

"ALL CITIZENS ARE EQUAL BEFORE LAW AND ARE ENTITLED TO EQUAL PROTECTION OF LAW" - ARTICLE 27 OF THE CONSTITUTION OF THE PEOPLE'S REPUBLIC OF BANGLADESH

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Reflections on Torture: denial or indifference?

ALMOST all regimes and governments engaging in torture consistently deny engaging in the practice, in spite of overwhelming hearsay and physical evidence from the citizens they tortured or their families. Prisons, law enforcement and intelligence apparatus working for the State are major sources of torture. Bangladesh is a country where torture is a constant method used by law enforcement agencies to extract confessional statements from arrestees, or just to demoralise them and break their will. Despite the fact that Bangladesh is a party to the Convention against Torture (CAT), the term 'torture' has yet to be criminalised. There are well-documented allegations of widespread torture by law enforcement personnel as part of an established routine in Bangladesh. Given the circumstances that have made the practice of torture and impunity an almost permanent fixture in the practice of criminal investigation, criminalisation of 'torture' would

nity in the law enforcement agencies of the country, where the infliction of pain and other inhuman methods have become the easiest way to close a criminal investigation.

Defining 'torture'

For the purpose of the discussions in this paper, it is first necessary to define the term 'torture' as it will be used here. In order to do so, this paper has relied on the UN

to lawful sanctions.

According to the Convention, therefore, torture is 'severe pain or suffering, whether physical or mental' being perpetrated by or with the consent of 'a public official or other person acting in official capacity'; and, according to a 18 May 2006 report of the Committee against Torture, there are 'no exceptional circumstances whatsoever' where a state can use torture and break its treaty obliga-

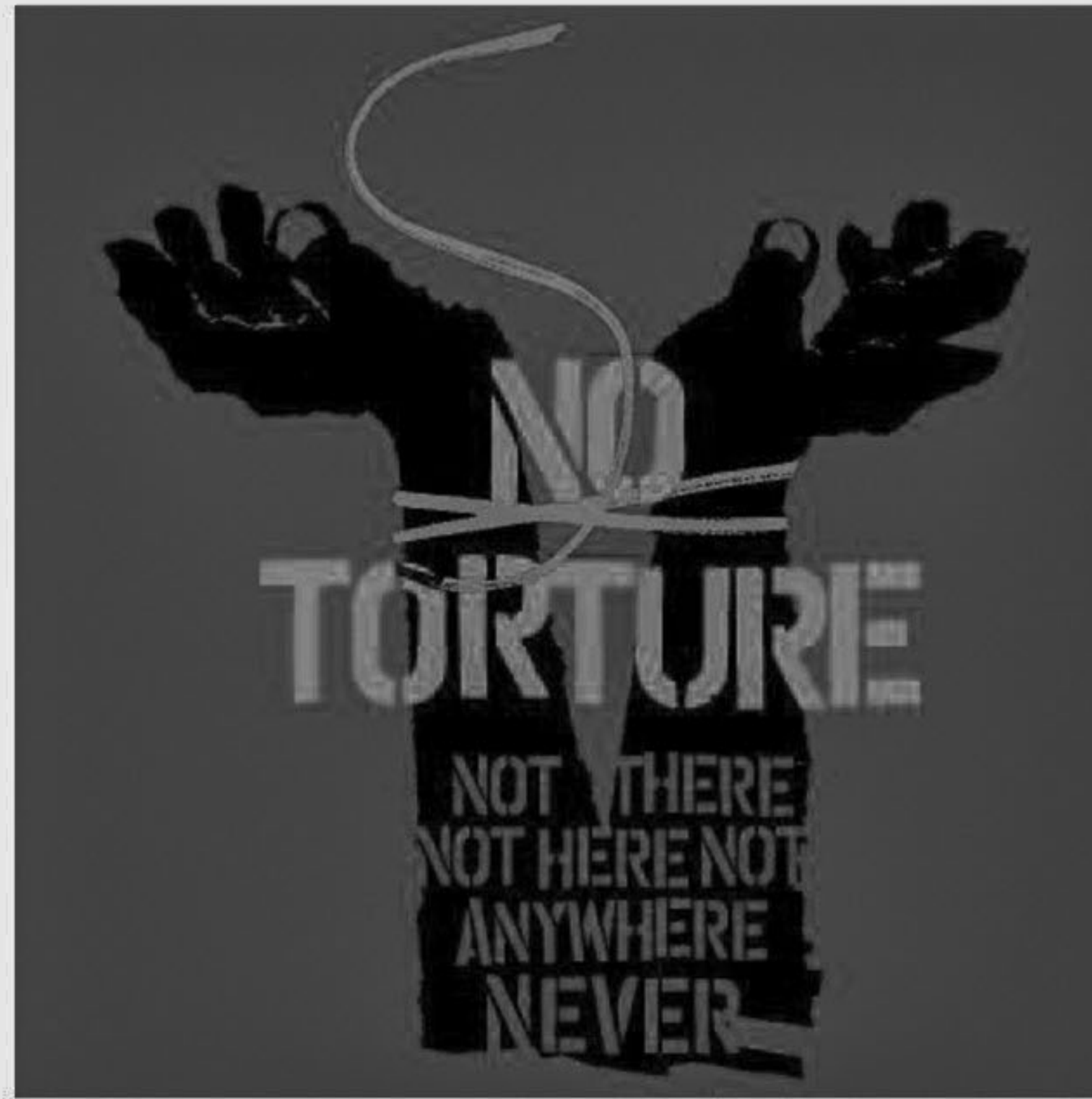
as a punishment; that

ii. Such torture mainly perpetrated by the police and the members of the Rapid Action Battalion is extrajudicial and may also lead to the death of the person tortured.

iii. Despite the fact that Bangladesh is a party to the Convention against Torture (CAT),

tortured can name, specifically, those involved in the perpetration of the torture and the place they were tortured, very little is done to investigate or apprehend those involved. This only reinforces the practice, as those who indulge in torture do so in full confidence that the will not be brought to justice.

Torture is an issue in Bangladesh that is discussed widely among the human rights community, denied by the government machinery and practiced by the law enforcement agencies. Unfortunately, apart from the Constitution of the People's Republic of Bangladesh, no other law mentions the term 'torture' though there are similar actions described in the penal laws. Law page would consecutively focus on different aspects of 'torture'; the present legal provisions, the perpetration of acts that amount to torture and the difficulty in implementing the laws. It would highlight the need to criminalise 'torture' not through enacting a new law, but by amending the Penal Code of 1960 and adding a new chapter on 'torture' and the pressing need to enact a law to protect victims and witnesses of all crime, so that they feel and are safe to



provide for stronger sanctions against the perpetration of torture, in comparison to what is contained in the criminal laws of Bangladesh to date. It would also strengthen the prosecution of perpetrators of torture, since the international definition of 'torture' covers both physical and mental aspects. Without an absolute prohibition on torture, situations like those discussed above, where torture is being used as an instrument of interrogation in the name of preventing crime and terrorism will prevail.

This write up studies the laws relating to cruel, inhuman and degrading punishment and the effect on criminal laws and law enforcement agencies if 'torture' were made a criminal offence. The write up highlights the need to criminalise torture in Bangladesh in order to reduce the level of impu-

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. According to Article 1 of the Convention, the term "torture" means: any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental

tions'. Article 16 of the Convention obliges signatories to prevent 'acts of cruel, inhuman or degrading treatment or punishment' in 'any territory under its jurisdiction'. This act is used for several purposes, according to the Convention:

- for obtaining a confession;
- for obtaining information;
- as punishment for an act committed or possibly committed;
- as a tool of intimidation;
- as a means of coercion;
- due to any form of discrimination.

Therefore it needs to be determined that:

i. In Bangladesh, torture is perpetrated by law enforcement agencies with the aim to fulfill one or more of the above objectives especially to obtain information and confessions; to intimidate and coerce and

the term 'torture' has yet to be criminalised.

There are provisions within existing criminal laws in Bangladesh that can still be used to punish the offence. However, since the term 'torture' is not mentioned in the Penal Code, a void remains and it is thus difficult to prosecute a person for this offence.

An Enabling Atmosphere for Torture and Impunity in Bangladesh

There are well-documented allegations of wide-spread torture by law enforcement personnel as part of an established routine in Bangladesh. Despite the fact that most of those

This is compounded by the fact that often torture is committed on a person on the orders of 'higher-ups' - which allows police to act with impunity. In addition, there is a fundamental lack of separation of powers; and political interference from the Executive has led to politically motivated decisions and lack of accountability for human rights violations, including torture.

Apart from the police force in Bangladesh, specialised law enforcement agencies the Rapid Action Battalion (RAB), 'joint forces', etc to assist the civilian force, has also resulted in an increased level of torture and other cruel and inhuman treatment and lack of account-

ability. The lack of disciplinary action against law enforcement personnel remains one of the main attributing factors to torture. There is no functioning independent system dealing with complaints of torture committed by law enforcement officials resulting in impunity and lack of accountability. RAB was formed in 2004 to assist the police force to combat crime in Bangladesh. The Battalion comprises of members from the Armed Forces and the Police, distinctively uniformed in black from head to toe. Initially, the people of Bangladesh welcomed the formation of RAB, thinking it would be better to combat the lawlessness in the country, as the police force was rife with corruption, poor investigation and apathy. Unfortunately, this has changed and in Bangladesh, all law enforcement agencies are feared and are in no way considered institutions emanating security and justice.

Apart from the cases of torture and physical abuse perpetrated on those in custody; throughout the public sector there is a fundamental lack of resources, including lack of infrastructure, personnel and proper investigative equipment. Sub-standard conditions in places of detention, including severe overcrowding, lack of sanitation, food and drinking water as well as medical treatment, amounts to cruel, degrading and inhuman treatment. Again, torture may be followed by the demise of the victim either as a result of the torture or in, what the law enforcers call 'cross-fire' or 'ambush', where they claim that the victim, after agreeing to take them to where the goods were hidden, suddenly gave a signal and his supporters ambushed the team and the victim was killed in the ensuing shoot-out.

Government inaction and indifference play a great part in encouraging impunity and torture by law enforcement agencies. In very rare cases, the police or the Ministry of Home Affairs may start an investigation into an alleged instance of torture, usually as a result of pressure from powerful individuals or groups, but these investigations do not result in prosecutions or punishments that are in line with international standards concerning torture. Corruption combined with influences from inside and outside the police and judiciary, plays a key role in ensuring impunity for the perpetrators. On the other hand, the victims lose physical and psychological capabilities, employment, financial solvency and social dignity.

(to be continued)

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HUMAN RIGHTS WATCH

Governments should protect migrant workers

MINISTERS from Asian labor-sending countries meeting in Dhaka this week should together endorse protections for migrant workers, Human Rights Watch, Migrant Forum in Asia, and CARAM Asia said in a briefing paper (Dhaka meeting was in progress when this briefing was published). They should give priority to protecting migrant domestic workers, who are at especially high risk of abuse, and to ending recruitment-related exploitation, the organizations said.

On April 19 to 21, 2011, Bangladesh hosted the fourth round of the "Colombo Process," a series of regional consultative meetings on Asian contractual migrant workers. Under the theme "Migration with Dignity," delegates from 11 Asian countries that send large numbers of workers abroad discussed the strategies to improve coordination, optimize benefits from migration, and prevent abuses at home and abroad. Several labor-receiving countries from Asia and the Middle East attended as observers.

"Abuses against migrants are often linked to gaps in information, poor coordination, and competition for jobs, so it's a big deal for these governments to sit around the table and address these problems

together," said Nisha Varia, senior women's rights researcher at Human Rights Watch. "The Dhaka meeting is also a chance to share information about successful reforms with other countries in the region."

The briefing paper, "Protecting Asian Migrants' Rights: Recommendations to Governments of the Colombo Process," urged delegates to pledge support for a proposed international convention on labor standards for domestic work, increase civil society participation in future regional dialogues, promote increased multilateral cooperation, and take measures to eliminate recruitment fees charged to migrant workers.

"We are encouraged that governments are reviving the Colombo Process, but migrant voices also belong at the table," said William Gois, coordinator for Migrant Forum in Asia, a regional network of 200 groups committed to protecting migrants' rights. "As the organizations and trade unions representing migrants, we would like to have greater access to the meetings and expanded opportunities to participate in the discussions."

Some 3 million Asian men and women migrate each year, a large proportion working in domestic

service, construction, manufacturing, and agriculture in other Asian countries and the Gulf States. Migrant workers play a key economic role - they fill labor demands in host countries and in 2010, Asian migrants sent home an estimated US\$175 billion in remittances. Gulf countries in particular rely heavily



on Asian contract labor; for example, there is approximately one migrant domestic worker for every two Kuwaiti citizens. Migrants from Bangladesh, India, Pakistan, and Sri Lanka have fueled construction booms in Saudi Arabia, the United Arab Emirates, and Bahrain.

But inadequate protections mean migrants also risk an array of abuses, the groups said, including recruitment-related deception and debts, unpaid wages, hazardous working conditions, physical and sexual abuse, and forced labor, including human trafficking. Unlicensed recruiters often operate with impu-

nity, migrants have limited information about their rights and channels to seek help, and immigration policies can trap workers with abusive employers.

"When high, and often inflated, recruitment fees leave migrants heavily indebted, they are especially

vulnerable to abuse," said Dr. Chowdhury Abrar, chairman of the international relations department at the University of Dhaka. "Cracking down on excessive fees and unethical recruitment practices will be a key ingredient to any reform."

Asian and Middle Eastern governments have introduced incremental reforms in recent years, and this year's forum will provide an opportunity to share best practices. While some countries have improved oversight of labor migration through bilateral agreements, uneven bargaining power between sending and receiving countries has meant that the resulting agreements are often weak. Such negotiations may also have unintended consequences, the groups said. When Indonesia froze migration of domestic workers to Malaysia in 2009 until a more protective Memorandum of Understanding could be concluded, recruiters from Malaysia turned to Cambodian workers instead.

"Even though migrants from Asia confront similar abuses while working abroad, their governments have typically addressed these bilaterally, and the results have been far weaker protections than if they negotiated together," said Mohammad Harun Al Rashid, regional coordinator for CARAM Asia.

In the wake of the departure of large numbers of migrants from Libya due to the armed conflict, governments at the Colombo Process meeting also plan to discuss coordinated responses to such emergency situations. Many Bangladeshi migrants were stranded in Egypt and Tunisia and had little means of returning home.

The International Organization for Migration provides technical support to the Colombo Process and serves as its secretariat. The labor-sending countries attending the Colombo Process include Afghanistan, Bangladesh, China, India, Indonesia, Nepal, Pakistan, the Philippines, Sri Lanka, Thailand, and Vietnam. Eight observer members represent countries of employment: Bahrain, Italy, Kuwait, Malaysia, Qatar, South Korea, Saudi Arabia, and the United Arab Emirates. The previous three regional consultations took place in Colombo, Sri Lanka (2003), Manila, the Philippines (2004), and Bali, Indonesia (2005). In 2008, the United Arab Emirates was host for a meeting that brought together governments from the Colombo Process, Gulf Cooperation Council countries, Yemen, Singapore, and Malaysia.

Source Human Rights Watch.