

Bangladesh: Human Rights Committee Concluding observations on the initial country report

Human Rights Committee

Concluding observations on the initial report of Bangladesh*

1. The Committee considered the initial report of Bangladesh (CCPR/C/BGD/1) at its 3339th and 3340th meetings (see CCPR/C/SR.3339 and 3340), held on 6 and 7 March 2017. At its 3363rd meeting, held on 22 March 2017, it adopted the present concluding observations.

A. Introduction

2. The Committee welcomes the submission of the initial report of Bangladesh and the information presented therein, and regrets that it was 14 years overdue. It expresses appreciation for the opportunity to engage in a constructive dialogue with the State party's high-level delegation on the measures taken by the State party since the entry into force of the Covenant to implement its provisions. The Committee is grateful to the State party for its written replies (CCPR/C/BDG/Q/1/Add.1) to the list of issues (CCPR/C/BDG/Q/1), which were supplemented by the oral responses provided by the delegation.

B. Positive aspects

3. The Committee welcomes the following legislative and institutional measures taken by the State party since the entry into force of the Covenant in 2000:

- (a) Adoption of the Domestic Violence Prevention and Protection Act, in 2010;
- (b) Adoption of the National Women Development Policy 2011, especially the framework for efforts to promote women's participation in decision-making positions contained in the policy;
- (c) Adoption of the Prevention and Suppression of Human Trafficking Act, in 2012;
- (d) Adoption of the Persons with Disabilities Rights and Protection Act, in 2013;
- (e) Adoption of the Torture and Custodial Death Prevention Act, in 2013.

4. The Committee also welcomes the ratification of, or accession to, the following international instruments by the State party:

- (a) The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, in 2011;

(b) The Convention on the Rights of Persons with Disabilities, in 2007.

C. Principal matters of concern and recommendations

National human rights commission

5. The Committee is concerned that the National Human Rights Commission (NHRC) may not have a broad enough mandate to investigate all alleged human rights violations, including those involving State actors such as the police, military and security forces. It is further concerned that the NHRC lacks sufficient financial and human resources to fulfil its mandate (art. 2).

6. The State party should broaden the mandate of the NHRC and allow it to investigate all alleged human rights violations, including those committed by State military and security actors. The State party should also provide the NHRC with sufficient financial and human resources to allow it to impartially and independently fulfil its mandate in line with the Paris Principles (General Assembly resolution 48/134, annex).

Domestic applicability of the Covenant and right to an effective remedy

7. The Committee is concerned that not all of the rights protected by the Covenant have been given full effect through domestic law and that some domestic legislation contains provisions contrary to the rights in the Covenant. It is also concerned at the lack of information on cases which demonstrate that domestic courts are upholding the rights in the Covenant (art. 2).

8. The State party should adopt domestic legislation enabling the implementation of all of the rights in the Covenant and undertake a comprehensive review of its legislation to bring conflicting provisions in line with the Covenant. The State party should also raise awareness about the rights in the Covenant and domestic law giving effect to these rights among judges, lawyers and prosecutors to ensure that rights guaranteed in the Covenant are upheld by the courts. It should also consider acceding to the First Optional Protocol to the Covenant, which establishes an individual complaint mechanism.

Counter-terrorism

9. The Committee is concerned about the use of unclear terminology in counter-terrorism legislation such as in the Special Powers Act of 1974, which grants the State broad powers of arrest and detention for the vague term "prejudicial acts", and the broad definition of "terrorist act" in the Anti-Terrorism Act of 2009, which can lend itself to arbitrary and abusive implementation. The Committee is concerned that the Anti-Terrorism Amendment Bill (2012) which amended the Anti-Terrorism Act of 2009 increased the penalty for financing terrorism to allow for a maximum punishment of the death penalty. It is further concerned by reports that these laws are used to stifle speech of journalists and human rights defenders (arts. 6, 9, 14 and 19).

10. The State party should ensure that:

(a) its counter-terrorism legislation is in full conformity with the Covenant;

(b) acts of terrorism are defined in a precise and narrow manner, and that legislation adopted in that context is limited to crimes that would clearly qualify as acts of terrorism;

(c) the death penalty is not imposed for offences, such as the financing of terrorism, which do not constitute the "most serious crimes" within the meaning of article 6 (2) of the Covenant; and

(d) counter-terrorism measures are not used to restrict freedom of expression and opinion of journalists and human rights defenders.

Non-discrimination

11. While noting that pursuant to article 28 of the Constitution the State will not discriminate against citizens on the limited grounds of "religion, race, caste, sex or place of birth," the Committee is concerned that the Anti-Discrimination Bill of 2015 has not yet been adopted, and that discrimination continues to occur against certain groups, such as:

(a) Discriminatory provisions against women continue to exist in law, and laws and Constitutional provisions protecting women are not enforced due in part to patriarchal attitudes in the State party towards women and girls;

(b) Attacks on places of worship of religious minorities, extortion, intimidation, harassment of, and land grabbing from, religious minorities;

(c) Lack of legal recognition of indigenous peoples, reported discrimination and restrictions on the civil and political rights of indigenous peoples, in particular as it relates to land rights and participation in political and decision making processes;

(d) Persistence of a caste based system resulting in limited employment and housing opportunities for people from so-called lower castes who experience extreme poverty, social stigma and marginalization;

(e) Criminalization under section 377 of the Penal code of consensual sexual acts between same sex couples which are termed "unnatural behaviour," stigmatization, harassment and violence against lesbian, gay, bisexual and transgender (LGBT) persons, barriers to assistance in seeking employment of "hijras" who are considered as transgender persons by the administration of invasive and humiliating medical examinations to prove transgender status (arts. 2, 3, 26 and 27).

12. The State party should ensure that the Anti-Discrimination Bill of 2015 protects against direct and indirect discrimination in the public and private sphere based on a comprehensive list of grounds for discrimination, including colour, descent, caste, national or ethnic origin, religion, sexual orientation and gender identity, disability and other status, and provide for effective remedies in case of violations. The State party should also accelerate the adoption of this bill and ensure its effective implementation. It should also develop education campaigns for schools, government officials and the general public to promote tolerance and appreciation for diversity and non-discrimination. Furthermore, the State party should:

(a) Undertake legislative reforms to eliminate direct and indirect discriminatory legislative provisions against women, implement existing legislative protections for women and girls, end entrenched patriarchal attitude in society through educational campaigns on the equality of women, and ensure that the application of religious personal status laws do not violate the right to non-discrimination of women and girls;

(b) Protect the safety and security of persons belonging to minority religious groups and ensure their ability to fully enjoy their freedom of religion and to worship without fear of attack;

(c) Recognize the legal status of indigenous peoples, facilitate the reporting of violations of the rights of indigenous peoples, investigate such cases, prosecute perpetrators and compensate victims, resolve land disputes through the implementation of the Chittagong Hill Tracts Land Dispute Resolution Commission Act 2001 (amended in 2016) and through the use of an independent land commission, and include indigenous persons in political and decision making processes;

(d) Take measures to end the de facto caste systems, and ensure that individuals from so-called lower castes are not relegated to caste based employment and have equal access to all rights guaranteed under the Covenant, without discrimination;

(e) Decriminalize consensual sexual acts between same sex couples, provide protection to lesbian, gay, bisexual and transgender (LGBT) persons from violence and harassment by ensuring that all cases are promptly investigated, prosecuted, and punished with appropriate sanctions, and eliminate barriers to employment and violations to the dignity of "hijras".

Early marriage and harmful traditional practices

13. The Committee is concerned that the State party has one of the highest rates of early marriage in the world, with 32% of girls married before the age of 15 and 66% of girls married before the age of 18. It is also concerned that early marriage is prevalent in refugee camps where 90% of families have at least one married family member under the age of 18. The Committee notes efforts by the State party to reduce early marriage through the approval of a Child Marriage Restraint Bill in 2016, but remains concerned that marriage below the age of 18 will be permitted in "special circumstances." The Committee is further concerned at the continuation of harmful traditional practices such as the imposition of the payment of dowries on the families of girls (arts. 2, 3, 24 and 26).

14. The State party should take immediate measures to sharply reduce early marriage and prevent dowry practices, including through the implementation of legislation preventing early marriage and dowry practices and by carrying out campaigns to publicize the legislation outlawing such practices, and inform girls, their parents and community leaders of the harmful effects of early marriage. The State party should amend the Child Marriage Restraint Bill to maintain the legal minimum age of marriage for girls at 18 years, in accordance with international norms, without any exceptions.

Voluntary termination of pregnancy and sexual and reproductive health

15. The Committee is concerned that abortion is criminalized except when the life of woman is in danger, which prompts women to resort to unsafe abortions, endangering their health and leading to a high rate of maternal mortality. The Committee notes that while the State party allows for "menstrual regulation," the procedure is not widely available and women requesting the procedure reportedly are often refused. It is also concerned at the high rate of adolescent pregnancy connected to early marriage and resulting in maternal mortality (arts. 3, 6, 7, 17, and 26).

16. The State party should:

(a) Revise its legislation to provide for additional exceptions to the legal ban on abortion, including in cases of rape, incest, fatal foetal impairment, and for therapeutic reasons, and to ensure that women are not denied medical services and are not prompted by legal obstacles, including criminal provisions, to resort to unsafe abortions that put their lives and health at risk;

(b) Increase education and awareness-raising programmes on the importance of using contraceptives and on sexual and reproductive health rights.

Violence against women

17. While noting the existence of laws and national action plans to prevent violence against women, the Committee is concerned at the lack of consistent implementation of these laws, in particular in light of the reportedly high rates of domestic and sexual violence against women and girls in the State party. Of particular concern are acid attacks, rape, gang rapes, dowry related violence, fatwa-instigated violence, sexual harassment, and sexual violence against indigenous women related to land grabbing in the Chittagong Hills Tract, and sexual and gender based violence and domestic violence against Rohingya refugee women and girls in refugee camps (arts. 3, 6, 7 and 27).

18. The State party should redouble its efforts to prevent and combat all forms of violence against women. It should ensure the consistent implementation of the existing laws and national action plans on violence against women. It should intensify awareness-raising measures among the police, the judiciary, prosecutors, community representatives, women and men on the gravity of sexual and gender based violence and domestic violence and its detrimental impact on the lives of victims. The State party should ensure that cases of violence against women, including indigenous and refugee women, are thoroughly investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and the victims are provided with full reparation. It should also ensure the availability of a sufficient number of shelters with adequate resources for victims.

Extra-judicial killings and enforced disappearances

19. The Committee is concerned at the reported high rate of extra-judicial killings by police officers, soldiers and Rapid Action Battalion (RAB) force members and the reported enforced disappearances, as well as the excessive use of force by State actors. The Committee is further concerned by the lack of investigations and accountability of perpetrators, leaving families of victims without information and redress. It is further concerned that domestic law does not effectively criminalize enforced disappearances, and that the State party does not accept that enforced disappearances occurs (arts.2, 6, 7, 9, 10, and 16).

20. The State party should:

(a) Take immediate measures to protect the right to life of all persons;

(b) Revise its legislation to limit the use of force by law enforcement officials, the military and special forces, incorporating international standards, including the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, and ensure accountability for violations;

(c) Effectively criminalize enforced disappearance;

(d) Investigate all cases of arbitrary killings, enforced disappearances, and excessive use of force, prosecute and if convicted punish the perpetrators with appropriate sanctions, and provide full reparation to the victims. In case of disappearances, the State party should establish the truth about the fate and the whereabouts of the victims and ensure that victims of enforced disappearance and their relatives are informed about the outcome of the investigation;

(e) Provide in its next periodic report information on: (i) the number of investigations conducted; (ii) convictions secured and (iii) disaggregated information on penalties that have been imposed on perpetrators.

Torture and ill treatment

21. The Committee notes information provided by the State party that there are currently no ongoing investigations into cases of torture in the State party and is concerned at this fact in particular in light of information that torture and ill-treatment by law enforcement or military personnel is widespread in the State party during interrogations, to extract confessions. The Committee notes reports that this practice continues despite the existence of the Torture and Custodial Death Prevention Act of 2013, and is further concerned at reports that law enforcement officials are requesting to repeal this law and are seeking safeguards from prosecution on torture charges (arts. 7, 9 and 10).

22. The State party should put an end to the practice of torture and ill-treatment. It should enforce the Torture and Custodial Death Prevention Act of 2013 and ensure that no immunity provisions in other laws supersede the protections in this Act. The State party should establish an independent complaint mechanism with the authority to investigate all reported allegations of, and complaints about, torture and ill-treatment. It should further ensure that alleged perpetrators of those crimes are prosecuted and that the victims are provided with full reparations.

Death penalty

23. The Committee is concerned at the high number of cases in which the death penalty is imposed in the State party and the fact that it can be handed down for crimes that do not meet the threshold of the "most serious crimes" within the meaning of article 6 (2) of the Covenant, such as smuggling or the adulteration of food under the Special Powers Act of 1974, the production, manufacture or consumption of intoxicant materials under the Intoxicant Control Act of 1990, and in certain cases spying under the Official Secrets Act of 1923 (arts. 6, 7 and 14).

24. The State party should give due consideration to abolishing the death penalty and acceding to the Second Optional Protocol to the Covenant, aiming at the abolition of the death penalty. If the death penalty is maintained, it should consider introducing a moratorium on its application and, in any event, undertake legislative reform to ensure that the death penalty is provided only for the most serious crimes, understood to be intentional killings, and that pardon or commutation of the sentence must be available in all cases, regardless of the crime committed. The State party should also ensure that, if the death penalty is imposed, it is never in violation of the Covenant, including in violation of fair trial procedures.

Prisons

25. The Committee is concerned at the poor conditions of detention in the State party's prisons, particularly with respect to overcrowding, unsanitary conditions, and extortion of inmates and their relatives by prison guards to enjoy basic rights. It is further concerned by the high number of deaths in prison over the last five years, all of which are attributed by the State party to natural causes or to suicide, while reports indicate that at least some of these deaths can be attributed to poor prison conditions, negligence by the authorities, lack of access to treatment, and, in some cases, death as a result of injuries sustained by torture while in police custody (arts. 6, 7, 9 and 10).

26. The State party should continue to strengthen its efforts to improve conditions of detention by taking practical measures to reduce overcrowding, particularly by promoting alternatives to detention, ensuring that bail determinations are made promptly and that persons on remand are not kept in custody for an unreasonable period of time. It should also increase efforts to guarantee the right of detainees to be treated with humanity and dignity and ensure that conditions of detention in all of the country's prisons are compatible with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

Freedom of opinion expression and association

27. The Committee is concerned at limitations on the rights of journalists, bloggers, human rights defenders and civil society organizations in the State party to exercise their right to freedom of opinion, expression and association, in particular:

(a) Lack of police protection, registration of complaints, investigations and prosecutions of incidents of violent killing of "secular bloggers" by extremist groups as well as death threats, physical attacks, intimidation and harassment of journalists, bloggers and human rights defenders;

(b) The arrest of at least 35 journalists, "secular bloggers" and human rights defenders in 2016 under the Information and Communications Technology (ICT) Act of 2006 (amended in 2013), a de-facto blasphemy law which limits freedom of opinion and expression using vague and overbroad terminology to criminalize publishing information online, which "hurts religious sentiment" and information, which prejudices "the image of the State" with a punishment of 7 to 14 years;

(c) Undue limitations on the ability of human rights defenders and non-governmental organizations to operate, through the Foreign Donations (Voluntary Activities) Regulation Bill of 2016, which restricts the ability of non-governmental organizations to secure resources and makes it an offence to make "inimical" or "derogatory" remarks against the Constitution or a constitutional body terms which are undefined and which can result in deregistration of the non-governmental organization in question (arts. 6, 19, and 22).

28. The State party should immediately undertake the following measures to protect the rights of journalists, bloggers, human rights defenders and civil society organizations:

(a) **Protect them from unlawful killings, physical attacks and harassment. Ensure that police officials receive adequate training regarding the protection of human rights defenders. Register complaints and thoroughly investigate all attacks on the life, physical integrity and dignity of these persons, bring perpetrators to justice and provide victims with appropriate remedies;**

(b) **Repeal or revise the laws mentioned above with a view to bringing them into conformity with its obligations under the Covenant, taking into account the Committee's**

general comment No. 34 (2011) on freedoms of opinion and expression. In particular, it should clarify the vague, broad and open-ended definition of key terms in these laws and ensure that they are not used as tools to curtail freedom of expression beyond the narrow restrictions permitted in article 19 of the Covenant;

(c) Repeal the Foreign Donations (Voluntary Activities) Regulation Bill, and ensure that any legal provisions restricting access to foreign funding does not risk the effective operation of non-governmental organizations as a result of overly limited fundraising options, and ensure that non-governmental organizations can operate freely and without fear of retribution for exercising their freedom of expression.

Right to political participation

29. The Committee is concerned that violence during elections, such as the excessive use of force by State actors during the January 2014 election, hinders the rights of voters to participate in free and fair elections (art. 25).

30. The State party should ensure the safety and security of all individuals in the context of elections so that they may exercise their right to vote.

Refugees and Asylum Seekers

31. The Committee is concerned at reports that at times large numbers of asylum seekers fleeing violence in Myanmar were returned to Myanmar at the border. It is also concerned that the State party intends to relocate over 30,000 Rohingya refugees to the island of Thengar Char, an area which currently lacks the infrastructure necessary for respect of basic human rights, and is prone to flooding, and that such relocation might take place without the full and free consent of the affected individuals (arts. 6, 7, 12 and 27).

32. The State party should implement legislative and administrative measures to comply fully with the principle of non-refoulement in line with article 6 and 7 of the Covenant. It should consider acceding to the 1951 Convention relating to the Status of Refugees and its 1967 Protocol. It should ensure that refugees are not forcibly relocated and that planned relocation sites would offer conditions of life compatible with the international obligations of the State party.

D. Dissemination and follow-up

33. The State party should widely disseminate the Covenant, its initial reports, the written replies to the Committee's list of issues and the present concluding observations with a view to raising awareness of the rights enshrined in the Covenant among the judicial, legislative and administrative authorities, civil society and NGOs operating in the country, and the general public. The State party should ensure that the report and the present concluding observations are translated into the official language of the State party.

34. In accordance with rule 71, paragraph 5, of the Committee's rules of procedure, the State party is requested to provide, within one year of the adoption of the present concluding observations, information on the implementation of the recommendations made by the Committee in paragraphs 14 (Early marriage and harmful traditional practices), 20 (Extra-judicial killings and enforced disappearances) and 22 (torture and ill treatment) above.

35. The Committee requests the State party to submit its next periodic report by 29 March 2021 and to include in that report specific up-to-date information on the implementation of the recommendations made in the present concluding observations and of the Covenant as a whole. The Committee also requests the State party, in preparing the report, to broadly consult civil society and NGOs operating in the country, as well as minority and marginalized groups. In accordance with General Assembly resolution 68/268, the word limit for the report is 21,200 words. Alternatively, the Committee invites the State party to agree, by 29 March 2018, to use its simplified reporting procedure, whereby the Committee transmits a list of issues to the State party prior to the submission of its periodic report. The State party's replies to that list will constitute its second periodic report to be submitted under article 40 of the Covenant.

* Adopted by the Committee at its 119th session (6 - 29 March 2017)

Attachments

-  Bangladesh
63 KB