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## Human Rights Council

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Universal Periodic Review

### **Written statement\* submitted by the Asian Legal Resource Centre, a non-governmental organization in general consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[22 August 2013]

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\* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

## **Bangladesh: State abuses UPR process due to lack of enforceability of UN human rights machinery**

In the UN Universal Periodic Review, Bangladesh has successfully abused the UPR Process, courtesy weakness in the enforcement of UN Human Rights machinery.

At the UN Human Rights Council's UPR process on 29 April 2013, during the 16<sup>th</sup> Session of the UPR Working Group in Geneva, Bangladesh's human rights record has been reviewed.

The Bangladesh state, on its part, has blatantly denied its responsibility in addressing gross violations of civil and political rights of its citizens.

And, it appears the UN Human Rights Council is going to finally adopt the UPR Report, distributed on 8 July 2013 and included as 'Agenda item 6' in the 24<sup>th</sup> Regular Session in the Council in September 2013, as a matter of ceremonial formality.

Since the UPR Session held between 22 April and 3 May 2013, the human rights conditions in Bangladesh have become worse. Documentations related to these alarming realities have been made by the Asian Legal Resource Centre (ALRC) and *Odhikar*, a Bangladesh based human rights organisation, which have participated in the UPR process at the 16<sup>th</sup> Session of the UPR Working Group at the UN Human Rights Council.

The Council should observe and question what it is going to adopt as a reviewed report.

In paragraph 63 of the UPR Report the Foreign Minister is quoted stating that "*extrajudicial killing was not permitted by law and as per Penal Code*". The Foreign Minister's statement is incorrect. The Penal Code, 1860, does not prescribe or deal with matters of law-enforcement agencies' operational affairs. Rather, it defines crimes and prescribes punishment of particular crimes concerned. It is, in fact, the Code of Criminal Procedure, 1898, that is the actual procedural law determining the limit and jurisdiction of the law-enforcement agencies in exercising their official authority and discharging the responsibility of upholding the laws of the land. In the same paragraph, no. 63, the Foreign Minister said, "*LEAs could resort to use of force or firearms only for self-defence and protection of public life and property*". This, for those unfortunate enough to be privy to the recent violence in Bangladesh, is a back-handed admission that under the excuse of 'self-defence and protection of public life and property', extrajudicial murders are occurring in Bangladesh. The minister claims that "*the number of deaths during exchange of fire had been reduced by a large margin to 177 during 2009–2012 from 546 during the preceding five years, and that such deaths were only 0.34 per cent of total number of arrests.*" This statement not only establishes the fact that extrajudicial killings are taking place unabatedly but also admits to the realities regarding the large number of citizens whose right to liberty is being denied. Is Bangladesh proud to establish that it only kills 0.34 percent of all the people arrested?

In paragraph 64 of the UPR Report, it has been mentioned that the Bangladesh Foreign Minister said "*there was no scope for impunity for LEAs under Bangladeshi laws and the Codes of Conduct and Rules of Engagement of the concerned LEAs. Any incident of human rights violation or use of excessive or firearms was subject to investigation, prosecution, legal and disciplinary actions.*" Theoretically, this statement is partially correct.

Reality presents a completely opposite picture. The problem rests in Bangladesh's culture of impunity, rather than its books of laws, mere parchments in the practical sense as far people's fundamental human rights are concerned. There are many records showing 'killed in crossfire' while the dead body has been found handcuffed. In almost all cases of extrajudicial executions, the law-enforcement agencies have arrested suspects beforehand; tortured them in custody; and killed them in a pre-planned manner, sometimes in custody

and sometimes in public. Virtually all the murders take place after midnight, according to stories repeatedly told by and about the Rapid Action Battalion and the police of Bangladesh.

It is true that there are provisions in law to investigate deaths in the custody of law-enforcement agencies. According to the default practice, an executive officer of the state, who is an ex-officio 'executive magistrate', is assigned by the authorities to conduct an inquiry into the alleged extrajudicial murder. Such officers know very well that they have no choice but to rubber-stamp the version supplied by the accused state personnel. Individually and institutionally, the embedded mindset of the public officers, which includes the institutions like the judiciary and prosecution, is to ensure impunity through cover-up, no matter what allegations surface against state perpetrators.

In paragraph no. 64, *"the Minister reported that 1,678 Rapid Action Battalion (RAB) members had so far been subjected to prosecution and conviction, including imprisonment and dismissal."* This statement is a blatant lie to the international community. Not a single record is available regarding the "prosecution and conviction" of any member of the law-enforcement agencies who have committed crimes involving extrajudicial murder, torture, and enforced disappearance.

In paragraph 65, the minister has said that the *"allegation of torture and ill-treatment needed to be substantiated with evidence."* It is the responsibility of the State to substantiate the evidences of all crimes including torture and ill-treatment that have been made inseparable from the policing and criminal investigation systems in Bangladesh, as the government wants the police to silence the dissident voices and any political opposition through the torturous system. The minister claims that *"in case of any proof of torture through legal proceedings, stern departmental action was taken against those responsible."* Firstly, the complaint mechanism, controlled by the police who investigate the criminal cases, always, not only denies registering complaints of victims of torture at the very outset but also, fabricates criminal cases against the survivors. Any victim who dares to file a complaint before a Court faces continued threat and intimidation as soon as the complaint reaches the relevant police station for investigation, i.e. when the Judicial Magistrate does not take the responsibility of investigating the case of custodial torture himself / herself. The media or human rights organizations that listen to the victims' plight and publish documentation face continuous repression, including intimidation, threat of discontinuing public advertisement and / or banning by the authorities, followed by arrest and detention of the journalists and human rights defenders in fabricated cases. In such circumstances there is no possibility of credible investigation and collection of substantiated evidence.

The minister deliberately avoided the matter of legislation criminalizing torture in compliance with the UN Convention Against Torture (CAT), despite a bill titled *"Torture and Custodial Death (Prohibition) Bill, 2009"* pending in Parliament since 10 September 2009, which has been reviewed by the relevant Parliamentary Committee and unequivocally recommended for adoption as legislation on 10 March 2011. Such suppression of information indicates that the authorities are committed to continue the prevailing torturous policing system in the country.

In paragraph 66 of the UPR Report, the minister has *"disagreed with the suggestion that enforced disappearance was frequently used by LEAs and clarified that the term did not exist in Bangladeshi laws, which recognized kidnapping or abduction as cognizable offences. She underlined that the association of LEAs or State machinery with such criminal acts was deliberately done to undermine their credibility and create misperception in the public mind."*

The Minister and the entire government machinery of Bangladesh is fooling the international community, and the country's citizens, by using the excuse that 'enforced disappearance' is not defined in penal laws. The government is systematically promoting the practice of enforced disappearance in the country, which can be vividly found through

the official treatment given to allegations of enforced disappearance. For example, when a disappearance takes place, in most cases, the victims are found to have been picked up from the streets or right from their workplaces by people either wearing the uniform of the Rapid Action Battalion or dressed in plain cloth claiming to be officers of the State. The police always refuse to register any complaints involving enforced disappearance whenever the allegations are against state-agents. Sometimes, in situations when the complainant comes from an influential socio-political background, the police may agree to register a complaint if the accused in the allegation is changed from a particular state agency to 'unknown miscreants'.

The last resort for families of the disappeared victims is the High Court Division of the Supreme Court of Bangladesh, where seeking remedy is a business of affluent people, due to the extremely high expenditure, courtesy lawyers' fees and pervasive entrenched corruption.

At the cost of exorbitant expense, when a family of a disappeared victim files a *Habeas Corpus* petition with a High Court Bench, the litigants face all-out objections from the Office of the Attorney General, which usually behaves like the slave of the ruling political masters and the security forces of the state.

Apart from the information provided during the UPR Working Group's Session in April 2013, at least two more cases of enforced disappearances have since been recorded where victims have been denied their right to get justice and also harassed and intimidated continuously.

The ALRC and *Odhikar* urge that the Human Rights Council of the United Nations needs to understand that the people of Bangladesh are suffering 'enforced disappearance', something horrifying, even if one only comprehends its most immediate effect on society. The Council should urgently put its resources and efforts together to correct and strengthen the enforcement of its human rights machinery so that the rights of countless victims do not remain only in ceremonial discussion. The UN Human Rights mechanisms deserve to be liberated from parchments and bureaucratic discussions. People's rights must be realized, physically, on the ground. If effective measures are adequately developed, countries like Bangladesh will not be allowed to abuse the UPR process and get away with a basket-full of lies right under the nose of the international community.

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