



# General Assembly

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## Human Rights Council

### Fortieth session

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Agenda item 4

### Human rights situations that require the Council's attention

## Written statement\* submitted by ODHIKAR - Coalition for Human Rights, a non-governmental organization in special consultative status

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

[3 February 2019]

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\* Issued as received, in the language(s) of submission only.



## Bangladesh: Freedom of speech and expression hindered in the name of public interest and digital security

Odhikar would like to draw the special attention of the Human Rights Council regarding systematic violations to freedom of speech and expression in Bangladesh. Freedoms of speech and expression have been severely curtailed due to the imposition of the draconian laws, in particular the Information and Communication Technology Act 2006 (amended 2009 and 2013) and the Digital Security Act 2018; and due to various restrictions and pressure on the mainstream media and social media. Such restrictions hinder accurate and impartial reporting and proper journalism and many media outlets and journalists are forced to practice self-censorship. The government has approved the draft of the 'Broadcasting Act', which will regulate and impose further restrictions on broadcasting media and news portals with provisions for stringent punishments like cancellation of licence and jail terms of up to seven years.<sup>1</sup> Due to such repressions, independent journalism and reporting were severely hampered before the rigged and manipulated 11<sup>th</sup> Parliamentary elections.

According to reports published in the media, at least 63 people, including online and cultural activists, lawyers and journalists, have been arrested under the Digital Security Act since it came into effect on 8 October 2018, mostly for criticising the Prime Minister, her father and the government on social media and even in TV talk shows. After the draft of the proposed Digital Security Bill was approved by the Cabinet on 29 January 2018, the Editors' Council expressed its concerns over eight sections (8, 21, 25, 28, 29, 31, 32 and 43) of the Bill<sup>2</sup> while western diplomats and the European Union in Bangladesh also expressed their concerns over sections 21, 25, 28 and 32.<sup>3</sup>

The UN Human Rights body urged Bangladesh to urgently revise the Digital Security Act (DSA), to ensure that it is in line with international human rights law.<sup>4</sup> The Act was passed by the Parliament on 19 September 2018, despite wide-ranging concerns that its content and scope could seriously impede the exercise of the rights to freedom of expression and opinion, as well as the rights to liberty of the person and to due process of law. On 8 October 2018, President Abdul Hamid assented to the Digital Security Act (DSA), ignoring calls from national and international organisations and rights groups, including the UN bodies, for returning it to Parliament for a revision. The Information and Communication Technology Act (ICT Act) is also considered a draconian law in Bangladesh, which violates rights to freedom of expression. Such repressive laws violate Article 39(2) of the Constitution.

The DSA gives the police wide powers of search and arrest without warrant. Many of the offences in the Act are non-bailable. The most controversial section of the DSA, section 32<sup>5</sup> is contrary to the Right to Information Act 2009. Section 43 of the law says that if a police official believes that an offence has been or is being committed at a certain place, or there is a possibility of someone committing crimes or destroying evidence, the official can search the place or arrest the person involved without any warrant or permission whatsoever. Meanwhile, although the notorious Section 57 of the ICT Act has been replaced with the promulgation of the new law, its controversial provisions were kept intact and spread out across four sections (25, 28, 29 and 31) of the DSA.

It is to be noted that the DSA as it stands, does not meet Bangladesh's obligations under the International Covenant on Civil and Political Rights, including provisions to respect and protect the right to be free from arbitrary arrest under Article 9; to protection from interference with privacy and correspondence under Article 17, and to freedom of opinion

<sup>1</sup> <https://www.thedailystar.net/country/broadcast-act-2018-bangladesh-cabinet-gives-draft-law-1647220>

<sup>2</sup> <https://www.thedailystar.net/opinion/perspective/news/digital-security-act-the-frying-pan-the-fire-1637137>

<sup>3</sup> Ibid

<sup>4</sup> <http://www.theindependentbd.com/post/169718>

<sup>5</sup> In this section, it is stated that if anyone collects, publishes or preserves or assists in preservation of any confidential information/reports through computer, digital device, computer network or any other electronic form, by illegally entering into an office of the government or a semi-government, autonomous or statutory body, it will be considered a crime of computer or digital spying.

and expression under Article 19. The Act not only has a severe impact on the work of journalists, lawyers, human rights defenders, bloggers, commentators and historians but also penalises the legitimate exercise of the right to freedom of expression by any other individual by any manner.

The Bangladesh Telecommunication Regulatory Commission (BTRC) controls internet access and how the right to freedom of expression will be exercised online. The BTRC was criticised for collecting personal data of mobile phone users. It has recently collected the personal data of some seventy million mobile phone users in 184 Upazilas (Sub-districts) from mobile companies, without their consent and shared the same with another government agency for a survey.<sup>6</sup> This is a blatant violation of the right to privacy and security.

According to section 29 of the Bangladesh Telecommunication Act, 2001, one of the objectives of BTRC is to ensure access to reliable, reasonably priced and modern internet-services for the people. Contrary to that, the government has blocked social media – Facebook, YouTube and mobile applications Viber, WhatsApp, Tango, Mypeople – at different times, in the name of ‘public interest’ or to stop ‘extremism’. Ironically, those bans were reported to be innocuous as the government cyber security was not up to the mark, although people in general suffered. In December 2018, internet access was obstructed right up to the day after the rigged and manipulated 11<sup>th</sup> Parliamentary elections on 30 December. Bangladesh does not recognise the right to internet access as a human right, hindrance to internet access directly affects the exercise of the human rights, resulting in violation of freedom of expression.

Moreover, the government has purchased several sophisticated surveillance tools to monitor social media and gag dissenting voices. With increased penetration of mobile and internet networks across the country, the government has set up various specialized cyber-crime police units over the years in different police departments, while the Ministry of Home Affairs has merged all the cyber units and set up a centralised body called the Cyber Crime Investigation Bureau (CCIB). The government has formed this full-fledged specialized police unit and imported Open Source Intelligence (OSINT) software to target those who spread malicious, provocative contents hurting religious sentiments.<sup>7</sup> Effective, lawful and justified monitoring is essential to control such crime. However, the misuse of surveillance technology can lead to the risk of curbing freedom of speech and freedom of expression. Needless to say, there is a lack of technical expertise, honesty, professionalism and neutrality in the law enforcement agencies involved in the monitoring and surveillance work, which results in violating rights to freedom of speech, opinion and expression, enshrined in Article 39 of the Constitution of Bangladesh and Article 19 of the ICCPR. There are no specific rules, strict monitoring, internal control or accountability systems to ensure full neutrality and professionalism of such a specialised unit.

The CCIB is going to procure machinery that reveals international mobile subscriber identity (IMSI), plus Monitor-Mobile Trackers and a “Back Pack IMSI Monitor-Location Finder”, which will allow them to identify and track devices from a backpack. These are dynamic web intelligence tools that allow users to harness the vast amount of intelligence data available on the web including social media networks, news networks, websites, blogs, and other internet sources.<sup>8</sup> Meanwhile, the Rapid Action Battalion (RAB) had been given the task of monitoring social media, at least for the four months leading up to the elections, and quite possibly thereafter. On 10 December 2018, the government blocked 58 news portals and websites over ‘national security’ concerns which was deemed by activists as government interference with the media.<sup>9</sup> However, it reopened the news portals after several hours, due to protests from the media and journalists association. Furthermore, the Election Commission also gave directives, at a meeting with representatives of the Bangladesh Telecommunication Regulatory Commission (BTRC) and National Telecommunication Monitoring Centre

<sup>6</sup> <https://www.dhakatribune.com/bangladesh/government-affairs/2018/12/17/btrc-sharing-mobile-phone-users-data-draws-flak>

<sup>7</sup> <https://www.thedailystar.net/frontpage/new-police-unit-check-cyber-crime-1515997>

<sup>8</sup> <http://www.atimes.com/article/bangladesh-steps-up-pre-election-internet-surveillance/>

<sup>9</sup> <https://www.thedailystar.net/backpage/news/btrc-orders-blocking-58-news-sites-1671649>

(NTMC) and heads of mobile phone operators, to monitor social media platforms round the clock up to the 30 December parliamentary elections.<sup>10</sup>

Odhikar believes that the government's step of increasing social media and internet monitoring is basically to silence critics and dissenters who are vocal against human rights violations centering on the general elections and beyond. Considering the violation of freedom of speech and expression in Bangladesh, Odhikar cordially requests the Human Rights Council to urge the Government to:

1. Respect, encourage and facilitate all human rights related activities. Freedom of opinion and expression must be protected through effective implementation of international human rights obligations.
  2. Design national laws and policies based on international obligations and be implemented without any discrimination.
  3. Repeal all repressive laws, including the special Powers Act of 1971, the ICT Act and the Digital Security Act of 2018.
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<sup>10</sup> <https://www.dhakatribune.com/bangladesh/election/2018/11/26/ec-instructs-to-monitor-social-media-platforms-24-7>