, enforced disappearances and torture in custody** are commonplace. Too often, when such violations occur, there is no prompt and proper investigation. From July 1, 2008 to September 30, 2012, a total of 506 extra-judicial killings were reported, and for the year 2011 alone, 30 enforced disappearance cases were documented by Odhikar, while 44 were reported by ASK for the year 2012. Both State and non-State actors are allegedly involved in such human rights violations. Although the number of extra-judicial killings (so-called "cross-fire" killings) somewhat decreased over the past years, the number of "enforced disappearances" has been dramatically increasing. One of the well-known cases of enforced disappearance and subsequent killing of a human rights defender is that of labour leader **Aminul Islam** in April 2012.

Freedom of expression remains generally curtailed in the country, where media workers continue to be harassed, threatened, attacked and even killed. Several journalists defending fundamental freedoms have also been affected. During the mission, the mission delegates heard that a number of reporters and journalists denouncing unlawful practices or disclosing sensitive information about corruption reported facing indirect or direct threats to their safety. This sometimes has led to self-censorship. In this context, *Just News BD* journalist **Mutafizur Rahman Sumon** was imprisoned in July 2012 and ill-treated for campaigning against the impunity for crimes against journalists.

Freedom of association of NGOs is hindered in many ways: the mission delegates witnessed a number of legal and practical obstacles to the activities of human rights NGOs: at least 11 members are required for an NGO to be registered, the registration process can be lengthy and subject to unsubstantiated delays, government officials can attend internal meetings of an NGO, any foreign funding must be approved by the NGO Affairs Bureau (NGO AB – a body placed under the authority of the Prime Minister's office), in a way that often delays the access to funds and jeopardises the implementation of human rights projects considered as too sensitive by the authorities. The NGO AB can decide to terminate an NGO, whereas the best practices in that regard suggest that this should be decided by an independent judiciary and subject to appeal. Such obstacles could potentially intensify against human rights organisations as an NGO Bill on "foreign funding" is currently being drafted.

The rights of workers, including their freedom of association, are not respected at various levels: although Bangladesh ratified seven of the eight core labour Conventions of the International Labour Organisation (ILO), the rights to strike and collective bargaining are not adequately guaranteed, and the strikes organised by workers to demand an increase of minimum wages are usually met with harsh repression, detention and even killings, which are not duly investigated. In addition, the trade union environment is highly politicised, and the few independent trade unions that exist face obstacles to their formation and functioning.

In terms of **women's rights**, women continue to face gender-based violence, including sexual harassment, without adequate protection by State authorities. In that context, a number of representatives of women's rights organisations and mainstream human rights organisations working on women's rights in Bangladesh can face obstacles to their work as well as harassment.

Land inequality remains another major problem in Bangladesh and is exacerbated by elite land grabs, sometimes in collusion with private companies. In such a context, **environmental and land rights activists** can face reprisals by both private companies and local authorities in their attempts to denounce the violations committed on the territories of local communities.

Corruption is also widespread at all levels of institutions, both central and local ones. In 2012, Bangladesh was ranked 144th out of 174 by the Transparency International Corruption Perceptions Index 2012. Corruption scandals regularly make the headlines, and human rights defenders that denounce embezzlement and collusion between officials and private actors can be subject to threats and reprisals.

The present fact-finding mission report aims to outline a detailed picture of the context in which human rights defenders operate in the country, and of the main trends of repression they are confronted with. The objective of the report is also to formulate conclusions and recommendations to the authorities of Bangladesh, the international community and other relevant stakeholders.

I - HISTORICAL AND ECONOMIC BACKGROUND

I.A/ HISTORICAL BACKGROUND

Bangladesh is characterised by a highly partisan political context, where two main parties, the Bangladesh Awami League (AL) and the Bangladesh Nationalist Party (BNP), regularly confront each other. This political division is affecting all levels of public life.

I.A.1/ THE INDEPENDENCE OF BANGLADESH

The State of Bengal, which nowadays encompasses the territories of the State of Bangladesh as well as the Indian states of West Bengal, Bihar and Orissa, was a single independent State until 1757, when the British East India Company imposed its colonial occupation in the aftermath of the battle of Palassy. In 1857, the British Crown replaced the East India Company, after the defeat of the first insurrection for independence.

Throughout the 20th century, a wave of nations sought independence from their colonial rulers, and the Indian sub-continent was home to some of the leading pro-independence movements.

At the core of the struggle was the Indian National Congress, an Indian political party founded in 1885. The Muslims of India then decided to form the All India Muslim League in 1906. The idea of a separate Muslim state emerged in the 1930s, during discussions steered towards the idea of an independent India.

On March 23, 1940, Muhammad Ali Jinnah, leader of the Muslim League, publicly endorsed the creation of a Muslim state and agreed with the idea of independence being granted to two separate countries: India and Pakistan.

Divided by religion, areas where Muslims made up the majority of the population were designated as "Pakistan", which included four provinces in the West, and one in the East, which was called East Bengal and from 1955 East Pakistan. East and West Pakistan were separated by more than 1,600 km of Indian soil.

Throughout the years, much focus was put on West Pakistan, and the East felt neglected at political and socio-economic levels. Frictions between East and West Pakistan culminated in an army crackdown in East Pakistan on March 25, 1971. East Pakistan declared independence on March 26, 1971 and the "liberation war" started. The ensuing war was one of the shortest and bloodiest of modern times: millions of persons, irrespective of religion, crossed the border to India, giving rise to an unprecedented exodus. On December 16, 1971, the Pakistani Army surrendered to the combined forces of the freedom fighters and the Indian army which had intervened. This set the stage for a new country called Bangladesh, with Dhaka as a capital.

I.A.2/ A HISTORY OF POLITICAL INSTABILITY (1972-2007)

In 1972, a Constitution for Bangladesh was drafted by a Constituent Assembly comprised of Members of Parliament (MPs) elected in 1970 under Pakistan.

The AL won the first Parliamentary elections in 1973, amidst protests over results by the opposition parties. The AL at that time was the main party, with a broad ability to support and promote the struggle for a new and independent nation.

A paramilitary force called "Jatio Rakkhi Bahini" was formed in 1972, resulting in the death of thousands of left wing political activists. Hardly a year into government, Sheikh Mujibur Rahman (or Sheikh Mujib) – the founding President of Bangladesh - declared a state of emergency. The Constitution was modified on January 25, 1975 to introduce the "4th amendment"

aimed at limiting the powers of the legislative and judicial systems. All the existing political parties were then dissolved and almost all newspapers were closed down.

On August 15, 1975, amidst growing criticism against his rule, Sheikh Mujib and his family members - with the exception of two daughters who were abroad at that time - were killed in a coup organised by a group of mid-level army officers. A new government, headed by a former minister of Sheikh Mujib, Mr. Khandakar Moshtaque, was formed.

Successive military coups occurred on November 3 and November 7, 1975, resulting in the emergence of Army Chief of Staff General Ziaur Rahman (also known as Zia, who declared the independence of Bangladesh after the crackdown of the Pakistani army) as leader. He pledged the army's support to the civilian government headed by the President, Chief Justice Sayem. Acting at Mr. Zia's behest, Chief Justice Sayem subsequently promulgated Martial Law, and named himself Chief Martial Law Administrator (CMLA).

In 1978, General Ziaur Rahman founded the BNP and was elected for a five-year term as President. His government withdrew the remaining restrictions on political parties, allowing the opposition to participate in the pending parliamentary elections. In 1979, Mr. Ziaur Rahman removed secularism and socialism from the Constitution, and inserted the notion of "total and absolute faith in Allah". In 1978, he also allowed Golam Azam, a leader of the Islamic party Jamaat-e-Islami (JI) in former East Pakistan, to return to Bangladesh. The latter had not supported the independence of the country and had consequently been living in exile in Pakistan since then.

In February 1979, more than 30 parties took part in the parliamentary elections, and the BNP won 207 of the 300 seats.

In May 1981, Mr. Ziaur Rahman was assassinated in a failed coup in Chittagong. The Vice-President, Justice Abdus Satter, took over as Acting President, and a presidential election was held where he was elected President.

In March 1982, the then Army Chief of Staff, Lieutenant General H.M. Ershad, took power in a bloodless coup. He dissolved Parliament, declared martial law, suspended the Constitution, and banned all political activities. Lieutenant General Ershad reaffirmed Bangladesh's moderate, non-aligned foreign policy. In December 1983, he formally took over the presidency.

On January 1, 1986, he established the Jatiyo Party as a political vehicle for the transition from martial law. After resigning as the chief of army staff, he won the general elections organised in May 1986 and was then elected President in October. The AL and the JI contested the general elections held in 1986, which were boycotted by BNP as well as by the leftist five party alliance (the Jatiyo Samajtantrike Dol - JSD, the Workers Party of Bangladesh, the Sramik Krishak Shomajbadi Dol, the Bangladesher Samajtantrike Dol - Khalikuzzaman, and the Bangladesher Samajtantrike Dol - Mahbubul Huq). In 1988, all major alliances boycotted the parliamentary elections.

In 1988, Lieutenant General Ershad declared Islam as the state religion of Bangladesh. In the endless change of political powers, he eventually stepped down in December 1990 following growing protests and general strikes against his rule, handing over power to an innovative transitional arrangement known as the "caretaker government" led by Shahabuddin Ahmed, the Chief Justice of Bangladesh, under whom the 1991 election was organised with the participation of all parties[1].

On February 27, 1991, the BNP won the elections and formed a government. The BNP was then led by Begum Khaleda Zia, the wife of former President Ziaur Rahman. In September 1991, the electorate approved changes to the Constitution, formally creating a parliamentary system and returning the governing power to the office of the Prime Minister, as in Bangladesh's original

1. The 1991 election actually experienced for the first time the "caretaker government" system.

Constitution. In October 1991, MPs elected a new Head of State, President Abdur Rahman Biswas.

In 1994, opposition leaders resigned *en masse* from Parliament and initiated a joint movement led by AL, JI and the Jatiyo Party to unseat Khaleda Zia's regime, and to demand a neutral caretaker government to be incorporated in the Constitution. President Abdur Rahman Biswas dissolved Parliament in November 1995 and an election was held on February 15, 1996, which was boycotted by the main political parties.

According to AL, the "caretaker" system was the only solution for holding a free and fair general election in Bangladesh, as the elections until then, under any regime, had failed to meet the basic requirements of credibility. The ruling BNP government, when it completed its tenure in 1996, failed to convince the opposition to participate in the general election due to a lack of credibility in the prevailing electoral process.

In 1996, the Constitution was amended to insert a provision (Article 58B) explicitly setting up the "caretaker" government, whose main responsibility, according to chapter II A of the 13th Amendment, was to run the state during the electoral period, "from the date on which Parliament is dissolved or stands dissolved" until "a new Prime Minister enters office after the constitution of Parliament". As a non-party administration, the caretaker's primary function was to create an environment in which a general election could be held "peacefully, fairly and impartially". It was also responsible for exercising the "routine functions of government with the aid and assistance of persons in the services of the Republic", and "except in the case of necessity (…) shall not make any policy decision"[2]. The Constitution did not specify its time limits, duties or activities.

Following this amendment, two general elections - one in June 1996 and the other in October 2001 - were held, where the opposition ousted the incumbents.

The 2001 elections saw a turnout of around 75 percent. The BNP came back to power, and formed an alliance with the JI. Most international observers considered the results generally acceptable, even though acts of violence and irregularities were reported. In 2003, the Government established the Rapid Action Battalion (RAB), which has since been accused of being responsible for the surge in the number of extrajudicial killings and torture in custody. During the BNP rule, security forces resorted to mass arrests as a means to suppress demonstrations, and workers in the export garment industry were subjected to violence and job dismissal in response to demands for wage increases and safe work conditions[3]. The five years of BNP rule were also marked by the rise of violent Islamist militancy, corruption and allegations of election rigging.

In 2007, the opposition once again joined forces to push for a political deadlock, which paved the way for the declaration of a state of emergency[4].

I.A.3/ THE MILITARY-BACKED CARETAKER GOVERNMENT (2007-2008)

On January 11, 2007, the military intervened in order to stop the widespread violence over an electoral deadlock between the then ruling BNP and the AL. To justify this intervention, the military leaders invoked Article 58B of the Constitution to set up a military-backed "caretaker government" pending elections.

2. See Article 58B of the Constitution of the People's Republic of Bangladesh as modified up to May 17, 2004, available at: http://www.parliament.gov.bd/Constitution_English/index.htm.
3. See Human Rights Watch, *World Report 2007*.
4. See Bangladesh Development Initiative (BDI), *Democratic Performance in Bangladesh 1991-2006 - A Political Measurement*, Journal of Bangladesh Studies Volume 9.2 (2007), available at: http://www.bdiusa.org/Journal%20of%20Bangladesh%20Studies/Volume%209.2%20%282007%29/Democratic%20Performance%20in%20Bangladesh%201991-2006%20-%20A%20Political%20Measurement.pdf

Article 58B gave a "constitutional facade" to what was in reality a coup, but most observers agreed that the political situation had deteriorated to the point that without an intervention from the military, the violence would have worsened.

From the beginning, the caretaker government promised to restore democratic rule through free and fair elections by the end of 2008, but also to use its nearly two years in office to undertake broad political reforms.

By aiming at sidelining from politics the leaders of the two main political parties, i.e. Khaleda Zia from BNP and Sheikh Hasina from AL, the caretakers and their military backers believed they could reverse the confrontational pattern of "party politics" and to foster an in-depth reform the BNP and the AL[5].

On December 29, 2008, the AL, led by Sheikh Hasina, came back to power, winning 229 of 300 seats. This put an end to the two-year military-backed caretaker government.

I.A.4/ CONSTITUTIONAL REFORMS UNDER AWAMI LEAGUE (AL) GOVERNMENT

In early 2012, the BNP gave an ultimatum to the government to reinstate the caretaker system by June 10, 2012 "or face battles in the streets". At the end of September 2013, a new ultimatum was set to October 25, 2013. Both ultimatums were however disregarded by the authorities. In that context, a BNP-led boycott of the 2013/2014 general elections is now increasingly probable, amid growing tensions and arrests of some leading human rights defenders.

At constitutional level, the 15th amendment to the Constitution has been AL's most controversial political act, not only because it abolished the caretaker government, but also because it contained other measures which resulted in a de facto ban on any further change to most of the Constitution.

Indeed, Article 7B prohibits any further amendments to most provisions of the Constitution, while Article 7A, aimed at the military, has made any attempt to abrogate or suspend the Constitution an act of "sedition", punishable by death[6]. Constitutionally speaking, the country therefore seems to be condemned to *status quo*.

Since the abrogation of the "caretaker government", the Election Commission of Bangladesh (EC), as reconstituted in February 2012[7], would theoretically have the most important role to play for the conduct of fair, transparent, and credible general elections, but its capacity to hold a ballot that would be free and fair has been questioned.

5. See International Crisis Group, Bangladesh: Back to the Future, Asia Report N°226 – June 13, 2012.
6. Article 7A reads: "(1) If any person, by show of force or use of force or by any other un-constitutional means – (a) abrogates, repeals or suspends or attempts or conspires to abrogate, repeal or suspend this Constitution or any of its article; or (b) subverts or attempts or conspires to subvert the confidence, belief or reliance of the citizens to this Constitution or any of its article, his such act shall be sedition and such person shall be guilty of sedition. (2) If any person - (a) abets or instigates any act mentioned in clause (1); or (b) approves, condones, supports or ratifies such act, such act shall also be the same offence. (3) Any person alleged to have committed the offence mentioned in this article shall be sentenced with the highest punishment prescribed for other offences by the existing laws". See Constitution of the People's Republic of Bangladesh (as amended in 2011):http://bdlaws.minlaw.gov.bd/pdf_part.php?id=367. Article 7B reads: "Notwithstanding anything contained in Article 142 of the Constitution, the preamble, all articles of Part I, all articles of Part II, subject to the provisions of Part IXA all articles of Part III, and the provisions of articles relating to the basic structures of the Constitution including article 150 of Part XI shall not be amendable by way of insertion, modification, substitution, repeal or by any other means". See Constitution of the People's Republic of Bangladesh (as amended in 2011): http://bdlaws.minlaw.gov.bd/pdf_part.php?id=367.
7. Article 119(1) of the Constitution reads: "The superintendence, direction and control of the preparation of the electoral rolls for elections to the office of President and to Parliament and the conduct of such elections shall vest in the Election Commission which shall, in accordance with this Constitution and any other law – (a) hold elections to the office of President; (b) hold elections of members of Parliament; (c) delimit the constituencies for the purpose of elections to Parliament; and (d) prepare electoral rolls for the purpose of elections to the office of President and to Parliament".

The AL argues that a strong EC will be the main bulwark against election frauds and irregularities. However, the EC has repeatedly been accused in the past of being biased to the ruling regime, both under the rule of BNP and AL.

It is also important to note that the EC legally remains under the office of the Prime Minister. This further contributes to strengthening the criticism towards the lack of independence of the EC.

I.A.5/ POLITICAL VIOLENCE IN THE RUN-UP TO GENERAL ELECTIONS

Many of the initiatives undertaken by the AL government as described above have contributed to a growing discontent among the public opinion.

The degree of tension is likely to further escalate ahead of the next general elections, which at the time of writing were scheduled for the end of the year 2013 or the beginning of the year 2014.

Three elements could contribute to a political deadlock and to a generalisation of violence over the coming months:

– the announced boycott by the BNP of any upcoming election until the "caretaker government" system is re-established, and the effective boycott of electoral talks with the EC early December 2012, on the grounds that the issue of the caretaker government was not on the agenda[8].

– the ban against the JI issued by the High Court of Justice on August 1, 2013, resulting in the exclusion of this party from the political game.

– the multiplication of acts of violence by JI supporters, in the context of a large-scale trial taking place before the International Crimes Tribunal (ICT) – a national court founded in 2010 to judge crimes against humanity committed during the nation's War of Independence in 1971. The first persons indicted and tried before the ICT have included nine JI and two BNP leaders. Allegations of political interference and lack of transparency have marked the trials. JI has been demanding release of their leaders detained and currently tried before the ICT.

It is worth noting that a few days before the Observatory mission departed, i.e. on November 6 and 7, 2012, more than a hundred people were injured as leaders and activists of JI fought running battles with the police in the capital Dhaka and other parts of the country. Police picked up at least 50 JI supporters after the clashes broke out in Dhaka, Chittagong, Sylhet, Barisal, Rangpur, Bogra, Gaibandha and Sirajganj. Some observers predicted that the pre-electoral period, the ongoing ICT trial and speculations about the possible sentences reinforced the risks of an escalation in tensions and violence.

Throughout the month of February 2013, Bangladesh indeed witnessed a rise in violent protests that caused the death of several dozens of persons, including women and children. The protests, which began on February 5, 2013, became widespread following the first death sentence issued on February 28 by the ICT against Mr. Delwar Hossain Sayedee, Vice-President of the JI party, who was among those indicted.

I.B/ ECONOMIC BACKGROUND

The ready-made garment (RMG) industry is one of the most important sources of income for Bangladesh and accounts for instance for approximately 90 per cent of all Bangladeshi exports to the European Union (EU)[9]. The country benefits from the European Commission's

8. See *Daily Star*, BNP boycotts talks with EC, December 3, 2012, available at: http://www.thedailystar.net/newDesign/news-details.php?nid=259704
9. See Delegation of the European Union to Bangladesh, Bangladesh-Europe 2012, p. 14: http://www.delbangladesh.eu/en/eu_and_country/EU-Bangladesh-2012/Blue%20Book.pdf

"Everything But Arms" preferential trade regime, which allows it to export all goods produced in Bangladesh (except arms) to the EU duty-free and quota-free. In order to offer competitive goods at low prices, Bangladesh companies generally pay low wages to their workers and often do not respect their labour rights. Foreign garment brands' purchase practices, unwillingness and unaccountability of the executive and administration to protect workers' rights in particular vis-à-vis suppliers, managers and owners, pressure to produce garments and other goods at lowest costs, high volumes and thigh deadlines, continue pushing Bangladesh manufacturers to pay low wages to their workers and to disrespect their labour rights. Despite international and domestic pressure following major recent tragedies in factories, this situation unfortunately remains mostly unchanged. Forced labour and child labour also continue.

On November 24, 2012, two days after the delegation left the country, news outlets worldwide broadcast images of the Tazreen Fashion factory outside Dhaka engulfed in flames. 121 textile workers perished in the fire that evening, making it the largest industrial disaster ever in Bangladesh. On April 24, 2013, the collapse of the Rana Plaza building in Savar, housing five garment factories, caused the death of more than 1,160 persons.

These tragedies are the last of a long series of deadly industrial accidents. Some issues combine to make the Bangladesh textile sector a hazardous workplace for hundreds of thousands of workers.

On May 15, 2013, 24 international brands announced their decision to enter a legally binding Accord on Fire and Safety in Bangladesh[10], with the global unions IndustriALL and UNI, as well as Bangladeshi unions. This agreement, which has since been joined by numerous additional businesses (around 80 as of mid-2013), provides for independent safety inspections. Through this agreement brands commit to continue doing business in Bangladesh at least for two years. This Accord recognises workers' rights not to enter the workplace in case of reasonable justification to believe it is unsafe without any retaliation or loss of pay.

10. See Accord on Fire and Building Safety in Bangladesh, May 2013, available at: http://www.industriall-union.org/sites/default/files/uploads/documents/2013-05-13_-_accord_on_fire_and_building_safety_in_bangladesh.pdf#overlay-context=; Information on the implementation of the Accord can be found here: http://www.industriall-union.org/bangladesh-safety-accord-implementation-moving-forward

II - LEGAL FRAMEWORK AFFECTING THE ACTIVITIES OF HUMAN RIGHTS DEFENDERS AND JUDICIAL HARASSMENT AGAINST THEM

In Bangladesh, part III of the Constitution protects fundamental rights. Of particular relevance are Article 37 on freedom of assembly, Article 38 on freedom of association, and Article 39 on freedom of expression. Article 16 guarantees to all citizens the protection of the law.

However, no specific legal framework is in place to facilitate or protect the activities of human rights defenders.

On the contrary, a number of restrictive pieces of legislation detrimental to the defence of fundamental freedoms are aimed to directly or indirectly hinder the work of human rights defenders in the country.

II.A/ FREEDOM OF EXPRESSION CURBED BY RESTRICTIVE LAWS APPLIED BY A BIASED JUDICIARY

II.A.1/ INTERNATIONAL STANDARDS

Article 19 of the *Universal Declaration of Human Rights* recognises the right of everyone to freedom of opinion and expression:

"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers".

Article 19 of the *International Covenant on Civil and Political Rights* (ICCPR), which Bangladesh acceded in 2000, states that:

"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".

The same Article provides for a number of restrictive permissible limitations under international law, i.e.:

"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 6 of the 1998 UN *Declaration on Human Rights Defenders* also recognises the right of (a) "everyone (…) individually or in association with others, to seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems; (…) and (c) "to study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and (…) to draw public attention to those matters".

II.A.2/ DOMESTIC STANDARDS

At the domestic level, the *Constitution* enshrines the right to freedom of expression, but in a more restrictive manner than what is provided under international law.

II.A.2.A/ THE CONSTITUTION

Article 39 of the Constitution provides that:

"(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".

This provision falls short of international standards, which state that any restriction must be "necessary" rather than "reasonable" and which do not allow restrictions such as "friendly relations with other States" or "contempt of court", an accusation abusively used against dissenting voices, as will be seen below.

Aside from the Constitution, other pieces of legislation are applied by judges to unduly restrict the environment in which human rights defenders and journalists operate.

II.A.2.B/ THE PENAL CODE

A number of sections under the *Penal Code* punish, including in some cases with life imprisonment, those who commit acts that are "prejudicial to the states", "sedition" or "defamation". These sections are broadly interpreted and open to political manipulation and are used against critics and opponents.

- *"Prejudicial acts" as defined by Section 505A of the Penal Code*

Under Section 505A of the Penal Code, any person who:

"expresses his/herself (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".

This provision therefore allows broad interpretations by the law enforcement agencies and the judiciary, and can lead to the criminalisation of freedom of expression.

- *"Sedition" as defined by Section 124A of the Penal Code*

Section 124A of the Penal Code also unduly restricts freedom of expression, stating that "whoever by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the government established by law be punished with imprisonment for life to which fine may be added, or with imprisonment which may extend to to three years, to which fine may be added, or with fine".

Again, here the term "disaffection of the government" can be interpreted very broadly to stifle any criticism of government policies, including their human rights record.

- *"Defamation" as defined by Section 501 of the Penal Code*

Several sections of the Penal Code relating to defamation can be used to unduly restrict freedom of expression, including that of human rights defenders. Section 501 of the Penal Code sanctions the act of printing or engraving matters to be known as defamatory. Usually, whenever a case is filed under this Section, an arrest warrant is issued by the Courts, which results in immediate arrests. This Section provides for penalties ranging from fines to imprisonment, or both, as well as forcible closure of the publication.

II.A.2.C/ THE ANTI-TERRORISM ACT, 2009 AND THE ANTI TERRORISM (AMENDMENT) ACT, 2012

In 2008, the caretaker government promulgated the Anti-Terrorism Ordinance, and on the basis of the Ordinance, the Ninth Parliament then enacted the *Anti-Terrorism Act* (also known as ATA) on February 24, 2009. This Act provides a broad and vague definition of "terrorism" which opens the door to human rights abuses under the guise of the so-called "fight against terror"[11].

In addition, on February 16, 2012, Parliament adopted the *Anti-Terrorism (Amendment) Bill*, which widens the scope of sanctions provided in the ATA by approving the death penalty as the maximum penalty for financing terrorist activities. Before the amendment, the ATA stipulated that the offence of financing acts of terrorism shall be punishable by no more than 20 years and no less than three years of imprisonment. The Amendment Bill also provides scope to prohibit the use of Bangladeshi land for the conduct of any terrorist activities inside the country or against other countries, all types of illegal arms and explosives, and the creation of 'panic' among the people through any terrorist activities. The Amendment Bill was passed with virtually no consultation with, and despite strong opposition from, Bangladeshi civil society groups. While the fight against terrorism is a legitimate one, the Bangladeshi anti-terrorism legislation has been abusively used against human rights defenders due to overly vague definitions of terrorism.

II.A.2.D/ THE BANGLADESH TELECOMMUNICATION (AMENDMENT) ACT (BTA) AND PRACTICAL OBSTACLES TO COMMUNICATIONS

In February 2006, the BNP-led coalition government enacted the *Bangladesh Telecommunication (Amendment) Act*, which added Section 97A to the Telecommunication Act of 2001, allowing the Government to engage in telecommunication surveillance and intelligence gathering, such as tapping mobile or land phone lines, without judicial supervision. Section 97B of the Act allows information collected under Section 97A to be considered as admissible evidence at any trial on the basis of the Evidence Act of 1872. Some human rights defenders, whom names are not disclosed for security reasons, reported their conversations were regularly phone-tapped.

In addition, since May 15, 2013, the Bangladesh Telecommunication Regulatory Commission (BTRC) ordered the International Internet Gateway companies to reduce the bandwidth speed to upload documents and digital media on the Internet.

A nine months ban has further been imposed on YouTube, which was lifted by the BTRC in June 2013[12].

II.A.2.E/ THE "CONTEMPT OF COURT" ACT, 1926

Three sections of the *Contempt of Court Act* (CCA), 1926 are still in force in Bangladesh. The Act does not define what is or amounts to a "contempt of court", which has therefore been left to the discretion of the courts. Accordingly, in practice, any act that a judge believes to be

11. For more information, see FIDH fact-finding mission report, *Criminal justice through the prism of capital punishment and the fight against terrorism*, October 2010: http://www.fidh.org/IMG/pdf/Report_eng.pdf.
12. The authorities had blocked YouTube in the country on September 17, 2012, officially to prevent people from watching a film titled "Innocence of Muslims", in the wake of deadly protests from the Middle East to South East Asia. The ban lasted almost nine months.

disgraceful to the court is considered as "contempt of court". Some human rights defenders have been sued or convicted under this charge.

In January 2012, the Contempt of Courts Bill 2011 was introduced in Parliament, with the aim of amending the existing Act. The current bill actually defines what should not be considered as contempt of court, rather than defining what is contempt of court. Indeed, under the bill[13], any unbiased and objective news published on any proceedings of a court, in full or in part, any final decision and any elements of a concerned case shall not be considered as contempt of court. Besides, no person could be convicted of contempt of courts if he or she makes statements or comments in good faith about presiding judges of lower courts or the Supreme Court. The bill also proposes not to consider as a contempt of court the disclosure of information about a trial process in camera or behind closed-doors, "except in some cases". It also exempts the media from contempt charges "if they publish objective news reports". There is a risk that the vague formulations used in the text would still allow wide interpretations which could still be used to silence voices criticising the authorities.

On February 23, 2013 the Contempt of Courts Bill 2011 was passed by the Parliament and on September 26, 2013, the High Court Division of the Supreme Court revoked this Act, terming it illegal and *ultra vires* to the Constitution.

II.A.2.F/ THE INFORMATION AND COMMUNICATION TECHNOLOGY ACT, 2006 AND THE INFORMATION AND COMMUNICATION TECHNOLOGY (AMENDMENT) ACT, 2013

In 2006, the Parliament of Bangladesh enacted the *Information and Communication Technology (ICT) Act*, 2006. The act provides a legal recognition of electronic transactions, of digital signatures, of electronic contracts, of e-commerce and electronic forms, and of electronic publication of the official gazette.

It also aims at the "prevention of computer crime", "forged electronic records", "intentional alteration of electronic records", "falsification of e-commerce and electronic transactions", and to provide "other responses to crimes relating to information and communications technology".

The ICT Act, 2006 provides for a "maximum punishment of up to 10 years of imprisonment or a maximum fine of Taka (Tk) 10,000,000, or both" in case of cybercrime.

Worryingly, on August 19, 2013, the Cabinet of Bangladesh, chaired by Prime Minister Sheikh Hasina, passed and approved the proposed draft of the ICT (Amendment) Act, 2013, although the Parliament was scheduled to be in session in September 2013[14].

On October 6, 2013, the National Parliament of Bangladesh passed the ICT (Amendment) Act, 2013, setting a minimum of seven years' imprisonment and increasing the highest punishment for cyber-crimes from 10 years under the existing Act to 14 years or a fine of Tk 10,000,000 or both, ignoring protests by civic forums and rights groups.

Moreover, while under the existing ICT Act, 2006, provisions were non-cognisable and bailable, and law enforcers were not allowed to arrest anyone without prior approval from an authority or court, offences under Sections 54, 56, 57 and 61 of the ICT Act, 2006 are now considered as cognisable and non-eligible for bail. As a consequence, law enforcers are empowered to arrest anyone accused of violating the law without a warrant, by invoking Section 54 of the Code of Criminal Procedure.

13. See *New Age*, "JS panel clears contempt of court bill", available at http://newagebd.com/detail.php?date=2013-01-17&nid=37099#.Uek3vVOVGiY
14. Article 93 of the Constitution provides that a text can be promulgated as an Ordinance by the President of Bangladesh when the "Parliament (...) is not in session", and "when immediate action is necessary". Article 93 also adds that an Ordinance shall nonetheless "be laid before Parliament at its first meeting following the promulgation".

In that context, human rights defenders, including whistleblowers and investigation journalists exposing abuses and human rights violations to the public opinion on the basis of secret or confidential documents or elements, can be particularly targeted. It is particularly feared that those amendments will lead to further arrests and harassment of human rights defenders, therefore shrinking the space of civil society in the country, and that there is risk that they could be applied retrospectively to the pending case against Mr. **Adilur Rahman Khan** and Mr. **Nasiruddin Elan** (see below).

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Adilur Rahman Khan following his arrest in August 2013.

II.A.3/ THE ABUSE OF LAWS TO HARASS AND SILENCE HUMAN RIGHTS DEFENDERS

With the combination of a politicised judiciary and a restrictive set of vaguely worded laws affecting the right to freedom of expression, a number of human rights defenders met by the mission delegates reported being forced to a certain degree of self-censorship in their daily activities.

Indeed, in a context where **the judiciary is lacking independence** and is generally acting upon orders from the executive, especially at lower levels, cases of judicial harassment have been launched against a number of lawyers, journalists, trade unionists or environmentalists reporting on human rights violations and facing dramatic sets of spurious charges. Such cases, which can last months or even years, are used as another means to silence the denunciation of human rights violations.

II.A.3.A/ JUDICIAL PERSECUTION OF ADILUR RAHMAN KHAN AND NASIRUDDIN ELAN

So far no measures have been taken by the relevant authorities to prevent the misuse of the above-mentioned national criminal and security laws.

One sad example of such misuse is the judicial persecution of Mr. **Adilur Rahman Khan**, Secretary of the human rights NGO Odhikar and a member of OMCT General Assembly, and Mr. **Nasiruddin Elan**, Odhikar Director, in relation to a fact-finding report issued by Odhikar about the killing of 61 people during an operation carried out on May 5-6, 2013 by law enforcement agencies against Hefazat-e Islam activists at the Dhaka's downtown Motijheel area.

On August 10, 2013, Mr. Adilur Rahman Khan was arrested by the Detective Branch (DB) of Police in Dhaka, at 10.20 pm, as he was returning at his Gulshan residence in Dhaka with his family. The police did not present any warrant of arrest and did not inform neither his family nor Mr. Khan why they were arresting him and where they were taking him. The Dhaka Metropolitan Police subsequently confirmed the arrest to the media.

On August 11, 2013, Mr. Khan was brought to the Chief Metropolitan Magistrate Court (CMM), where he was produced before the Dhaka Metropolitan Magistrate and the complaint against him was read by the Public Prosecutor. The police lodged a General Diary against him on August 10, 2013, under Section 54 of the Code of Criminal Procedure at the Gulshan police station. Mr. Adilur Rahman Khan was also charged under clauses 1 and 2 of Section 57 of the ICT 2006 (amended in 2009) for publishing false images and information and disrupting the law and order situation of the country. The Court then placed Mr. Khan on a five-day remand for interrogation.

Furthermore, on August 11, 2013, the Odhikar office was searched by DB police between 8.20 pm and 9.00 pm. They inspected the files and documents and then seized three laptops and two CPUs from Odhikar's offices.

On August 12, 2013, the High Court of Bangladesh stayed the five-day remand order to interrogate Mr. Adilur Rahman Khan and asked police to send him to jail.

On August 13, 2013, Dhaka Metropolitan Magistrate Mostafa Shahriar Khan, in accordance with the High Court order, issued the order to send Mr. Adilur Rahman Khan to Dhaka Central Jail. He was later transferred to Kashimpur Jail number 1, on the outskirts of Dhaka city.

On September 4, 2013, the DB police announced they had filed a charge sheet against Mr. Adilur Rahman Khan as well as against Mr. Nasiruddin Elan for "distorting images by using photo shop and publishing a fabricated report, which enraged public sentiment", under Section 57 of the ICT Act and Sections 505 (c) and 505A of the Penal Code, in relation to the above-mentioned fact-finding report issued by Odhikar. If found guilty, the two human rights defenders might face up to 14 years in jail or Tk 10,000,000 (about 93,660 €) fine under the ICT Act and seven years' jail term under the Penal Code.

On September 5, 2013, the case was referred to the Cyber Crimes Tribunal, which issued an arrest warrant against Mr. Nasiruddin Elan on September 11, 2013.

On September 9, 2013, the Chief Metropolitan Magistrate Court rejected the bail petition filed by Mr. Adilur Rahman Khan. This was the second time Mr. Khan's lawyer was submitting a petition seeking bail for his client.

On September 11, 2013, the Cyber Crimes Tribunal issued an arrest warrant against Mr. Nasiruddin Elan and on September 25, it directed officer-in-charge of Gulshan police station to submit by October 21 the report on the execution of the arrest warrant.

On September 12, 2013, Mr. Adilur Rahman Khan was brought to the CMM to attend a hearing under Section 54 of the Code of Criminal Procedure, as this was the day the DB police had to submit their findings in this regard. Mr. Adilur Rahman Khan was discharged from this section, which was a mere formality, as legally one cannot be detained more than 21 days under Section 54 of the Code of Criminal Procedure. Yet Mr. Adilur Rahman Khan has been

detained more than a month under this section. However, the charges of violating Section 57 (1) and (2) of the ICT Act 2006 and sections 505 (c) and 505A of the Penal Code still stand.

On September 25, Mr. Adilur Rahman Khan was presented to the Cyber Crimes Tribunal, which dismissed for the third time the bail petition filed by his lawyer on September 19. Judge AKM Shamsul Alam scheduled the next hearing to October 21, 2013.

It is in this framework that Messrs. **Yves Berthelot** and **Max De Mesa** led an Observatory mission in Dhaka from October 5 to October 9, 2013[15]. The delegation was also able to attend the bail hearing of Mr. Adilur Rahman Khan before the High Court Division of the Supreme Court on October 8, 2013. During the hearing, the court granted a six-month interim bail to Mr. Khan, but on October 9, 2013, the Office of the Attorney General filed an application before the Appellate Division of the Supreme Court, requesting to stay the High Court's order granting bail to Mr. Khan. However, the Chamber Judge decided on the same day to uphold the High Court Division's decision.

On October 11, 2013, at 10.30 am, Mr. Khan was finally released on bail from Kashimpur Jail number 1. It took two days for the bail order to be implemented, adding further harassment against Mr. Khan.

On October 10, 2013, Mr. Nasiruddin Elan was granted an order of "no arrest or harassment" for four weeks from the High Court Division of the Supreme Court.

On October 21, 2013, Mr. Adilur Rahman Khan appeared before the Dhaka Cyber Crime Tribunal. Yet, Mr. Khan once again found out that a Public Prosecutor has not yet been appointed to represent the Government at his trial, which amounts to further harassment and delay in framing charges against him. The Tribunal Judge then fixed the next date of hearing in his case on November 10, 2013. He also asked Odhikar's lawyers to ensure the presence of Mr. Nasiruddin Elan on the next hearing date.

Furthermore, on October 21, 2013, at approximately 12:45 pm, a plain-clothes officer, with a walkie talkie, approached Mr. Adilur Rahman Khan's house and asked the security guard whether he had returned home. That man was also seen on a motorbike surveying the house for quite some time.

On November 6, 2013, Mr. Nasiruddin Elan and his lawyers appeared before the Cyber Crimes Tribunal and appealed for bail in the above-mentioned case. Yet, Judge Shamsul Alam rejected the plea for bail and ordered that Mr. Elan be arrested and taken to Dhaka Central Jail, where he remained detained as of issuing this report.

II.A.3.B/ 49 LEGAL ACTIONS FILED AGAINST AMAR DESH EDITOR MAHMUDUR RAHMAN

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Arrest of Mahmudur Rahman.

Since 2011, Mr. **Mahmudur Rahman**, Acting Editor of the popular newspaper *Amar Desh*, one of the leading Bangla-language newspapers, has faced nearly 50 judicial cases under numerous charges including "defamation", "sedition" and several offences defined in the Anti-Terrorism Act, for publishing a report on the alleged corruption practices of the Prime Minister and her relatives.

15. For the main conclusions of the mission, see Observatory Press Release, issued on October 11, 2013.

On June 1, 2010, the Tejgaon Thana Officer-in-Charge raided the press office of *Amar Desh* with armed forces, and declared its closure. The next day, agents of the Tejgaon police station entered the *Amar Desh* offices, arrested Mr. Rahman, who had chosen to reside in his office, and took him to the Dhaka cantonment police station (CPS) for interrogation. The police forces also resorted to the use of force against the protesting journalists who attended the scene, beating them with sticks.

On the same day, Mr. Rahman was charged under Sections 419, 420 and 500 of the Penal Code for "cheating by personation", "dishonestly inducing delivery of property" and "defamation", and the Tejgaon police station also filed a case against him (Case No. 2(6) 2010), as well as against the *Amar Desh* Deputy Editor Mr. **Syed Abdal Ahmed**, the Assistant Editor Mr. **Sanjeeb Chowdhury**, the City Editor Mr. **Jahed Chowdhury**, reporter **Alauddin Arif**, and the office assistant **Saiful Islam**, as well as against 400 unnamed people for, *inter alia*, "obstructing Government officials to perform their duties" during Mr. Rahman's arrest, under Sections 143, 342, 332, 353, 186, 506, 114 of the Penal Code.

On June 6, 2010, another case (Case No.5 (6) 2010) was filed against Mr. Rahman at the Kowali police station for, *inter alia*, "obstructing Government officials to perform their duties" under Sections 143, 186, 332, 353, 225B/34 of the Penal Code, while he was already in custody.

On August 19, 2010, the Appellate Division of the Supreme Court sentenced him to six months' imprisonment for "gross contempt of court" for having published a report on April 21, 2010 where the role of the Attorney General's Office was criticised. The Court also fined Mr. Rahman Tk 100,000 (around 1,130 Euros). The contempt of court notice was brought before the Court by two lawyers reported to be supporters of the Government. On the same day, the Court also sentenced Mr. **Oliullah Noman**, special correspondent of *Amar Desh*, to one-month imprisonment and a fine of Tk 10,000 (around 113 Euros), and Mr. **Hashmat Ali**, publisher of the same newspaper, to a fine of Tk 10,000 for contempt of court in relation to their responsibility in the publication of the report. Moreover, Mr. Noman was sentenced to one-month imprisonment.

In October 2010, Mr. Rahman was transferred to the Kashimpur jail located at Gazipur and later in January 2011 at Gazipur district jail, which made it more difficult for his lawyers to visit him, as well as for him to access the medical treatment he required. On March 17, 2011, he was released from the Gazipur district jail after having served nine and a half months in prison.

However, on March 28, 2011, Mr. Mahmudur Rahman was scheduled to appear before two different courts – the CMM of Dhaka and the District Court of Gopalganj, located at a distance of 250 km from each other – on "defamation" and "cheating" charges, under Section 420, 469, 500, 501 and 34 of the Criminal Code, in relation to articles published in *Amar Desh*.

Therefore, Mr. Rahman himself appeared in Dhaka while his lawyer appeared before the Gopalganj Court and applied for the postponement of the trial and displayed the documents related to the Dhaka Court's summon. The judge in Gopalganj rejected the application and issued an arrest warrant against Mr. Rahman.

During the same hearing, the judge in Gopalganj also issued arrest warrants against two other journalists, Mr. H. M. **Mehedi Hasnat**, correspondent of the *Dainik Destiny* in Kotalipara, and Mr. **Jahangir Hossain Sheikh**, Acting Editor of the weekly *Matrimukti*. The criminal case against them is related to a report published in *Amar Desh* on April 4, 2010 alleging that some AL leaders and their relatives could be involved in war crimes committed in 1971.

As of mid-2013, Mr. Rahman was still facing a dozen charges related to his work as a journalist, and had to go to courts at least three times a week, seriously affecting his capacity to carry out his daily work. During the mission, he also reported to the delegation that he feared being

arrested anytime, and was even fearing for his personal safety. And indeed, in April 2013, Mr. Rahman was again arrested because of his journalistic activities and put under six days remand[16]. After his lawyers and family members complained about acts of torture perpetrated against him during remand at the Detective Branch of police custody, Mr. Rahman was treated at the BSMMU Hospital. Finally, on April 17, 2013, he was sent to the Kashimpur Jail number-2, where he remained detained as of October 2013.

II.A.3.C/ JUNE-SEPTEMBER 2010: 11 LEGAL ACTIONS FILED AGAINST THREE MEMBERS OF THE BANGLADESH CENTRE OF WORKERS' SOLIDARITY; MOST REMAIN PENDING

In addition to the fact that the Bangladesh Centre for Worker Solidarity (BCWS) was de-registered by the NGO AB in June 2010[17], between June 2010 and September 2010, 11 legal actions were brought against three of its members: Ms. **Kalpona Akter**, BCWS Secretary General, Mr. **Babul Akhter**, BCWS Law and Research Secretary, and Mr. **Aminul Islam**, also a member of BCWS.


Amilul Islam

Following growing social unrest among garment factory workers, who suffer from harsh living conditions due to extremely poor wages that barely allow them to ensure the survival of their families, the Governmental Committee on the Minimum Wage decided on July 27, 2010 to raise minimum wages by 80 per cent, from Tk 1,662 up to Tk 3,000 per month (around 34 Euros), a decision that was officially announced by the Labour and Employment Ministry on July 29, 2010. However, workers considered this minimum wage insufficient and demanded a raise up to Tk 5,000 (approximately 56 Euros).

On July 30 and 31, 2010, following the Labour and Employment Ministry's announcement, the textile workers expressed their discontent by demonstrating in the streets, when the police forces reportedly fired tear gas on the demonstrators and charged at them. Several protesters and labour leaders were arrested, including Messrs. Akhter and Islam and Ms. Akhter, who were all accused of "inciting workers unrest during the protests", which they denied.

Mr. Babul Akhter later alleged that on the night of August 28, 2010, he was beaten in custody. He reported having been blindfolded and severely beaten by unknown interrogators while he was at the Ashulia police station. Mr. Aminul Islam stated he was tortured by officials of the National Security Intelligence Agency in custody on June 16, 2010. Both said that they were threatened to be "cross-fired", or executed extrajudicially, if they did not confess to charges. To date, the government has failed to investigate the torture allegations. On September 10, 2010, they were released on bail from the Dhaka central jail but Ms. Kalpona Akhter was charged with eight violations of the law, Mr. Babul Akhter with seven and Mr. Aminul Islam with four.

The charges against Ms. Kalpona Akhter and Mr. Babul Akter are still pending nearly two and a half years after the event and requires both activists to be present five to seven days per month in different courts scattered around the metropolis of Dhaka[18].

16. For more information, see OMCT-FIDH Press Release, issued on April 17, 2013.
17. See below.
18. Mr. Aminul Islam was killed in April 2013, in still unclear circumstances. See below.

II.B/ RESTRICTIONS ON FREEDOM OF ASSOCIATION: DAILY HINDRANCES IN THE ACTIVITIES OF HUMAN RIGHTS NGOs AND POLITICAL CONTROL OF TRADE UNIONS

In the bipartisan public atmosphere of Bangladesh, newspapers and media outlets but also NGOs are often informally categorised as pro-government or anti-government, depending on who they criticise, which usually makes them easy targets when the opposition comes to power.

In the political environment that prevailed during the mission, some human rights NGOs considered as "critical" to the government therefore reported being particularly targeted, notably through lengthy administrative checks and controls, delays in their registration processes or even de-registration. In addition, some human rights projects have been delayed by the NGO Affairs Bureau (NGO AB), which does not conform with the legislation with regard to deadlines for authorisations. As a consequence, many projects cannot be implemented properly.

Although human rights defenders and lawyers are aware of the need to address this phenomenon, some of them are reluctant to litigate before courts on that issue, because they are fearful of creating an adverse precedent. "If an adverse landmark judgement is adopted, then an NGO would face adverse consequences", one of them reported. This is emblematic of the general mistrust of some civil society representatives towards the judiciary.

The delegation also found a number of deficiencies in the labour legislation that present important obstacles to the free exercise of trade union and labour rights. Workers face important legal and practical hurdles in setting up trade unions. In practice, an environment of intimidation and repression effectively silences workers' demands and stifles possibilities of dialogue between workers and employers, who in some cases have close ties with the law enforcement authorities. In the ready-made garment (RMG) sector, which employs 3.5 million workers, only 63,000 workers are unionised and only a handful of collective bargaining agreements are in force. The disappearance and subsequent murder of Mr. Aminul Islam in April 2012 (see below) reminded that labour leaders risk paying for their activities with their life.

This part will first address the situation of human rights NGOs, and then the situation of trade unions.

II.B.1 HUMAN RIGHTS NGOs

II.B.I.A/ INTERNATIONAL STANDARDS

The 1998 *UN Declaration on Human Rights Defenders* explicitly recognizes human rights defenders the right to associate and to access funding for the purpose of promoting and protecting human rights and fundamental freedoms.

On the right to associate, Article 5 of the Declaration states:

"For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: (...) (b) To form, join and participate in non-governmental organizations, associations or groups".

The right to freedom of association is a fundamental universal right enshrined in numerous international treaties and standards, especially Article 22 of the *ICCPR*. In its Communication No. 1274/2004, the United Nations Human Rights Committee (CCPR) observed: " The right to freedom of association relates not only to the right to form an association, but also guarantees the right of such an association freely to carry out its statutory activities. The protection afforded by Article 22 extends to all activities of an association […][19]".

19. See CCPR, Communication no. 1274/2004, para 7.2.

Permissible restrictions to the exercise of this right are clearly identified in positive law. The only restrictions permissible are those "prescribed by law" and that are "necessary in a democratic society".

In its case law, the CCPR states that on the basis of Article 22 of the ICCPR, any restriction or measure shall only be taken in order "to avoid a real, and not only hypothetical, danger for national security and the democratic order"[20], and adds that "the existence of any reasonable or objective justification to limit freedom of association is not sufficient. The State Party must also demonstrate that the prohibition of the association and the initiation of criminal proceedings against individuals for belonging to that association are truly necessary to avoid a real, and not only hypothetical, danger for national security and the democratic order, and that less draconian measures would prove insufficient to reach that objective".

The CCPR also highlights that such measures shall be meticulously assessed, and insists on the crucial character of proportionality of any measure or restriction[21]. The CCPR adds in that regard that it is necessary to assess such restrictions in the light of consequences they could have on members of an association[22].

On the right to receive funding, Article 13 of the Declaration states:

"Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration".

While the Declaration on Human Rights Defenders protects the right to seek, receive and utilise funds, it does not place restrictions on the sources of the funding (public / private, local / foreign). Therefore, it implicitly includes in its scope the right of NGOs to access funds from foreign donors. Moreover, the United Nations Special Rapporteur on the situation of human rights defenders emphasised that the Declaration protects the right to "receive funding from different sources, including foreign ones"[23]. The Special Rapporteur, like the Special Representative of the UN Secretary-General on the situation of human rights defenders before her[24,] considered that "Governments should allow access by human rights defenders, in particular non-governmental organizations, to foreign funding as a part of international cooperation, to which civil society is entitled to the same extent as Governments"[25].

Moreover, the Special Rapporteur stressed that access to funding "is an inherent element of the right to freedom of association", and that "in order for human rights organizations to be able to carry out their activities, it is indispensable that they are able to discharge their functions without any impediments, including funding restrictions"[26].

The Special Rapporteur on the right to peaceful assembly and freedom of association took up these recommendations in his first report to the Human Rights Council. He stated: "Any associations, both registered or unregistered, should have the right to seek and secure funding and resources from domestic, foreign, and international entities, including individuals, businesses, civil society organizations, Governments and international organizations"[27].

20. See CCPR, Communication no. 1119/2002, para. 7.2.
21. See CCPR, Communication no. 1274/2004, para. 7.6.
22. See CCPR, Communication no. 1093/2001, para. 7.3.
23. See United Nations General Assembly, *report of the Special Rapporteur on the situation of human rights defenders*, United Nations Document A/66/203, July 28, 2011, para. 70.
24. See United Nations General Assembly, *report of Special Representative of the Secretary-General on the situation of human rights defenders,* United Nations Document A/59/401, October 1, 2004, para. 82.
25. See United Nations General Assembly, *report of Special Rapporteur on the situation of human rights defenders,* United Nations Document A/66/203, July 28, 2011, para. 70.
26. See United Nations General Assembly, *report of Special Rapporteur on the situation of human rights defenders,* United Nations Document A/64/226, August 4, 2009, para. 91.
27. See UN Human Rights Council, *report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association*, UN Document A/HRC/20/27, paragraphs 67-68, May 21, 2012.

On registration:

It is important to stress that some of the best practices under international law with regards to registration provide that:

– Laws governing the creation, registration and functioning of civil society organisations should be written and should set up clear, consistent and simple criteria to register or to incorporate a civil society organisation as a legal person,

– Non-governmental organisations that meet all administrative criteria should be immediately able to register as legal entities,

– States should ensure that existing laws and regulations are applied in an independent, transparent and less burdensome or lengthy manner in order to avoid restricting the right to freedom of association,

– States must ensure that any restriction regarding the registration of organisations is fully compatible with Article 22 of the ICCPR (see above on "permissible restrictions").

II.B.1.B/ DOMESTIC LEGISLATION

As we will see below, the domestic legislation governing the activities of human rights NGOs in Bangladesh fails to meet many international standards and best practices.

II.B.1.B/ i) Legislation governing the rights and obligations of NGOs

The government administers and oversees the operations of NGOs in Bangladesh on the basis of a series of regulations.

The legal framework can be divided into two parts:

– Laws governing the granting of legal status to NGOs
– Laws that govern relationships between NGOs and the government

The laws providing for registration are:

1. The Societies Registration Act, 1861
2. The Trust Acts 1882, which governs charities and trusts.
3. The Companies Act, 1994

The laws governing relationships between NGOs and the government are:

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

The situation of NGOs and their obligations can be summarised as follows:

Organizational Forms	**Societies**	**Trusts**	**Non-profit companies**
Registration Body	Registrar of Companies	Registrar of Trusts	Registrar of Companies
Approximate Number	At least 21 members	At least 15 members	At least 11 members
Barriers to Entry	Foreigners, non-citizens, and minors prohibited from serving as founders.	Foreigners, non-citizens, and minors prohibited from serving as founders.	Foreigners, non-citizens, and minors prohibited from serving as founders.

Organizational Forms	Societies	Trusts	Non-profit companies
Barriers to Activities	All forms of CSOs are subject to termination for the non-submission of reports. Annual reports are mandatory. Government representatives may attend internal CSO meetings.	All forms of CSOs are subject to termination for the non-submission of reports. Annual reports are mandatory. Government representatives may attend internal CSO meetings.	All forms of CSOs are subject to termination for the non-submission of reports. Annual reports are mandatory. Government representatives may attend internal CSO meetings.
Barriers to Speech and/or Advocacy	No legal barriers	No legal barriers	No legal barriers
Barriers to International Contact	No legal barriers	No legal barriers	No legal barriers
Barriers to ressources	A CSO seeking to receive or use foreign donations must obtain approval, known as *FD Registration*, from the NGOAB	A CSO seeking to receive or use foreign donations must obtain approval, known as *FD Registration*, from the NGOAB	A CSO seeking to receive or use foreign donations must obtain approval, known as *FD Registration*, from the NGOAB

Source: http://www.icnl.org/research/monitor/bangladesh.html

Accordingly, domestic legislation and practices governing the activities of NGOs in Bangladesh, including human rights ones, fail to meet some international standards and best practices in that regard since:

– a high number of members is required for an NGO to be registered (see above);
– government officials can attend internal meetings of an NGO,
– any foreign funding must be approved by the NGO Affairs Bureau, which often delays the process,
– the NGO Affairs Bureau can decide to terminate an NGO, whereas the best practices in that regard suggest that termination shall be decided by an independent judiciary and subject to appeal.

ACTIVITIES OF THREE NGOs SUSPENDED IN COX'S BAZAAR DISTRICT

About 30,000 registered Rohingya refugees from Burma and 200,000 to 500,000 unregistered Rohingyas are located in the south-east around Cox's Bazaar. With the renewed eruption of systematic discrimination against – and other targeting – of the Rohingyas by the Burmese authorities and other perpetrators in Arakan and Rakhine at the border with Bangladesh since June 2012, many Rohingyas have fled to Bangladesh. The Bangladeshi Government has remained passive in front of the inflow of the refugees, and has given no public assistance to them. In order for private organisations to provide support to Rohingyas on the ground, they must first obtain permits or another form of clearance, which the government can revoke, as was the case in the summer of 2012.

Indeed, on July 30, 2012, the local district administration suspended the activities of three NGOs working with Rohingyas in Cox's Bazaar District, i.e. Doctors Without Borders (*Médecins sans frontières* - MSF), Action Against Hunger (*Action contre la faim* - ACF) and The Muslim Aid - United Kingdom, through an order issued and signed by the Assistant Commissioner on behalf of the administration of Cox's Bazaar District.

The suspension order alleged that the three organisations were supporting citizens of Myanmar, "living illegally in Cox's Bazaar", without any approval from the NGO AB.

II.B.1.B/ ii) The functioning of the NGO Affairs Bureau (NGO AB): obstacles to project approvals based on political considerations

The NGO AB was established in 1990 through an administrative order of the Government.

Its primary function is to regulate the activities of NGOs operating with foreign assistance and registered under the Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978. It is placed under the supervision of the Prime Minister's Office.

The set of rules of business of the NGO AB provides that NGO projects that are to be financed with foreign funds have to be submitted to it for clearance and approval. According to the same Rules, the NGO AB has to issue a decision within 45 days after the reception of all relevant information on the project[28].

After the examination of the proposal, the NGO AB then has to send it to the relevant Ministry, which in turn has 21 days to provide its comments regarding the project.

At first sight the process appears to be clear, transparent and expeditious. However, the mission could witness that the implementation of such mandate has often been guided by political considerations. Examples of violations of the law and lengthy administrative processes have jeopardised a number of human rights projects.

EXCESSIVE DELAYS IN OBTAINING NGO AB AUTHORISATIONS OBSTRUCT NGO ACTIVITIES

Since 2009, access to foreign funding for the human rights NGO Odhikar has continued to be hampered by administrative measures. The NGO AB only replied on January 25, 2012 to the submission made by Odhikar on December 28, 2010 concerning a project called "Education on the additional Protocol to the Convention against Torture (OPCAT)" funded by the European Union. Odhikar waited for over 13 months to get permission to conduct this project. This was in clear breach of NGO AB regulations, which require that replies should normally be issued within 45 days from the date of receipt of the submission. Meanwhile, since the period covered by the funding had lapsed, Odhikar had to re-submit the same project, which it did on February 16, 2012. This time, NGO AB notified authorisation on July 7, 2012, nearly five months later.

In August 2009, the Government refused an Odhikar project called "Training and advocacy for human rights defenders in Bangladesh", funded by the Danish branch of the Research Centre for Torture Victims (RCT). Odhikar challenged this decision before the High Court Division of the Supreme Court of Bangladesh, and obtained an order of suspension of the decision. However, when RCT Denmark requested Odhikar to extend the duration of the project by three months, the Ministry of Internal Affairs raised the same objections. Odhikar was finally unable to implement the project because it was *de facto* impossible to access the RCT Denmark funds.

Other NGOs also reported being subject to similar hindrances.

28. While scrutinising a project, the NGOAB has to consider whether the latter contributes to socio-economic development, without duplicating existing state and non-governmental programs (Circular: Section 7(1): 1993). After scrutiny, the NGOAB forwards the proposal to the relevant Ministry, which has to reply within 21 days. If the Ministry does not, the NGOAB can assume that the Ministry has no objection to the project (Circular: Section 7 (d): 1993). However, if the Ministry has an objection to the project or recommends modification unacceptable, the NGOAB may approve the project after obtaining clearance from the Prime Minister's Office (Circular: Section 7 (e): 1993). The NGOAB, if necessary, can approve the project proposal after making changes and modifications. But in such a case, the opinions and limitations of donor agency/agencies and relevant NGOs should be considered (Circular: Section 7 (f) 1993). The NGOAB is required to communicate its decision within 45 days of receiving the project proposal with the requisite details (Circular : Section 7 (g): 1993). For more information, see Sheikh Kabir Uddin Haider, *Genesis and growth of the NGOs: Issues in Bangladesh perspective*, International NGO Journal Vol. 6(11), pp. 240-247, November 2011, at http://www.academicjournals.org/ingoj/pdf/pdf2011/Nov/Haider.pdf.

ARBITRARY DE-REGISTRATION OF THE BANGLADESH CENTER FOR WORKERS' SERVICES (BCWS)

Beyond repeated delays over funding approval, the NGO AB has also faced criticism related to its arbitrary decision to terminate BCWS, an NGO active in the field of workers' rights that, faced with the impossibility to register as a trade union and following its de-registration, has been seriously hampered in the continuation of its activities.

The BCWS is an NGO that provides support services to workers in the formal and informal sector. On June 3, 2010, the NGO AB cancelled the non-governmental license of the BCWS, thus depriving it of its legal right to operate in the country. The bank account of the organisation was closed, following an order issued by the General Director of the NGO AB. On July 17, 2011, the NGO-AB issued a letter stating that Ms. Kalpona Akter and Mr. Babul Akhter would have to be stripped off their membership in the organisation and, as a consequence, the Social Welfare Department rejected BCWS's registration on July 31, 2011, adding that "from now on the BCWS should be abolished". After revoking BCWS's registration, the authorities required the resignation of Ms. Kalpona Akhter and Mr. Babul Akhter, BCWS leaders both facing criminal charges[29], as a precondition to the renewal of the registration of BCWS. In 2011, a new registration request was denied. At the time of the mission, BCWS had been forced to reduce its staff and activities, and the office of the organisation was at risk of being closed anytime. Yet, in September 2013, BCWS regained legal status.

II.B.1.B/ iii) The "NGO Bill": risk of further restrictions on freedom of association

On January 19, 2012, the NGO AB drafted a controversial Bill on Foreign Donations Regulation to be integrated in the Foreign Donations (Voluntary Activities) Regulation Ordinance of 1978 and the Foreign Contribution (Regulation) Ordinance of 1982. If adopted, this will result in tighter controls over the activities of human rights NGOs.

Under the new Bill, without permission from the government, no Bangladeshi person or organisation can receive or use any foreign donation, grant, cash or any form of contribution from foreign governments, organisations or citizens of a foreign state. It adds that no person employed in voluntary activities can travel abroad with foreign contributions without prior permission of the Director General of the NGO AB. This would severely contradict Article 12 of the ICCPR, which provides that "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", and "shall be free to leave any country, including his own".

As of October 2013, the Bill had not yet been passed into law, but the government had already started implementing it by asking local level district administrators (known as Deputy Commissioners – DC) to give clearance (i.e. permission) certificates to human rights NGOs working at district level. NGOs working on human rights issues doubt they will get these clearance certificates.

For instance, on June 14, 2012, the NGO AB sent a letter to Odhikar (which Odhikar received on July 4, 2012) after giving its approval on Odhikar's project "Human Rights Research and Advocacy in 2010", requesting that Odhikar provide all necessary documents to DC to obtain a clearance certificate for that project. Odhikar provided the DC offices with all the documents related to that project, which had already been submitted to the NGO AB, in the project implementation areas (Rangpur, Sylhet, Rajshahi, Khulna, Barisal and Chittagong). However, beyond what is required by the procedure, the DC offices also asked for unnecessary explanations from Odhikar as to why the organisation did not have field offices at the district level, or why local human rights defenders were not paid. The DC office in Chittagong and Rajshahi issued certificates to Odhikar on August 8 and 12, 2012, mentioning its activities

29. See above.

were satisfactory. But in a letter dated August 12, 2012 the DC office in Khulna mentioned that a certificate could not be issued as Odhikar does not have any field office in Khulna.

Likewise, Odhikar submitted applications for fund clearance to the NGO AB in the framework of the implementation of the third year of its "Human Rights Research and Advocacy" programme and of the second year of its "Education on the additional Protocol to the Convention against Torture (OPCAT)" awareness programme, on October 30, 2012 and March 6, 2013 respectively. However, the NGO AB requested Odhikar to obtain "no objection certificates" from the DC in the districts where activities were planned, which required Odhikar to send all the relevant information and documents accordingly to the said DC offices. However, despite providing all relevant documents, Odhikar has been asked to provide the same details as above regarding the presence of field offices and the status of the staff. As of October 2013, out of 16 districts, only two clearance certificates had been granted, i.e., by Barisal and Pabna DC offices. A letter issued by the Khulna DC office on March 19, 2013 (which Odhikar received on April 25, 2013) alleged that no certificate could be granted as Odhikar had no local office in Khulna, no paid staff or income-expenditure and no salary register. Odhikar therefore continues to be *de facto* prevented from obtaining the funds needed to continue its human rights activities.

In addition, two Odhikar election monitoring programmes have reportedly been pending approval and fund clearance by the NGO AB since April 2013 (such clearance has to be ultimately approved by the Ministry of Home Affairs).

II.B.2/ TRADE UNIONS

The individuals with whom the delegation met offered contrasting views of the labour situation, often depending on whether the person or the union to which the person belonged was aligned with the Government, or the opposition, or independent. Trade union leaders close to the opposition reported that their freedom of expression was a major problem.

Following the mission, tragedies at Tazreen Fashion Factory on November 24, 2012, which resulted in the death of 121 textile workers in the fire, as well as the collapse on April 24, 2013 of the Rana Plaza building in Savar, housing five garment factories, and causing the death of more than 1,160 persons, reminded the dire legal and practical conditions in which workers operate in the ready-made garment (RMG) industry and the need for a stronger trade union movement in Bangladesh.

Section II.B.2.a) lists international and national standards to which Bangladesh has committed in terms of economic, social, cultural and labour rights. Section II.B.2.b) focuses on the way in which they are implemented and enforced, and discusses in greater detail the difficulties faced by those who campaign for the enforcement of the laws, and aim to protect, promote and improve them. A special focus is made on the circumstances in which labour leader Aminul Islam disappeared and was found dead in April 2012.

II.B.2.A/ INTERNATIONAL STANDARDS RELATING TO ECONOMIC, SOCIAL, CULTURAL AND LABOUR RIGHTS

Bangladesh accessed the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) on October 5, 1998, and made a number of reservations including to Article 7 and 8 on workers' rights[30] which provide for the possibility to restrict the scope of these rights by interpreting them in the light of the relevant provisions of the Constitution and national legislation.

30. "The Government of the People's Republic of Bangladesh will apply Articles 7 and 8 under the conditions and in conformity with the procedures established in the Constitution and the relevant legislation of Bangladesh".

Bangladesh ratified *International Labour Organisation (ILO) core Conventions 87 and 98* on the freedom to form trade unions and the right to collective bargaining in 1972.

Article 3 of ILO Convention 87 provides that:

"1. Workers' and employers' organisations shall have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organise their administration and activities and to formulate their programmes.
2. The public authorities shall refrain from any interference which would restrict this right or impede the lawful exercise thereof."

Its Article 8 states:

"2. The law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention."

Finally, Article 11 of the Convention requires all countries in which the Convention is in force "to take all necessary and appropriate measures to ensure that workers and employers may exercise freely the right to organise."

ILO Convention 98, Article 1, provides:

"1. Workers shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment.
2. Such protection shall apply more particularly in respect of acts calculated to:
(a) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership;
(b) cause the dismissal of or otherwise prejudice a worker by reason of union membership or because of participation in union activities outside working hours or, with the consent of the employer, within working hours."

The Convention also requires countries where it is in force to establish the conditions in which collective bargaining can take place and to protect trade unions from employer control.

II.B.2.B/ NATIONAL STANDARDS

On July 15, 2013, a bill titled *Bangladesh Labour (Amended) Act, 2013* was approved by the Bangladesh Parliament. As of the end of July 2013, the amendment was awaiting the signature of the President to be enacted. It is aimed to replace the current Labour Act 2006. Although the amended act contains a number of improvements in terms of freedom of association and occupational health and safety, persistent weaknesses remain, as will be seen below.

II.B.2.B/ i) The Labour Act 2006

The *Labour Act of 2006*, in particular Chapter 13, which deals with trade union and industrial relations, does not appear to fully implement the two ILO core conventions mentioned above.

In 2007, the ILO's Committee of Experts on the Application of Conventions and Recommendations (CEACR) noted that, if anything, the Labour Act was more restrictive than the previous legislation, and noted "*with deep regret that the new Act does not contain any improvements in relation to the previous legislation and in certain regards contains even further restrictions which run against the provisions of the Convention*"[31].

The Labour Act does not allow trade unions for a number of categories of workers: domestic servants, public sector workers, health care workers, house-based workers, market salesmen,

31. See Observation by the CEACR, adopted 2007, published 97th ILC session (2008), available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:2289780

those working in the education sector and those working in agricultural establishments with fewer than 10 workers. None of these groups are allowed to organise. This rule means that in practice only around 20 per cent of all workers in Bangladesh have been covered by the Labour Act. The CEACR found that the Labour Act should be amended in a way that would allow these groups to organise.

In addition, workers who can organise themselves through trade unions must satisfy a set of strict criteria set out in Chapter 13 of the Labour Act before their trade union can be registered: they must prove that the trade union represents 30 per cent of workers in the company; the employer must "verify" the list of trade union officers; and the trade union statute must meet a number of requirements before the Department of Labour can proceed to registration of the union. There is no protection against dismissal in the period pending registration for workers who wish to register the trade union. The law says that the union must be dissolved if it is found to represent less than 30 per cent of workers in the workplace.

The CEACR in 2007 concluded that the 30 per cent threshold for setting up a union should be lowered and that the law should be amended to make the Act compliant with Convention 87.

Importantly, the Labour Act does not prohibit interference with internal trade union affairs by the employer, thus leaving open the possibility for employers to do so unpunished. The CEACR has repeatedly recommended that such a prohibition be adopted[32].

II.B.2.B/ ii) The Labour Law Reform Package

The adoption of the reformed of the Labour Act by Parliament on July 15, 2013 was made under pressure from the international community following the collapse of the Rana Plaza. In response to the tragedy, the United States suspended Bangladesh's Generalized Special Preferences (GSP) status, which gave it favourable tariff rates on its goods. The decision prompted the Bangladeshi Government to appoint a "high level committee" to amend the labour laws, although this occurred after a draft of the bill already passed the Parliamentary Standing Committee.

The ILO, international trade unions and foreign governments advocated for specific reforms that would address weakness in Bangladesh's Labour Act, 2006. The amended law addresses some of the issues identified, but it "falls short" - in the words of the ILO[33] - of the comprehensive reform that is needed. In a letter to the Minister of Labour in May 2013, after a draft of the proposed amendment was first circulated, the International Trade Union Confederation (ITUC) called the failure of reforms to address concerns of ILO and trade unions "unacceptable"[34].

The amendment contains some improvements to freedom of association, but a large number of shortcomings remain. Workers will no longer need approval from factory owners to form a union[35] and the previous obligation to send employers the names of union leaders when registering a trade union has been eliminated[36]. Further, workers are allowed to call on outside experts for advice during collective bargaining[37]. In the public industrial sector, workers will now be allowed to elect 10 percent of their enterprise officers from outside the workplace, although this right is not extended to workers in the private sector[38].

32. Id.
33. See ILO statement on the reform of Bangladesh labour law, July 22, 2013, available at: http://www.ilo.org/global/about-the-ilo/media-centre/statements-and-speeches/WCMS_218067/lang--en/index.htm?shared_from=shr-tls
34. See Letter from Sharan Burrow, General Secretary of ITUC, to Rajiuddin Ahmed Raju, Minister of Labour and Employment, 9 May 2013, available at: http://www.ituc-csi.org/IMG/pdf/ituc_letter_to_minister_of_labour_raju_may_2013_final.pdf
35. See the official text of the Bangladesh Labour (Amendment) Act 2013, available in Bangla only at: http://www.mole.gov.bd/index.php?option=com_content&task=view&id=475&Itemid=543
36. See ILO statement on reform of Bangladesh labour law, July 22, 2013, available at: http://www.ilo.org/global/about-the-ilo/media-centre/statements-and-speeches/WCMS_218067/lang--en/index.htm?shared_from=shr-tls
37. Id.
38. Id.

Despite these improvements, the Minister of Labour's proclamation upon the passing of the bill that "[a]ll obstacles to freedom of association have now been removed"[39] is far from the case. Serious obstacles remain. Most problematically, the law maintains a 30 per cent minimum membership requirement to form a union. It also does not extend freedom of association and collective bargaining rights to workers in export processing zones, who are legally barred from forming a union (see infra)[40]. In fact, the number of sectors excluded from the law's protection has apparently actually increased under the reformed law. Non-profit education and training facilities, as well as "hospitals, clinics and diagnostic centers", have been added to the list[41]. In addition, the fact that workers in the private sector cannot elect outside representatives leaves the possibility open for employers to "force out union leaders by firing them for an ostensibly non-union-related reason, a common practice globally"[42].

The right to strike also continues to be impeded by the law. For example, it requires that two-thirds of the union's membership must vote for a strike, a small improvement over the previous requirement of three-quarters of the membership. The government will be able to stop a strike if it decides it would cause "serious hardship to the community" or is "prejudicial to the national interest," terms that are not defined but can easily be misused. The law also contains discriminatory anti-strike provisions favouring foreign investors by prohibiting strikes in any establishment during the first three years of operation if it is "owned by foreigners or is established in collaboration with foreigners"[43].

The amended law also seeks to redirect attention to so-called "welfare participation committees" (WPCs - see infra) and "safety committees" workers. Workers at non-union workplaces would directly elect their representatives to WPCs and safety committees, which would be created in factories with more than 50 workers.

II.B.2.B/ iii) The "welfare participation committees" (WPCs)

Bangladeshi companies with more than 50 employees are required to create WPCs, which are composed of employer and employee representatives. Article 205 of the Labour Act 2006 provides that:

(1) The employer in an establishment in which fifty or more workers are normally employed shall constitute in the prescribed manner a participation committee.
(2) Such committee shall be formed with representatives of the employer and the workers.
(3) The number of representatives of workers in such committee shall not be less than the number of representatives of the employer.
(4) The representative of the workers shall be appointed on the basis of nomination given by the trade unions in the establishment.
(5) Each of the trade unions, other than the collective bargaining agent, nominating equal number of representatives and the collective bargaining agent nominating representatives, the number of which shall be one more than the total number of representatives nominated by the other trade unions.
(6) In the case of an establishment where there is no trade union, representatives of the workers on a participation committee shall be chosen in the prescribed manner from amongst the workers engaged in the establishment for which the participation committee is constituted."

Article 206 specifies that these committees aim to promote trust and understanding between the employer and the employee, to ensure the application of the law, to improve productivity,

39. See Syed Zain al-Mahmood, Bangladesh Passes New Labor Law, July 15, 2003, Wall St. J., available at: http://online.wsj.com/article/SB10001424127887323664204578607814136238372.html
40. See ILO statement on reform of Bangladesh labour law, July 22, 2013, available at: http://www.ilo.org/global/about-the-ilo/media-centre/statements-and-speeches/WCMS_218067/lang--en/index.htm?shared_from=shr-tls
41. See Human Rights Watch, Bangladesh: Amended Labor Law Falls Short, July 15, 2003, available at: http://www.hrw.org/news/2013/07/15/bangladesh-amended-labor-law-falls-short
42. Id.
43. Id.

reduce production costs and waste in the company, to improve health and safety in the workplace and improve the quality of the products.

The law specifies that trade unions select the employee representative on the committee. In the absence of a trade union, the employee representative is chosen among the company's workers in a "prescribed manner", which is not further specified in the Labour Act, thus opening the possibility of an "employer's favourite" being picked, who does not necessarily represent the views of the majority of workers in the establishment.

The Industrial Relations Rules (IRR) of 1977 clearly state that the representatives shall be appointed through an **election process** (this being the "prescribed manner" referred to in the law). Pursuant to Rules 22 and 25 the "*(…) Director of Labour shall direct the employer to hold election for choosing workmen's representatives on the Participation Committee within one month from the date of receipt of such direction*" and "*a copy of the voters' list shall be forwarded to the Director of Labour who may authorize any of his officer to supervise the election*".

The law requires a participation committee to meet at least once every two months and that the number of management representatives shall not exceed that of workers', and obliges the employer to take the necessary measures to implement the recommendations of the participation committee within the period specified by the committee. Additionally, its mandate, i.e., promoting trust and co-operation and ensuring application of labour laws, can be interpreted broadly.

However, it appears that although mandatory, only few factories have implemented genuine participation committees. Many of them are not functional or lack elected workers' representatives in garment factories. It has been reported to the mission that often, when they exist, they are formed with management-selected workers instead of elected workers' representatives.

In practice, it is alleged that employers use the participation committees to discourage the setting up of or hinder trade unions, particularly in the RMG sector[44]. Even state institutions may see and actively promote participation committees as non-union worker participation councils and as an alternative to unions. In May 2012 for instance, the Labour and Employment Minister asked the garment makers to form participation committee at factory-level, and declared that the formation of trade unions in the garment sector would be based on the performance of the participation committees[45].

In addition, worryingly, neither the Bangladesh Labour Act (BLA) nor the IRR provide for adequate protection for participation committees members, which may suffer from discrimination, harassment or which contracts may consequently be terminated, without legal protection leaving participation committee's members in a highly vulnerable situation.

II.B.2.B/ iv) The Export Processing Zones (EPZs)

The Government of Bangladesh defines Export Processing Zones (EPZs) as follows:

"*In order to stimulate rapid economic growth of the country, particularly through industrialization, the government has adopted an 'Open Door Policy' to attract foreign investment to Bangladesh. The Bangladesh Export Processing Zones Authority (BEPZA) is the official organ of the government to promote, attract and facilitate foreign investment in the Export Processing Zones. The primary objective of an EPZ is to provide special areas where potential investors would find a congenial investment climate, free from cumbersome procedures*"[46].

44. See International Trade Union Confederation, "Internationally Recognised Labour Standards in Bangladesh", Report for the WTO General Council review of the trade policies of Bangladesh, 2012, p 3. http://ituc-csi.org/IMG/pdf/bangladesh-final.pdf
45. See Daily Star, *Minister asks garment makers to form bodies to fight labour unrest*, May 23, 2012, available at: http://www.thedailystar.net/newDesign/news-details.php?nid=235289
46. See http://www.epzbangladesh.org.bd/bepza.php?id=about_bepza

EPZs pose a special concern with regard to the exercise of trade union rights in Bangladesh, as they are outside the scope of the Labour Act. Trade unions rights are unregulated in EPZs, nor are wages, working hours or occupational health and safety standards. Instead, a separate piece of legislation, the EPZ Workers Welfare Association and Industrial Relations Act (EWWAIRA) of 2010, applies. There are no trade unions in EPZs, but "worker welfare associations (WWA)". WWAs have no collective bargaining rights, but can negotiate with management of the industrial unit concerned. ITUC has noted that in fact, not a single collective bargaining agreement exists in any EPZ[47].

The CEACR has repeatedly asked the Bangladesh government to take measures to bring the EWWAIRA into conformity with ILO Convention 87[48]. It has criticised the rule that there can be no more than one Worker Welfare Association per industrial unit.

The CEACR also considered that the legislation establishes excessive and complicated minimum membership and referendum requirements for the establishment of a WWA: a WWA may be formed only when a minimum of 30 per cent of the eligible workers of an industrial unit seek its formation, and this has been verified by the Executive Chairperson of the EPZ authority (BEPZA), who shall then conduct a referendum on the basis of which the workers shall acquire the legitimate right to form an association under the Act, only if more than 50 per

cent of the eligible workers cast their vote, and more than 50 per cent of the votes cast are in favour of the formation of the WWA.

It stated that the Chairperson of the BEPZA has "excessive" powers concerning the approval of the committee that will draft the constitution of the WWA.

The EPZ legislation states that if a referendum among workers for the establishment of a WWA fails to yield the necessary support, then a second referendum cannot be held until one year has elapsed. Similarly, 30 per cent of workers can ask for the WWA to be de-registered and prevent the establishment of another WWA for one year. Similarly, the BEPZA can de-register a WWA on vague grounds. The CEACR has spoken out against the difficulties in establishing a WWA and the easiness with which the authorities can close them down.

Furthermore, there is a total prohibition on strikes within EPZs until October 31, 2013.

Importantly, Section 10(2) of the EWWAIRA prevents a WWA from obtaining or receiving any funds from any external source without the prior approval of the Executive Chairperson of the BEPZA. Equally, section 80 provides that WWAs are prohibited from establishing any connection to any political parties or NGOs. The CEACR has remarked that this is contrary to the principle of freedom of association, where a trade union pursues the lawful and normal objectives for which trade unions are created.

The legislation makes it nearly impossible to create a federation of WWAs across more than two or more EPZs (Section 24(1)). In 2012 it was virtually impossible for WWAs to join a trade union or other federation, because the implementing regulations to provide for these procedures had not yet been issued.

The rules above mean that, where a WWA is created, it is impossible to establish cooperation with or support from experts or groupings outside, such as labour law experts affiliated with other unions or a federation.

Sections 20(1), 21 and 24(4) do not seem to afford guarantees against interference with the right of workers to elect their representatives in full freedom (e.g. the procedure of election is to be determined by BEPZA). The CEACR also considers this to be contrary to ILO Convention 87.

47. See ITUC, Report for the WTO General Council Review of the Trade Policies of Bangladesh, Geneva, September 24-26, 2012, p. 6, available at:http://www.ituc-csi.org/IMG/pdf/bangladesh-final.pdf
48. See Observations by the CEACR, adopted 2012, published 102nd ILC session (2013), available at: http://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:3081931

II.B.2.B/ v) Implementation and enforcement of the labour legislation

The ILO's Decent Work Country Programme for Bangladesh for the period 2012-2015 observes that "*weak implementation of the law means that the protection of the rights of the workers is not ensured properly as envisaged in the law and the provisions of the ILO Conventions*"[49].

There are 7,000 companies in the RMG sector in Bangladesh and some 150 trade unions.

However, very few new trade unions are registered. The delegation was informed that the Department of Labour registered two new trade unions in the RMG sector in 2008, none in 2009 and 2010, and one in 2011. In the RMG sector, 43 applications for registration were submitted to the Department of Labour in 2011 and 42 were rejected without reason despite fulfilling requirements. In that situation, some workers have no other choice but to create an NGO as an alternative to a trade union.

The delegation met with a number of labour activists who reported that workers who attempt to register a trade union at the Department of Labour are dismissed by their employer. This is possible under the Labour Act because it does not provide protection for them during this interim period, but is contrary to the ILO Convention 87, which Bangladesh ratified in 1972.

The delegation was also informed that workers who wish to set up a trade union inside a garment factory are harassed and/or fired and cannot resort to any legal or government assistance in this respect. In one case, it was reported that the Department of Labour, which is responsible for registering newly-created trade unions, forced the employer to fire the workers wishing to set up the union. Another case saw owners of a registered union go to the High Court, which took its registration away. Several trade union representatives met by the delegation also said that a worker who attempts to open a trade union can be transferred to another production unit in another part of the country.

Trade unions have little confidence in employers, while the latter are afraid of their operational efficiency if trade unions become strong. "Collective bargaining is a dream", remarked one of the labour leaders interviewed by the delegation.

In practice, many trade unions are politicised. The delegation observed that trade unions close to the ruling party will not face as much repression as independent unions or those close to the political opposition. Trade unions close the opposition do not enjoy as much freedom of expression as those linked with the government. The Bangladesh Jatiyatabadi Sramik Dal (BJSD) trade union confederation, labelled as closer to the opposition party BNP, reported that it did not get permission to hold a Labour Day rally on May 1, 2012 and was obliged to hold an event indoors.

Since 2010, a special police unit of some 3,000 officers called the "Industrial Police" is in operation with the task of helping to solve labour conflicts. Trade union representatives met by the delegation considered them to be an instrument of the employers to repress labour activists.

In addition to the restrictions in the legal framework, judicial harassment is being used to try to stop activists from defending labour standards. The practice of charging activists with many different misdemeanours in various courts around the country means that they must, for long periods of time, regularly attend court hearings or pay lawyers to represent them. In some cases, two court hearings are scheduled at different courts at exactly the same time. A number of activists subjected to such harassment wish to remain anonymous.

A labour leader who wishes to remain anonymous reported being arrested and tortured with a co-worker in 2006 for his labour activities in the RMG sector, and having to deal with much mental pressure as a result of the intimidation coming from the law enforcement

49. ILO Decent Work Country Programme for Bangladesh 2012-2015, p 10/ http://www.ilo.org/public/english/bureau/program/dwcp/download/bangladesh.pdf

agencies. In the years 2007 to 2011 he had been charged in four criminal cases, including "destruction" and "obstructing law enforcement", while he declared that he was not even present in the location where the facts are alleged to have happened. Two charges are still pending. He is required to go to court once a month and his bail can be revoked at any time.

Threats made my telephone or directly in person, often emanating from the national security apparatus and carried out by thugs, also contribute to make the life of labour activists very difficult. The Industrial Police appears to act on behalf of the employers in that it represses and intimidates workers when a conflict situation arises.

The enforced disappearance and murder of labour rights activist Aminul Islam served as a particularly stark reminder that labour leaders who become "too" influential may pay for their activism with their lives. In a separate incident at the Bidi factory in Kushtia, two workers were killed and ten others injured during a demonstration on July 15, 2012. Many of the murders, threats and harassment have not been penalised, resulting in impunity for those responsible. Such tragedies and the ensuing context of impunity may intimidate other labour leaders and workers, and force them to keep a low profile.

From the above, the picture emerges of a climate in which the links between factory management and the police, the security agencies and in some cases the judicial system are strong and conspire to disrupt, discourage and intimidate activists standing up for the rights of workers. These links are said to be strong and partially due to widespread corruption.

In such an environment, it is hardly surprising that very few collective bargaining agreements have been negotiated. Where they exist, they have often come about as a result of pressure from foreign buyers. One workers representative considered that foreign buyers' Codes of Conduct are probably more useful for Bangladesh workers than the Labour Act. He added, however, that social audits carried out by foreign buyers are often rather superficial and when announced in advance, can be manipulated by local management. The delegation could hear that the foreign brands, faced with stiff competition, put great pressure on Bangladesh RMG factory owners to produce at the very lowest cost. A factory manager indeed reported that Bangladeshi garment producers are being "squeezed" by the foreign buyers. It is also reported that factory owners use such argument as a disclaimer to dilute their own responsibility.

The May 15, 2013 Accord on Fire and Safety in Bangladesh[50] has the potential to improve workers' freedom of association as it includes a central role for workers and their representatives: Health and Safety Committees including workers' representatives shall be required by the signatory companies in all Bangladesh factories that supply them, fire safety inspection reports will be shared with workers' representatives at factory-level and representatives from signatory unions will be able to access factories to provide security trainings.

However, to ensure respect for freedom of association of workers, additional steps are needed including a reform of the labour law ensuring workers' rights to representative and collective bargaining; effective public services to authorise and control factories' construction and workers' rights on the workplace; effective fight against corruption and accountability of factories' owners; foreign brands' participation to back-up effective change beyond audits, including through adapting their purchasing practices. As the main importing partner of the garment industry, the European Union has a special responsibility in supporting such move.

50. See above.

IMPUNITY FOR THE ENFORCED DISAPPEARANCE AND SUBSEQUENT KILLING OF LABOUR RIGHTS LEADER AMINUL ISLAM

On the evening of April 4, 2012, Mr. Aminul Islam, a labour leader in the labour movement Bangladesh Garment and Industrial Workers Federation (BGIWF), and also active in the BCWS, failed to come to an appointment with an acquaintance. He had been at work in the garment industry district of Ashulia that day. His wife and friends did not see him again that evening and reported him missing. He remained disappeared until April 5, when his body was found 40 miles north of Dhaka: he had been beaten up badly and his knees, ankles and feet showed evidence of beatings. He reportedly bled to death and was buried immediately after being found. On April 6, his friends and family identified him after seeing a picture of his body in a newspaper.

Mr. Aminul Islam had been described as a devout and modest man who was fully aware of the risks that his labour activities carried with him. He had been a respected labour leader for several years in a factory outside Dhaka producing garments for Tommy Hilfiger, American Eagle and other foreign brands. Factory workers came to him to resolve work-related problems, while he had also helped to find solutions in collective labour conflicts and to defuse stand-offs between management and workers at his factory. He had been a "natural" leader who took on the problems of other workers as if they were his own.

In 2010 he had been beaten up, allegedly by thugs led by a National Security Intelligence (NSI) agent, who told him that he was being followed for his labour activities. He and his wife had been receiving threatening anonymous phone calls for some time, believed to come from the police and NSI agents. Along with Kalpona Akhter and Babul Akhter, also labour leaders from the BCWS, he had been charged with a four misdemeanours in 2010 following strikes demanding higher wages for garment sector workers (see supra). They were still pending at the time of his death in 2012 and forced him to attend court hearings several days per week, thus reducing his ability to carry out his work and labour activities. After the murder, the police district in Ashulia took up the case but failed to find those responsible for it. The acquaintance with whom Aminul Islam met was reported to have ties with the security apparatus, disappeared after the murder and has been unaccounted for since then.

Then, a police detective was put on the case and in late November 2012, the murder investigation was taken to a higher level of investigation: the Criminal Investigation Department has now taken up the investigation after being pushed to undertake action by the "Justice for Aminul" campaign.

Yet, at the time of writing, the perpetrators of Aminul Islam's murder had not been found and no progress appeared to have been made in identifying the murderers or those who ordered it.

On January 17, 2013, the European Parliament adopted a resolution urging the Bangladeshi authorities "duly to investigate the torture and murder of labour rights activist Aminul Islam", and calling on the Bangladeshi Government "to lift restrictions on trade union activities and collective bargaining"[51].

51. See European Parliament resolution on recent casualties in textile factory fires, notably in Bangladesh , January 14, 2013, available at: http://www.europarl.europa.eu/sides/getDoc.do?type=MOTION&reference=P7-RC-2013-0004&format=PDF&language=EN

III - THREATS, ATTACKS AND REPRISALS AGAINST HUMAN RIGHTS DEFENDERS

The mission delegates met with a number of individuals and organisations documenting environmental rights violations, women's rights violations, and corruption, who have been exposed to multiple forms of reprisals in their daily activities, both by State or non-State actors.

III.A/ ENVIRONMENTAL DEFENDERS HARASSED BY PRIVATE ACTORS

In Bangladesh, environmental defenders struggling against illegal sand extraction and promoting environmental justice have been confronted with a number of obstacles to their work, often in a context of collusion between officials and private actors.

III.A.1/ THREATS AND HARASSMENT BY PRIVATE ACTORS AGAINST HUMAN RIGHTS DEFENDERS DENOUNCING ILLEGAL SAND EXTRACTION

Illegal sand mining carried out in the area of Mayadip Island, Sonargaon Upazilla, Narayanganj district, has resulted a series of serious human rights violations, including physical violence and threats against villagers protesting against the disruption of their land and defending their right to livelihood, right to food, right to adequate living and community rights. In such remote areas, environmental defenders denouncing these abuses and violations are particularly at risk.

Mayadip is an island in the Meghna River, one of biggest rivers of Bangladesh. In 1983, the government relocated several groups of homeless people, including fisher folk, from different areas of Bangladesh to Mayadip Island. However, the government has not provided other basic facilities such as safe drinking water, public health care, and educational facilities after relocating the people. Moreover, ongoing illegal sand extraction threatens food security and the environment as it erodes the island. The rights of the villagers have been particularly violated as a result of sand extraction by two private companies, i.e. Micro International and Four Point General Trading & Contracting Co.

Since July 2010, Micro International, owned by a group of politically influential persons of the Narayanganj and Comilla districts, have been extracting sand from Mayadip and Nunertek islands as well as from Badyerbazar villages of Narayanganj district. A lease was issued by the administration to the Micro International for sand extraction in Badyerbazar, but the authorities failed to monitor the island erosion as well as to prevent subsequent violations of the rights of the villagers. In addition, although no lease was granted by the administration for Mayadip and Nunertek islands, this has not prevented the company from mining sands on these islands too[52].

As a result, in September 2010, the villagers of Mayadip Island lodged a written petition to the Upazila Nirbahi Officer (UNO; sub-district executive officer) and to the Assistant Commissioner (AC) of Land (in charge of land issues), to demand the end of the extraction activities of the company in areas close to the island, because of the continued erosion of the land into the Meghna River. The AC of Land subsequently issued a public order requesting that the company refrain from mining sand on and around the island. However, some of these activities continued in violation of the order.

On October 17, 2010, the DC of Narayanganj district visited Mayadip Island and was handed out a written complaint signed by 1,000 villagers. The DC announced in public that the company had never been granted any license to extract sand from Mayadip, and stated that he had officially formed a 21-member-committee to protect the two islands from illegal sand extraction. However, in practice, the authorities failed to prevent the company from continuing to extract sand illegally.

52. Moreover, the Micro International company had earlier extracted sand in the neighbouring islands - Nalchar and Ram Prasader Char of Comilla district - resulting in the erosion of two thirds of the islands.

On April 26, 2011, the High Court eventually issued a stay order to request the cessation of sand mining activities. In the stay order, the High Court ordered the DC of Narayanganj district to refrain from leasing areas of Nunertek Balumahal and ordered both companies to stop extracting sand from the area. Despite the stay order, it is alleged that the companies still extract sand in Mayadip Island.

On March 22, 2012, the United Nations Special Rapporteurs on adequate housing, on the right to food, and on extreme poverty and human rights issued a joint communication to the Bangladesh government, addressing concerns over "the impact that sand extraction in the Meghna River is allegedly having on the ability of Mayadip Island residents to enjoy minimum levels of their right to an adequate standard of living, access food, and the threat the sand extractions is posing on affected communities' future enjoyment of the right to food and the right to adequate housing[53]".

In a context where official decisions, including from higher branches of the judiciary, fail to be properly implemented because of political influence of the private local actors responsible for human rights violations, human rights defenders denouncing such abuses are exposed to a variety of risks.

THREATS AND HARASSMENT AGAINST ENVIRONMENTAL AND COMMUNITY ACTIVIST, MR. SHAHED KAYES

On September 13, 2012, environmental and community rights activist **Shahed Kayes**, Founder and Executive Director of the Subornogram Foundation as well as Chief Advisor of the Illegal Sand Extraction Prevention Committee in Mayadip-Nunertek, was threatened with death by henchmen of the Shahajalal Enterprise, another company involved with the illegal sand extraction near the Mayadip-Nunertek islands, as he and his team were monitoring the illegal sand mining activities. The DC of Narayanganj district as well as the district police authorities were subsequently informed about the death threats against him, but as of September 2013, the administration had not taken any action, either to stop the illegal extraction of sand from the area, or to protect the activists. Such threats reportedly intensified after the referral of the above-mentioned communication to the United Nations Special Rapporteurs on adequate housing, on the right to food, and on extreme poverty and human rights.


Shahed Kayes

Mr. Kayes has continued to receive threats through unregistered mobile phone numbers since then. Moreover, on July 2, 2013 at around 9.30 pm, a motorcycle stopped beside him and two unidentified men threatened to kill him. Mr. Kayes subsequently filed a general diary (GD) at the Sonargaon police station, which has still not taken any action in that regard.

On July 25, 2013 Mr. Kayes and two other activists were on a private boat on their way to the Mayadip and Ram Prasader chor (Island), where the Subornogram Foundation has two free schools for the children of the fishermen community. While on the Meghna River, close to the banks of Nolchor (Island), two small speedboats carrying 6 to 7 people each, some of them allegedly involved with sand grabbing in the area of Myadip and Nunertek islands, stopped Mr. Kayes and the two activists. Mr. Kayes was then thrown into one of the speedboats and taken away to "Faraji Kandi", in the Meghna sub-district of Comilla district. Another speed boat subsequently came with another 7 or 8 people as well as a trawler carrying 30 to

53. See United Nations, "*Mandates of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the right to food; and the Special Rapporteur on extreme poverty and human rights*", available at: https://spdb.ohchr.org/hrdb/21st/public_-_AL_Bangladesh_22.03.12_(2.2012).pdf.

35 additional people. These persons reportedly beat Mr. Kayes severely, stabbing his shoulder and slitting his wrist. While they were beating him, some of them reportedly told him "you are fighting against us and we've lost lots of money because of your movement. We made the mistake of not killing you before; this time we will kill you. We will cut the veins in your wrists and legs, tie your hands and legs together and throw you in the river". Meanwhile, the two other activists called a journalist, who informed the police in Sonargaon and the Meghan Police station. Police officers eventually rescued Mr. Kayes, and officers from the Sonargaon Police Station arrested one of the perpetrators and confiscated a speedboat, while the rest of the assailants were able to flee the scene. On the same day, Mr. Kayes filed a case at the Sonargaon police station, mentioning the names of the assailants in this complaint. However, no further arrests have been carried out since then.

In addition, Mr. Kayes also suffers from judicial harassment, as several cases have been filed against him on spurious charges before various courts in different Upazillas (subdistricts). One of these cases was filed with Cumilla Court, Cumilla District, by the police department of the Meghna Thana (police station) of the Cumilla District, while another was lodged in Narayanganj Court, Narayanganj District. Such fabricated cases are aimed to discourage his denunciation of human rights violations perpetrated in the area of Mayadip Island. In addition, no investigation has since been carried out by the local authorities on the basis of these charges.

III.A.2/ DEFAMATION AND HARASSMENT BY NON-STATE ACTORS AGAINST HUMAN RIGHTS DEFENDERS CAMPAIGNING IN FAVOUR OF ENVIRONMENTAL JUSTICE AND LITIGATING AGAINST THE ADVERSE CONSEQUENCES OF SHIP-BREAKING ACTIVITIES: THE CASE OF THE BANGLADESH ENVIRONMENTAL LAWYERS ASSOCIATION (BELA)

The adverse consequences of ship-breaking on human health and safety and on the environment pose another major problem in Bangladesh, one of the last countries in the world in which the ship-breaking industry continues to expand. Broken ships are indeed sent from all over the world to the country, especially to Chittagong, and dismembered by underpaid workers in a context of constant violations of labour laws and standards. The dismembered ships usually release toxic products into the environment, which pollute ecosystems and threaten human health.

The Bangladesh Environmental Lawyers Association (BELA) has focused much of its activities on workers' rights within the ship-breaking industry as well as on the halting of the detrimental environmental effects of the industry.

In 2006, the association filed an important petition with the Bangladeshi Supreme Court, seeking to prevent ships from entering Bangladesh unless they were certified to be free of toxic substances. The petition also demanded the prohibition of further ship-breaking activities unless the government guaranteed protection for the workers and the environment. While BELA won the case, it filed another case against five entities purporting to set up yards by chopping down the mangrove forest. The Mak Group was one of those five entities. In the latter case, the Court directed:

(a) the government and the Forest Department to immediately act upon all memos and decisions pertinent to coastal afforestation and the policies of the government and ensure the protection of such afforested lands;

(b) the government agencies shall issue necessary clearance to the ship breakers provided only that they strictly comply with the laws and regulations on environmental protection and labour safety;

The Court decision further stated that:

(c) if, despite all the negative effects of ship-breaking, the government is determined to still allow it to continue, then it must find a place for the yards away from ecologically sensitive areas (like the sea shores or forests) and consider locating them in developed port areas that will have dry floors and facilities to contain and safely dispose of wastes. The Court further directed to finalise the draft Rules ensuring conformity with the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989, the Merchant Shipping Ordinance, 1983, the Territorial Water and Maritime Zones Act, 1974

and the rules of 1977 made thereunder, the Bangladesh Environment Conservation Act, 1995 and rules of 1997 made thereunder, the Coast Guard Act, 1994 and the Import Policy Order.

On September 29, 2010, a defamation case was filed against five persons, including Ms. **Rizwana Hasan**, Chief Executive of BELA, and advocate **Iqbal Kabir** before the Chittagong Metropolitan Magistrate Court by Mr. Abdur Rouf Chowdhury, manager of the ship-breaking company Mak Corporation, which had been fingered in the above petition BELA had filed. The Mak Corporation manager alleged that his company's image and dignity had been tarnished by the BELA petition. To avoid arrest, on October 13, 2010, Ms. Hasan and Mr. Kabir were both granted bail. They subsequently submitted a petition with the High Court on January 24, 2011 to request that the case filed against them by the Mak Corporation be quashed. The case was eventually scrapped on August 8, 2012 by the judges of the High Court.

III.A.3/ MURDER OF JOURNALISTS MR. SAGAR SAROWAR AND MS. MEHERUN RUNI AS THEY WERE COVERING ENERGY-RELATED ISSUES

On February 11, 2012, two well-known, married Bangladeshi journalists, Mr. Sagar Sarowar and Ms. Meherun Runi, were stabbed to death in their Dhaka apartment as they were reportedly covering energy-related issues. The crime scene showed evidence that it had been searched and the couple's possessions were strewn around the apartment. Two investigations were conducted and after a year-long investigation by the Bangladesh Police, the case was called stalled. To date the case remains unresolved.

III.B/ GENDER-BASED HARASSMENT AGAINST – AND OBSTACLES FACED BY – WOMEN HUMAN RIGHTS DEFENDERS

Although Bangladesh ratified the Convention on the Elimination of Discrimination against Women (CEDAW) in 1984, and even though discrimination against women is theoretically prohibited, persisting reservations made by Bangladesh on two fundamental Articles of the Convention, i.e. Article 2 and Article 16.1(c), impede the full implementation of all the other provisions of the Convention. In addition, in practice women continue to face gender-based violence, including sexual harassment, without adequate protection by State authorities.

In that context, a number of representatives of women's rights organisations and mainstream human rights organisations working on women's rights in Bangladesh face obstacles to their work as well as harassment.

Women human rights defenders face two kinds of difficulties in their work in Bangladesh. On the one hand, the high degree of self-censorship of women victim of abuses, who often fear retaliation, makes the monitoring of violations and the attempts to make the perpetrators accountable more difficult. On the other hand, women working for the defence of human rights can be themselves targeted either because they defend the rights of women, or because they are women, or both.

During the mission, the delegates met with a number of women who reported being harassed and/or slandered for their activism as women human rights defenders. Such harassment can range from verbal assaults by State officials to slandering campaigns in the press, administrative harassment or even sexual harassment. Generally, such abuses and violations remain unpunished.

INSUFFICIENT PROTECTION OF TEACHER MS. SHAMPA GOSWAMI

In May 2011, Ms. **Shampa Goswami**, a teacher in Mozahar Memorial Secondary School in Kaligonj, district of Satkhira, Khulna division, and also cooperating with Odhikar, paid several visits to an elderly woman in hospital victim of a gang rape, and advised her to file a complaint to the police. After four men were arrested for the gang rape several days later,

a man living near Ms. Goswami's home called on her and contended that since she was working for human rights she should intervene and get the men released. The same man repeatedly pressed her, including through phone calls, to intervene on their behalf despite her ignoring him.

On October 23, 2011, Ms. Goswami was harassed in front of a shop by four men. They were later joined by a group of a dozen men who directed her to follow them. When she refused, they threatened to hand her over to the police, and snatched her cell phone when she tried to call the police station herself. She was forced to follow them to a nearby building where one of her younger brother's friend had already been taken. The men took pictures of both of them, verbally harassed and intimidated them, and threatened to send the pictures to the press if she did not give them money. Ms. Goswami informed them that she was a human rights defender working with Odhikar, which they disparaged.

On October 25, 2011, Ms. Goswami filed a complaint with Satkhira Police station accusing ten men in relation to those acts. The First Information Report (FIR) accused them of the crimes of "unlawful assembly", "wrongful confinement", "theft" and "criminal intimidation", under Sections 143, 342, 379, 506 of the Penal Code respectively. On November 2, 2011, some local human rights defenders formed a human chain in support of Ms. Goswami and submitted memorandums to the Deputy Commissioner and Superintendent of Police in Satkhira district to protest the incident. Meanwhile, police submitted a charge sheet in the Court against the ten accused persons. After this incident, the accused and their families verbally abused Ms. Goswami.

In the meantime, the father of one of the ten men accused in the complaint filed by Ms. Goswami, and Mr. Abdul Hamid, a member of the School Management Committee, attempted to pressure Ms. Goswami into withdrawing the complaint. Instead, she registered a complaint in the police log book (GD) with Kaligang police station on March 24, 2012. As a result, Mr. Abdul Hamid and four of his associates threatened to suspend Ms. Goswami from her job, distorted photos of her by replacing her head with that of an unknown man, and circulated the picture via phones and through the Internet. After Ms. Goswami lodged another GD on June 28, 2012 to protest those actions, the police arrested Mr. Abdul Hamid and one of his associates. Both were subsequently released on bail. No information was provided to the Observatory regarding the status of this complaint as of 2013.

On August 30, 2012, the school head teacher, Mr. Lutfar Rahman, sent a letter to Ms. Goswami alleging "anti-social and unethical activities". Ms. Goswami responded to the letter on September 4, 2012, and was later reinstated.

III.C/ ANTI-CORRUPTION ACTIVISTS PARTICULARLY TARGETED AMID WIDESPREAD CORRUPTION CONTEXT

In Bangladesh, corruption is widespread at all levels of institutions, both State and local ones. According to Transparency International (TI), in 2011, 66 percent of the population reported that they had to pay a bribe to access basic services, and 46 per cent believed that corruption had increased. In 2012, Bangladesh was ranked 144th out of 174 by the TI Corruption Perceptions Index 2012[54]. Corruption scandals regularly make the headlines, and human rights defenders that denounce embezzlement and collusion between officials and private actors can be subject to threats and reprisals.

During the electoral campaign in the run-up to the last elections, AL leader Sheikh Hasina had pledged, in her electoral platform, to set up a corruption-free administration, and to turn the Anti-Corruption Commission (ACC), created through an Act promulgated on February 23, 2004

54. See Transparency International Corruption Perceptions Index 2012, available at: http://www.transparency.org/cpi2012/results.

that came into force on May 9, 2004, into a truly independent and effective body. However, since then, numerous corruption cases have continued to emerge and the ACC is still lacking credibility among the public opinion. In April 2012 for instance, Railways Minister Suranjit Sengupta was reinstated in the ministers' cabinet after a scandal broke out, involving bribes worth Tk 70 lakh ($90,000 - the equivalent of nearly seven years of ministerial wages - see infra).

In October 2009, ACC Chairman Ghulam Rahman acknowledged that the commission had in reality been turned into a "toothless tiger", since prior government approval was usually sought before investigating officials[55], leaving the fight against corruption dependent on political considerations.

On February 28, 2011, the ACC (Amendment) Act 2011 was introduced in Parliament. While the proposed amendments contain some positive elements, many others are not consistent with the commitments of the Government, nor with the expectations of the people for an independent and effective ACC[56].

Should such legislation be adopted, these might not be enough to eradicate corrupt practices or acts of hostility – at both verbal and judicial levels – against defenders and journalists working on corruption-related issues. Some editors, reporters and journalists who denounce unlawful practices or disclose sensitive information about corruption are still facing indirect or direct threats to their safety. In addition, some organisations have faced extremely virulent and hostile criticism for investigating corruption among government officials or Members of Parliament (MPs).

III.C.1/ ANTI-CORRUPTION JOURNALIST FEARING FOR HIS LIFE AFTER REVEALING THE INTERVIEW OF A KEY WITNESS IN THE SO-CALLED "RAILWAY-GATE" SCANDAL

In mid-April 2012, the Railways Minister Mr. Suranjit Sengupta resigned as the Railways Minister four months after taking charge of the Ministry following the so-called "railway-gate" scandal.

Shortly before, Bangladeshi newspapers had reported that on April 9, 2012, the driver of the Minister, Mr. Azam Khan, had entered the Border Guard Bangladesh (BGB) headquarters in the capital Dhaka and had pulled up the vehicle near the main entrance, where he shouted that there was "bribe money stashed in the car". This drew the attention of the BGB men, who discovered Tk 70 lakh ($90,000) in the car.

This led to the detention of the Assistant Personal Secretary of the Minister, Mr. Omar Faruq Talukder, of the Bangladesh Railway General Manager (East) Mr. Yusuf Ali Mridha and of the Railway's Divisional Security Commandant Mr. Enamul Huq along with the driver. All were however released on April 10, 2012 without charges.

On April 16, 2012, amid growing fuss about this large-scale corruption case, the Railway Minister publicly announced his resignation as minister, "taking responsibility of everything". He was however reinstated by the Prime Minister as a "minister without portfolio" on April 17.

Sources in the Railway Ministry later revealed that the Rail Sramik League, ministers, lawmakers, ruling party leaders and a section of corrupt railway officials were taking bribes from job applicants since this Ministry started the recruitment of 7,500 people. A senior railway official confessed that "2 lakh to 5 lakh [were] being taken from each candidate". 1,128 people were given jobs in the railway's east zone over the year.

55. See, e.g., http://www.thefinancialexpress-bd.com/2009/10/15/81645.html
56. See http://www.ti-bangladesh.org/research/PositionPap010311.pdf.

On October 4 and 6, 2012, senior *RTV* reporter **Bayezid Ahmed** released two exclusive video interviews of Mr. Azam Khan, the driver of the former assistant personal secretary of the Minister, Mr. Omar Faruq Talukder, appearing on TV for the first time since the scandal broke out on April 9, 2012. In that series of testimonies, Mr. Azam Khan reported that the Tk 74 lakh stashed in his car were being taken directly to the house of the then Railway Minister Suranjit Sengupta. Mr. Azam Khan had been missing since the scandal surfaced.

In the four-minute interview, Mr. Azam Khan revealed that Major Mashiur Rahman was involved in the recruitment business. "As far as I know he was involved in a Tk 3 core recruitment deal. He wanted to have several hundred people appointed in the railway through Omar Faruq" he added. Immediately after the TV report, Mr. Suranjit Sengupta described Mr. Azam Khan's interview as a "media creation".

On the eve of the release of the interview, Mr. Omar Faruq reportedly asked Mr. Bayezid Ahmed not to broadcast it as this "could ruin [his] career". Then on October 6, Mr. Bayezid Ahmed noticed several persons moving with motorbikes around the *RTV* premises, questioning his colleagues and the neighbourhood about his place of residence and his habits.

In addition, during the night of October 5 to 6, 2012, it was reported to the delegation that several unknown individuals came to his house and asked his friends where he was at that moment, at what time he would return and at what time he would usually leave for work. They subsequently warned that they would "teach him what journalism is". On October 6, Mr. Bayezid Ahmed filed two GD at Shere Bangla Nagar and Tejgaon police stations, to report on these incidents. The police subsequently appointed two officers in charge of an investigation. One of the investigators said he would "try to do something", adding that "this would be difficult as those responsible for the threats [were] unknown". Towards the end of October 2012, two unidentified individuals again came to Mr. Bayezid Ahmed's residence and urged him to open the door. They left as he refused to do so. Mr. Bayezid Ahmed filed a third GD with the Shere Bangla Nagar police station, which appointed the same investigator as before, who was later said to be "on leave". As of mid-November 2012, Mr. Bayezid Ahmed was hiding and changing houses everyday, fearing for his safety. No information could be obtained since then regarding his situation.

III.C.2/ IMPRISONMENT OF - AND ILL-TREATMENTS AGAINST - A JOURNALIST FIGHTING AGAINST THE IMPUNITY OF CRIMES AGAINST ANTI-CORRUPTION JOURNALISTS

During the course of the mission, the delegates were informed by several interlocutors of the unsolved murder of a couple of journalists, Mr. **Sagar Sarowar** and Ms. **Meherun Runi**, on February 11, 2012, as they were reportedly covering energy-related issues. In July 2012, *Just News BD* journalist **Mutafizur Rahman Sumon** was subsequently imprisoned and ill-treated for campaigning against the impunity for crimes against journalists, including Mr. Sarowar and Ms. Runi. Mr. Sumon got bail on July 17, 2012, and the police had not submitted any charge sheet as of June 2013. The next hearing in his case was scheduled for June 30, 2013. No information could be obtained since then.

III.C.3/ VERBAL ATTACKS AGAINST TRANSPARENCY INTERNATIONAL BANGLADESH (TIB)

On October 14, 2012, Transparency International Bangladesh (TIB) published a survey[57] revealing that 97 out of the 149 MPs surveyed were involved in "negative activities" that included being linked to or being supportive of criminal activities, misusing public funds or influencing government decisions, and that 70 percent of them were involved in criminal activities such as murder, land-grabbing, extortion, tender manipulation and cheating". The disclosure of the study triggered strong verbal reactions from several MPs, who alleged that TIB aimed to "undermine the Parliament and the Government by releasing an imaginary report, considered

57. See http://blog.transparency.org/2012/10/19/bangladesh-citizens-doubt-performance-of-politicians/

the study "as tantamount to sedition" and reported that with that document, their "privileges have been violated". Such reaction is further evidence of the degree of political violence in the country and of the inability of a number of State officials to enter into constructive dialogue. Some of these statements are reproduced below[58].

Tuesday, November 20, 2012 Front Page

Study on MPs

TIB flayed at Sangsad

Angry lawmakers term survey ill-motivated; Speaker to decide on course of action; TIB executive director says any decision should be consistent with democracy

Staff Correspondent

Speaker Abdul Hamid and some ruling alliance MPs in parliament yesterday launched a blistering attack on TIB, terming the graft watchdog's recent survey on the activities of lawmakers "flawed" and "ill-motivated".

In response to lawmakers clamouring for action against TIB for "undermining the dignity of parliament", the Speaker said he would come up with a decision later in consultation with some senior MPs.

Some lawmakers, including Tofail Ahmed and Sheikh Fazlul Karim Selim, requested the Speaker to convene a meeting of the parliamentary standing committee on privileges, and to summon TIB officials to appear before it to defend the survey.

The Transparency International Bangladesh (TIB) report, released on October 14, said 97 percent of the 149 sitting MPs surveyed were involved in "negative activities" that include being linked to or being supportive of criminal activities, misusing public funds and influencing government decisions.

And 70 percent of those involved in "negative activities" were engaged in "criminal activities" like murder, land-grabbing, extortion, tender manipulation and cheating. Many MPs even used their position to boost their income, the survey added.

Contacted yesterday, TIB Executive Director Iftekharuzzaman said, "I have full respect for parliament. If something is decided or discussed in the House, it should be consistent with democracy."

What TIB did was for the sake of democracy, he said, adding that if any adverse decision is taken against TIB, it must be considered how different quarters at home and abroad will take it.

Before taking any decision, MPs should consider whether it goes with their image and democracy, Iftekharuzzaman added. "The parliamentarians should have the mentality to tolerate criticism as critics are also well-wishers."

The ruling alliance MPs participating in an unscheduled discussion for over 40 minutes, rejected the survey and challenged the watchdog to prove its findings.

Speaker Abdul Hamid, who was presiding over the sitting, questioned the method of the survey, saying TIB took opinion of only 600 people. "Who are these people? Are they commoners? Or are they employees of TIB?"

Both ruling and opposition MPs are bad as per the TIB report, Hamid said. "Then who will run the country? TIB or civil society? I am asking them again to join the next election and win people's mandate if they want to run the country."

The Speaker said it was unfortunate that a section of the media desperately and deliberately was trying to undermine the image of the Jatiya Sangsad and MPs.

Veteran AL leader Tofail Ahmed said TIB had prepared the report by taking the opinion of only 600 people out of 16 crore. "TIB's whole survey is unethical. Did it set up a court to judge MPs?"

"In the name of searching for honest and competent candidates, they are launching attacks on parliament," he said.

A total of eight MPs participated in the discussion and many others sought the floor to speak on it.

Jatiya Party lawmaker Mujibul Haque said releasing such a report ahead of the national polls was ill-motivated.

AL leader Sheikh Fazlul Karim Selim, who piloted the discussion, said, "It is a shameless attack on parliament and it is tantamount to sedition.

"TIB has crossed its limits. It wants to control parliament, state and judiciary. It considers itself a superpower."

He added, "I request you [Speaker] to convene a meeting of the privilege committee and summon them [TIB officials] to prove their findings. If they fail, the government has to take action."

Selim alleged some NGO officials live luxurious lives and some NGOs bring crores of taka from abroad in the name of running their activities. "I will ask the finance minister to check how they spend the money. If they spend their money against the state, government and democracy, beyond their jurisdiction, then ban all their activities and expel them from the country."

He said TIB had undermined parliament and the government as well as by releasing an imaginary report. "Our privileges have been violated."

TIB was conspiring against democracy and was in favour of undemocratic forces as it got privileges with an unelected government in power, Selim added.

"Those who patronised the minus-two formula are now engaged in conspiracy to promote a third force as they do not get importance during the tenure of an elected government.

58. See http://archive.thedailystar.net/newDesign/news-details.php?nid=258186

CONCLUSION

In the highly polarised atmosphere of Bangladesh, political dialogue between the AL and the BNP has become extremely difficult. Most observers believe that the situation will not improve in the lead-up to the general elections planned for end 2013/early 2014, which may even end up in a political deadlock, in particular in view of the announced boycott of the elections by the BNP so long as a "caretaker government" system similar to the one in place from 2007 to the end of 2008 is not reinstated.

In such a context, human rights defenders and NGOs tend to be categorised as pro-government or anti-government, depending on whom they criticise or which party is in power. Accordingly, a number of defenders reported to the Observatory's mission being forced to a certain degree of self-censorship in their daily activities, while others find themselves on the frontline of repression anytime they dare criticise publicly the human rights record of government officials. Repression includes physical attacks, arbitrary detention or judicial harassment.

From a legal point of view, a number of pieces of legislation fail to abide by international human rights law with regards to freedom of expression, and very little or no progress was noted since the FIDH fact-finding mission in Bangladesh in 2005[59]: a number of sections under the Penal Code continue to punish those who commit acts that are "prejudicial to the states", "sedition" or "defamation", provisions which are broadly interpreted and open to political manipulation and are used against critics and opponents. In addition, the Bangladeshi anti-terrorism legislation has been abusively used against human rights defenders due to overly vague definitions of terrorism.

In terms of freedom of association, a number of NGOs and trade unions continue to face obstacles in the exercise of their activities, due to restrictive pieces of legislation as well as arbitrary practices such as delays in the approval of human rights projects, de-registrations and harassment of their members. Moreover, a new bill on associations is currently being tabled, which might result in further disproportionate restrictions in terms of NGOs access to foreign funding, in contravention with international standards.

With regards to trade unions, although the Labour Act was recently amended, many shortcomings remain as categories of workers are still excluded from the scope of the text and as the 30 per cent threshold of representation is still required for the registration of trade unions. The trade union environment itself is polarised along the AL and the BNP, and the few independent unions that exist face obstacles to their work, including daily harassment. The extrajudicial killing of labour leader and human rights defender Aminul Islam in 2012, and the impunity that ensued, reminded the international community and human rights defenders on the ground how risky independent labour rights activities could be in Bangladesh.

Human rights defenders and NGOs exposing corruption by officials are further threatened and/or publicly slandered, while environmental rights defenders are under pressure of private companies, which sometimes file judicial complaints against them.

Women human rights defenders operate in a difficult environment since they are confronted to self-censorship by women victim of abuses, and can be themselves targeted either because they defend the rights of women and/or because they are women.

The relative economic development of Bangladesh in recent years has therefore not been accompanied with sufficient improvements in the human rights field. Human rights defenders remain inadequately protected and suffer repression for carrying out freely legitimate activities under international law. As long corruption is not curbed, and in the absence of a constructive political dialogue, of legislation promoting human rights, and of an independent judiciary, abuses of power and arbitrary practices will continue to make the exercise of fundamental

59. See Observatory section of FIDH Fact-Finding Mission Report, *Speaking out makes you a target*, 2005.

freedoms more difficult, to hinder the strengthening of an independent civil society, and to maintain human rights defenders in the trap of a disabling environment.

While welcoming the repeated assurances of Government officials met by the Observatory solidarity mission delegation in October 2013, of the Government's adherence to human rights, the freedom of expression, due process and the rule of law, and the authorities' assurances of Mr. Adilur Rahman Khan's physical integrity and safety, it is important to highlight that:

1. The prosecution of Mr. Adilur Rahman Khan and his stigmatisation in the media has had a chilling effect on civil society and human rights defenders at large. There is today a clear sense of insecurity within the human rights community in Bangladesh, traditionally known to be diverse and vivid. Its ability to undertake critical human rights work is already negatively impacted as organisations are becoming reluctant to document violations, and victims and witnesses especially in rural areas are afraid to come forward. Human rights documentation is a fundamentally important element for advancing human rights in any democratic country and defenders must be able to do so while protecting their sources where needed. There is a need to re-establish consensus on those fundamental principles.

2. The continuation of the prosecution and even more so a possible conviction of Mr. Adilur Rahman Khan will further entrench the existing threats and intimidation to human rights defenders and shrink the democratic space for effective human rights work. We found indication of government influence on the proceedings against Mr. Khan and Odhikar casting serious doubts as to the integrity of the process. We recall in this regard that any instrumentalisation of the judiciary and direct or indirect interference risks to undermine and compromise the role of the judiciary and the rule of law. In this context it is doubly important to guarantee scrupulously the right to a fair trial under the International Covenant on Civil and Political Rights (ICCPR), and to avoid any interference by the Executive into the proceedings, and to allow international observers to monitor the proceedings.

3. There is today a highly polarised political situation that has socially gripped and divided Bangladesh wherein statements, much more so criticisms, are associated, labelled or categorised with one or the other political party with persons vilified, charged or subjected to violent actions. The environment of growing radicalisation in society is further contributing to such polarisation. This has placed human rights defenders at great risk, has led to self-censorship for fear that critical human rights work is mistaken as political activism. It is especially in environments such as this one that it is important to ensure that human rights defenders can maintain independent human rights work free from threat and from being wrongly labelled as political activists.

4. A concerted paradigm shift in the medium and long term period from over-arching partisan politics that determine one's status in society to rights-based governance and development is imperative. At the heart of this paradigm shift needs to stand the protection of human rights, including effective steps to investigate violations, protecting witnesses and victims and a commitment to ensure full accountability. This reshift and needed change by all actors must centre on the protection of those who defend the rights of others.

5. In light of the acute sense of crisis for defenders urgent steps have to be taken to ensure the full protection for the rights under the United Nations Declaration on Human Rights Defenders and to reaffirm the authorities' commitment to human rights defenders protection, which is the first responsibility of any democratic government. There is need for a review of the broader legal and policy framework for human rights defenders to ensure an enabling environment for human rights defenders in Bangladesh.

The human rights community in Bangladesh is today more important than ever and will require continuous support in overcoming the present threats that it is facing.

RECOMMENDATIONS

TO THE GOVERNMENT OF BANGLADESH TO:

– Guarantee, under all circumstances, the physical and psychological integrity of all human rights defenders in Bangladesh;

– Put an end to any act of violence and harassment, including at the judicial level, against human rights defenders;

– Carry out prompt, independent and transparent investigations into cases of violations of the rights of human rights defenders, including threats, attacks, killings, torture and ill-treatment, in order to identify all those responsible and bring them to justice;

– In particular, investigate the killings of labour leader Aminul Islam, as well as journalists Mr. Sagar Sarowar and Ms. Meherun Runi, and bring those responsible for it to justice without further delay;

– Stop denigrating human rights defenders and recognise their vital role in the advent of democracy and the rule of law, and create an enabling environment so they can carry out their activities freely and without hindrance;

– Bring the following pieces of legislation in full conformity with international standards and instruments: the Penal Code; the Anti-Terrorism Act, 2009; the Anti-Terrorism (Amendment) Act, 2012, the Bangladesh Telecommunication (Amendment) Act; the Information and Communication Technology Act, 2006; the Information and Communication Technology (Amendment) Act, 2013; the Voluntary Social Welfare Agencies (Registration and Control) Ordinance, 1961; the Foreign Donations (Voluntary Activities) Regulation Ordinance, 1978; the Foreign Contributions (Regulation) Ordinance, 1982; the Labour Act, 2006; and the Labour Law Reform Package, 2013.

– Solve the problems regarding the status of NGOs, notably the excessive delays in obtaining authorisations and the arbitrary de-registration and the renunciation to the adoption of any additional and disproportionate obstacles to their activities (as for example by adopting or by giving some substance to the controversial bill drafted by the NGO Affairs Bureau (NGO AB) on Foreign Donations Regulation to be integrated in the Foreign Donations (Voluntary Activities) Regulation Ordinance of 1978 and the Foreign Contribution (Regulation) Ordinance of 1982) and proceed with the registration of trade unions and reduce the backlog of applications;

– With regards to labour rights and the rights of trade-unionists:
  – Scrap the 30 per cent "representativity" requirement for the registration of trade unions;
  – Extend the coverage of the Labour Act to categories of workers currently excluded;
  – Adopt a prohibition for employers to interfere in internal trade union affairs;
  – Extend the scope of the Labour Act to apply to EPZ and grant collective bargaining rights to WWAs, while making it easier for WWAs to be registered;

– Fully cooperate with UN Treaty Bodies, and in particular with the Committee Against Torture (CAT), the Human Rights Committee (CCPR), the Committee on Economic, Social and Cultural Rights (CESCR), and the Committee on the Elimination of All Forms of Discrimination Against Women (CEDAW);

– Fully cooperate with the relevant UN mechanisms, and to this end accept the country visit requested by the UN Special Rapporteur on the situation of human rights defenders, the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression as well as the UN Special Rapporteur on the independence of judges and lawyers; and extend a standing invitation to the Special Procedures of the UN Human Rights Council;

– Comply at all times with the provisions of the Declaration on Human Rights Defenders, adopted by the UN General Assembly on December 9, 1998, in particular:
  – its Article 1 which states that "everyone has the right, individually and in association with others, to promote and strive for the protection and realization of human rights and fundamental freedoms" at the national and international levels,
  – its Article 5, which states that "For the purpose of promoting and protecting human rights and fundamental freedoms, everyone has the right, individually and in association with others, at the national and international levels: (a) To meet or assemble peacefully; [...]"
  – and Article 12.2, which states that the State should take all necessary steps "to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of their legitimate exercise of the rights referred to in this Declaration";

– Comply in all circumstances with the international obligations of Bangladesh regarding the protection of human rights and fundamental freedoms;

– Fully implement the provisions of Resolution A/HRC/22/L.13 adopted by the UN Human Rights Council on March 15, 2013, calling upon States, in particular, to ensure that reporting requirements placed on individuals, groups and organs of society do not inhibit functional autonomy, and furthermore to ensure that they do not discriminatorily impose restrictions on potential sources of funding aimed at supporting the work of human rights defenders in accordance with the Declaration [on human rights defenders] other than those ordinarily laid down for any other activity unrelated to human rights within the country to ensure transparency and accountability, and that no law should criminalize or delegitimize activities in defence of human rights on account of the origin of funding thereto.

– Fully implement the recommendations made in the framework of the two cycles of the Universal Periodic Review of Bangladesh (2009 and 2013), urging Bangladesh notably to "take measures to protect human rights defenders, including journalists".

TO THE UNITED NATIONS - AND IN PARTICULAR TO RELEVANT UN SPECIAL PROCEDURES TO:

– Condemn publicly the deterioration of the situation of human rights defenders in the country, including any acts of harassment, arrest and violence against members of human rights NGOs, journalists and labour rights activists, and stress that those responsible for such abuses and violations must be held accountable;

– Call on the authorities of Bangladesh to guarantee the physical and psychological integrity as well as the rights of all human rights defenders;

– Continue to grant particular attention to the protection of human rights defenders in Bangladesh, in accordance with the UN Declaration on Human Rights Defenders, and follow-up on the implementation of recommendations issued on Bangladesh;

More specifically:

– To the UN Special Rapporteur on the situation of human rights defenders:
  – to follow-up, in cooperation with other relevant Special Procedures, on individual cases of human rights defenders facing harassment in Bangladesh;
  – to send a reminder to Bangladesh regarding her pending request for a visit (2013).

– To the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association:
  – to follow-up, in cooperation with other relevant Special Procedures, on individual cases of human rights defenders facing obstacles to their freedom of peaceful assembly and association in Bangladesh;
  – to send a request for a country visit to the authorities of Bangladesh.

– To the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression:
  – to follow-up, in cooperation with other relevant Special Procedures, on individual cases of human rights defenders and journalists facing obstacles to their freedom of opinion and expression in Bangladesh;
  – to send a request for a country visit to the authorities of Bangladesh.

– To the UN Special Rapporteur on the independence of judges and lawyers:
  – to follow-up, in cooperation with other relevant Special Procedures, on individual cases of human rights defenders facing judicial harassment in Bangladesh;
  – to send a reminder to Bangladesh regarding her pending request for a visit (2007).

– To the UN Special Rapporteur on extrajudicial, summary or arbitrary executions:
  – to follow-up, in cooperation with other relevant Special Procedures, on the status of investigation into the killing of human rights defenders, notably labour leader Aminul Islam, as well as journalists Mr. Sagar Sarowar and Ms. Meherun Runi;
  – to send a request for a country visit to the authorities of Bangladesh.

TO THE INTERNATIONAL LABOUR ORGANISATION (ILO) TO:

– Urge the Government of Bangladesh to fulfil its obligations under the ratified ILO conventions, as well as its commitments made at the International Labour Conference in June 2013 regarding the implementation of the reformed labour law;

– Work with the Government of Bangladesh on the development and adoption of further legislative proposals to address the remaining obstacles to labour rights, through, i.e.:
  – the removal of the 30 per cent minimum membership requirement to form a union;
  – the extension of freedom of association and collective bargaining rights to workers in export processing zones, who are presently legally barred from forming a union;
  – the extension of the reformed law to all the labour sectors;
  – the removal of obstacles to the right to strike.

– Through the "Improving Working Conditions in the Ready-Made Garment Sector" (RMGP) initiative, recently launched by the ILO and the Government of Bangladesh, and encompassing a "Better Work" country programme:
  – to take measures to minimise the threat of fire and building collapse in ready-made garment factories;
  – to take measures to ensure the rights and safety of workers at all times;
  – to undertake genuine, objective and transparent building and fire safety assessments;
  – to strengthen and support genuine, objective and transparent labour, fire and buildings inspections.

– Periodically review progress on the implementation of ILO commitments.

TO THE EUROPEAN UNION (EU) AND OTHER FOREIGN DIPLOMACIES TO:

– Pursue the efforts undertook to support the election process, call all political forces to find a consensus on the modalities for an inclusive electoral process and call again Bangladesh to investigate into human rights violations, forced disappearances and extrajudicial killings and to bring those responsible into justice. Closely follow up the development of specific cases like the one of Mr. Aminul Islam;

– Systematically condemn, including through highest level public statements, harassment, arrest and violence against human rights defenders, including members of human rights NGOs, journalists and labour rights activists, and stress that those responsible for such abuses and violations must be held accountable;

– Ensure that the delegations and Head of Missions take all conservatory, protective, preventive and reactive measures, including local statements and proactive *démarches* in line with the various EU Guidelines, including those on torture and on violence against women. Regarding in particular the EU Guidelines on Human Rights Defenders ensure:
  – regular meetings with human rights defenders;
  – prison visits to human rights defenders detained;
  – observation of trials held against human rights defenders as a means to sanction their human rights activities.

– Use dialogues to follow up progress and raise other matter of concern, to denounce shortcomings, and to send strong messages of support for human rights defenders. Use dialogues also to obtain further commitments and progress, assessing results, based upon clear and meaningful benchmarks and substantive indicators, and making those assessment public. Ensure the dialogues can produce positive human rights outcomes and do not become rituals used to deflect international scrutiny of its human rights record;

– Still seeking for the best interplay between the instruments and policies at disposal, regularly assess the whole EU strategy put in place and adapt it if no significant results. Ensure also in that regards that the granting of particular incentives like GSP or the benefit of closer bilateral relationships, are dependent on measurable progress;

– Regarding business and human rights, ensure that the delegations and Head of Missions diffuse the CSR guidelines to the European enterprises, and, as requested by the European Parliament in January 2013, ensure that officers based in EU delegations are given regular training on CSR, in particular with respect to the implementation of the UN 'protect, respect and Remedy' framework, and that the EU delegations function as EU contact points for complaints concerning EU companies and their subsidiates. In addition, take additional action, initiatives and reinforce the legal framework in order to:
  – render human rights due diligence mandatory for EU-based companies, which shall require them to identify, prevent, mitigate, and account for human rights impacts and risks linked to their operations, products or services, including throughout their entire supply chains, and operations abroad; and
  – adopt clear and mandatory requirements for the disclosure of EU-based companies' policies and impacts on human rights and the environment, including throughout their supply chain, as well as effective enforcement of such reporting requirements;
  – facilitate affected persons/communities access to courts and effective remedies in the home country;
  – exclude companies engaging in activities violating human rights in Bangladesh from public procurement procedures and call for tenders.

– Take also all necessary measures to prevent and regulate the export of ICT technologies that could be used to violate the right to freedom of expression and privacy and improve the monitoring of exports of those ICTs products and services.

fidh

Establishing the facts
Investigative and trial observation missions

Through activities ranging from sending trial observers to organising international investigative missions, FIDH has developed, rigorous and impartial procedures to establish facts and responsibility.
Experts sent to the field give their time to FIDH on a voluntary basis.
FIDH has conducted more than 1 500 missions in over 100 countries in the past 25 years. These activities reinforce FIDH's alert and advocacy campaigns.

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FIDH organises numerous activities in partnership with its member organisations, in the countries in which they are based. The core aim is to strengthen the influence and capacity of human rights activists to boost changes at the local level.

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OMCT
SOS-Torture Network

Created in 1985, the World Organisation Against Torture (OMCT) is today the main coalition of international non-governmental organisations (NGO) fighting against torture, summary executions, enforced disappearances and all other cruel, inhuman or degrading treatment. With 311 affiliated organisations in its SOS-Torture Network, OMCT is the most important network of NGOs working for the protection and the promotion of human rights in the world.

Based in Geneva, OMCT's International Secretariat provides personalised medical, legal and/or social **assistance to victims of torture** and ensures the daily dissemination of **urgent interventions** across the world, in order to prevent serious human rights violations, to protect individuals and to fight against impunity. Moreover, some of its activities aim at protecting specific categories of vulnerable people, such as women, children and human rights defenders. OMCT also carries out campaigns relating to violations of economic, social and cultural rights. In the framework of its activities, OMCT also **submits individual communications and alternative reports** to the United Nations mechanisms, and actively collaborates in the **respect, development and strengthening of international norms** for the protection of human rights.

OMCT has either a consultative or observer status with the United Nations Economic and Social Council (ECOSOC), the International Labour Organisation, the African Commission on Human and Peoples' Rights, the Organisation Internationale de la Francophonie, and the Council of Europe.

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obs

The Observatory
for the Protection
of Human Rights Defenders

Activities of the Observatory

The Observatory is an action programme based on the belief that strengthened co-operation and solidarity among human rights defenders and their organisations will contribute to break the isolation they are faced with. It is also based on the absolute necessity to establish a systematic response from NGOs and the international community to the repression of which defenders are victims.

With this aim, the Observatory seeks to establish:

- a mechanism of systematic alert of the international community on cases of harassment and repression of defenders of human rights and fundamental freedoms, particularly when they require urgent intervention;
- the observation of judicial proceedings, and whenever necessary, direct legal assistance;
- international missions of investigation and solidarity;
- a personalised assistance as concrete as possible, including material support, with the aim of ensuring the security of the defenders victims of serious violations;
- the preparation, publication and world-wide dissemination of reports on violations of the rights and freedoms of individuals or organisations working for human rights around the world;
- sustained action with the United Nations and more particularly the Special Rapporteur on Human Rights Defenders, and when necessary with geographic and thematic Special Rapporteurs and Working Groups;
- sustained lobbying with various regional and international intergovernmental institutions, especially the Organisation of American States (OAS), the African Union (AU), the European Union (EU), the Organisation for Security and Co-operation in Europe (OSCE), the Council of Europe, the International Organisation of the Francophonie (OIF), the Commonwealth, the League of Arab States, the Association of Southeast Asian Nations (ASEAN) and the International Labour Organisation (ILO).

The Observatory's activities are based on consultation and co-operation with national, regional, and international non-governmental organisations.

With efficiency as its primary objective, the Observatory has adopted flexible criteria to examine the admissibility of cases that are communicated to it, based on the "operational definition" of human rights defenders adopted by FIDH and OMCT: "Each person victim or at risk of being the victim of reprisals, harassment or violations, due to his or her commitment, exercised individually or in association with others, in conformity with international instruments of protection of human rights, to the promotion and realisation of the rights recognised by the Universal Declaration of Human Rights and guaranteed by the different international instruments".

To ensure its activities of alert and mobilisation, the Observatory has established a system of communication devoted to defenders in danger. This system, called Emergency Line, can be reached through:

E-mail : Appeals@fidh-omct.org
FIDH Tel: + 33 1 43 55 25 18 Fax: + 33 1 43 55 18 80
OMCT Tel: + 41 22 809 49 39 Fax: + 41 22 809 49 29

fidh

OMCT
SOS-Torture Network