

Human Rights Council Working Group on the Universal Periodic Review
16th Session, 22 April to 3 May 2013

ADVOCACY/BRIEFING NOTE
ICJ suggested recommendations: Universal Periodic Review of Bangladesh

This advocacy note is brought to the attention of all Permanent Missions to the United Nations Office at Geneva. This note addresses issues set out below, as further explained in the UPR Stakeholder Submission of the International Commission of Jurists (ICJ). The ICJ's full submission, along with an analysis comparing recommendations in that submission with corresponding first cycle recommendations and commitments, can be found online at: <http://www.icj.org/icj-submission-on-the-universal-periodic-review-of-bangladesh>.

1. Independence and impartiality of the judiciary

Notwithstanding the efforts to establish an independent Judicial Service Commission, no separate secretariat has yet been created for the judiciary in Bangladesh. As a result, premature transfers, arbitrary postings, promotions and removals may be used as incentives or disincentives. Furthermore, Bangladesh has no legislation establishing appointment criteria for Supreme Court judges. In the early 1990s, political appointments became more frequent. In June 2010, the High Court asked the Government why specific guidelines had not been framed for the appointment of judges. Two years have passed and the Government has yet to enact specific legislation for the appointment of judges.

Article 95 of the Constitution provides few requirements for appointing judges to the Supreme Court such that the candidate must: (1) be a citizen of Bangladesh; and (2) have practiced law in the Supreme Court for at least ten years or held judicial office for at least ten years *or have other such qualifications as may be 'prescribed by law'*. The open nature of these guidelines leaves appointment prone to political considerations, rather than competence and expertise.

Under international law, the promotion of judges must be based on objective factors, notably ability, integrity and experience. In 2009, the Supreme Court held that the appointment of the Chief Justice must be on the basis of seniority. Notwithstanding, four of the last six appointments to the office of Chief Justice have disregarded the principle of seniority. The lack of transparent and objective criteria for the promotion of judges undermines the independence and impartiality of the judiciary.

Suggested recommendations:

- i) Establish an independent secretariat to work with the Judicial Services Commission to ensure that the appointment, transfer and promotion for members of the lower judiciary is not administered by the Ministry of Law, Justice and Parliamentary affairs;
- ii) Enact specific guidelines in the Constitution or by law for the appointment of judges so as to ensure that there is no discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national, linguistic or social origin, property, income, birth or other status;
- iii) Implement the 2009 Supreme Court decision in *Idrisur Rahman v Bangladesh* so as to follow recommendations of the Chief Justice of the Supreme Court of Bangladesh concerning the appointment of Supreme Court judges;
- iv) Amend Article 95 of the Constitution to include more detailed minimum qualifications for the appointment of members of the judiciary; or enact legislation prescribing such qualifications as per Article 95; and
- v) Respect the principle of seniority as reflected in articles 96 and 97 of the Constitution, in the appointment of the Chief Justice of the Supreme Court of Bangladesh.

2. Appointment of public prosecutors

Bangladesh has a longstanding practice of appointing ruling party-affiliated lawyers as public prosecutors and it is alleged that the current Government has replaced the entire group of public prosecutors with members or supporters of the governing party.

Suggested recommendations:

- vi) Enact legislation ensuring that only persons of highest integrity and expertise, with appropriate training and qualifications, are appointed as public prosecutors; and
- vii) Ensure that any appointment guidelines include safeguards against appointments based on partiality or prejudice, excluding any discrimination against a person on the grounds of race, colour, sex, language, religion, political or other opinion, national, social or ethnic origin, property, birth economic or other status.

3. Presidential pardons

The repeated granting of presidential pardons to persons convicted of serious crimes is a matter of concern. As one example, in July 2011, the President granted a pardon to AHM Biplob, son of ruling party leader Abu Taher of Laxmipur; Biplob was convicted and sentenced to death for the murder of Nurul Islam, BNP leader – the main opposition party.

Suggested recommendation:

- viii) The granting of pardons or clemency should not be used to frustrate or interfere with the obligation to provide effective legal remedy and reparations to victims of human rights violations.

4. International human rights instruments and mechanisms

The Government of Bangladesh is yet to become party to six international human rights instruments. Bangladesh has not adhered to its reporting obligations under the ICCPR and the ICESCR and has outstanding requests from eight Special Procedures for a visit to take place.

Suggested recommendations:

- ix) Become party to: the OP to the ICCPR, the Second OP to the ICCPR, the OP to the ICESCR, the OPCAT, the Third OP to the CRC, and the CPED;
- x) Accept the requests of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, the Independent Expert on water and sanitation, the Independent Expert on minority issues, the Special Rapporteur on extrajudicial, summary or arbitrary executions, the Special Rapporteur on independence of judges and lawyers, the Special Rapporteur on contemporary forms of slavery, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, and the Special Rapporteur on the human rights of internally displaced persons to undertake official missions in Bangladesh at the earliest possible opportunity, and extend to them all reasonable cooperation and assistance to facilitate a timely and effective country mission;
- xi) Present to the Council, as soon as possible after adoption of the outcome document for the UPR of Bangladesh, a national plan of action for the implementation of accepted recommendations and voluntary pledges and commitments; and
- xii) Present to the Council, two years after adoption of the outcome document, a mid-term progress report on the status of implementation of recommendations and voluntary pledges and commitments.

The ICJ expresses to all Permanent Missions the assurances of its highest consideration.
