

# Political Conflict, Extremism and Criminal Justice in Bangladesh

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## *Executive Summary*

As the Awami League (AL) government's political rivalry with the Bangladesh National Party (BNP) reaches new heights, so has its repression. At the same time, a deeply politicised, dysfunctional criminal justice system is undermining rather than buttressing the rule of law. Heavy-handed measures are denting the government's legitimacy and, by provoking violent counter-responses, benefitting violent party wings and extremist groups alike. The government needs to recognise that it is in its interest to change course, lest it fail to either contain violent extremism or counter political threats. A key part of a more prudent course would be to depoliticise and strengthen all aspects of the criminal justice system, including the judiciary, so it can address the country's myriad law and order challenges and help stall a democratic collapse.

The political conflict between the AL and BNP has resulted in high levels of violence and a brutal state response. The government's excesses against political opponents and critics include enforced disappearances, torture and extra-judicial killings. Police tasked with targeting the government's rivals and an overstretched justice system compelled to prosecute opposition leaders and activists now also face a renewed threat from violent extremists. The permissive legal environment, however, is creating opportunities for extremist outfits to regroup, manifested in the killings of secular bloggers and foreigners and attacks on sectarian and religious minorities in 2015. The government's reaction to rising extremism, including arrest and prosecution of several suspects without due process and transparency, is fuelling alienation that these groups can further exploit.

Reconciling with the opposition and hence stabilising the state requires both political compromises and an end to the repressive use of law enforcement agencies and abuse of the courts. Politicising the police and using elite forces, particularly the Rapid Action Battalion (RAB), to silence political dissent, are laying the seeds of future violence. By concentrating on targeting the opposition, the police are failing to curb criminality; the prisons are overburdened by the mass arrests of opposition leaders and activists; and the judiciary, perceived as partisan for trials and sentences based on political grounds, is losing credibility. The result is a justice system that swings between two extremes: woefully slow and dysfunctional for ordinary cases and speedy, undermining due process, in politically charged ones.

Any effort to reform a dysfunctional criminal justice system, including by investing in training, equipping and otherwise modernising the police, prosecution and judiciary, will be insufficient unless it is also taken out of politics. Years of partisan recruitment, promotions and postings have polarised these institutions to the point that officials no longer conceal their allegiances. Partisanship tends to determine the kinds of complaints and cases that get filed and prioritised and even informs verdicts and sentences.

The problems surrounding delivery of justice are further compounded by legal mechanisms to silence civil society and prevent media scrutiny and parallel processes that undermine due process in politically charged cases. The deeply flawed International Crimes Tribunal (ICT), established in 2010 to prosecute individuals responsible for atrocities committed during the 1971 liberation war, is an important example of

the dangers of using rule of law institutions for political ends. Perceptions of injustice are creating opportunities for extremist groups and fuelling political conflict.

The BNP and its Jamaat-e-Islami ally marked the anniversary of the disputed 2014 elections with indiscriminately violent strikes and traffic blockades, which were matched brutally by the state. The BNP now appears less willing to resort to violence to unseat the government; its decision to re-enter the political mainstream gives the government an opportunity it should exploit by urgently resuming dialogue with the opposition. To demonstrate sincerity and as a first step, it should end use of the rule of law institutions to target opponents and silence critics. Accepting legitimate avenues of participation and dissent would also help regain some lost legitimacy and the trust of citizens in the state's provision of both justice and security. So long as there is no independent court system to arbitrate disputes fairly, the parties are likely to continue taking those disputes to the streets, but a neutral judiciary could help defuse tensions by upholding fundamental principles and preventing executive excesses. The international community can help to promote political reconciliation by, in the U.S. and EU case, using economic levers to pressure Dhaka to respect civil and political rights, and in New Delhi's by using close ties to urge the AL to allow the opposition legitimate political expression and participation. There is no time to lose. If mainstream dissent remains closed, more and more government opponents may come to view violence and violent groups as their only recourse.

## *Recommendations*

*To restore political stability and ensure security*

### **To the Government of Bangladesh:**

1. Commit to accepting legitimate political opposition and dissent, including by ending use of the criminal justice system to target political critics; and respond positively to the BNP's decision to refrain from violence and re-enter the political and constitutional mainstream through participation in the electoral process by reopening urgently a dialogue to end the destabilising political stalemate.

### **To the Opposition:**

2. Commit to peaceful opposition, including by preventing party activists from using violence to subvert the political order; and sever ties with political allies who use violence to destabilise the government.

### **To the Higher Judiciary:**

3. Develop consistent judicial doctrine/interpretation upholding the right to a fair trial and restraining the executive branch from undermining fundamental constitutional rights and principles, including actions against civil society institutions that undermine their ability to function freely.

*To respect the constitutional right to free speech and dissent*

### **To the Government of Bangladesh:**

4. Withdraw all cases against journalists, human rights groups and other civil society actors that are based on vague and dubious grounds, such as expressing views deemed "derogatory" of public officials or against the "public interest", and end press closures and raids on media offices.
5. Withdraw the 2014 national broadcast policy and remove restrictions on online expression in the Information and Technology Act.

### **To the Higher Judiciary:**

6. Refrain from issuing contempt of court citations to media and other civil society representatives for criticising court judgments, and overturn unjustified contempt convictions in other courts, including the International Crimes Tribunal.

*To ensure due process and end political interference in the justice system*

### **To the Government of Bangladesh:**

7. Enforce the constitutional requirement for an independent judiciary by establishing a more transparent, consultative appointment process, including consultations with the bar councils and parliamentary endorsement.

8. Avoid statements alleging the identity of those responsible for crimes while investigations are ongoing; and end the practice of presenting suspects to the media, rather than in court, as required by the constitution.

**To the Higher Judiciary:**

9. Issue clear orders against any executive bodies or officials found to be interfering in the judicial process.
10. Insist on the need for an adequately resourced and staffed Supreme Court secretariat as fundamental to achieving judicial independence; provide the necessary resources to and scrutinise the workings of the lower judiciary; and hold to account judges who fail to provide a fair trial.

*To modernise the criminal justice system*

**To the Government of Bangladesh:**

11. Introduce amendments to adapt the Code of Criminal Procedure 1898, Evidence Act 1872, Police Act 1861, Penal Code 1860 and the Jail Code to modern challenges, including by implementing Bangladesh Law Commission recommendations on increasing use of technology and forensic and other modern evidentiary standards in investigations and trials.
12. Professionalise the police, prosecution agencies and lower judiciary, including by introducing a merit-based selection and recruitment process, secure tenure and effective mechanisms to evaluate performance and check political interference.
13. Identify personnel, training and resource needs particularly for the Police Bureau of Investigation, while developing specialised investigation units for national- and district-level policing.

*To push for a broader political reform agenda*

**To the International Community:**

14. Link some development assistance, and in the U.S. case the restoration of the Generalised System of Preferences (GSP) facility, to demonstrable improvements in human rights, free speech and association and fair trial.
15. Use, in the case of India, its close relationship with the AL to urge the government to allow legitimate avenues of political expression and participation to the opposition.

**Brussels, 11 April 2016**

# Political Conflict, Extremism and Criminal Justice in Bangladesh

## I. Introduction

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Bangladesh's law enforcement and judicial system is tasked with suppressing the Awami League (AL) government's political rivals, while also countering criminality and violent extremism. Over-stretched, it is failing both to enforce the law and to stabilise the polity. Current law and order challenges are largely rooted in the intense rivalry between the government and its political opposition, the Bangladesh Nationalist Party (BNP) and its Jamaat-e-Islami ally. A resurgent extremist threat, symbolised by the killing of secular bloggers and foreigners and attacks on religious minorities in 2015 and in April 2016, adds to the security challenges.<sup>1</sup>

Despite relative peace on the streets, the country has yet to emerge from its cycle of political violence. The government's heavy-handed, repressive response to challenges from the political opposition and to national security from extremists provokes violent counter-responses, aggravating pressure on a politicised police and judiciary. The resentment it fuels makes accommodation with the opposition and, by extension, internal stability, more elusive. By using force and denying justice, it also provides extremist organisations an opportunity to exploit the resultant alienation and justify their anti-state agenda.

This report examines the factors driving political instability and contributing to insecurity, and assesses the criminal justice system's capacity to contain the threat of rising extremism and criminality and help to stem democratic collapse. Interviews were conducted with law enforcement and other government officials, political leaders and civil society representatives, including the legal community and rights activists. Given the restrictions on political expression and dissent and the sensitivity of the information, most names and locations of some interviews have been withheld.

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<sup>1</sup> For analysis of politics and security dynamics, see Crisis Group Asia Reports N°s 264, *Mapping Bangladesh's Political Crisis*, 9 February 2015; 187, *The Threat from Jamaat-ul Mujahideen Bangladesh*, 1 March 2010; 182, *Bangladesh: Getting Police Reform on Track*, 11 December 2009; 151, *Restoring Democracy in Bangladesh*, 28 April 2008; and 121, *Bangladesh Today*, 23 October 2006.

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## II. Constitutional Distortions, Political Instability and Violence

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Bangladesh's founders based the 1972 constitution on secularism, tolerance and ethnic identity, reflecting its creation out of a bloody civil war that followed decades of political struggle against Pakistani military regimes for autonomy, democratic governance and the rights of the Bengali majority.<sup>2</sup> Yet, subsequent amendments reflected a drift toward a more repressive polity. The second amendment (1973) gave the executive power to declare a state of emergency; the 1974 Special Powers Act authorised warrantless detention and imposed the death penalty for a wide range of offences, even adulteration of food.<sup>3</sup> The fourth amendment (1975) in effect turned the country into a single-party state under the Bangladesh Krishak Sramik Awami League (BKSAL), banned media other than four state-owned newspapers and brought the lower judiciary directly under the executive. The 1975 military coup led to the assassination of President Mujibur Rahman and much of his family, for which his daughter, current Prime Minister Sheikh Hasina Wajid, blames military ruler Ziaur Rehman, former Prime Minister Khaleda Zia's husband, thus sowing the seeds of the AL-BNP hostility that persists today.

The fifth constitutional amendment, which validated the 1975 coup and subsequent martial law, provided indemnity to Mujib's assassins. It also repealed the secularism clause from the preamble, replacing it with "absolute trust and faith in almighty Allah". This had significant ramifications for the law, state and minority rights, since most in Bangladesh are Buddhist, Hindu, Christian or animist.<sup>4</sup> Rehman's regime was also marked by extrajudicial killings, including of dozens of dissenting military officers, and trials of hundreds of soldiers by military courts.

After General Hussain Muhammad Ershad ousted Zia's regime in a palace coup in 1982, Sheikh Hasina and Khaleda Zia jointly opposed the military regime, which, lasting until 1990, saw pro-democracy activists brutally killed by police, including the November 1987 slaying of a pro-AL protester that inspired a surge of demonstrations.<sup>5</sup> After the AL- and BNP-led pro-democracy movement brought Ershad down in 1990, civilian rule was restored. The BNP formed the government following the 1991 elections, and the two parties continued to collaborate, including on the August 1991 constitutional amendment to revive parliamentary democracy. After the AL boycotted the disputed February 1996 election, however, and held demonstrations that paralysed Dhaka, the BNP supported the thirteenth constitutional amendment, which provided for a 90-day caretaker government to oversee subsequent elections.<sup>6</sup>

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<sup>2</sup> Bengali speakers in the east wing, now Bangladesh, were a majority of united Pakistan's population. Donald L. Horowitz, *Ethnic Groups in Conflict* (California, 1985), pp. 242-243.

<sup>3</sup> The law was enacted against the backdrop of a nine-month famine and mass starvation in 1974, when local businessmen were widely accused of hoarding and adulterating food supplies.

<sup>4</sup> The constitution did not recognise these groups as indigenous; as recently as October 2015, the government issued circulars warning against use of that word to describe ethno-religious minorities in any events hosted on public property. "Fresh restrictions on indigenous peoples stirs controversy", *Dhaka Tribune*, 29 October 2015.

<sup>5</sup> "Shaheed Noor Hossain Day observed", *Prothom Alo*, 10 November 2015.

<sup>6</sup> The system foresaw the president appointing the chief adviser and ten advisers within fifteen days of parliament's dissolution to oversee elections within 90 days. The chief adviser would be the last serving Supreme Court chief justice, a retired appellate division justice or "an appropriate citizen"; if none were available, the president would take the role. The president would also assume defence



The caretaker system, however, contributed to deeper politicisation of state institutions, as governments filled them with loyalists to consolidate their rule, and also to retain influence during the caretaker administrations that oversaw elections. Hundreds of bureaucrats were sanctioned for suspected sympathies and/or allegiance to the rival camp.<sup>7</sup> In the second half of the BNP-led government (2001-2006), attacks on and killings of top opposition leaders also increased, with the AL accusing it of negligence or complicity.<sup>8</sup> Countrywide violence before the scheduled 2006 polls gave the military justification to intervene on 11 January 2007, resulting in a military-backed caretaker government that continued until December 2008.

Democracy was restored in 2009, and the AL government's June 2011 decision to amend the constitution to abolish the caretaker system, following a Supreme Court ruling declaring it unconstitutional, ended a process that, at least conceptually, provided for peaceful transfers of power. The 5 January 2014 polls were the most violent ever, and the BNP and its Jamaat ally marked their one-year anniversary with violent strikes and traffic blockades, triggering a brutal state response that led to four months in which more than 122 were killed and thousands of protestors detained.<sup>9</sup>

Since mid-2015, there has been a veneer of calm. The BNP contested mayoral elections in 234 municipalities in December, and, while alleging massive rigging, refrained from violent confrontation. It also avoided violence when marking the second anniversary of the disputed elections in January 2016. However, the AL government continues to deny the opposition legitimate avenues for participation and dissent. In 2015, it suspended some 500 BNP-backed local government representatives and replaced them with pro-AL officials.<sup>10</sup> Thousands of criminal cases have been lodged against opposition members and activists. At least eight top BNP leaders were arrested in 2015. Zia and her son, BNP Vice Chair Tarique Rahman, face corruption and other criminal charges that could imprison them for life. Given the fragility of the political system a single spark, such as Zia's conviction, could reignite the violence that has brought the country to a virtual standstill twice since 2013.

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ministry powers and functions and have authority to promulgate ordinances and rules and, if needed, a state of emergency. Crisis Group Report, *Mapping Bangladesh's Political Crisis*, op. cit.

<sup>7</sup> "Why OSD without specific reason: HC", *BDnews24.com*, 4 June 2012.

<sup>8</sup> "Tarique was involved in Aug 21 grenade attack", *The Daily Star*, 16 December 2015.

<sup>9</sup> Crisis Group Report, *Mapping Bangladesh's Political Crisis*, op. cit.

<sup>10</sup> "Looking back 2015: Violence, no space for opposition mark politics", *The New Age*, 31 December 2015.

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### III. Law and Order Challenges

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#### A. Party-backed Violence and Criminality

Bangladesh's political culture has been described by a legal scholar as "relentlessly violent", with governments exploiting the state machinery to suppress the opposition and the opposition mobilising violent party workers to undermine the government.<sup>11</sup> This zero-sum game is responsible for the political impasse. In 14,000 incidents between 2002 and the end of 2013, including 369 days of *hartals* (strikes), more than 2,400 died and 126,300 were injured. Violence during strikes accounted for a quarter of the documented violence. The AL and BNP individually accounted for more than 40 per cent of the incidents against each other.<sup>12</sup>

Party-linked student and youth groups that played a key role in opposing authoritarianism before Bangladesh's birth and during military rule have mostly served as coercive wings for their parties since the 1990s. They are used to expand influence and entrench control, often by force, over resources and turf, including on college campuses. They are also used to enforce *hartals* and other forms of street agitation. With student politics "becoming synonymous with thuggery in the last twenty years", the BNP's student wing, Jatiyatabadi Chhatra Dal, and youth wing, Juba Dal, and the AL's student wing, the Bangladesh Awami Chhatra League, and youth wing, Juba League are also increasingly involved in violent criminal activities.<sup>13</sup>

Moreover, student and youth organisations also provide ruling parties a recruitment pool for state institutions, including law enforcement agencies, which commonly ignore their violence and criminality. If linked to government, such groups in effect operate above the law. Even without such links, they exercise significant influence, enhancing their party's recruitment potential. The temptation of financial reward through extortion and other means also attracts students from economically deprived backgrounds to these groups.<sup>14</sup>

The Jamaat-e-Islami's student wing, Islami Chhatra Shibir, poses unique law enforcement challenges. In 1978, the Zia regime lifted the Mujib government's ban on the party, which had opposed independence. Over the next two decades, the party established a robust grassroots and economic machinery that, even as it lacked broad popular support, translated into significant political clout. This enabled the Jamaat to join the BNP-led coalition government in 2001.

Shibir's violence is different in brutality, if not volume, from that of other parties' youth wings.<sup>15</sup> In February 2013, soon after the International Crimes Tribunal (ICT) sentenced Jamaat Vice President Dilwar Hossain Sayadee to death (see below), its student activists committed unprecedented violence in a week that saw over 60 deaths, with police especially targeted.<sup>16</sup> They were allegedly also responsible for some of the

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<sup>11</sup> Saira Rahman Khan, "Vested Interest: The Human Rights Practices of Political Parties", in *Special Report: Inexistent Rule of Law in Bangladesh*, Asian Human Rights Commission, vol. 13, nos. 2-3, June-September 2014.

<sup>12</sup> Bert Suykens and Aynul Islam, "Distribution of Political Violence in Bangladesh", Conflict Research Group, Department of Conflict and Development Studies, Ghent University, 2015.

<sup>13</sup> "Boys with guns", *The Star*, 1 February 2013.

<sup>14</sup> Crisis Group interviews, editor, prominent daily; law enforcement officials, Dhaka, 22 December 2015.

<sup>15</sup> Its methods reportedly include slicing the veins on the hands and feet of political opponents. "Shibir 'cuts' BCL leader's tendon", *Bdnews24.com*, 31 October, 2013.

<sup>16</sup> "Shibir men attack cops in Rajshahi again", *The Daily Star*, 1 April, 2013.

worst attacks during election-related violence in late 2013 and the early months of 2015.<sup>17</sup> Many Shibir leaders and activists have joined banned militant groups, such as Jagrata Muslim Janata Bangladesh (JMJB), Jamaat-ul Mujahedin Bangladesh (JMB) and Ansarullah Bangla Team.<sup>18</sup> These include a prominent JMJB commander, Aziz ur Rahman (Bangla Bhai), executed in 2007, and Rezwanul Azad Rana, an absconding Ansarullah Bangla Team member sentenced to death for the murder of blogger Rajib in 2013 and the prime suspect in a number of 2015 blogger killings.<sup>19</sup>

## B. *Extremist Violence*

### 1. State inaction and action

Soon after Bangladesh's formation, and during the 1980s and 1990s, radical leftist parties, such as Purba Banglar Communist Party, Biplobi Communist Party, Purba Banglar Sarbahara Party, Red Flag, Gono Mukti Fouz and Janajuddho conducted numerous attacks across the country. To counter them, paramilitary forces were raised, such as the Jatiya Rakkhi Bahini (National Defence Force, absorbed into the military in 1975).<sup>20</sup> By the 2000s, the radical left threat was limited to low-scale criminal activity, mostly in the south west and parts of the north. The growth of religious extremist militancy was partly sparked by Islamist opposition to the left and, even more so to the AL and its secular political leanings.

In 2004, a new organisation, the JMJB, carried out vigilante "justice" against radical leftist activists in the northern Bagmara district.<sup>21</sup> Within a year of its formation, calling for imposition of Sharia (Islamic law), a number of other Islamist extremist organisations, including JMB and Harkatul Jihad Al Islami-Bangladesh (HUJI-B) conducted major attacks across the country, including suicide bombings of courts in Chittagong and Gazipur and attacks on judges in Jhalakathi. Among the most prominent was the 21 August 2004 grenade attack on the AL rally that injured Sheikh Hasina and killed a senior party member and twenty others. This was followed by countrywide synchronised bombings in 63 of 64 districts on 17 August 2005. Some groups, including JMB and HUJI-B, had close links with regional extremists, such as the Pakistan-based, anti-India Lashkar-e-Tayyaba.<sup>22</sup>

Though religious extremism arose under its watch, the BNP-led coalition government (2001-2006), which included the Jamaat, did not target radical Islamist groups. Some security analysts believe that the BNP, and certainly its Jamaat ally, shared their political ideology and goals.<sup>23</sup> Driven similarly by animosity towards India, Bangladesh's military and some political actors, including within the BNP, also patronised

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<sup>17</sup> Crisis Group Report, *Mapping Bangladesh's Political Crisis*, op. cit.

<sup>18</sup> Crisis Group interviews, law enforcement officials and security experts, Dhaka, November 2015-January 2016.

<sup>19</sup> "Bangla Bhai active for six years", *The Daily Star*, 13 May 2004. "Blogger Rajib Killing: Convicted Rana hiding in Malaysia", *The New Age*, 22 January 2016.

<sup>20</sup> "Myth, reality and Rakkhi Bahini", *The Daily Star*, 13 January 2014. The Rapid Action Battalion (RAB), Rakkhi Bahini's successor, has conducted similar operations against radical leftists. "Purbo Banglar Communist Party founder Mofakkhar killed in Rab action", *The Asian Tribune*, 19 December 2004.

<sup>21</sup> Eliza Griswold, "The Next Islamist Revolution?", *The New York Times Magazine*, 23 January 2005.

<sup>22</sup> Crisis Group Report, *The Threat from Jamaat-ul Mujahideen Bangladesh*, op. cit.

<sup>23</sup> Crisis Group interviews, Dhaka, November 2015; Brian Vaughn, *Bangladesh: Political and Security Developments and US Interests* (Pennsylvania, 2001).

and protected various Islamist extremist groups to support insurgencies in India's north-eastern provinces and Myanmar's Rakhine state.<sup>24</sup> However, under intense international and domestic pressure after the August 2005 synchronised attacks, the BNP government responded aggressively, hanging six top JMB leaders and imprisoning several by 2007.<sup>25</sup> The military-backed caretaker government (2007-2008) continued this punitive approach.

After assuming office in 2009, the AL empowered the police and the elite Rapid Action Battalion (RAB) to apprehend extremists, dismantle militant cells and counter their ability to radicalise and recruit. As part of a nationwide anti-radicalisation scheme, imams at mosques were trained to give anti-militancy sermons during Friday prayers. Parliament passed the Anti-Terrorism Act in 2009, since amended twice, and the Anti-Money Laundering Act in 2012 to prevent terrorism financing. According to police statistics, more than 2,400 militants were arrested between 2005 and 2013; at least 154 Islamist extremists are currently on death row.<sup>26</sup>

## 2. Re-emergent extremism

Though the crackdown undermined their ability to freely recruit, plan and conduct operations, Islamist extremists are now exploiting acute political polarisation, as they did during the BNP-led coalition government, to regroup. Moreover, the deeply-flawed ICT process is being used to depict the AL as anti-Islam and a threat to Bangladesh's Muslim identity. Protests by secular nationalist elements challenging some ICT verdicts have also galvanised extremist groups.

The ICT's February 2013 death sentence on Jamaat Vice President Sayadee, as noted, led to deadly clashes with police. In September 2013, the Supreme Court commuted the sentence to life imprisonment, sparking major protests by those who wanted it upheld.<sup>27</sup> In February 2013, the ICT had also sentenced Jamaat leader Abdul Quader Mollah to life imprisonment, provoking mass protests in Dhaka's Shahbagh square demanding a death sentence. In response, the government amended a law prohibiting the state from challenging ICT verdicts. On appeal, the court raised the sentence to death in September 2013.

The Shahbagh movement mobilised a counter-response from the Hefazat-e-Islam (Protection of Islam), an Islamist coalition, fed by a mushrooming *qaumi* (privately-run) madrasa sector that, unlike government-run madrasas, escapes regulation.<sup>28</sup> Portraying the Shahbagh protestors as atheists, it held major demonstrations in Chittagong and elsewhere, including a 3 May 2013 congregation in the capital that the police dispersed aggressively. Mollah's hanging that December added grist to Hefazat's propaganda mill. The ICT, Shahbagh movement and executions of popular

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<sup>24</sup> In the late 1970s, Dhaka accused Indian intelligence agencies of supporting the insurgency in the Chittagong Hill Tracts, bordering on Myanmar. Similarly, the Indian security establishment for years, especially during BNP-led regimes, accused Bangladesh's top intelligence agency, the Directorate General of Force Intelligence, of sponsoring terrorism in India. Crisis Group interview, retired military and RAB officials, Dhaka, December 2015. *Special Report*, op. cit.

<sup>25</sup> "Bangla Bhai active for 6 yrs: His outfit spreads tentacles to establish Taliban-like rule", *The Daily Star*, 13 May 2004; "Bangladesh executes 6 Islamist militants", *The New York Times*, 30 March 2007.

<sup>26</sup> Data provided to Crisis Group by the home ministry, Dhaka, October 2014. Also, "Radicalism growing freely", *The Daily Star*, 12 November 2015.

<sup>27</sup> "Bangladesh Islamist's war crimes life sentence", Reuters, 17 September 2013.

<sup>28</sup> According to the home ministry, the Hefazat-e-Islam was formed in 1948, when Bangladesh was still part of Pakistan.

clerics gave the group a new campaign with broader appeal than its original agenda focused on curtailing women's freedom, including a work ban. Its increased appeal was also evidence of rising Islamist influence in rural areas. In negotiations to end Hefazat protests, the AL government agreed, among other concessions, to abandon intended reforms to regulate the *qaumi* madrasa sector.<sup>29</sup>

Bangladesh has over 14,000 *qaumi* madrasas, with some 1.4 million students, mostly from rural and economically-deprived areas. The sector has resisted modernisation and regulation efforts by governments and remains independent of the national educational curriculum, amplifying concerns it serves as an extremist recruitment pool. The AL government has reportedly increased surveillance over such madrasas and some authors and publishers of inflammatory texts taught in them.<sup>30</sup>

In 2013, a new Islamist organisation, Ansarullah Bangla Team, espousing al-Qaeda's ideology, marked its appearance with the brutal killing of blogger and Shahbagh organiser Ahmed Rajib Haider Shovon and attacks on two other bloggers. It reportedly has a hit list of 84 "atheist" bloggers, of which nine have been killed, as well as two publishers. The Bangladeshi-American blogger Avijit Roy was the first of five victims of brutal murders and attacks in 2015; on 6 April 2016, another secular blogger, Nazimuddin Samad was murdered in Dhaka.<sup>31</sup> These attacks symbolise a new kind of extremist threat, aimed at silencing liberal and secular voices. Attacks on foreigners have also increased, including the 28 August 2015 killing of an Italian national in Dhaka, the 3 September murder of a Japanese national in Rangpur and the 20 November attack on an Italian priest. While the killing of the publishers was claimed by al-Qaeda in the Indian Subcontinent (AQIS), the other attacks were claimed by the Islamic State (IS), raising concerns that rivalry between the new entrants to the Bangladeshi jihadist landscape could potentially escalate.<sup>32</sup>

Though the police have arrested extremist suspects for the attacks on foreigners, senior officials, including Prime Minister Hasina, attribute these to hired hands of the BNP and Jamaat.<sup>33</sup> The government has also criticised the blogger community for promoting atheism and was silent when the Ulema League, an AL-affiliated religious group, demanded the death penalty for anyone insulting religious sentiments.<sup>34</sup> Such

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<sup>29</sup> Crisis Group Report, *Mapping Bangladesh's Political Crisis*, op. cit.; "Hefazat chief helped draft policy, then opposed it", *The Daily Star*, 19 March 2014.

<sup>30</sup> "Qaumi madrasas under scanner", *Dhaka Tribune*, 26 April 2014.

<sup>31</sup> "Secular activist who criticised Islamism killed in Dhaka", *The Guardian*, 7 April 2016; "Blogger Rajib killing: Convicted Rana hiding in Malaysia", *The New Age*, 20 January 2016. "Bangladeshi blogger named on hit list warned: 'You will be next'", *The Guardian*, 28 May 2015. "Bangladesh: Killing of blogger blow to free speech", Human Rights Watch, 12 May 2015; "In Bangladesh, blogging can get you killed", Amnesty International, 9 November 2015.

<sup>32</sup> AQIS was set up by Aimal al-Zawahari in September 2014 in response to Islamic State (IS) leader Abu Bakar al-Bagdadi's challenge. "Al Qaeda claims responsibility for attacks on two publishers in Bangladesh", *The New York Times*, 1 November 2015; "For foreigners, fears grow over killings claimed by Islamic State in Bangladesh", *The Washington Post*, 20 November 2015; "Another Italian national shot at", *The New Age*, 19 November 2015; "Italian aid worker killing: no clue to murder", *The New Age*, 30 September 2015; "Yet another foreigner shot to death", *The New Age*, 4 October 2015.

<sup>33</sup> "All evidence shows us it's not ISIS", said Sajeeb Wazed, the prime minister's son and chief government adviser on information technology, adding that the four suspects in the Italian aid worker's killing "have no affiliation to know terrorist organisations. They're just criminals". "For foreigners, fears grow over killings", op. cit.

<sup>34</sup> "Militants change tactics, but govt in Bangladesh sticks to old strategy", *The Daily Star*, 7 August 2015.

statements provoke misgivings even among sympathisers about the AL's commitment to its secularist credentials.

Sectarian attacks and attacks on religious minorities (see below) also intensified toward the end of 2015, including on a Shia procession to mark Ashura on 24 October; on Shia and Ahmadi mosques and shrines, two Hindu temples and several minority religious and community leaders. Two mosques on the largest naval base were also bombed.<sup>35</sup> None of these produced large casualties, but they reflect a rising extremist threat. Law enforcement agencies have arrested several suspects, including three each for the Ashura and Shia mosque attacks and eighteen alleged JMB militants for six attacks in the north. Yet, statements by officials blame the opposition, or an "international conspiracy" for the actions, sending mixed messages about government intentions. Moreover, with guilt largely based on confessions in custody, there are doubts about the credibility of the law enforcement response.<sup>36</sup>

Those responsible for the recent attacks, according to informed observers, may represent a new generation of extremists, particularly from the JMB and Ansarullah Bangla Team, who are more sophisticated and more linked to transnational jihadist networks.<sup>37</sup> Detective-branch officials are concerned about the sophisticated explosives used by and information technology skills of arrested suspects. "From 2003 to 2005, militant suspects were either illiterate or poor madrasa-educated students. We are worried, as this time most of the suspects are educated and technologically sound", said a senior police official.<sup>38</sup> Without an effective government response, the extremist menace is likely to grow, threatening religious minorities in particular and undermining the country's secular credentials.

### 3. Attacks on minorities

Largely ethnically Bengali and Muslim, Bangladesh also has a 10 per cent religious, ethnic and linguistic minority.<sup>39</sup> Hindus, the largest religious minority, roughly 9 per cent of the population, are often significant in national elections.<sup>40</sup> Historically, their support of the secular, centre-left AL has brought them important benefits, such as police appointments, but has also invited anti-Hindu attacks, particularly by Jamaat activists during elections.<sup>41</sup> During the 2001 polls, 330 attacks were reported against Hindus in 57 districts, including assault, rape and murder. After years of denial by the BNP-led government about those incidents, the AL government formed a three-member judicial commission in 2010 to investigate them. Its 2011 report accused more than 25,000 BNP and Jamaat activists, and at least 25 then ministers, of involvement.<sup>42</sup> However, the government did not implement the recommendations to

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<sup>35</sup> "Police arrest ex-PDB chairman Khijir Khan's murder 'mastermind', another suspect", *BDnews* 24.com, 10 October 2015; "10 injured in bomb attack on Hindu religious gathering in Bangladesh", *India Today*, 5 December 2015; "One killed and scores wounded in attack at Shia site in Bangladesh capital", *The Guardian*, 24 October 2015; "Baha'i leader injured in shooting", *NTVBD.com*, 8 November 2015; "Many injured in twin blasts in navy mosques", *The New Age*, 19 December 2015.

<sup>36</sup> Crisis Group interviews, human rights activists, lawyers, Dhaka, February 2016.

<sup>37</sup> Crisis Group interviews, security experts, Dhaka, February 2016.

<sup>38</sup> Crisis group interview, Dhaka, 3 February 2016.

<sup>39</sup> Population Census, Bangladesh Bureau of Statistics, 2011.

<sup>40</sup> Crisis Group interview, prominent academic, Dhaka University, Dhaka, January 2016.

<sup>41</sup> Crisis Group interview, human rights activist, 26 October 2015.

<sup>42</sup> Anbarasan Ethirajan, "Bangladesh 'persecution' panel reports on 2001 violence", BBC report, 2 December 2011.

establish investigation committees in every district. Similar attacks against Hindus occurred around the January 2014 elections.<sup>43</sup>

A leading human rights group described attacks on Hindus as “persistent background noise”, referring to their continuation at a lower intensity even during periods of general calm.<sup>44</sup> However, Hindus’ safety is particularly hostage to broader political developments, their communities bearing the brunt of Islamist mobilisation. After the 2013 ICT verdict against Sayadee, for example, Islamist activists destroyed 280 Hindu homes, 200 Hindu-run businesses and 500 Hindu temples, injuring around 190 people. Attacks on temples and desecration and theft of Hindu idols now occur regularly. Seizure of Hindu-owned homes by local elites, reportedly including AL and BNP politicians, is also common.<sup>45</sup> The systematic targeting of women, especially rape, regardless of the perpetrators’ political leanings, is common to attacks on minority communities.<sup>46</sup> While many are arrested, largely due to media coverage, most are released, such as the alleged mastermind of the 2012 attacks on the Buddhist community in Cox’s Bazar.<sup>47</sup>

Non-Bengali Muslims, commonly known as Biharis, who settled in Pakistan’s east wing from Bihar after independence in 1947 and are seen as Pakistani sympathisers, confront similar threats. In 2014, nine were burnt alive and one killed by police shots in an alleged Dhaka land-grabbing case. The first response of law enforcement was to pick up seven local Biharis, which further infuriated that community. Calls to bring allegedly involved local AL leaders to justice remain unheeded.<sup>48</sup>

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<sup>43</sup> Mushfiq Wadud, “Minorities targeted in Bangladesh political violence”, IRIN, 31 January 2014.

<sup>44</sup> “Rights of Religious Minorities”, Ain o Salish Kendra (human rights organisation), 2008.

<sup>45</sup> “Violence against Hindus: 2013 overview”, Ain o Shalish Kendra, 8 January 2014. “An inquiry into causes and consequences of deprivation of Hindu minorities in Bangladesh through the Vested Property Act: framework for a realistic solution”, in *Religion – A Tool for Discrimination in South Asia*, South Asians for Human Rights (SAHR), 2010. Supporters of ex-AL State Minister for Home Affairs Shamsul Hoque Tuku were allegedly responsible for arson on Hindu homes in 2013. In January 2016, an AL lawmaker was reportedly implicated in land grabbing from Hindus in a district bordering India. “Tuku’s kin quizzed over attack on Hindus”, BDnews24.com, 13 November 2013; “Judicial probe sought into land grabbing by Thakurgaon MP”, *The New Age*, 9 January 2016.

<sup>46</sup> In 2014, police charged ten people with gang rape of two Hindu women in Jessore during election-related violence, but a local AL youth wing leader, first to be arrested, was not charged. “Charges pressed against 10 for Monirampur gang rape”, *The New Age*, 9 August 2014.

<sup>47</sup> “Ramu attacks: Prime suspect enjoying chairmanship”, *Dhaka Tribune*, 29 September 2014.

<sup>48</sup> “10 dead in arson attack on Mirpur Bihari camp”, *The New Age*, 15 June 2014.

#### IV. Political Polarisation, Law Enforcement and Human Rights

Both BNP and AL governments have pursued counter-terrorism measures such as BNP's creation of RAB and AL's Anti-Terrorism Act. While apparently effective in suppressing extremist groups in the short term, they have, by undermining human rights and rule of law, fuelled alienation and heightened political tensions, providing violent extremists new opportunities to regroup, recruit and re-emerge.

Political polarisation has played a major part in contributing to the abuses. In October 2002, for instance, the BNP-led coalition launched "Operation Clean Heart" to counter rising crime. Led by the military in "aid of civilian authority", it was justified by Prime Minister Khaleda Zia on the grounds that the police lacked capacity. However, the AL and other opposition groups accused the government of targeting political opponents rather than criminals.<sup>49</sup> In an implicit acknowledgement of abuses, the government promulgated an ordinance indemnifying military personnel against prosecution for casualties, injury, and damage to property caused by the operation.<sup>50</sup> According to Human Rights Watch, at least 60 people were killed extrajudicially.<sup>51</sup> RAB's creation in 2004 institutionalised the military's law enforcement role. Allegations of RAB excesses, including abduction, torture and extrajudicial killing, have been made ever since.<sup>52</sup>

In its 2009 electoral manifesto, the AL pledged that its government would prevent human rights abuses, including extrajudicial killings, and such abuses did decline in the first two years of its second government. However, as tensions with the BNP escalated, extrajudicial killings became more frequent, as did other human rights abuses, such as illegal detentions and enforced disappearances, mainly of opposition activists. As the record of the current AL government shows, these appear to have increased with each successive dispensation. By September 2014, some 24,000 opposition BNP leaders and activists had been charged in some 500 cases, including acting Secretary General Fakhrul Islam Alamgir, two joint secretaries general and several standing committee members.<sup>53</sup>

Killings, particularly by RAB, are often justified as having occurred during a shoot-out or crossfire – commonly referred to as "encounter killings".<sup>54</sup> According to human rights activists, other law enforcement agencies are copying RAB's methods, with the police possibly overtaking it in extrajudicial killings.<sup>55</sup> Anti-terrorism legislation, enacted in 2009 and amended twice thereafter, is frequently misused to suppress dissent, including through provisions that allow social media posts to be

<sup>49</sup> Sumit Ganguly, "Bangladesh and India" in Larry Diamond, Leonardo Morlini (eds.), *Assessing the Quality of Democracy* (Washington DC, 2005), p. 177.

<sup>50</sup> Joint Drive Indemnity Ordinance 2003.

<sup>51</sup> "Bangladesh crime fight", BBC news online, 1 November 2002; "HC scraps law giving indemnity to 'Operation Clean Heart'", BDnews24.com, 13 September 2015; "Operation clean heart: HC declares actions of operation illegal", *The New Age*, 14 September 2015; "Bangladesh: Events of 2005", Human Rights Watch, 2006.

<sup>52</sup> Crisis Group Report, *Mapping Bangladesh's Political Crisis*, op. cit.

<sup>53</sup> "BNP 'legally' trapped", *The Daily Star*, 2 September 2014.

<sup>54</sup> Ridwanul Haque, *Judicial Activism in Bangladesh: A Golden Means Approach* (Newcastle, 2001), pp. 230-231.

<sup>55</sup> "Extrajudicial killings continue", Odhikar monthly report (November 2015), 1 December 2015. Odhikar, a leading rights organisation, conducts regular fact-finding missions and maintains the most extensive data available in Bangladesh on rights abuse by the law enforcement agencies.



used as evidence.<sup>56</sup> Opposition leaders and activists are a significant proportion of the victims of alleged extrajudicial killings, enforced disappearances, illegal detentions and torture in remand by police and RAB.<sup>57</sup> Several prominent opposition leaders, including parliamentarians and former ministers, have disappeared after allegedly being apprehended by law enforcers.<sup>58</sup>

In 2007, Inspector General Police (IGP) Nurul Huda reportedly sent the government a proposal to establish a police commission, headed by the home minister and comprising civil society members, including human rights defenders, to make the institution more accountable to the public. It has yet to be adopted.<sup>59</sup>

RAB and the police detective branch often convene press briefings at their headquarters to link detainees to numerous terrorist offences but without details of the investigation or evidence.<sup>60</sup> “These briefings have an aura of the surreal”, said a security expert.<sup>61</sup> “The practice of producing alleged criminals in front of the media is absolutely illegal, as the CrPC [Code of Criminal Procedure] clearly states that a detainee must first be produced in court”, said a senior criminal lawyer of the Dhaka magistrate court.<sup>62</sup> Conducted by top law enforcement officials, the briefings make it near impossible for investigators to report any findings that contradict what their superiors had publicly announced.<sup>63</sup> Overreliance on confessions encourages brutal means to extract them; law enforcers are widely accused of obtaining false confessions of terrorist acts from petty criminals. Family members often allege that suspects were taken from their homes weeks or months before their “formal” arrests; many detainees later say in court that they were tortured to extract confessions.<sup>64</sup>

The government purportedly investigates allegations of extrajudicial killings through executive magistrates, but findings are not made public. The Torture and Custodial Death (Prevention) Act of 2013 establishes life sentences for law enforcement officials convicted of custodial deaths and bars justification on the grounds of “exceptional circumstances”. Yet, these abuses continue, with a prominent AL parliamentarian and bill author attributing them to law enforcers’ lack of familiarity or

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<sup>56</sup> “Bangladesh: New amendment to Anti-Terrorism Act gags Freedom of Expression”, joint statement, International Federation for Human Rights (FIDH) and Odhikar, <http://odhikar.org/wp-content/uploads/2013/06/Statement-FIDH-Odhikar-ATA-2013-eng.pdf>.

<sup>57</sup> “Democracy in the cross-fire: Opposition violence and government abuses in the 2014 pre and post-election period in Bangladesh”, Human Rights Watch, April 2014.

<sup>58</sup> David Bergman and Muktadir Rashid, “Anatomy of a Disappearance, and a Reappearance”, *The Wire*, 23 May 2015; “Ilias Ali, driver go missing”, *The Daily Star*, 19 April 2012.

<sup>59</sup> Crisis Group interview, Muhammad Nurul Huda, February 2016. As IGP, Huda had recommended the Police Act be amended to introduce a police commission to ensure accountability of and provide “broader” policy directions to the police. Such a commission could then pave the way for a more permanent accountability body. Muhammad Nurul Huda, “Reform imperatives for the police”, *The Daily Star*, thirteenth anniversary special, 2004.

<sup>60</sup> “RAB arrests 12 alleged AQIS militants from capital”, *The Independent* (Dhaka), 3 July 2015. Also see website, Dhaka Metropolitan Police, at [www.dmp.gov.bd](http://www.dmp.gov.bd).

<sup>61</sup> Crisis Group interview, Dhaka, November 2015.

<sup>62</sup> Crisis Group interview, Dhaka, February 2016.

<sup>63</sup> Crisis Group interview, Dhaka, February 2016.

<sup>64</sup> “Joj gives a deposition”, *Prothom Alo*, 30 September 2013. “Human rights monitoring report: 1 – 31 January 2016”, Odhikar, 1 February 2016; “Tavella murder: three suspects on remand”, *The New Age*, 27 October 2015.

sensitisation to the law and lack of awareness of the victims and their families about legal recourse it provides.<sup>65</sup>

According to lawyers, the absence of a penal code provision criminalising disappearances has complicated efforts to bring law enforcement personnel to account, at least in trial courts.<sup>66</sup> A prominent human rights organisation, Odhikar, reported 64 disappearances in 2015, up from 53 in 2013.<sup>67</sup> The higher judiciary must put an end to such practices and ensure perpetrators are held accountable. Most importantly, the government must realise that extrajudicial disappearances and other human rights abuses undermine public confidence in its ability to deliver justice.

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<sup>65</sup> Crisis Group interview, Saber Hossain Chowdhury, Dhaka, February 2016; “Another killing case filed against SI Zahid”, *The New Age*, 8 August 2014.

<sup>66</sup> Mohammed Ashrafuzzaman, “Rule of Law in Bangladesh: Normative standards and reality’s mirror”, in *Special Report*, op. cit.

<sup>67</sup> “Human rights monitoring report: 1-31 January 2016”, Odhikar, 1 February 2016; “Human rights report: 2014”, Odikhar, no date.

## V. The Dysfunctional Criminal Justice System

### A. Flawed Legal Regime

The criminal justice regime is based on the colonial-era framework of the 1860 Penal Code, the 1872 Evidence Act and the 1898 Code of Criminal Procedure (CrPC). That these continue to serve their original punitive and suppressive purposes, rather than prevention, reform and rehabilitation, is reflected in a high prison population – 75,000-80,000 in 68 jails with a capacity of only about 30,000. Inadequate bail provisions, due to political pressure, as well as inadequate resources and legal frameworks, compound the problem.<sup>68</sup> From 2008 to 2011, only 683 of more than 18,000 convicted prisoners were put on probation.<sup>69</sup>

Periods of political turmoil, such as now, have further strained the prison system, with the number of inmates often doubling, in some cases forcing authorities to set up tents or lay out mats on porches to accommodate them.<sup>70</sup> Given the case backlog and mass arrests of opposition activists, only one-third of prisoners are convicted, let alone tried; often untried prisoners remain behind bars beyond the maximum sentence for the crimes with which they have been charged.<sup>71</sup>

The penal system relies heavily on the death penalty. Some 250 were hanged from 1971 to 2008, and 23 between January 2009 and March 2016. Around 1,200 prisoners remain on death row, awaiting the result their appeals to the Supreme Court.<sup>72</sup> Presidential reprieves for death row prisoners are commonly given to ruling party members or loyalists sentenced during an earlier regime.<sup>73</sup>

While the CrPC and Evidence Act were amended in the 1980s, they are still significantly short of the needs of a modern, accountable justice system. The Evidence Act allows a person under trial for rape to question the moral character of the victim; there is no witness protection program; and monetary ceilings for some serious offences were set more than a century ago.<sup>74</sup>

Section 54 of the CrPC allows the police to arrest a person without warrant or court order on grounds of “reasonable suspicion”, “reasonable complaint”, or “credible information” about the person being “concerned in any cognizable offense”, and “any person having in his possession without lawful excuse any implement of house-breaking”, among nine equally vague provisions. Under Section 167, magistrates can authorise fifteen-day extensions of custody if the police fail to complete initial investigation within the stipulated twenty-four hours.<sup>75</sup> The High Court bench of the Supreme Court acknowledged in a 2003 case addressing the rise in custodial deaths that the vagueness of these provisions has been widely manipulated to harass and

<sup>68</sup> Crisis Group interview, former deputy inspector general of prisons, Dhaka, January 2016.

<sup>69</sup> “Development and Use of the Probation System in Bangladesh”, Bangladesh Legal Aid and Services Trust (BLAST) and Penal Reform International (PRI), 13 March 2014.

<sup>70</sup> Crisis Group interview, Adilur Rahman Khan, secretary, Odhikar, Dhaka, October 2015.

<sup>71</sup> Crisis Group interview, former deputy inspector general of prisons, Dhaka, January 2016.

<sup>72</sup> “Bangladesh criminal justice through the prism of capital punishment and the fight against terrorism”, International Freedom for Human Rights report, October 2010; Bangladesh country data, Cornell Law School database, at [www.deathpenaltyworldwide.org/country-search-post.cfm?country=bangladesh](http://www.deathpenaltyworldwide.org/country-search-post.cfm?country=bangladesh); “Nearly 1,200 SC prisoners await SC verdict”, *The New Age*, 19 December 2015.

<sup>73</sup> “President pardons a criminal twice”, *The Daily Star*, 27 February 2012.

<sup>74</sup> “Observations of the Bangladesh Law Commission on the draft of the Bangladesh Criminal Procedure Amendment Bill 2013”, 1 July 2013.

<sup>75</sup> Sections 54 and 167, Bangladesh Code of Criminal Procedure, 1898.

detain political activists. It also established fifteen guidelines for arrest and police remand.<sup>76</sup> Since the ruling, Section 54's use has decreased, other laws are reportedly used, including local police acts specific to some administrative divisions, to detain persons without charge.<sup>77</sup>

Changes made in the legal regime further undermine accountability. Lacking a clear definition of terrorism, the Anti-Terrorism Act allows for trial of offences as vague as threatening the "solidarity of Bangladesh".<sup>78</sup> The 2009 Mobile Court Act restored judicial authority to executive magistrates and empowered them to award jail sentences of up to two years without allowing a legal defence. The 2001 Telecommunications Act gave the executive wide powers of surveillance without judicial oversight. Section 57 of the 2013 Information and Communication Technology Act allows trials of anyone bringing disrepute or causing offence to public officials and other public figures.<sup>79</sup> Absent legal definitions or judicial interpretation of "disrepute" or "offense", this in effect covers all form of criticism and dissent.<sup>80</sup>

## B. *Policing and Political Interference*

A legal scholar noted that the AL and BNP have both relied on the law enforcement apparatus to strengthen their "right to rule" instead of the "rule of law".<sup>81</sup> The police are widely perceived as politicised, corrupt and inept.<sup>82</sup> Police recruitment and appointments are largely on partisan grounds, and parliamentarians regularly interfere in postings and transfers of officers in their constituencies.<sup>83</sup> Most senior and mid-level positions are filled by officers who demonstrate allegiance to ruling parties and take their cues from the government of the day. While appointments and transfers of low-ranking officers up to inspector are done internally, the home ministry controls these, and promotions, for assistant superintendents and above.

Many top officials, such as the inspector general, the Dhaka police chief, national police spokesperson and heads of elite forces such as the RAB reportedly have direct

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<sup>76</sup> Iftekhhar Ahmed Ronnie, "Direction to amend section 54 and 167 of CrPC", *Ain O Salish Kendra*, 20 May 2003. For the Supreme Court's divisions and their jurisdictions, see fn. 101 below.

<sup>77</sup> Crisis Group interview, lawyers, Dhaka, February, 2016. For instance, Chapter V, Police Regulations, the Dhaka Metropolitan Police Ordinance, 1976 (Ordinance no. III, 1976), empowers the police commissioner "whenever and for such time as he considers necessary for the preservation of public peace or safety" to prohibit, among other activities, "the delivery of public harangues, the use of gestures or mimetic representations, and the preparation, exhibition or dissemination of pictures, symbols, placards or any other object or thing which may, in his opinion, offend against decency or morality or undermine the security of the State".

<sup>78</sup> The amended Anti-Terrorism Act covers measures to combat terrorism financing; domestic proscription and listing of persons or entities; investigation of offences, and judgement procedures. Text of "Anti-Terrorism Rules, 2013", home affairs ministry at [www.mha.gov.bd](http://www.mha.gov.bd). Also, "Bangladesh criminal justice", op. cit.

<sup>79</sup> The Mobile Court Act 2009 (Act no. 59 of 2009); The Bangladesh Telecommunication Act 2001 (Act no. 18 of 2001).

<sup>80</sup> Crisis Group interview, assistant judge, district sessions court, December 2015.

<sup>81</sup> Saira Rahman Khan, op. cit.

<sup>82</sup> In national household surveys by Transparency International – Bangladesh, law enforcement agencies have consistently ranked among the top two most corrupt institutions; see "Corruption in Service Sectors: National Household Survey 2012".

<sup>83</sup> Crisis Group interviews, Criminal Investigation Department (CID) officers, Dhaka, November 2015.

links to the prime minister or her office.<sup>84</sup> Senior officials also often influence investigations, driven by partisanship, nepotism or financial gain; public statements by the prime minister or ministers identifying or supporting suspected perpetrators hamper investigations, and charges are often politicised. For example, once the Awami League returned to power, the police chief at the time of the 21 August 2004 attack on the AL rally was accused of involvement in the crime, as was the first investigating officer.<sup>85</sup>

The force, moreover, is grossly understaffed, with an estimated 161,000 officers serving a population of 160 million, roughly 1:1,000.<sup>86</sup> Constables, with no investigative authority or training, and functions largely limited to patrols or guarding VIPs, are two-thirds of the force. The 40,000 officers with authority to investigate are overburdened: an officer typically investigates some fifteen cases a month.<sup>87</sup>

Investigative capacity is also low. According to common practice in stations, the officer who records a complaint conducts the preliminary investigation and submits a charge sheet.<sup>88</sup> Criminal cases largely depend on confessions to judicial magistrates under Section 164 of the CrPC. Allegations are widespread that police misuse a fifteen-day CrPC remand provision to force confessions by torture and blackmail. Defendants often retract confessions in court, claiming duress.<sup>89</sup> Prosecutors argue that police failure to produce credible witnesses also undermines convictions.<sup>90</sup> Yet, witnesses will not come forth without an adequately resourced protection program. More importantly, the CrPC and Evidence Act should be amended to make forensic and documentary, rather than ocular, evidence the foundation of investigation.<sup>91</sup>

The government set up a Police Bureau of Investigation (PBI) in 2012, with some 970 positions, including police and other civil servants and led by a deputy police inspector general, to impart and deploy specialised, scientific methodology. Operational in August 2015, it is currently investigating around 3,000 cases. Because it is yet to be properly resourced, however, it is unable to help build successful cases or to wrest the investigation lead from RAB and the detective branch.<sup>92</sup>

While the PBI should get the necessary resources, staff and government backing, training in preliminary investigation skills should also be given to rank-and-file police to ease the burden on specialised investigators and make the force more efficient. The CID, Dhaka Metropolitan Police and RAB have separate criminal intelligence and analysis units. Establishing such a unit with a central database of forensic and other documentary evidence would enable more coordinated, proactive, specialised responses to security challenges from criminal activity to religious extremism.<sup>93</sup>

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<sup>84</sup> Crisis Group interview, senior official, National Human Rights Commission, Dhaka, December 2015.

<sup>85</sup> "Tarique, Babar indicted", *The Daily Star*, 19 March 2012.

<sup>86</sup> Crisis Group interviews, CID officers, Dhaka, November 2015. Most countries with well-developed police forces have a ratio of 1:400-500.

<sup>87</sup> The Bangladesh police recommend a maximum workload of eight cases. Crisis Group interview, senior police official, January 2016.

<sup>88</sup> "Observations of the Bangladesh Law Commission", op.cit.

<sup>89</sup> Crisis Group interviews, lawyers, judges, Dhaka, February 2016; "Bangladesh: Events of 2005", op. cit.

<sup>90</sup> "Bangladesh criminal justice through the prism of capital punishment", op. cit.

<sup>91</sup> There are five forensic laboratories in Dhaka and Chittagong, but their use is fairly limited; a cyber forensic laboratory is currently being set up at the CID.

<sup>92</sup> "Police Bureau of Investigation starts functioning after 3 years", *The New Age*, 25 August 2015.

<sup>93</sup> Crisis Group interview, CID officer, Dhaka, November 2015.

### C. *Prosecution Weaknesses*

Prosecution was under police remit until reforms in 2007, which, instead of establishing a separate, independent service, transferred it to the law ministry. Nine years later, prosecutors have yet to develop an institutional identity or gain public credibility. There are 68 public prosecutors, some 40 additional prosecutors and 500 assistant prosecutors.<sup>94</sup> The law ministry generally appoints them on political affiliation, not merit, the only professional requirement being two years with a local bar. Politically appointed prosecutors often serve as another government enforcement tool. A judge alleged that some prosecutors extort both victims and defendants and use their political clout to pressure fellow judges.<sup>95</sup>

There is no separate salary or career structure or specialised training for prosecutors, who often lack the skills to frame and argue cases that hold up in court. Moreover, politically-appointed prosecutors are often replaced when governments change.<sup>96</sup> Such changes regularly delay or extend cases, which can take several years to conclude.<sup>97</sup> An August 2015 Law Commission report found that disposal of criminal cases had dropped by nearly 50 per cent since 2009, when assistant prosecutors took over the trying of cases from police sub-inspectors. Conviction rates have also dropped from close to 52 per cent to 43.5 per cent and are even lower for serious crimes. In December 2015, 30 suspected militants were reportedly released in five cases, and another 151 are set to be released because the investigating officer failed to follow basic procedure under the Anti-Terrorism Act.<sup>98</sup>

The government shelved the 2008 General Attorney Services Ordinance amid criticism that it lacked an effective model for monitoring and holding prosecutors accountable. Yet, effective supervision and/or performance evaluation is still absent. Poorly paid, many continue to work as private lawyers, often ignoring their official duties.<sup>99</sup> Though many fail to appear at hearings or produce witnesses, the law ministry refrains disciplining its appointees. If a judge lodges a complaint, the most done is to replace the assistant prosecutor for that case.<sup>100</sup>

An autonomous prosecution service should be established, with a separate adequate budget. While the law ministry should appoint the prosecutor general, internal appointments should be based on professional criteria, including a strong criminal defence record, and followed up by specialised training. A training academy for prosecutors, possibly with international support, should be created. To ensure independence and quality, prosecutors should be given competitive salaries and secure tenure. To ensure accountability, a supervisory authority should be set up, comprised

<sup>94</sup> Information provided to Crisis Group by an assistant public prosecutor, Dhaka, December 2015.

<sup>95</sup> Crisis Group interview, assistant judge, district sessions court, December 2015.

<sup>96</sup> International Commission of Jurists submission to the Universal Periodic Review of Bangladesh, sixteenth session of working group, UN Human Rights Council, 22 April-3 May 2013; "Overview of corruption within the justice sector and law enforcement agencies in Bangladesh", U4 Expert Answer website (U4.no), Transparency International, Chr Michelsen Institute, no date.

<sup>97</sup> With no formal mechanism for assigning cases, a handful of prosecutors typically distribute files among themselves. Crisis Group interview, additional public prosecutor, Dhaka, November 2015.

<sup>98</sup> Saira Islam Khan, op. cit. "Terror suspects off the hook", *Daily Star*, 29 December 2015.

<sup>99</sup> The ordinance set up the government's attorney department. Assistant prosecutors are paid 500 taka (just over \$6) per day, and an additional 2000 taka (\$25.50) as a monthly honorarium.

<sup>100</sup> Crisis Group interview, additional public prosecutor, Dhaka, February 2016; "Judicial magistrates' courts: case disposal drops to 50pc since 2009", *The New Age*, 5 August 2015.

of respected retired judges and senior advocates, to scrutinise performance, including investigation gaps, trial delays and suspiciously high acquittal rates.

#### D. *Judicial Challenges*

##### 1. Politicisation of the judiciary and provision of justice

There are 1,700 judges in the lower courts, and 90 in the High Court.<sup>101</sup> According to the Bangladesh Law Commission, 2.8 million cases were pending in 2014 in the lower judiciary and 325,000 in the High Court.<sup>102</sup> The judiciary and law ministry have taken a number of initiatives to ease the backlog, including encouraging out-of-court dispute resolutions through the National Legal Aid Services Organisation; prioritising the disposal of cases more than ten years old or minor, such as traffic violations; and increasing the number of lower court judges.<sup>103</sup> Yet, the backlog remains. In fact, the recent increase in judges has coincided with an increase in pending cases.<sup>104</sup>

Several factors are responsible, including police investigators and prosecutors framing charges poorly, prosecutors failing to appear at proceedings or to produce witnesses, and judges issuing unnecessary adjournments and/or deliberately delaying verdicts for political reasons.<sup>105</sup> Meaningful progress will be unachievable without addressing the judiciary's politicisation.

While the 1972 constitution gave the Supreme Court full control of the lower judiciary, the fourth amendment (1975) transferred that power to the president. "Since then, the government has maintained some form of control on the lower judiciary which continues till this day, despite the 1999 ruling", said a senior Supreme Court advocate.<sup>106</sup> In November 2007, the military-backed caretaker government amended four CrPC clauses to bring the lower judiciary under the Supreme Court's purview.<sup>107</sup> Yet, the judiciary still lacks a separate secretariat, in effect leaving the law ministry in charge of recruitment, as well as transfers of and administrative action against lower court judges. Moreover, the 2009 Mobile Courts Act revived executive magistracy, which runs in parallel to the lower judiciary.

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<sup>101</sup> In the two-tier court system, the magistrate and district sessions courts hear criminal cases at the lower level. Magistrate courts hear offences that carry a maximum seven-year sentence; sessions courts hear charges that carry stronger sentences, as well as appeals on magistrate court rulings. The Supreme Court has two divisions: a High Court bench, which hears appeals from lower courts and tribunals and has original jurisdiction in some limited cases; and an Appellate Division that hears appeals from the High Court.

<sup>102</sup> Bangladesh Law Commission recommendations on easing the backlog of ongoing trials in Bangladeshi courts, 21 May 2014.

<sup>103</sup> Crisis group interview, Minister for Law, Justice and Parliamentary Affairs Anisul Huq, Dhaka 16 January 2016.

<sup>104</sup> The AL-led government appointed 56 higher court judges during its previous term (2009-2014) and another ten judges during the current term. There are around three million cases pending in the courts, including 400,000 in the Supreme Court, according the law, justice and parliamentary affairs minister. Bangladesh Law Commission recommendations on easing the backlog, op. cit.; "10 new Addl HC judges sworn in", *News Today*, 13 February 2015; "Three million cases pending", *The Daily Star* (editorial), 20 June 2015.

<sup>105</sup> "Timely Justice for all in Bangladesh: A Challenge for Change: Court processes, problems and solutions", Supreme Court of Bangladesh and UNDP, 2015.

<sup>106</sup> Crisis Group interview, Dhaka, February 2016. The 1999 Supreme Court ruling called for separation of the executive and judiciary.

<sup>107</sup> Masdar Hossain Case, Supreme Court Bar Association, [www.bangladeshsupremecourtbar.com/Masdar\\_Hossain\\_Case.php](http://www.bangladeshsupremecourtbar.com/Masdar_Hossain_Case.php).

Executive interference in the judiciary is rampant. While ruling party members and supporters in effect remain above the law, with the police often refusing to file complaints against them, some use their political influence to push cases through the system for a price.<sup>108</sup> Judges are harassed by prosecutors and have been transferred or threatened with administrative action by law ministry officials for granting bail to opposition activists or giving perceived adverse rulings in politically-sensitive cases.<sup>109</sup> In January 2014, the Anti-Corruption Commission (ACC) initiated an investigation against a Dhaka sessions court judge two months after he had dismissed a money laundering case against BNP Vice Chairman Tarique Rahman for insufficient evidence. Facing government harassment, the judge fled the country.<sup>110</sup>

Although the higher judiciary is ultimately responsible for departmental proceedings against lower court judges, in the absence of a secretariat, the four-member general administration committee, chaired by the Supreme Court chief justice, is over-stretched and seldom defies or overturns an executive decision.<sup>111</sup> Often, the law ministry will block a judge's promotion by initiating a preliminary investigation on dubious grounds. Such practices, employed with increasing frequency, prompted the current chief justice in January 2016 to accuse the executive of "usurping the powers of the judiciary".<sup>112</sup>

However, the Supreme Court has not been beyond political influence. Past rulings validating military rule undermined public and legal community confidence in its independence.<sup>113</sup> Some of that legitimacy was regained when it declared military interventions unconstitutional.<sup>114</sup> Yet, the Supreme Court validated the president's imposition of a state of emergency and the installation of a military-controlled caretaker government in November 2011.<sup>115</sup> Under the current AL government, it has failed to prevent executive interference and politicisation of justice. Its January 2015 ban, amid BNP protests, on media coverage of BNP Vice Chair Tarique Rahman is one manifestation of a partisan bench.<sup>116</sup> The Supreme Court has also upheld all ICT death sentences and appears to be prioritising, over a long list of other death verdicts to be reviewed, examination of the death sentences of 152 members of the Bangladesh Rifles (BDR) for their role in a revolt against the AL government in February 2009.<sup>117</sup> Those sentenced for less politically-charged crimes typically spend more than a decade on death row before their appeals are heard.<sup>118</sup>

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<sup>108</sup> Saira Rahman Khan, op. cit.

<sup>109</sup> Crisis Group interviews, district sessions court judge, December 2015; legal community, October-December 2015.

<sup>110</sup> "Ex-judge now living in Malaysia", *The Daily Star*, 23 January 2014; "ACC summons Bashundhara Group official", *The Daily Star*, 28 January 2014.

<sup>111</sup> Crisis Group interview, Supreme Court lawyer, Dhaka, October 2015.

<sup>112</sup> "Govt wants to snatch all power of judiciary", *Prothom Alo*, 10 January 2016.

<sup>113</sup> Crisis Group interview, National Human Rights Commission, Dhaka, December 2015.

<sup>114</sup> "The Constitution (Fifth Amendment) Act's Case 2006", *The Bangladesh Law Times* (special issue). In August 2010, the Supreme Court's High Court division declared General Hussain Muhammad Ershad's martial law and the Seventh Amendment that validated it unconstitutional, a decision upheld by the Appellate Division in May 2011. *Siddique Ahmed (appellant) versus Government of Bangladesh and Others (respondents)*, civil appeal no. 48 of 2011.

<sup>115</sup> Crisis Group Report, *Mapping Bangladesh's Political Crisis*, op. cit.

<sup>116</sup> "Bangladesh media ban for opposition leader Khaleda Zia's son", BBC News, 7 January 2015.

<sup>117</sup> "Nearly 1,200 SC prisoners await SC verdict", *The New Age*, 19 December 2015; "Bangladesh to execute 152 soldiers for mutiny crimes", BBC News, 5 November 2013.

<sup>118</sup> Crisis Group interview, former deputy inspector general of prisons, Dhaka, 5 January 2016.



## 2. Judicial appointments

The president appoints additional judges for a two-year probationary period on the prime minister's (binding) advice and in consultation with the Supreme Court's chief justice.<sup>119</sup> The president may confirm permanent appointments on the chief justice's advice. Yet, the prime minister has the key role, largely ignoring higher court judgments calling for meaningful consultation with the chief justice. As a result, there are additional judges with clear political leanings or who are not inclined to challenge the government before their confirmation. Junior judges on division benches are also largely viewed as government sympathisers who give favourable rulings.<sup>120</sup>

During its 2001-2006 tenure, the BNP government stacked the bench with loyalists, including by appointing nineteen additional judges to the High Court division just before the Supreme Court's 2004 summer recess. The AL made this politicisation an electoral issue. Once in office, however, Sheikh Hasina, similarly appointed judges without meaningfully consulting the chief justice and on political grounds.<sup>121</sup>

The minimum requirement for a Supreme Court appointment is ten years of bar membership, without accounting for active service, or ten years as a lower court judge. In practice, appointments favour partisan lawyers with no experience in writing judgements over experienced lower court judges at an estimated 90:10 ratio. A former Supreme Court registrar argued that active lower court judges are sometimes more qualified than higher court peers.<sup>122</sup> Some of the latter, unable to properly draft verdicts, have tended to publish detailed judgments after their retirement – a practice the chief justice described (out of court) as unconstitutional.<sup>123</sup> Around 550 higher court verdicts and orders have yet to be given in written judgments.<sup>124</sup>

A 2014 law commission proposal called for the government to set minimum active-service requirements for appointment of lawyers and lower court judges to the Supreme Court.<sup>125</sup> Retired Supreme Court justices have recommended that lawyers and serving lower court judges be appointed in equal proportion to ensure a sufficient number of experienced judges in the higher courts.<sup>126</sup> Quality must, however, be accompanied by institutional independence. In September 2014, the AL-dominated parliament passed the sixteenth constitutional amendment, restoring legislative authority to impeach judges, which had been vested in the three-member Supreme Judicial Council (SJC) headed by the chief justice. The AL's track record of partisan appointments and propensity to curb opposition and dissent have raised justified concerns about its intentions. Judges facing the prospect of parliamentary impeachment may be even less inclined to challenge executive action.

The chief justice's increasingly frequent and public criticisms of the government's conduct reflect frustrations within the judiciary and legal community about executive overreach.<sup>127</sup> Bar and bench should channel such sentiments into demands to

<sup>119</sup> Section 95, constitution.

<sup>120</sup> Crisis Group interviews, Supreme Court advocates, October-December 2015.

<sup>121</sup> "Bangladesh" in "Countries at the Crossroads: An Analysis of Democratic Governance", Freedom House, vol. 11, 23 February 2012, pp. 57-74.

<sup>122</sup> Crisis Group interview, Dhaka, December 2015.

<sup>123</sup> "Bangabhaban meet resolves to skip controversy", *Prothom Alo*, 30 January 2016.

<sup>124</sup> "Three retd SC judges yet to write 550 orders", *The New Age*, 27 January 2016.

<sup>125</sup> Bangladesh Law Commission recommendations on legislating the appointment of Supreme Court judges in line with constitutional requirements, submitted on 5 August 2012.

<sup>126</sup> Crisis Group interview, former Supreme Court registrar, 16 December 2015.

<sup>127</sup> Crisis Group interviews, legal community, October-December 2016.

enforce the constitutional requirement for an independent judiciary. A first step should be a more transparent, consultative judicial appointment process, based on consultations with the bar councils and followed by parliamentary endorsement.

#### E. *Parallel Justice*

If the regular judicial process is problematic, the establishment of special tribunals and other parallel processes pose additional hurdles to the delivery of justice. The 2002 Speedy Tribunal Act set a 120-day limit for completion of trial in cases the law ministry selects for quick dispensation. But the selections tend to be made on political grounds, such as for the 21 August 2004 grenade attack case in which BNP Vice Chairman Tarique Rahman is currently on trial in absentia.<sup>128</sup> In August 2015, a Dhaka special court held almost weekly hearings on an embezzlement case that could see BNP leader Khaleda Zia imprisoned for life.<sup>129</sup> Proceedings continue on another case, in which Zia is accused of causing the state a loss of nearly 138 billion taka (almost \$2 million) in awarding contracts to a Canadian energy company. The High Court quashed an almost identical charge in 2010 against Prime Minister Hasina for awarding contracts to the same company.<sup>130</sup>

There are other special tribunals, including for offences under the Special Powers Act.<sup>131</sup> Many have timeframes under which a trial is to be completed but standards for admission of evidence, including video and social media, that regular courts do not recognise. The result is a justice system that swings between two extremes: a woefully slow and dysfunctional process for ordinary cases and a speedy process that undermines due process in politically-charged ones.

Arguably the most consequential and controversial parallel process is the ICT's, established in 2010 under the International Crimes (Tribunals) Act, 1973 to prosecute Bangladeshis who committed atrocities in collusion with the Pakistani military during the 1971 liberation war. The ICT has convicted 24 of war crimes, most of them prominent opposition leaders, while ignoring accusations of atrocities by pro-independence militias against pro-Pakistan elements, including against the Bihari community.<sup>132</sup> The ICT Act dispenses with technical rules under the Evidence Act; does away with standards of witness testimony under the CrPC; and makes no mention of the burden of evidence for conviction. A lawyer involved in the defence of a person convicted of war crimes said, "it is virtually impossible to defend anybody under this law", a view echoed by many prominent domestic and foreign experts.<sup>133</sup>

In August 2013, ICT prosecutors charged Human Rights Watch with contempt in a still open case after it described the trial of former Jamaat head Ghulam Azam as "deeply flawed", citing credible reports of "collusion and bias among prosecutors and

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<sup>128</sup> Since September 2008, Rahman has been in self-exile in London.

<sup>129</sup> "Tarique was involved in Aug 21 grenade attack", *The Daily Star*, 16 December 2015; "Increasing concern about Khaleda's prosecution", *Prothom Alo*, 6 August 2015. Though the 120-day period is long past, the case continues.

<sup>130</sup> Crisis Group interview, Barrister Moudud Ahmed, former law minister and BNP standing committee member, Dhaka, December 2015.

<sup>131</sup> There are also special anti-terrorism tribunals and special tribunals for women and child repression, labour disputes, administration and income tax disputes and bank loans.

<sup>132</sup> Geoffrey Robertson Q.C., "Report on the International Crimes Tribunal", International Forum for Democracy and Human Rights, 2015.

<sup>133</sup> Crisis Group interviews, Dhaka, November-December 2015.

judges”.<sup>134</sup> In April 2014, the ICT charged a Dhaka-based British journalist, David Bergman, with contempt after he questioned in a blog aspects of the proceedings, including exaggerated claims of numbers killed in the liberation war. He was convicted on 2 December 2014. In April 2015, the tribunal initiated contempt proceedings against 23 of 49 signatories of an earlier statement criticising the Bergman verdict, after exonerating those who had apologised.<sup>135</sup> In a major ruling later that month, the Supreme Court’s High Court Division ruled that those convicted of contempt by the ICT have a constitutional right to take the case to the Appellate Division of the Supreme Court, contrary to the ICT act.<sup>136</sup> This may open some space for criticism and dissent.

#### F. *Silencing Civil Society*

Bringing the perpetrators of recent jihadist attacks to justice through a transparent legal process will be important to bolstering public confidence in the state’s ability to contain resurgent extremism. An impartial and effective criminal justice system could also help defuse political tensions between the AL and BNP and restore political stability by checking state excesses, rejecting politicised trials and, by ensuring fair dispute resolution in court, removing the opposition’s incentive to seek violent resolution on the streets. Yet, reforming the criminal justice system at the very least requires government and opposition to acknowledge the importance of shoring up the rule of law. Instead, the government appears bent on using the law enforcement machinery and its hold over parliament to silence legitimate dissent and criticism.

Freedom of expression and civil liberties are under assault, with restrictions on the media reaching proportions that are unprecedented and alarming, at least under a democratically elected government.<sup>137</sup> The secretary of the prominent human rights NGO, Odhikar, is currently on trial for contradicting the official number of casualties during the 2013 Hefazat rally, while the organisation’s foreign funds are frozen.<sup>138</sup> In 2013, parliament amended the Information and Communication Technology Act, placing new restrictions on online expression. Hundreds of politicians and private citizens, including academics, have been tried or charged for views expressed on Facebook or for posting or sharing “derogatory” images, though the law does not clearly define “derogatory”.<sup>139</sup>

The 2014 national broadcast policy – announced amid widespread media condemnation of RAB abuses – called for prohibiting content contrary to the “public interest”, undermining the reputation of the army and law enforcement agencies or

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<sup>134</sup> “Bangladesh: Azam trial concerns”, Human Rights Watch, 16 August 2013.

<sup>135</sup> In the verdict, the presiding judge said that “freedom of expression [can only] be exercised in good faith and public interest”. “UK journalist convicted for doubting 1971 war toll”, Agence France-Presse, 3 December 2014; “Contempt charge against David B.”, *The Daily Star*, 10 May 2014; “Unsolved atrocities in Bangladesh”, *The New York Times* (editorial), 15 May 2014; “23 citizens issued contempt notices”, *Dhaka Tribune*, 2 April 2015; “Bergman case: 15 absolved of contempt charges after apologies”, *BDnews24.com*, 23 February 2015.

<sup>136</sup> “Appeal over tribunal’s contempt verdict constitutional: HC”, *BDnews24.com*, 29 April 2015.

<sup>137</sup> “Human Rights Monitoring Report”, Odhikar, 1 December 2015.

<sup>138</sup> See “One Year later: Bangladesh activists still face trumped up charges”, Global Civil Society Alliance (CIVICUS) press release, 4 September 2014.

<sup>139</sup> “Journalists arrested in Bangladesh under the ICT Act”, Committee to Protect Journalists, 17 August 2015.

harming relations with “friendly countries”.<sup>140</sup> While the government called the provisions merely “guidelines” with no mechanism for enforcement or punishment, they carry high potential for abuse.<sup>141</sup> Even before the policy’s formulation, the government had forced several television channels to close, including Channel One, Diganta TV and Islamic TV (for live coverage of the 2013 Hefazat rally), and Ekushay TV (subsequently resurrected under new ownership) for live broadcast of a speech by Tarique Rahman. Ekushay TV’s former owner has been imprisoned since January 2015, convicted for pornography and sedition.<sup>142</sup>

The print media confronts similar challenges. The Bangla-language daily *Amar Desh* shut down and its owner and acting editor, Mahmudur Rahman, has been detained since April 2013 on charges including defamation, sedition and corruption, after a story alleging corruption of the prime minister’s son and ICT adviser, Sajeeb Wazed Joy. In January 2014, following reporting critical of the government, the offices of another vernacular newspaper, *Inqilab*, were raided, its press closed and four journalists arrested for publishing “false” and “misleading” information. The leading Bangla and English dailies, *Prothom Alo* and *Daily Star*, have come under intelligence agency pressure, along with calls by AL parliamentarians and leaders, including Prime Minister Hasina’s son Joy, for the trial of *Daily Star* editor Mahfuz Anam and closure of the newspaper, after he admitted, during a January 2016 talk show, to having published uncorroborated corruption allegations against Sheikh Hasina in 2008, during the military-backed caretaker government. AL activists have filed over 60 criminal defamation and at least seventeen sedition cases against him.<sup>143</sup>

Right to dissent was a major factor underlying Bangladesh’s independence struggle. Upholding it is as important now, if political stability is to be restored. Suppression of free expression in a nation with a long tradition of political activism has often, including in recent years, provoked violent reaction and lethal confrontation between government and opposition. Such crises have strained state resources, while undermining the legitimacy of the government and standing of the law enforcement agencies and judiciary in the eyes of the public.

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<sup>140</sup> Text of the policy on the Awami League website, [www.albd.org/~parbonc/index.php/en/updates/news/1430-cabinet-approved-the-draft-national-broadcasting-policy-2014](http://www.albd.org/~parbonc/index.php/en/updates/news/1430-cabinet-approved-the-draft-national-broadcasting-policy-2014).

<sup>141</sup> Iftekhhar Zaman, “National Broadcast Policy: End of history?”, Transparency International–Bangladesh, 17 August 2014; “Broadcast policy will not curb press freedom: minister”, *The New Age*, 11 August 2014.

<sup>142</sup> “Diganta, Islamic TV taken off air”, *BDnews24.com*, 5 June 2013; “Amar Desh, Diganta, Islamic TV closed for irregularities: Inu”, *Dhaka Tribune*, 20 May 2013; “Ekushey TV chairman sent to jail”, *The New Age*, 7 January 2015.

<sup>143</sup> “Amar Desh acting editor Mahmudur gets 3yrs for not giving wealth report”, *The Daily Star*, 14 August 2015; “Inqilab office raided, news editor held”, *The Daily Star*, 20 August 2014; David Bergman “Bangladeshi spies accused of blocking media adverts”, *Al Jazeera*, 7 October 2015; “MPs demand Mahfuz Anam be tried, *Daily Star* shut down”, *BDnews24.com*, 7 February 2016; “Police seek approval for sedition case against Mahfuz Anam”, *The Daily Star*, 27 February 2016.

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## VI. International Engagement

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While Bangladesh may not be a priority in the regional policies of most influential international actors, a growing recognition of the links between a dysfunctional polity and rising extremism is refocusing attention on its domestic challenges. The ability of outside actors to steer an AL-BNP rapprochement is limited, but the country's major financial and development partners, particularly the U.S. and EU, could still usefully push for a broader reform agenda, particularly in the context of civil and political rights, that might help steer the country onto the path of stability. The political instability, criminal violence and extremism have more immediate security implications for neighbouring India. With a long history of engagement with Bangladesh, it is possibly best positioned to influence political dynamics, if willing to pressure its traditional AL ally to mend fences with the BNP.

As Bangladesh's largest export market, the U.S. has used financial leverage, particularly through engagement with the AL government on labour rights. It suspended Dhaka's eligibility for tariff benefits under the Generalised System of Preferences (GSP) in June 2013, following the April 2013 Rana Plaza collapse that killed over 1,100 people, mostly workers. While the AL government has yet to implement all recommended measures to improve labour conditions, attempts to persuade Washington to restore GSP benefits are translating into some steps forward.<sup>144</sup> Moving beyond the discussion about labour standards, the U.S. should signal that performance on free speech, fair trials and human rights more broadly will determine whether and with what speed it will restore the GSP facility. The EU, a large export market, especially for readymade garments, is also a major development partner and could link some of its aid to improvements in human rights, free speech, fair trials and respect for the rights of the political opposition more broadly.

The U.S., EU and its member states should also engage with India, which has sway on both sides of Bangladesh's political divide and reportedly was important in encouraging reduction of violence in early 2015.<sup>145</sup> Extracting guarantees and follow-through from Dhaka on its primary security interest – a stable border region that does not again become a sanctuary for anti-Indian and other militant groups – it has expanded economic, cultural and people-to-people ties with its smaller neighbour.<sup>146</sup> An unstable Bangladesh unable to slow the growth of jihadist networks would undermine India's economic and security interests. In the absence of a major crisis, however, New Delhi has been reluctant to involve itself in internal politics. Yet, Prime Minister Narendra Modi's government should realise AL refusal to accept legitimate political opposition, could trigger a major confrontation that would benefit spoilers, including radical extremists. Exploiting its close relationship to the AL government and bolstered further by the Indian parliament's 2015 ratification of the 1974 Land Boundary Agreement, New Delhi should insist on a level political playing field.<sup>147</sup>

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<sup>144</sup> "Bangladesh: improving working conditions in the readymade garment sector: progress and achievements", International Labour Organisation, January 2016.

<sup>145</sup> Crisis Group interviews, BNP leaders, Dhaka, April 2015.

<sup>146</sup> Tridivesh Singh Maini, "India-Bangladesh relations: the bigger picture", *The Diplomat*, 5 June 2015.

<sup>147</sup> The Indian parliament's failure to ratify the Land Boundary Agreement was a longstanding Bangladeshi grievance. Following India's July 2015 ratification, the two countries began the process of exchanging control over 162 enclaves on each other's territory, with residents choosing their area

## VII. Conclusion

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Politicised justice and violence have increasingly become inseparable in Bangladesh. The polity's deep polarisation, exacerbated by the BNP's 2014 electoral boycott and the AL government's refusal to accept legitimate criticism, have led to political impasse. Addressing the law and order challenges requires the AL and BNP to lower tensions to levels that ensure basic internal stability.

The BNP's apparent decision to re-enter the political mainstream is a welcome departure from its obstructionist agenda a year ago. It provides an opening for dialogue between government and opposition that could end the zero-sum game that has held the county and citizens hostage to a longstanding political feud. It is in the AL's interest to accept the BNP's decision to work within the constitutional and political order. Should Sheikh Hasina fail to do so, her government could be a loser, a realisation that is increasingly accepted by some in both parties.<sup>148</sup> For a start, the government should end the use of a politicised law enforcement and judicial apparatus against the opposition. Otherwise, the targeting of critics and resort to rampant human rights abuses, with their potential to spark a return of political violence, will also continue to provide grist to the jihadists' propaganda mill.

By suppressing a secular civil society, the AL is alienating what was historically a key constituency. This has significant ramifications for its future. Despite many legal and political challenges, the BNP still enjoys a popular base. Should it opt for peaceful opposition while the government continues to suppress dissent, the AL would likely bear the blame for worsening social and political divisions. As in the past, the arbitrary legal provisions and instruments the government has introduced could also be used against it in a subsequent dispensation. If so, a change in government would simply add another chapter to, rather than turn the page on, the political crisis.

While the onus of breaking this cycle rests with the AL government, an independent justice system could become vital, as a neutral arbiter. An impartial judiciary that protects constitutional freedoms, including of association and free speech, courts that provide access to justice instead of acting as instruments of the executive, and police who focus on combatting criminality, including violent extremism, while also protecting all citizens would give the opposition the level playing field essential for a resumed, meaningful dialogue with the government. Civil society stakeholders, particularly the legal community, also have an important role to play in defusing political tensions by checking the government's excesses, protecting fundamental rights and reviving rule of law.

**Brussels, 11 April 2016**

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of residence and citizenship. "Land Boundary Agreement: India, Bangladesh swap 162 enclaves, 14,000 Bangladeshis become Indian", Press Trust of India, 1 August 2015.

<sup>148</sup> Crisis Group Report, *Mapping Bangladesh's Political Crisis*, op. cit.



Appendix A: Map of Bangladesh



## Appendix B: Glossary

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AL	Awami League, currently the ruling party, led by Prime Minister Sheikh Hasina Wajid.
AQIS	al-Qaeda in the Subcontinent.
BNP	Bangladesh National Party, led by former Prime Minister Khaleda Zia.
CID	Criminal Investigation Department.
CrPC	Code of Criminal Procedure.
GSP	Generalised System of Preferences.
Hartal	Strike.
HUJI-B	Harkatul Jihad Al Islami-Bangladesh, an anti-India jihadist group.
ICT	International Crimes Tribunal, prosecuting cases of atrocities committed during the 1971 liberation war.
IS	Islamic State.
JMB	Jamaat-ul Mujahideen Bangladesh, Bangladesh's most prominent jihadist group.
JMJB	Jagrata Muslim Janata Bangladesh, an extremist group.
PBI	Police Bureau of Investigation.
RAB	Rapid Action Battalion, an elite paramilitary force.



## Appendix C: About the International Crisis Group

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The International Crisis Group (Crisis Group) is an independent, non-profit, non-governmental organisation, with some 120 staff members on five continents, working through field-based analysis and high-level advocacy to prevent and resolve deadly conflict.

Crisis Group's approach is grounded in field research. Teams of political analysts are located within or close by countries or regions at risk of outbreak, escalation or recurrence of violent conflict. Based on information and assessments from the field, it produces analytical reports containing practical recommendations targeted at key international, regional and national decision-takers. Crisis Group also publishes *CrisisWatch*, a monthly early warning bulletin, providing a succinct regular update on the state of play in up to 70 situations of conflict or potential conflict around the world.

Crisis Group's reports are distributed widely by email and made available simultaneously on its website, [www.crisisgroup.org](http://www.crisisgroup.org). Crisis Group works closely with governments and those who influence them, including the media, to highlight its crisis analyses and to generate support for its policy prescriptions.

The Crisis Group Board of Trustees – which includes prominent figures from the fields of politics, diplomacy, business and the media – is directly involved in helping to bring the reports and recommendations to the attention of senior policymakers around the world. Crisis Group is co-chaired by former UN Deputy Secretary-General and Administrator of the United Nations Development Programme (UNDP), Lord Mark Malloch-Brown, and professor of International Relations at Sciences-Po (Paris) and founding dean of its Paris School of International Affairs, Ghassan Salamé. Its Vice Chair is Ayo Obe, a Legal Practitioner, Columnist and TV Presenter in Nigeria.

Crisis Group's President & CEO, Jean-Marie Guéhenno, served as the UN Under-Secretary-General for Peacekeeping Operations from 2000-2008, and in 2012, as Deputy Joint Special Envoy of the United Nations and the League of Arab States on Syria. He left his post as Deputy Joint Special Envoy to chair the commission that prepared the white paper on French defence and national security in 2013. Crisis Group's international headquarters is in Brussels, and the organisation has offices in nine other locations: Bishkek, Bogota, Dakar, Islamabad, Istanbul, Nairobi, London, New York, and Washington DC. It also has staff representation in the following locations: Bangkok, Beijing, Beirut, Caracas, Delhi, Dubai, Gaza City, Guatemala City, Jerusalem, Johannesburg, Kabul, Kiev, Mexico City, Rabat, Sydney, Tunis, and Yangon.

Crisis Group receives financial support from a wide range of governments, foundations, and private sources. Currently Crisis Group holds relationships with the following governmental departments and agencies: Australia (Department of Foreign Affairs and Trade), Austria (Austrian Development Agency), Canada (Global Affairs Canada), Denmark (Ministry of Foreign Affairs), European Union (Instrument contributing to Stability and Peace), France (Ministry of Foreign Affairs), Germany (Federal Foreign Office), Japan (Ministry of Foreign Affairs), Ireland (Irish Aid), Principality of Liechtenstein, Luxembourg (Ministry of Foreign Affairs), The Netherlands (Ministry of Foreign Affairs), New Zealand (Ministry of Foreign Affairs and Trade), Norway (Ministry of Foreign Affairs), Sweden (Ministry of Foreign Affairs), Switzerland (Federal Department of Foreign Affairs), and United States (U.S. Agency for International Development).

Crisis Group also holds relationships with the following foundations: Adessium Foundation, Carnegie Corporation of New York, Global Dialogue, Henry Luce Foundation, Humanity United, John D. and Catherine T. MacArthur Foundation, Open Society Foundations, Open Society Initiative for West Africa, Ploughshares Fund, Robert Bosch Stiftung, Rockefeller Brothers Fund, and Tinker Foundation, Inc. Crisis Group is also grateful for its collaboration with Koerber Foundation.

**April 2016**

## Appendix D: Reports and Briefings on Asia since 2013

*As of 1 October 2013, Central Asia publications are listed under the Europe and Central Asia program.*

### Special Reports

*Exploiting Disorder: al-Qaeda and the Islamic State*, Crisis Group Special Report, 14 March 2016.

### North East Asia

*China's Central Asia Problem*, Asia Report N°244, 27 February 2013 (also available in Chinese).

*Dangerous Waters: China-Japan Relations on the Rocks*, Asia Report N°245, 8 April 2013 (also available in Chinese).

*Fire on the City Gate: Why China Keeps North Korea Close*, Asia Report N°254, 9 December 2013 (also available in Chinese).

*Old Scores and New Grudges: Evolving Sino-Japanese Tensions*, Asia Report N°258, 24 July 2014 (also available in Chinese).

*Risks of Intelligence Pathologies in South Korea*, Asia Report N°259, 5 August 2014.

*Stirring up the South China Sea (III): A Fleeting Opportunity for Calm*, Asia Report N°267, 7 May 2015 (also available in Chinese).

*North Korea: Beyond the Six-Party Talks*, Asia Report N°269, 16 June 2015.

*Stirring up the South China Sea (IV): Oil in Troubled Waters*, Asia Report N°275, 26 January 2016 (also available in Chinese).

### South Asia

*Pakistan: Countering Militancy in PATA*, Asia Report N°242, 15 January 2013.

*Sri Lanka's Authoritarian Turn: The Need for International Action*, Asia Report N°243, 20 February 2013.

*Drones: Myths and Reality in Pakistan*, Asia Report N°247, 21 May 2013.

*Afghanistan's Parties in Transition*, Asia Briefing N°141, 26 June 2013.

*Parliament's Role in Pakistan's Democratic Transition*, Asia Report N°249, 18 September 2013.

*Women and Conflict in Afghanistan*, Asia Report N°252, 14 October 2013.

*Sri Lanka's Potemkin Peace: Democracy under Fire*, Asia Report N°253, 13 November 2013.

*Policing Urban Violence in Pakistan*, Asia Report N°255, 23 January 2014.

*Afghanistan's Insurgency after the Transition*, Asia Report N°256, 12 May 2014.

*Education Reform in Pakistan*, Asia Report N°257, 23 June 2014.

*Afghanistan's Political Transition*, Asia Report N°260, 16 October 2014.

*Resetting Pakistan's Relations with Afghanistan*, Asia Report N°262, 28 October 2014.

*Sri Lanka's Presidential Election: Risks and Opportunities*, Asia Briefing N°145, 9 December 2014.

*Mapping Bangladesh's Political Crisis*, Asia Report N°264, 9 February 2015.

*Women, Violence and Conflict in Pakistan*, Asia Report, N°265, 8 April 2015.

*The Future of the Afghan Local Police*, Asia Report N°268, 4 June 2015.

*Revisiting Counter-terrorism Strategies in Pakistan: Opportunities and Pitfalls*, Asia Report N°271, 22 July 2015.

*Sri Lanka Between Elections*, Asia Report N°272, 12 August 2015.

*Winning the War on Polio in Pakistan*, Asia Report N°273, 23 October 2015.

*Nepal's Divisive New Constitution: An Existential Crisis*, Asia Report N°276, 4 April 2016.

### South East Asia

*Indonesia: Tensions Over Aceh's Flag*, Asia Briefing N°139, 7 May 2013.

*Timor-Leste: Stability At What Cost?*, Asia Report N°246, 8 May 2013.

*A Tentative Peace in Myanmar's Kachin Conflict*, Asia Briefing N°140, 12 June 2013 (also available in Burmese and Chinese).

*The Philippines: Dismantling Rebel Groups*, Asia Report N°248, 19 June 2013.

*The Dark Side of Transition: Violence Against Muslims in Myanmar*, Asia Report N°251, 1 October 2013 (also available in Burmese and Chinese).

*Not a Rubber Stamp: Myanmar's Legislature in a Time of Transition*, Asia Briefing N°142, 13 December 2013 (also available in Burmese and Chinese).

*Myanmar's Military: Back to the Barracks?*, Asia Briefing N°143, 22 April 2014 (also available in Burmese).

*Counting the Costs: Myanmar's Problematic Census*, Asia Briefing N°144, 15 May 2014 (also available in Burmese).

*Myanmar: The Politics of Rakhine State*, Asia Report N°261, 22 October 2014 (also available in Burmese).

*A Coup Ordained? Thailand's Prospects for Stability*, Asia Report N°263, 3 December 2014.

*Myanmar's Electoral Landscape*, Asia Report N°266, 28 April 2015 (also available in Burmese).

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