

## **PRESENTATION: BANGLADESH**

**HONOURABLE MOHAMMAD FAZLUL AZIM,**

**MEMBER OF PARLIAMENT, BANGLADESH**

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It is indeed a great privilege and honour for me to have been invited to participate in the Meeting of Asian Parliamentarians against Torture and Ill-Treatment sponsored by the Asian Human Rights Commission and the Rehabilitation and Research Centre for Victims of Torture. I must thank the Organisers for staging this meeting in which parliamentarians from 13 Asian countries are participating. I am hopeful that the objectives in the meeting shall be achieved through valuable and meaningful deliberations, discussions and contributions by the participating parliamentarians.

One of the paramount considerations in the UN Charter was to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, and to encourage respect for universal human rights without any distinctions. Consequently, human rights viewed at the universal level are described in the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 5 of the UDHR and article 7 of the ICCPR enshrine the individual's right against torture and other cruel, inhuman or degrading treatment or punishment. The legal framework of all member countries should be based on this principle. This is the cornerstone of democratic statehood. Every individual's life, liberty, security of person and freedom from slavery, servitude and torture and other cruel, inhuman and degrading treatment or punishment must be guaranteed. The UN General Assembly recognises these ideals and considers it the obligation of the state to prohibit any form of torture within the national legal order. The CAT was therefore adopted by the General Assembly on 10 September 1984.

We are all aware that human rights as proclaimed by the world bodies can be safeguarded only if we make conscious efforts to fulfil our commitments. In the background paper of the Asian Alliance against Torture and Ill-Treatment, it has been correctly noted that the practice of torture is widespread in most countries of Asia, my country included. The objective of this meeting is to find ways forward to work for a torture-free Asia and identify ways in which parliamentarians can help guide the process. A suggestion would be for parliamentarians to promote the adoption of a sound legal framework conducive to the elimination of torture and ill-treatment in their respective countries. In the same background paper, the Asian Alliance against Torture has provided a 27-page brief on the state of human rights and practices of torture in Bangladesh. I am not here to defend our legal system – there are certainly areas which are in need of reform and modernisation – but I do wish to acknowledge publicly the areas in which extensive legal reforms have been made.

### **A few points concerning Bangladesh**

1. Article 35 of the Constitution of Bangladesh provides for the protection of the citizen against torture and other cruel, inhuman and degrading treatment or punishment.
2. Since 1971 independence, several reforms have been undertaken to promote the preservation of human rights of citizens.

3. The law concerning right to information was passed in 2011 following longstanding demands from the media and several human rights organisations.

4. In 2011, a law was passed to formally separate the judiciary from the executive.

5. In most cases of human rights violations, it is not the absence of relevant laws but rather the lack of access to legal redress that have frustrated individuals, families and communities. The non-implementation of human rights instruments have also become a major problem.

6. Bangladesh has a large number of human rights non-governmental organisations (NGOs) who have, as human rights defenders, often criticised the lack of accountability on the part of the government to properly implement the CAT. An active citizenry has also sustained the struggle to defend human rights these past years.

7. Rule of law is often undermined by inadequately funded government institutions. The lack of funding precludes investigations into alleged crimes and human rights violations. Investigations that are made are often not very thorough.

8. There has been a draft law formulated to replace the 1861 Police Act. This is intended to improve the accountability and quality of service of the police force. This draft law has been posted on the government's website for the purpose of public comment and feedback.

9. A bill entitled "Torture and Custodial Death (Prohibition) Bill 2009 was tabled in the parliament on 10 December 2009. This bill sought to criminalise torture in Bangladesh in accordance with the state's international obligations. The AHRC welcomed the bill, and the bill is awaiting passage as law – this is dependent upon the political will of the government (in which Awami League holds a significant majority of seats).

### **The role of parliamentarians**

1. What should be the role of parliamentarians in a malfunctioning police system?

2. What kind of legal reform is necessary to increase the competence and interest of police in criminal investigation?

3. Are laws designed to protect officials and not citizens? Section 46 of the Bangladesh Constitution empowers the government to extend immunity from prosecution to any state officer.

4. What is the role of parliamentarians in movements to repeal local laws incongruous with international law?

5. Parliamentarians can play a critical role in domesticating the CAT as torture has not yet been criminalised in Bangladesh.

### **My role as a parliamentarian to promote the implementation of the CAT**

1. My role as a parliamentarian is to make legislation. This is the case for any representative of any democratic society. Laws are usually passed by majority vote in parliament, but these can be overturned by a subsequent parliament. Then there are long-term structural challenges to be worked out. Democracies can make life difficult for their governments too. We also have to note that any single parliamentarian cannot represent the sentiments of the entire government. I highlight that any declaration made by me is not representative of my current government.

2. It is my personal commitment to get my government to remove its reservation on article 14(1) of CAT. MPs of a ruling party can also be punished internally for speaking out against their leadership. I am glad to be an independent MP – I stand up to speak my mind and my convictions, and I do it on behalf of 155 million people, not for a select group of people who compose a political party.

3. I am proud of the strong NGO networks in Bangladesh. It is my belief that civil society can and does influence the government as well as popular sentiment. Motivation is a key word: there must be occasions in which government is pressed with the importance of the CAT. I encourage meetings such as this one wherein dialogue can be open and difficult issues raised on the ground. Let's raise public awareness about human rights, even among the 'enlightened' and educated few. I hope therefore to build alliances between civil society, NGOs and members of the government.

4. Few have access to the print and the media. If the people are not aware they possess these rights, there'll be little popular pressure for change – the people will accept torture not as something "just" but as a fact of life. I wish to sensitise the media and the community to the notion of human rights.

I go home with a moral commitment to be an agent of change. I want there to be serious debate, temporarily away from the political culture and environment of my country so that I can go home to introduce new ideas, reaffirm my convictions and influence my government for the betterment of my people. I will be frank – there are numerous obstacles, some seem insurmountable.

1. Since 1991, my country's democratic process has been stronger – elections and the parliamentary system exist. Yet the practice and belief in practice of human rights have deteriorated.

2. Lack of training – the army's actions can be extreme, and members of law enforcement do not have sufficient training.

3. Lack of use of modern and scientific methods and existing technologies to collect information and gather evidence.

4. Hypocrisy or fickle-mindedness of certain politicians – MPs elected today who now do not care about human rights were only yesterday, as members of the opposition, clamouring for their government to adopt this, ratify that. There is a lack of seriousness when thinking about, debating and implementing mechanisms to protect human rights. If human rights are not consciously accepted as a sociopolitical priority, proper mechanisms to protect them will never be designed or put to use.

5. Deficiencies in our system

a. Lack of witness protection, particularly where powerful politicians are involved.

b. Non-independence of National Human Rights Commissions.

c. Police reform has not been taken up in conjunction with the implementation of CAT. This furthermore requires close cooperation between civil society and the government. d. Safeguards against arbitrary deprivation of liberty (64 and 167 of the Criminal Procedure Code), closely linked to the fundamental legal principle of habeas corpus, have yet to be put in place.

- e. Failure by the government to ensure independent and impartial investigations and prosecutions into allegations of torture materialise.
- f. Lack of specific legislation(s) providing for redress and compensation for victims of arbitrary arrest and torture.
- g. Non-implementation of basic human rights provisions in international law, including article 14a of the CAT.
- h. Lack of legal framework that can prevent and punish practices of torture.

I endorse the Meeting of Parliamentarians as a useful forum for the discussion of existing reality of torture and challenges faced by governments/parliamentarians committed to fighting torture.

### **Recommendations**

1. Establish a judicial reform commission to review outstanding concerns related to the CAT.
2. Restore independence of the National Human Rights Commission and enable them, through adequate funding and human resources, to take steps to combat corruption and make recommendations toward police reform in conformity with the requirements of the CAT.
3. Draft a Police Bill following extensive consultation with the public. The Bill should attempt to incorporate suggestions and feedback in a manner that reflects the consultative process and represents popular sentiment. This is fundamental to the workings of any democracy.
4. Actively develop close cooperation between parliamentarians, NGOs and civil society groups.
5. Implement existing High Court guidelines concerning safeguards against arbitrary arrest and detention under sections 54 and 167 of the Criminal Procedure Code.
6. Ensure independent, impartial and thorough investigations into allegations of torture committed by previous regimes.
7. Ensure prosecution of those found responsible of torture and other human rights violations.
8. Adopt specific legislation reaffirming right to redress for victims of torture and arbitrary arrest and detention, and providing avenues through which remedy may be claimed.
9. Remove the Bangladesh government's reservation to CAT article 14(1).
10. Legislators should create a sound legal framework that can effectively prevent and punish incidents of torture.
11. The AAATI should persevere in its efforts to develop a permanent forum for Asian parliamentarians to discuss ways to promote the CAT and methods of implementing the CAT.

## Concluding remarks

Yet there is reason to hope, and I hope others share that view. Parliamentarians have an immense role to play in the construction of a torture-free society. A sound legal framework is pivotal to achieving the objectives laid out in the CAT. Most importantly, mind-sets have to change along with procedural reform; without this, change is not sustainable. In addition to legislating, parliamentarians have the responsibility and authority to raise questions concerning the compliance of the government with provisions in the CAT. Parliamentarians also play other practical roles such as peace- and confidencebuilding between powerful and powerless groups; this is a daily challenge for all grassroots representatives. Conflict resolution and information dissemination are other ways in which parliamentarians could influence their constituencies and the government. Human rights may be protected through laws constructed by men, but are best guaranteed when enshrined in the understanding and consciousness of all people. A victim must know his or her inherent right before becoming outraged at the abuse, or to be able to claim the right to remedy following the violation. As such, although I may sound powerless as an independent, opposition parliamentarian, I believe there is a much more complex and meaningful role I play in the very slow shifting of paradigms. Human rights work, as you are all probably aware, requires patience and perseverance. I believe we will eventually see the light.

Thank you very much for your attention. I am available after this; please feel free to speak to me. It is a privilege to receive this information from civil society and to serve my country by being in the government.

***Honourable Mohammad Fazlul Azim,***

***Member of Parliament, Bangladesh***