



## HUMAN RIGHTS analysis

# The status of UNCAT in Bangladesh: The fight goes on

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If the human rights situation in Bangladesh is analysed in parlance with the international standards of human rights law, we will see that the human rights record of the country has never been pleasing. During the various regimes, incidents of human rights violations were commonplace. Sometimes the level of torture increased, but incidents of human rights abuses never came to a halt. During the 23 months of the State of Emergency imposed by the immediate past 'caretaker government', various political activists, journalists, teachers and professional people - including human rights defenders - were tortured and became victims of inhuman or degrading treatment. It is alleged that various security and intelligence agencies, including law enforcement forces were used for this purpose.

Torture is inflicted to humiliate a person and as an exercise to show power and authority. Torture, unfortunately, is also applied as an efficient and less costly alternative to elaborate investigation. The premise is, once tortured; the person will open up and tell the truth. It is Odhikar's experience that law enforcement agencies believe security, law and order cannot be maintained without torture. Thus torture is carried out when suspects are picked up by law enforcement agencies, and taken into custody. When the suspects are taken into remand for further questioning, torture is a logical conclusion.

### Torture and impunity in Bangladesh

Torture has been employed for a long period of time without law

enforcement agencies being held accountable. There are no accurate estimates as to how many persons fall victim to torture or the extent of this practice. It is also difficult to guess, as torture is used for different purposes, as a part of questioning a suspect, getting confessions, extracting money, forcing a person to make a false statement, oppressing the poor and often to repress opposition against the Government party.

In Bangladesh torture is not considered a crime and though it is widely accredited, it is still not criminalised. Bangladesh still does not follow its legal obligations to stop torture, even after being a state party to the Convention Against Torture (CAT). According to international law regards torture and ill treatment as crime. Bangladesh also has to consider torture as a crime. To uphold human rights, international conventions should be followed, torture should be considered a crime, criminals should be punished and victims of torture should adequately be compensated.

During the Emergency, torture took a dreadful turn. According to Odhikar's information, 44 people were victims of torture in the year 2008. However, Odhikar believes that the actual number of victims of torture is higher because in most cases, victims keep their mouths shut in fear of being tortured again. Torture in custody continues during the present elected regime. In the past 10 months, 74 people were allegedly tortured by the law enforcement agencies. Among them 14 have reportedly been dead due to torture. Of these torture victims, 39 were tortured by police, 23 by the RAB, 5 by coast guard, 4 by

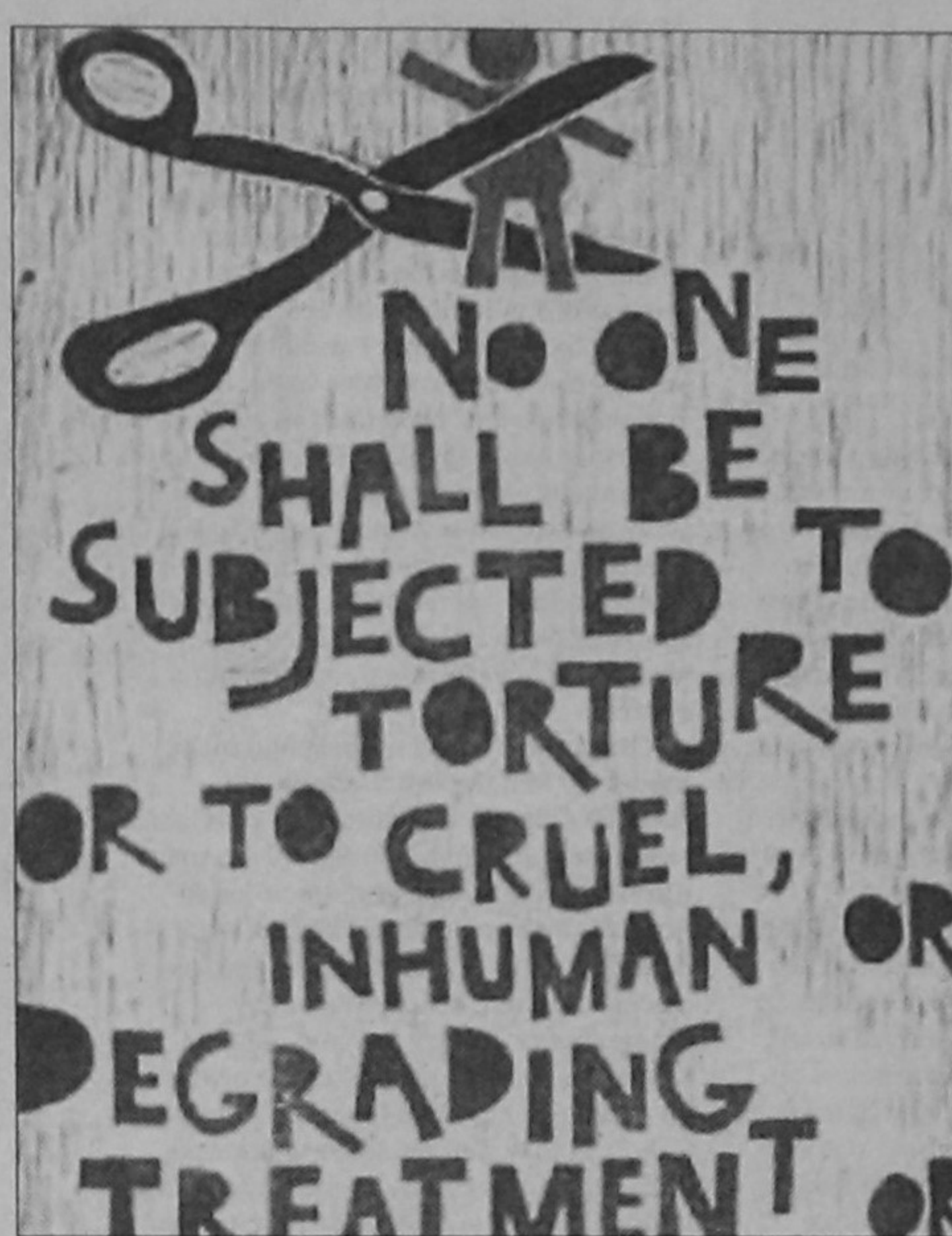
BDR, 2 by members of the Joint Task Force and 1 by jail police.

Torture and ill treatment of persons deprived of their liberty usually takes place in centres of detention that are inaccessible to any form of public scrutiny. This is the ideal context for torturers to operate with complete impunity. Torture constitutes one of the more gross violations of fundamental rights of human beings. It destroys the dignity of humanity by degrading their bodies while causing injuries, some times irreparable, to their minds and their spirits. The horrific consequences of this terrible human rights violation spread to the family of the victims and into their social surroundings. Through these acts, the values and principles upon which democracy stands and any form of human coexistence lose their significance.

### National Safeguard to Prevent Torture

The Constitution of the People's Republic of Bangladesh in Article 35 (5) explicitly states that 'no person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment.' However, the definition of torture is still not comprehensive. Sections 330 and 331 of the Penal Code, 1860 makes the acts of causing hurt or grievous hurt for the purpose obtaining confessional statements, criminal offences, punishable with imprisonment which may extend up to 10 years and fine. But it does not cover torture or cruel, inhuman or degrading punishment or treatment.

Article 32 of the constitution ensures protection of right to life and personal liberty in accordance



with law. Because of the consequences of such deprivation, the framers of the Constitution made the specific provision of Article 35 (5) as stated above even though it is very much covered by Article 31. Article 11 of the constitution states that the state shall be a democracy where human rights and worth for human dignity shall be secured for all. This Article further reinforces the safeguard against any form of

torture.

### Recommendations

The Convention against Torture, adopted by the United Nations, signifies an enormous progress by categorizing the practice of torture as an international crime and by creating the mechanisms to denounce it. However, despite efforts on the issue of prevention, progress has been small at the

national and international level.

Bangladesh Government ratified the CAT on 5th October 1998. All states that have ratified and signed the convention have agreed to count torture as a punishable crime in their national laws. The second term election of Bangladesh to the UN Human Rights Council has fortified Bangladesh's responsibility to comply with the international standard of human rights norms. What can be done by Bangladesh to curb this trend of torture and impunity? The following recommendations have been suggested:

- There is urgency to form an Independent Investigation Department to take complaints against the members of law enforcement agencies, including the security agencies, equipped with their own investigators.
- Torture has to be rejected and disowned by the authorities, which have to make it clear that acts of torture would not be tolerated and the perpetrator would also not be protected in any way.
- Impunity is seen everywhere, but nowhere more publicly than in the extra-judicial killings carried out by law enforcement agencies. Not a single individual has ever been made accountable for these. Impunity of law enforcement agencies should be culminated.
- Proper implementation of existing laws should be ensured.
- There is a necessity to provide victims with effective remedies and to ensure that they receive reparation for the injuries suffered.
- Reservation on Article 14 of the UNCAT must be withdrawn.

### Conclusion

Despite being a state party to various international treaties and conventions, torture and extra-judicial killings prevail in Bangladesh due to lack of accountability and culture of impunity of law enforcement agencies. The most important reason for this in Bangladesh is that torture is still not considered as a crime. Since we have no national law against torture, no practical step can be taken against this. As a result, incidents of torture and violations of human rights are being perpetrated, in different forms, by law enforcement agencies.

A culture of impunity protects the perpetrators and since most of the investigations are carried out by the same agencies, it is almost impossible to get redress for torture victims. There is no independent authority to complain against the law enforcement authorities. As such, torture and inhuman or degrading treatment remain and continue to be a source of major concern and a glaring example of human rights violations in Bangladesh. It is submitted that Bangladesh should enact a national legislation against torture with regard to the UNCAT and ratify and carry out the provisions of this Optional Protocol to the UNCAT.

The write up is an abridged version of a presentation made at the National Advocacy Meeting on 'Torture and the OPGAT: Creating National Awareness' organised by Odhikar and RCT, Denmark recently held in Dhaka.

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## HUMAN RIGHTS advocacy



# Advance participation of women in politics

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In South Asia, the concept of power and authority are ascribed to certain social characteristics determined by the male privileged groups to exclude women. Women normally are not given the opportunity to hold positions of power in politics. Though women of South Asia have historically fulfilled their obligations and contributed to the democratic struggles and social, economic and political development of their countries in the past, but their roles have remained unacknowledged.

The gender insensitive political culture of the region has made it difficult for women politicians to

well. Since most of the international instruments do not have explicit positions to create a gender sensitive, safe and secure space for women to participate actively in politics, it is imperative to harmonize the existing international instruments to be adapted at the national level.

With a view to analyze laws and policies to promote women's participation in politics by providing a regional forum to women politicians, legal experts, academicians and women activists to share gender gaps in the laws and policies of South Asia from the VAWIP perspective for enhancing the safe and secure participation of women in politics; to enlighten South Asian media perspectives on VAWIP by providing a regional platform to journalists, analysts, cri-

The discussed issues and themes of the conference included gender sensitivity in politics and women's participation in South Asia; laws and political participation in South Asia; election laws, system and code of ethics from gender perspectives, harmonization of VAWIP in CEDAW; South Asian media perspectives on VAWIP and their role; lobbying strategies and collaborative actions for addressing VAWIP issues, role of stakeholders in lobbying with national governments, SAARC and UN agencies.

The event saw the presence of eminent personalities like Rajesh Tandon, Chairperson, SAP-International; Rasheda K Chowdhury, Former Adviser to the Caretaker Government of Bangladesh; Dr Fazle Hasan Abed, Chairperson and founder of BRAC; Kumari Balasuriya, Governor, Southern Province, Sri Lanka; Meenakshi Gopinath of India; Hina Jilani, advocate and human rights activist of Pakistan; Chandni Joshi, advisory group member and former regional programme director, UNIFEM, Nepal; Masuda Jalal of Afghanistan, Dr Rohit Kumar Nepali, Executive Director, SAP-International, Advocate Sultana Kamal, Former Adviser to the Caretaker Government of Bangladesh and Executive Director, Ain O Salish Kendra; Anis Haroon, Chairperson of Women Commission on the Status of Women, Pakistan and Syed Nurul Alam, Executive Director, SAP-Bangladesh among others. Women politicians, human rights activists, lawyers, media personalities and members of the civil society from Afghanistan, Bangladesh, India, Nepal, Pakistan and Sri Lanka took part in the conference.

The conference expressed grave concern over the gender oppressive values and systems embedded in political cultures that inhibit women politician from establishing themselves in decision making positions at all levels and upholding democratic values. As a result while all countries have criminal laws to protect women from violence, these laws do not appear to be adequately effective in protecting women from violence in the political sphere. This factor often obstructs women's political career. Moreover, the election code of conduct in this region are gender insensitive and do not recognize that the situation of men and women in politics does not entail a level playing field.

The conference ended with a declaration of zero tolerance to violence against women in the politics. It called for immediate actions to create violence free politics where women can participate without fear on equal terms in politics and contribute towards nation building and urged the need of address of the VAWIP issues on part of different national, regional and international document, media and civil society pressure groups.

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firmly establish themselves in decision-making positions. The intensely competitive world of men dominated politics; patriarchal mindsets and masculine culture of politics are major obstacles to women's participation in politics in the region which has raised an urgent need for the issue of Violence Against Women in Politics (VAWIP) to be undertaken at a regional level and addressed effectively.

Though almost all national, regional and international documents guarantee equal rights of men and women, but in reality gender sensitive laws, policies and provisions are currently absent in South Asian countries. Most of the national laws are silent about VAWIP and political violence is dealt with under criminal laws. There seem to be no specific plans and actions to address the issues of VAWIP. Even it has not been discussed in most of the international instruments including CEDAW. The SAARC gender database has ignored the VAWIP issues as

tiques and activists to share the existing status and situation of gender sensitive political coverage in the media and its value and the importance of the media in addressing the issues of VAWIP in South Asia to promote safe and secure participation of women in politics and to synergize the collaborative actions for lobbying by bringing together all the stakeholders working on women in politics including national, regional and international organizations to develop the common lobbying of strategies and collaborative actions for addressing VAWIP issues at the International level, South Asia Partnership International (SAP-International) in collaboration with South Asia Partnership-Bangladesh (SAP-Bangladesh) and with the support from Oxfam Novib organized the 3rd South Asian Regional Conference on Democracies without Violence Engendering Politics, Policies and Actions on November 10-12, 2009 at BRAC Center Inn, Dhaka.

## FOR YOUR information



# Human Rights Council: How does it function?

THE Human Rights Council is an inter-governmental body within the UN system made up of 47 States responsible for strengthening the promotion and protection of human rights around the globe. The Council was created by the UN General Assembly on 15 March 2006 with the main purpose of addressing situations of human rights violations and make recommendations on them.

One year after holding its first meeting, on 18 June 2007, the Council adopted its "Institution-building package" providing elements to guide it in its future work. Among the elements is the new Universal Periodic Review mechanism, which will assess the human rights situations in all 192 UN Member States. Other features include a new Advisory Committee, which serves as the Council's "think tank" providing it with expertise and advice on thematic human rights issues and the revised Complaints Procedure mechanism, which allows individuals and organizations to bring complaints about human rights violations to the attention of the Council. The Human Rights Council also continues to work closely with the UN Special Procedures established by the former Commission on Human Rights and assumed by the Council.

On 18 June 2007, the Human Rights Council adopted the President text entitled "UN Human Rights Council: Institution Building" (resolution 5/1) by which a new Complaint Procedure is being established to address consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.

The new Complaint Procedure is established in compliance with the mandate entrusted to the Human Rights Council by General Assembly resolution 60/251 of 15 March 2006, in which the Council was requested to review and, where necessary, improve and rationalize, within one year after the holding of its first session, all mandates, mechanisms, functions and responsibilities of the former Commission on Human Rights, including the 1503 procedure, in order to maintain a system of special procedures, expert advice and a complaint procedure.

Accordingly, ECOSOC resolution 1503 (XLVIII) of 27 May 1970 as revised by resolution 2000/3 of 19 June 2000, served as a working basis for the establishment of a new Complaint Procedure and was improved



where necessary to ensure that the complaint procedure be impartial, objective, efficient, victims-oriented and conducted in a timely manner.

"Special procedures" is the general name given to the mechanisms established by the Commission on Human Rights and assumed by the Human Rights Council to address either specific country situations or thematic issues in all parts of the world. Currently, there are 31 thematic and 8 country mandates. The Office of the High Commissioner for Human Rights provides these mechanisms with personnel, policy, research and logistical support for the discharge of their mandates.

Special procedures' mandates usually call on mandate holders to examine, monitor, advise and publicly report on human rights situations in specific countries or territories, known as country mandates, or on major phenomena of human rights violations worldwide, known as thematic mandates. Various activities are undertaken by special procedures, including responding to individual complaints, conducting studies, providing advice on technical cooperation at the country level, and engaging in general promotional activities.

Special procedures are either an individual (called "Special Rapporteur", "Special Representative of the Secretary-General" or "Independent Expert") or a working group usually composed of five members (one from each region). The mandates of the special procedures are established and defined by the resolution creating them. Mandate-holders of the special procedures serve in their personal capacity, and do not receive salaries or any other financial compensation for their work. The independent status of the mandate-holders is crucial in order to be able to fulfill their functions in all impartiality.

Source: UN Human Rights Council Web page