

Submission to The Committee Against Torture
67th Session - (22 July - 9 August 2019)

BANGLADESH

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Reporting Organisations:



Harm Reduction International (HRI) is a leading NGO dedicated to reducing the negative health, social, and legal impacts of drug use and drug policy. We promote the rights of people who use drugs and their communities through research and advocacy to help achieve a world where drug policies and laws contribute to healthier, safer societies.

The organisation is an NGO in Special Consultative Status with the Economic and Social Council of the United Nations.



The World Coalition Against the Death Penalty, an alliance of more than 150 NGOs, bar associations, local authorities and unions, was created in Rome on 13 May 2002. The aim of the World Coalition is to strengthen the international dimension of the fight against the death penalty. Its ultimate objective is to obtain the universal abolition of the death penalty. To achieve its goal, the World Coalition advocates for a definitive end to death sentences and executions in those countries where the death penalty is in force. In some countries, it is seeking to obtain a reduction in the use of capital punishment as a first step towards abolition.

Harm Reduction International and the World Coalition Against the Death Penalty (WCADP) welcome the Committee Against Torture (the Committee)'s decision to consider Bangladesh compliance with the Convention Against Torture (CAT) in its 67th Session, despite not having received the initial state party report.

With this submission, Harm Reduction International and WCADP wish to highlight some of the human rights violations relevant to the Committee's mandate which have been committed in the context of drug control in Bangladesh. In particular, this submission will focus on gross human rights violations committed by law enforcement agencies, the death penalty for drug offences, conditions of detention, access to health services, and ill-treatment in private rehabilitation centres.

Bangladesh drug policy

Bangladesh drug policy is predominantly punitive. Article 19 of the Narcotics Control Act (Act no.20 of 1990) envisages harsh punishments for the production, transport, trafficking, possession, and use of a broad range of controlled substances. Depending on the substance and the quantity, the penalties range from six months to life imprisonment, to the death penalty if the use, possession, or trafficking of drugs exceeds as little as:

- 25 grams of heroin or cocaine;
- 10 grams of morphine;
- 2 kilograms of opium and derivatives.

Imprisonment can also be imposed for the mere possession of "tools, equipments, raw materials serviceable in the production of intoxicants on himself or in a place in his possession"¹ and for knowingly assenting to the use of "rooms, houses, sites, grounds, vehicles, articles or equipments" to commit the abovementioned offences.²

In addition, Article 16 of the Narcotics Control Act allows the compulsory detention and treatment of persons dependent on drugs.

Bangladesh has recently intensified its anti-drug efforts.

In early May 2018, Prime Minister Sheikh Hasina called for the Rapid Action Battalion (RAB) to combat the drug trade with the same fervour that was applied to operations against "militants" and extremists.³ The Prime Minister affirmed in June of the same year: "Drugs destroy a country, a nation and a family. [...] We will continue the drive, no matter who says what".⁴

The punitive, zero-tolerance anti-drug campaign that these statements propelled has resulted in an ongoing, widespread violation of human rights across the country.

This war on drugs is ultimately a war on the poor, and a political strategy.⁵ UN experts denounced that:

"'Slum' areas have been particularly subjected to raids and that that the 'war on drugs' disproportionately targets poor and underprivileged people. There are also reports that lists of individuals to be subjected to operations have been prepared, that members of the RAB [Rapid Action Battalion] are accepting money not to target certain individuals, and that in some cases killings may have been politically motivated".⁶

¹ The Narcotics Control Act (Act no.20 of 1990), Art. 20. Available at: https://www.unodc.org/res/cld/document/the-narcotic-control-act-1990.html/The_Narcotic_Drugs_and_Psychotropic_Substances_Control_Act_1990.pdf

² Ibid., Art. 21

³ Dhaka Tribune, 'PM Hasina tells RAB to continue drives against drug abuse' (3 May 2018). <https://www.dhakatribune.com/bangladesh/2018/05/03/pm-hasina-tells-rab-continue-drives-drug-abuse>

⁴ Doshi V '138 people killed in 2 months in Bangladesh police crackdown on drug dealers.' (The Washington Post, 12 July 2018). https://www.washingtonpost.com/world/asia_pacific/138-people-killed-in-2-months-in-bangladesh-police-crackdown-on-drug-dealers/2018/07/11/c78806ba-6f1d-11e8-b4d8-eaf78d4c544c_story.html?noredirect=on&utm_term=.b62e0a8fd2f1

⁵ Notably, the coalition led by the prime minister won the 31st December 2018 elections with 96% of the seats. The election was denounced as "farcical" and marred by violence and abuse of power. See, among others: DAWN (2018) 'Bangladesh ruling coalition declared winner of disputed election.' <https://www.dawn.com/news/1454646>.

⁶ OHCHR (2018) *OHCHR Communication to Bangladesh*. Geneva: United Nations Office of the High Commission for Human Rights. Available from: <https://spcommreports.ohchr.org/TmSearch/Results>. (According to available sources, the Government of Bangladesh has failed to reply to the Communication, as of 20 June 2019).

Gross human rights violations by law enforcement authorities

Extrajudicial executions

Summary, extrajudicial and arbitrary executions are prohibited under international human rights law. Those prohibitions are derived from the right to life enshrined in the International Covenant on Civil and Political Rights, to which Bangladesh is a party, and are considered peremptory norms.⁷

As also clarified by the International Guidelines on Human Rights and Drug Policy, States have a responsibility to “Take measures to prevent both State-perpetrated and private violence, threats to life, and unnecessary or disproportionate use of potentially lethal force based on actual or perceived drug use or involvement in the illicit drug trade, and investigate, prosecute, and hold accountable those responsible for such acts.”⁸

Since May 2018, up to 466 people were killed by the police in the country, mostly in the context of anti-drug operations.⁹ These have been denounced as “the highest number of extra-judicial killings in the country’s history.”¹⁰ According to Human Rights Watch, despite credible and systematic allegations of violations, including an audio recording of an extrajudicial execution by members of the RAB, authorities have failed to investigate those responsible and there exists a long standing pattern of covering up unlawful killings.¹¹

Notably, in its 2017 Concluding Observations on Bangladesh the UN Human Rights Committee expressed concern at the high rate of extrajudicial killings by the RAB and other Bangladeshi law enforcement units, and at the lack of investigations and accountability.¹²

Torture

Allegations of torture committed by law enforcement in the context of anti-drug operations have emerged. According to the local human rights organisation ODHIKAR, police arrested some people following a drug raid in Matikuma Village, in Jessore District, on 8 November 2018. The police later tortured two of these people, shooting them both in the leg, resulting in both having their wounded leg amputated. Despite the Torture and Custodial Death (Prevention) Act, 2013, being passed after demands from human rights defenders, a vast majority of torture victims and family members are not able to file any cases under it due to fear of reprisals.

Death Penalty for drug offences

The death penalty for drug offences constitutes a violation of international law. The UN Human Rights Committee has authoritatively and repeatedly made clear that drug offences do not meet the threshold of “most serious crimes” under Article 6.2 of the International Covenant on Civil and Political Rights.¹³ From the same Article also descends the prohibition, for retentionist countries, to expand capital punishment to new offences.¹⁴

The death penalty in any context is also increasingly considered to be contrary to an emerging customary norm that its imposition and enforcement is in breach of the prohibition of torture or cruel, inhuman or degrading treatment or punishment.¹⁵

⁷ Human Rights Council, ‘Report of the UN Special Rapporteur on extrajudicial, summary or arbitrary executions. Protection of the right to life in the context of arrest’, UN Doc A/66/330 (30 August 2011), Para 19

⁸ UNAIDS et al., ‘International Guidelines on Human Rights and Drug Policy’ (2019), 5.ii <https://www.humanrights-drugpolicy.org/>

⁹ International Drug Policy Consortium, *10 Years of Drug Policy in Asia: How Far Have We Come? A civil society shadow report* (2019), 35

¹⁰ Islam Z, ‘Rehabs in need of rehabilitation’

¹¹ Human Rights Watch, *World Drug Report 2018: Bangladesh* (2019) <https://www.hrw.org/world-report/2019/country-chapters/bangladesh>

¹² Human Rights Committee, ‘Concluding Observations on the initial report of Bangladesh’. UN Doc. CCPR/C/BGD/CO/1 (27 April 2017), Para 19

¹³ Among others, Human Rights Committee, ‘General Comment no.36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life’. UN Doc. CCPR/C/GC/36 (30 October 2018), Para 35

¹⁴ *Ibid.*, Para 34

¹⁵ *Ibid.*, Para 51. Also OHCHR, *Using the death penalty to fight drug crimes violates international law, UN rights experts warn World Day Against the Death Penalty* (10 October 2015). <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16581&LangID=E>

Although it has been ten years since the last drug-related execution took place in the country, this de facto moratorium for drug offences is currently threatened by the Government's push to expand capital punishment as a tool to combat this perceived drug emergency.

On 27 October 2018, the Bangladeshi Parliament adopted the Narcotics Control Act 2018, which expands the applicability of the death penalty by including yaba (methamphetamine pills) among the controlled substances whose production, possession or trafficking can be punished by death; effectively contravening the abovementioned prohibition to expand the imposition of capital punishment.

At least 229 individuals were sentenced to death in Bangladesh in 2018,¹⁶ of which two for drug offences;¹⁷ while according to Odhikar 47 people were sentenced to death - and one was executed - between January and March 2019.¹⁸ According to the latest available official data, 1204 individuals are on death row in Bangladesh.¹⁹ Regrettably, the government does not specify for which crime these individuals have been convicted, nor provides information on their conditions of detention.

In May 2018, Bangladesh underwent the third cycle of Universal Periodic Review, receiving recommendations by 18 states to establish a moratorium and work towards the total abolition of the death penalty. These were all noted but not accepted.

Arbitrary detention for drug-related offences, and inhuman conditions of detention

To respect the absolute prohibition of torture, Bangladesh has an obligation to protect the lives and well-being of people in custody by ensuring that prison conditions meet international standards.

The first three weeks of the 2018 anti-drug campaign saw the arrest of over 13,000 suspected of drug offences,²⁰ and numbers have not since abated: recent sources indicate that around 26,000 people may have been arrested – in many cases arbitrarily - for drug offences between May 2018 and February 2019.²¹ As a result, prison overcrowding has become a serious problem in Bangladesh. Despite an official capacity of 36,614, there were 86,550 prisoners being held across the country as of 31 March 2019.²² In January 2019, 100 prisoners were reportedly kept in an abandoned warehouse in Khulna District Jail due to lack of space.²³

Prison overcrowding is one of the key contributing factors to poor prison conditions and its consequences can be life-threatening. The local human rights organisation Odhikar reported that unhygienic conditions have resulted in prisoners becoming ill, and that several prisoners have died due to a lack of proper treatment facilities and negligence by prison authorities.²⁴

In addition, Bangladesh does not currently provide lifesaving harm reduction services, such as opioid substitution therapy (OST), to people in detention. The denial of OST to people in detention has been declared to be a violation of the right to be free from torture and ill treatment in certain circumstances. As this Committee noted in its recent Concluding Observations on the Russian Federation, States have an obligation to provide people who use drugs in detention with adequate access to necessary medical treatment.²⁵

Obstacles to accessing health care

Lack of access to pain treatment when the state is aware of the level and extent of suffering and when the treatment to remove or lessen that suffering is available, can constitute a violation of the right to be free of

¹⁶ Amnesty International, *Death Sentences and Executions 2018* (2019)

¹⁷ <https://www.thedailystar.net/country/2-get-death-drug-dealing-1589623>

¹⁸ The Daily Star, '2 get death for drug dealing' (11 June 2018) <https://www.thedailystar.net/country/2-get-death-drug-dealing-1589623>

¹⁹ Bangladesh Department of Prisons, *Prison Population Statistics, 2017. Volume 1* (2017)

²⁰ Miles T, 'U.N. urges Bangladesh to halt killings of suspected drug offenders', Reuters, <https://www.reuters.com/article/us-bangladesh-drugs/u-n-urges-bangladesh-to-halt-killings-of-suspected-drug-offenders-idUSKCN1J21ZH> (Reuters, 6 June 2018)

²¹ <https://www.aljazeera.com/news/2019/02/drug-dealers-surrender-bangladesh-crackdown-190216165728814.html>

²² Bangladesh Prison Directorate, cited in ODHIKAR Human Rights Monitoring January- March 2019.

²³ ODHIKAR, *Three-Monthly Human Rights Monitoring Report on Bangladesh: January-March 2019*

²⁴ Ibid..

²⁵ Committee Against Torture, 'Concluding Observations on the sixth periodic report of the Russian Federation'. UN Doc. CAT/C/RUS/CO/6 (28 August 2018), Para 21.

cruel, inhuman or degrading treatment. In a December 2008 Joint Letter to the Commission on Narcotic Drugs, the UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment and the UN Special Rapporteur on the right to health, argued that the right to be free of cruel, inhuman and degrading treatment also entails a positive obligation on the government's side to ensure accessibility of pain treatment to the general population.²⁶ In a later report to the Human Rights Committee, the Special Rapporteur on torture noted that "there can be no doubt that withdrawal symptoms can cause severe pain and suffering if not alleviated by appropriate medical treatment."²⁷

During the latest cycle of Universal Periodic Review, in 2018, the Government of Bangladesh accepted a recommendation to take specific measures aimed at eliminating all forms of discrimination and stigma in healthcare settings, in particular against those persons who are in a more vulnerable position, including in the context of mental health and of HIV/AIDS.²⁸

The crackdown on drugs has seriously hampered the ability of people who use drugs to access health services. Drop in centres are reportedly being obstructed or even stopped due to requests from the security services, while people who use drugs fear that they will be arrested or even killed if they seek treatment there.²⁹ This puts people already in vulnerable positions at increased health risk, has serious implications for HIV prevention and treatment and; thus also preventing Bangladesh from achieving the Sustainable Development Goal 3.3.³⁰

Ill-treatment in private rehabilitation centres

States obligations under the absolute prohibition of torture and ill-treatment include positive duties to protect individuals from acts of ill-treatment perpetrated by private actors.³¹ General Comment 2 of this Committee clarifies that "each State party should prohibit, prevent and redress torture and ill-treatment in all contexts of custody or control, for example, in prisons, hospitals, schools, institutions that engage in the care of children, the aged, the mentally ill or disabled, in military service, and other institutions as well as contexts where the failure of the State to intervene encourages and enhances the danger of privately inflicted harm."³²

Furthermore, the International Guidelines on Human Rights and Drug Policy clarify that, in order to comply with their obligations with regard to the prohibition of torture, States shall "Take effective legislative, administrative, judicial, and other measures to prohibit, prevent, and redress all acts of torture and ill-treatment in their jurisdiction and in all settings under their custody or control, including in the context of drug dependence treatment, whether administered in public or private facilities."³³

Dozens of private drug rehabilitation centres operate in Bangladesh (both licensed and non-licensed), which impose non-evidence based forms of treatment amounting to ill-treatment, and in some cases leading to death.³⁴ Recent reports denounced the inhuman, unhygienic conditions in which individuals are held in some of these centres and detailed the inhuman treatments imposed. Among others, these reports described severe overcrowding, lack of medical professionals, "clusters of cockroaches camped out in the clogged kitchen sink, hid out in the food and cutlery storage area and scurried away on the floor", denial of

²⁶ Joint letter by the UN special rapporteur on the prevention of torture and cruel, inhuman or degrading treatment or punishment, Manfred Nowak, and the UN special rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Anand Grover, to the Commission on Narcotic Drugs, December 2008. Available at <https://www.hr-dp.org/files/2013/09/22/SpecialRapporteursLettertoCND012009.pdf>. See footnotes 218 and 219 here: <https://www.hrw.org/report/2011/05/12/uncontrolled-pain/ukraines-obligation-ensure-evidence-based-palliative-care>.

²⁷ Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, Manfred Nowak, A/HRC/10/44, January 14, 2009, <http://daccessdds.un.org/doc/UNDOC/GEN/G09/103/12/PDF/G0910312.pdf?OpenElement> (accessed August 4, 2009), para. 72.

²⁸ Human Rights Council, 'Report of the Working Group on The Universal Periodic Review: Bangladesh'. UN Doc. A/HRC/39/12 (11 July 2018), 147.31

²⁹ OHCHR, 'Killing of suspected "drug offenders" in Bangladesh must stop – UN Human Rights Chief.' (6 June 2018) <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23178&LangID=E>

³⁰ Communication UA BGD 5/2018 (6 June 2018), <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gld=23888>

³¹ Human Rights Committee, 'General comment no. 31 [80], The nature of the general legal obligation imposed on States Parties to the Covenant.' UN Doc. CCPR/C/21/Rev.1/Add.13 (26 May 2004)

³² Committee Against Torture, 'General comment no.2, Implementation of Article 2 by State Parties'. UN Doc. CAT/C/GC/2 (24 January 2008), Para.15

³³ UNAIDS et al., 'International Guidelines on Human Rights and Drug Policy' (2019), 6.

³⁴ For an example see Islam Z, 'Rehabs in need of rehabilitation' (The Daily Star, 1 February 2019). <https://www.thedailystar.net/star-weekend/spotlight/news/patients-not-criminals-1695820>;

information on the treatment imposed and forced feeding of medication, and abusive and intimidating behaviour by the part of the administrators.³⁵

Recommendations

In light of the above, Harm Reduction International and WCADP invite the Committee to recommend Bangladesh to:

- Immediately halt the anti-drug campaign that began in May 2018 and deliver justice and accountability by ensuring impartial and effective investigations in all allegations of arbitrary detention, extrajudicial killings, and torture;
- Immediately adopt an official moratorium on executions and remove drug offences from the list of crimes punishable by death, as a first step towards the complete abolition of the death penalty;
- While imprisoned, ensure detainees are held in humane conditions and in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), with access to adequate food, water, and sanitation;
- Adopt legislation and put in place the necessary policies to ensure that people who use drugs in prison receive appropriate harm reduction services, including needle and syringe programmes and opioid substitution therapy;
- Ensure drop in centres providing harm reduction and health services can operate freely, and adopt measures to protect people who use drugs while accessing healthcare services; including by making sure that security services do not stop or otherwise harass or detain people who use drugs before or after they access such services;
- Undergo a systematic review of private rehabilitation centres, focusing on the conditions of the 'patients' and the kind of treatment imposed, and fully investigate allegations of deaths and ill-treatment occurred in these centres;
- Reply promptly to the Communication sent by the Office of the High Commissioner for Human Rights to the Government on 6 June 2018 (UA BGD 5/2018).

³⁵ Islam Z, 'Rehabs in need of rehabilitation' (The Daily Star, 1 February 2019). <https://www.thedailystar.net/star-weekend/spotlight/news/patients-not-criminals-1695820>; Rabbi A H, 'To rehab and back' (Dhaka Tribune, 26 July 2018). <https://www.dhakatribune.com/magazine/weekend-tribune/2018/07/26/to-rehab-and-back>