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Subject: Written Statement on the International Crimes Tribunal, Bangladesh

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Declaration

This statement is submitted by Mr. Toby M. Cadman, Barrister-at-law, of the Chambers of Nine Bedford Row International. consisting of 27 pages.

This statement is submitted to the members of the United States Congress Tom Lantos Human Rights Commission to form part of the record of the hearing entitled "Human Rights in Bangladesh" to be held on 1 December 2015

This statement is submitted solely in the capacity of defense attorney for the accused before the International Crimes Tribunal, Bangladesh.

The matters contained in this statement are true to the best knowledge and belief of the maker of the statement.

I. Introduction

1. The human rights situation in Bangladesh requires the urgent attention of the international community. There are numerous matters that give rise to grave concern and whilst the International Crimes Tribunal, Bangladesh (hereinafter: Tribunal) may be considered one of the fundamental areas that require attention, it is not the only matter of concern and the general breakdown in human rights protection, encompassing arbitrary arrest and detention, torture in police custody, enforced disappearance and extra-judicial killings are widespread.
2. I make these points with full recognition that I am not an impartial observer; I represent the interests of clients who face trial, and further, I have submitted a report previously to a Congressional Hearing on the Bangladesh. However, the concerns I raise are legitimate, and objective, and not partisan, in fact, many of these concerns have been echoed by the former United States Ambassador-at-Large for War Crimes Issues, Stephen J. Rapp, United Nations Working Group on Arbitrary Detention, United Nations Special Rapporteur for the Independence of Judges and Lawyers, United Nations Special for Summary Execution, United Nations Special Rapporteur on Torture, International Bar Association War Crimes Committee, Human Rights Watch, International Center for Transitional Justice, Amnesty International, No Peace Without Justice, International Commission of Jurists to name just a few. It is of particular concern that many of these various organizations have seemingly given up on Bangladesh due to the Government's unwillingness to engage in dialogue.
3. As an example of the contempt with which the Bangladesh Government appears to hold international institutions is their abject failure to engage with the UN Special procedures branch despite a number of adverse opinions, and further, their rejection

of any form of criticism made, regardless of the credibility of those that make such comments.

4. There is also a great deal of apathy due to the lack of a representative opposition that can engage with the international community. It is with all of these matters in mind, that it is strongly recommended that the United States engage on a serious level with the Government of Bangladesh, along with the United Nations Office of the High Commissioner for Human Rights, the other major financial contributors to Bangladesh including the United Nations, United Kingdom and the European Union, with a view to establishing a sense of normality and greater accountability.
5. It is recommended that the United States Congress takes the lead in recommending to the United Nations Human Rights Council that an International Commission of Experts be established to conduct an independent and impartial inquiry into the International Crimes Tribunal, Bangladesh as a matter of priority.
6. The issue is dealt with in more detail below, however, the stance adopted by the Bangladesh Government regarding political opposition and any who seek to criticize the Government or its policies, is undermining civil society to such an extent that instances of unrest are becoming common and widespread, and further, there is an argument to suggest that oppression on the scale we see in Bangladesh is assisting extremist groups.
7. The US Government will no doubt be aware that IS have already publically stated that Bangladesh is a target, and therefore, in considering the lack of respect for the principle of the Rule of Law, we must also consider the wider consequences and how Bangladesh is now some way into its descent towards autocracy.

II. *The Current Political Situation*

8. During 2015 the political polarization of Bangladesh and the governmental policies of oppression have placed the country on the verge of greater and more divisive conflict.
9. The cause of political violence in Bangladesh can be traced back to the 2014 elections. In defiance of the Supreme Court's recommendations and despite disagreements from the political opposition, the Awami League-led Government decided to call elections without appointing a caretaker government to oversee them, as was the tradition for nearly two decades. Given the high risk of electoral fraud, the main opposition party, the Bangladesh National Party (BNP) boycotted the elections, joined by a coalition of 20 parties sharing the same demands. Moreover, Jamaat-e-Islami, the third biggest political actor in the country, was precluded from taking part in the elections; consequently, the Awami League won the overwhelming majority of the seats in parliament, a significant proportion of those seats being won uncontested.
10. This unrepresentative, unjust and internationally-criticized electoral process was considered "*one of the most violent in the country's history*"¹, as 500 citizens lost their lives in confrontations between protesters and governmental forces². The attacks and limitations to opposition forces were so blatant as to place the leader of the BNP under effective house arrest; and induce the withdrawal of a coalition partner of the Awami League, which joined the boycott. A dozen political leaders were either killed or arrested as part of the brutal reaction of the Bangladeshi government to the boycott and the protests³. According to Human Rights Watch, Bangladeshi security forces carried

¹ Human Rights Watch (2014): "Democracy in the Crossfire: Opposition Violence and Government Abuses in the 2014 Pre- and Post- Election Period in Bangladesh", April 2014, ISBN: 978-1-62313-1272, p. 1.

² Human Rights Watch, "Bangladesh: End Deadly Cycle of Crimes", 6th February 2015, <http://www.hrw.org/news/2015/02/06/bangladesh-end-deadly-cycle-crimesa>

³ Human Rights Watch, "Democracy in the Crossfire: Opposition Violence and Government Abuses in the 2014 Pre- and Post- Election Period in Bangladesh", April 2014, ISBN: 978-1-62313-1272, p.3.

out extra-judicial executions, enforced disappearances, and arbitrary arrests⁴ before, during and after the electoral period.

11. Despite the gravity of the political violence that erupted from the unfairness of these elections, reports confirmed new electoral irregularities in the subsequent municipal elections, including intimidation of opposition candidates, harassment of the media, vote rigging and the capture of polling centres by government security forces.
12. January 2015 marked the first anniversary of the elections, and opposition forces organized demonstrations, strikes and transport blockades to protests against the legitimacy of the Awami League government and demand its resignation. The government, after issuing a ban on any anti-government public demonstrations, responded with lethal violence and resorted to a further significant crackdown on the opposition that lasted for months.
13. Although denied by the Awami-League government, BNP-leader Khaleda Zia was placed under house arrest, her offices were locked and a large police presence impeded her exit. She spent two weeks effectively detained in her offices⁵, with very limited access to basic needs, such as food and electricity. At the same time, other relevant opposition leaders, such as Mirza Fakhrul Islam Alamgir —BNP's Acting Secretary General— or Shamsheer Mobin Chowdhury, were arbitrarily arrested⁶.

⁴ *Ibid*, p.1.

⁵ Amnesty International, "Bangladesh: human Rights deteriorate as political violence escalates", Public Statement, 20 January 2015, p. 2.

⁶ *Ibidem*, p. 4.

14. This new wave of political violence, exacerbated by the reckless and unlawful brutality showed by Bangladeshi security forces, took at least 150 lives⁷. Human rights groups estimate that in the first seven months of 2015 more than 4,500 people were injured as a result of political violence⁸, and over 10,000 perceived political opponents were arrested⁹. Most of these detentions are arbitrary, as they are based solely on the mere membership of a dissenting political group¹⁰. These massive arrests endanger the physical integrity of thousands of citizens; first, due to the deplorable prison conditions; and second due to the numerous reports of torture and sexual violence in prison¹¹. Indeed, numerous prisoners get ill and 26 have died in prison due to the lack of medical treatment and substandard food¹². Moreover, several arrestees were killed whilst being arrested, as will be analysed in following sections.
15. Far from acknowledging and investigating the responsibility of the law enforcement authorities, the government blamed the opposition for the violence and threatened to commence judicial proceedings against its political leaders. For example, Mirza Fakhrul Islam Alamgir and Shamsher Mobin Chowdhury faced charges of instigating

⁷ Human Rights Watch, "Bangladesh: Investigate Case of Enforced Disappearance", 18th March 2015, <http://www.hrw.org/news/2015/03/17/bangladesh-investigate-case-enforced-disappearance>

⁸ Odhikar, "Six-Months Human Rights Monitoring Report", 1st July 2015, <http://1dgy051vgvxxh41o8cj16kk7s19f2.wpengine.netdna-cdn.com/wp-content/uploads/2015/07/human-rights-monitoring-Six-Monthly-report-2015-eng.pdf>; and Odhikar, "Human Rights Monitoring Report, July 1 –31, 2015", 1st August 2015, <http://1dgy051vgvxxh41o8cj16kk7s19f2.wpengine.netdna-cdn.com/wp-content/uploads/2015/08/human-rights-monitoring-July-Monthly-report-2015-eng.pdf>

⁹ Bergman, D. "Free speech under fire in Bangladesh", 17th April 2015, Al Jazeera America, <http://america.aljazeera.com/articles/2015/4/17/bangladesh-press-freedom.html>

¹⁰ Odhikar, "Human Rights Monitoring Report: February 1-28, 2015", 1st March 2015, <http://odhikar.org/human-rights-monitoring-report-february-2015/>

¹¹ Amnesty International, "Amnesty International Report 2014/15: The State of the World's Human Rights", 2015, ISBN: 978-0-86210-488-7, p. 73; and Asian Human Rights Commission, "Bangladesh: Stop Disappearances and extrajudicial executions", 28th January 2015. Doc ID: AI-HRC-STM-023-2015 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-023-2015>

¹² Odhikar, "Six-Months Human Rights Monitoring Report", 1st July 2015, <http://1dgy051vgvxxh41o8cj16kk7s19f2.wpengine.netdna-cdn.com/wp-content/uploads/2015/07/human-rights-monitoring-Six-Monthly-report-2015-eng.pdf>

violence in 2015, inspite of the absence of evidence proving their responsibility for any violent episodes. Khaleda Zia was further charged with instigating an arson attack that killed seven people¹³. According to Amnesty International, these arrests had a mere political character¹⁴, which constitutes a violation of the freedoms of expression, association and peaceful assembly. Sadly, this is not an isolated incident. During the last years, numerous political opponents have suffered politically motivated arrests and the judicial branch of power has been systematically manipulated to further political gains.

16. Massive arrests and the use of violence are not the only tools of oppression used by state security forces against the civilian opposition: the Asian Human Rights Commission reported that the houses and business of political opponents were also being demolished, forcing their families to displace¹⁵.
17. Fundamental liberties and human rights, including the freedoms of association and of expression, are at the lowest levels in the country. Journalists regularly confront systematic pressures and censorship from the Government¹⁶, which also suspended and banned the publication or broadcasting of certain ideologically opposed newspapers and TV channels¹⁷. In November 2015 the government blocked the services of Facebook, WhatsApp and Viber “on security grounds”, however, the measure was taken

¹³ BBC, “Bangladesh opposition leader Khaleda Zia charged over arson attack”, 4th February 2015, <http://www.bbc.co.uk/news/world-asia-31127763>

¹⁴ Amnesty International, “Bangladesh: human Rights deteriorate as political violence escalates”, Public Statement, 20 January 2015, p. 4.

¹⁵ Asian Human Rights Commission, “Bangladesh: Government drive against opposition and citizens”, 21st January 2015. Doc ID: AHRC-STM-014-2015 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-014-2015>

¹⁶ Amnesty International, “Stop them Now! Bangladesh: enforced disappearances, torture and restrictions on freedom of expression”, 2014, p. 18.

¹⁷ Odikhar “A journey towards anarchy, political uncertainty and human rights violations: possibilities of dire consequences if there is no negotiated political settlement ” 4th January 2015 <http://odhikar.org/a-journey-towards-anarchy-political-uncertainty-and-human-rights-violations-possibilities-of-dire-consequences-if-there-is-no-negotiated-political-settlement/>

immediately after the Supreme Court upheld the death penalty in respect of two individuals convicted by the ICT¹⁸, thus, inviting us to believe that the Government was attempting to limit public criticisms to the judicial process. It would not be the first time that the Bangladesh establishment has attempted to curtail criticism of the ICT: the journalist David Bergman was condemned to “simple imprisonment till the rising of the court” and a fine of Taka 5,000 for publishing concerns about the serious flaws of the process and due process violations in the proceedings conducted in front of the ICT¹⁹.

18. Several journalists have suffered attacks during the last year²⁰ and their offices have been raided²¹. Their independence have been subjected to further pressure as a result of the governmental crackdown on the opposition and the increasing governmental control over narratives²². This has limited the ability to report impartially on the events occurring during the last year. The arrest and intimidation of Abdus Salam, chairman of the Ekushey TV channel, is representative of the overwhelming and intolerable pressure that the media critical of the government has received since January 2015²³.

¹⁸ Husain, I. and Hasan, K., “Facebook, WhatsApp, Viber blocked in Bangladesh”, Dhaka Tribune, 18th November 2015, <http://www.dhakatribune.com/bangladesh/2015/nov/18/govt-orders-blocking-facebook-whatsapp-viber>

¹⁹ Human Rights Watch, “Bangladesh: Conviction of Journalist Chills Speech”, 5th December 2014, <http://www.hrw.org/news/2014/12/05/bangladesh-conviction-journalist-chills-speech>

²⁰ Odhikar, “Human Rights Monitoring Report: February 1-28, 2015”, 1st March 2015, <http://odhikar.org/human-rights-monitoring-report-february-2015/>, p. 12.

²¹ *Ibid*, p. 13.

²² *Ibid*, p. 12.

²³ Amnesty International, “Bangladesh must investigate deaths and release prisoners held in opposition crackdown”, 8th January 2015, <http://www.amnestyusa.org/news/news-item/bangladesh-must-investigate-deaths-and-release-prisoners-held-in-opposition-crackdown>

19. Freedom of expression deteriorated even further with the approval of Information and Communication Technology Act²⁴, which in practice is used to target the expression of information critical of the government and the dissemination of information on human rights violations. Indeed, numerous bloggers, activist and human rights defenders have been charged under this law²⁵, and those criticizing the government are frequently defined as “traitors”²⁶. Furthermore, the approval of the “The Foreign Donation (Voluntary Activities) Regulation Act 2014”, allows for a government control of NGOs and limits its reporting activities²⁷. These actions against the media and NGOs, and the more general attacks to the political opposition, are the result of a governmental intent to “*suppress criticism or dissent*”²⁸ and constitute a violation of freedom of expression, recognized in article 19 of the ICCPR, treaty to which Bangladesh is party.
20. Moreover, there have been different standards for pro- and anti-government demonstrations. While Section 144 of the 1898 Code of Criminal Procedure formally forbade

²⁴ Amnesty International, “Amnesty International Report 2014/15: The State of the World’s Human Rights”, 2015, ISBN: 978-0-86210-488-7, p. 72.

²⁵ Amnesty International, “Stop them Now! Bangladesh: enforced disappearances, torture and restrictions on freedom of expression”, 2014, p. 17; Odhikar, “Human Rights Monitoring Report: February 1-28, 2015”, 1st March 2015, <http://odhikar.org/human-rights-monitoring-report-february-2015/>, p.17

²⁶ IMADR, “Human Rights Defenders in Bangladesh and Accountability in Sri Lanka (HRC 28th, 2015, OS)”, Statement, 17th March 2015, <http://imadr.org/hrds-bangladesh-accountability-sri-lanka-hrc28th-2015-os/>

²⁷ Odikhar “A journey towards anarchy, political uncertainty and human rights violations: possibilities of dire consequences if there is no negotiated political settlement ” 4th January 2015 <http://odhikar.org/a-journey-towards-anarchy-political-uncertainty-and-human-rights-violations-possibilities-of-dire-consequences-if-there-is-no-negotiated-political-settlement/>

²⁸ Foreign & Commonwealth Office, “Human Rights and Democracy: The 2014 Foreign & Commonwealth Office Report”, March 2015, ISBN 9781474114882, p. 39

all public protests²⁹, the ruling party was still authorised to organise its own demonstrations³⁰.

21. However, the government is completing its policy of power accumulation and elimination of political opposition using the judicial arena. The judicial process before the International Crimes Tribunal in Bangladesh is so filled with procedural irregularities, political interference, judiciary partiality and instances of unfairness that it can only be perceived to be a tool of political vendetta designed to target the opposition. Indeed, according to Lord Carlile QC, "*the root cause of this latest division is the International Crimes Tribunal*"³¹.
22. In practice, the trials before this tribunal have created further conflict and disunity. Protests against the unfair and selective nature of this tribunal were responded to with extreme violence by the Special Security Forces; and ended with the mass killing of civilians on 5-6th May 2013³² and on 28th February 2013, with "*the highest number of civilian killing recorded ever in the history by the state agency*"³³.
23. This continuous unrest, the indiscriminate crackdown on the opposition and the systematic policies of oppression by the Awami League government has created an unprecedented security crisis.

²⁹ Asian Human Rights Commission, "Bangladesh: Crackdown on media and opposition intensifies", 12th January 2015. Doc ID: AHRC-STM-008-2015 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-008-2015>

³⁰ *Idem*

³¹ Letter to the Rt. Hon. William Hague MP, 18th October 2013, available at: <http://tmcadvisorygroup.com/wp-content/uploads/2013/10/Letter-to-the-Rt-Hon-William-Hague-MP-181013.pdf>, last accessed: 18th September 2015.

³² Citizens International (2013): "Mass Killing in Bangladesh", 13th May 2013, available at: <http://www.citizens-international.org/ci2012/?p=2826>, last accessed: 23rd September 2015.

³³ CNN (2013): "Mass killing and Genocide in Bangladesh on 28th February, 2013", *iReport*, 4th May 2013, available at: <http://ireport.cnn.com/docs/DOC-936595>, last accessed: 23rd September 2015.

24. The gravity and depth of this crisis was already acknowledged by the U.S. Congressional Subcommittee on Asia and the Pacific in the hearing “Bangladesh’s Fracture: Political and Religious Extremism”, organized on 30th April 2015. The participants of this hearing argued that the current security crisis “*may lead to a further breakdown of order that could open space for Islamic militancy or for the military to take power*”³⁴. Thus, extremism and authoritarianism are the two forecasted outcomes of the current political situation in Bangladesh.
25. The United Nations has also issued statements concerning this security crisis: Ravina Shamdasani, spokesperson for the UN High Commissioner for Human Rights, called upon the Bangladeshi government to ensure “*that all measures taken to restore law and order are conducted in line with the parameters set by international human rights law*”³⁵. Nevertheless, the Bangladesh government seems to have obviated this recommendation.
26. Political violence in the country extraordinarily affected the normal life of its citizens and has had damaging consequences for the economy of the country. According to all major international human rights organizations, human rights violations are ordinary in Bangladesh. Thousands of citizens have suffered the reign of terror of the government security forces, the space for dissent has progressively disappeared and the government is slowly taking control of all political narrative in the country.
27. The numerous instances of extrajudicial killings and enforced disappearances, the political violence, the unstable situation at the border with India, the progressive rise of

³⁴ Subcommittee on Asia and the Pacific (2015): “Bangladesh’s Fracture: Political and Religious Extremism”, Committee on Foreign Affairs, House of Representatives, 30th April 2015, Washington DC, available at: <http://docs.house.gov/meetings/FA/FA05/20150430/103406/HHRG-114-FA05-Transcript-20150430.pdf>, last accessed: 24th September 2015, p. 2.

³⁵ Ravina Shamdasani, “Press briefing note on Bangladesh”, Office of the UN High Commissioner for Human Rights, 16th January 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=15490&LangID=E>

extremism, and the violent repression of dissent by security forces threaten the security of Bangladeshi citizens.

28. The pervasive impunity of the Security Forces, which operates arbitrarily, seems to have aggravated this security crisis. Worryingly, high-profile political leaders issued public statements promising impunity for the commission of human rights violations against the opposition³⁶, which in practice provided a *carte blanche* to security forces to confront protesters with extreme violence in the first three months of 2015.
29. Illustrative examples of these inciting and inflammatory statements include, Bangladeshi Prime Minister, Sheikh Hasina declaring “*as the head of the government I'm giving [the police] the liberty to take any action wherever and whenever it will be deemed necessary*” to stop the arson attacks³⁷, and in another occasion she added that “*the hands of the culprits who make and hurl petrol bombs should be burnt so they can feel the pain of arson victims*”³⁸.
30. Such statements from a political leader of a country and the main representative of the state are to be viewed with the utmost of concern. They seem to promise a selective application of the rule of law and provide security forces with absolute liberty to use unrestrained and indiscriminate force against protesters. These statements are, thus, in

³⁶ See Amnesty International, “Bangladesh: Excessive police force not the answer to horrific petrol bomb attacks”, 29th January 2015, <https://www.amnesty.org/en/articles/news/2015/01/bangladesh-excessive-police-force-not-answer-horrific-petrol-bomb-attacks/>, Asian Federation Against Involuntary Disappearances (AFAD) and Asian Forum for Human Rights and Development (FORUM-ASIA) “Bangladesh: Extrajudicial killings and enforced disappearances amidst political impasse must end”, 10th February 2015, <http://odhikar.org/afad-and-forum-asia-statement-on-bangladesh-extrajudicial-killings-and-enforced-disappearances-amidst-political-impasse-must-end/>, Human Rights Watch, “Bangladesh: End Deadly Cycle of Crimes”, 6th February 2015, <http://www.hrw.org/news/2015/02/06/bangladesh-end-deadly-cycle-crimes> and BD News, “Stop violence at any cost, I take all liability: PM tells police”, 28th January 2015, <http://bdnews24.com/bangladesh/2015/01/28/stop-violence-at-any-cost-i-take-all-liability-pm-tells-police>

³⁷ Amnesty International, “Bangladesh: Excessive police force not the answer to horrific petrol bomb attacks”, 29th January 2015, <https://www.amnesty.org/en/articles/news/2015/01/bangladesh-excessive-police-force-not-answer-horrific-petrol-bomb-attacks/>

³⁸ Asian Human Rights Commission, “Bangladesh: Government drive against opposition and citizens”, 21st January 2015. Doc ID: AHRC-STM-014-2015 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-014-2015>

breach of international standards, and in particular seem to disregard the requirements set out in the UN Code of Conduct for Law Enforcement Officials³⁹ and the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials⁴⁰.

31. This interpretation of Ms. Hasina's words are further confirmed by the the Asian Federation Against Involuntary Disappearances (AFAD) and the Asian Forum for Human Rights and Development (FORUM-ASIA), which reported that several ministers, members of the Awami League, and policemen "have issued directives to shoot suspected attackers on sight"⁴¹.

III. *Extra-Judicial Killings and Enforced Disappearances*

(a) *Extrajudicial killings*

32. There is widespread evidence of torture; cruel, inhuman or degrading treatment or punishment; and arbitrary detention in Bangladesh. Extrajudicial killings and enforced disappearances have also become a common practice in the country.
33. Odhikar, a reputed domestic human rights organization, reported 111 extrajudicial killings by security forces from January to July 2015. The victims were shot, beaten, strangled or tortured to death. The majority of the citizens lost their lives at the hands of

³⁹ UN General Assembly, *Code of conduct for law enforcement officials*, 5th February 1980, A/RES/34/169, <http://www.refworld.org/docid/48abd572e.html>

⁴⁰ United Nations Congress on the Prevention of Crime and the Treatment of Offenders, *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials*, 7th September 1990, <http://www.ohchr.org/Documents/ProfessionalInterest/firearms.pdf>

⁴¹ Asian Federation Against Involuntary Disappearances (AFAD) and Asian Forum for Human Rights and Development (FORUM-ASIA) "Bangladesh: Extrajudicial killings and enforced disappearances amidst political impasse must end", 10th February 2015, <http://odhikar.org/afad-and-forum-asia-statement-on-bangladesh-extrajudicial-killings-and-enforced-disappearances-amidst-political-impasse-must-end/>

either the police or the Rapid Action Battalion (RAB)⁴², the latter having become synonymous with brutality and subject to significant international criticism given the manner in which it approaches its responsibilities. Given the high degree of impunity promised by political leaders, this exorbitant number of killings could hardly be considered surprising.

34. Officially, 86 out of the 111 extrajudicial killings took place during alleged crossfire. The official versions, nevertheless, echo numerous past instances of cases in which the official authorities had alleged that a certain person had died during crossfire and evidence was later discovered proving that the victim had been summarily executed by Bangladeshi security forces while being unarmed⁴³. Consequently, human rights organizations question the official number of casualties in crossfire and suspect that the number of summary executions is higher than in the official versions.
35. As a matter of fact, the families of several victims, including activists and members of the political opposition, reported having witnessed the arrest of their family members before they appeared dead⁴⁴. The security forces usually allege that the person died in a gunfight or in a road accident, as, frequently, killings during crossfire are denied further investigation by the Bangladeshi judiciary and security forces, leaving the real facts unclear⁴⁵.

⁴² Odhikar, "Six-Months Human Rights Monitoring Report", 1st July 2015, <http://1dgy051vgvxh41o8cj16kk7s19f2.wpengine.netdna-cdn.com/wp-content/uploads/2015/07/human-rights-monitoring-Six-Monthly-report-2015-eng.pdf>

⁴³ Human Rights Watch, "Democracy in the Crossfire: Opposition Violence and Government Abuses in the 2014 Pre- and Post- Election Period in Bangladesh", April 2014, ISBN: 978-1-62313-1272, p. 3.

⁴⁴ Asian Human Rights Commission, "Bangladesh: Government drive against opposition and citizens", 21st January 2015. Doc ID: AHRC-STM-014-2015, <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-014-2015>

⁴⁵ Amnesty International, "Bangladesh: Excessive police force not the answer to horrific petrol bomb attacks", 29th January 2015, <https://www.amnesty.org/en/articles/news/2015/01/bangladesh-excessive-police-force-not-answer-horrific-petrol-bomb-attacks/> and Human Rights Watch, "Bangladesh: End Deadly Cycle of Crimes", 6th February 2015, <http://www.hrw.org/news/2015/02/06/bangladesh-end-deadly-cycle-crimes>.

36. At least 35 victims were recognized members of political parties in the opposition, which invites to question the potential political motivation of their deaths. Indeed, on 11th January 2015, Mr. Tofail Ahmed –Commerce Minister of Bangladesh– declared that “BNP would meet the fate the Naxalites did after the country's liberation in 1971”⁴⁶.
37. Among those political opponents that have been extra-judicially killed are Matiur Rahman, Vice-President of the Shyampur Union unit Chhatra Dal (BNP's student wing)⁴⁷; Nuruzzaman Jony, General Secretary of the Khilgaon Thana unit Chhatra Dal⁴⁸; and Imrul Kayes, Municipal Councillor of Narail District. They all were allegedly killed during “gunfights”⁴⁹, although there are reports proving that the first two had been previously arrested.
38. It is of note that although political violence has decreased since March 2015, extrajudicial killings have continued to take place for months. For example, in July 2015, Odhikar reported seven killings, all of them during alleged “crossfire”.
39. However, these statistics do not include the names of those executed after having been found guilty of international crimes by the ICT. Given the unfair nature of the process, the politicization of the trials, the blatant denial of due process, and the gross human rights violations occurred during the judicial proceedings, these executions could be

⁴⁶ Asian Human Rights Commission, “Bangladesh: Crackdown on media and opposition intensifies”, 12th January 2015. Doc ID: AHRC-STM-008-2015 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-008-2015>

⁴⁷ Odhikar, “Human Rights Monitoring Report: January 1-31, 2015”, 1st February 2015, <http://odhikar.org/human-rights-monitoring-report-january-2015/>, p.11; and Asian Human Rights Commission, “Bangladesh: Government drive against opposition and citizens”, 21st January 2015. Doc ID: AHRC-STM-014-2015 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-014-2015>

⁴⁸ *Idem*.

⁴⁹ Asian Human Rights Commission, “Bangladesh: Government drive against opposition and citizens”, 21st January 2015. Doc ID: AHRC-STM-014-2015 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-014-2015>

considered an arbitrary deprivation of life and, therefore, amount to summary executions.

(b) Enforced disappearances

40. In addition, from January to July 2015 the same organization documented 40 cases of enforced disappearances of persons that had been “picked up allegedly by the men claiming to be members of law enforcement agencies”⁵⁰. This last figure rises to 208 when expanding the time period to January 2009⁵¹. The whereabouts of 109 of these individuals still remain unknown⁵².
41. on occasions the cases of enforced disappearances in Bangladesh result in cases of extrajudicial killings: nine of the people disappeared in 2015 were later found dead⁵³, while the whereabouts of 10 disappeared are still unknown.
42. Frequently, the Detective Branch (DB) of Police, the Rapid Action Battalion (RAB), and the Joint Forces are related to the cases of enforced disappearances, as the families of the persons disappeared alleged that their family members had been detained by

⁵⁰ Odhikar, “Six-Months Human Rights Monitoring Report”, 1st July 2015, <http://1dgy051vgyxh41o8cj16kk7s19f2.wpen-gine.netdna-cdn.com/wp-content/uploads/2015/07/human-rights-monitoring-Six-Monthly-report-2015-eng.pdf> and Odhikar, “Human Rights Monitoring Report, July 1 –31, 2015”, 1st August 2015, <http://1dgy051vgyxh41o8cj16kk7s19f2.wpen-gine.netdna-cdn.com/wp-content/uploads/2015/08/human-rights-monitoring-July-Monthly-report-2015-eng.pdf>

⁵¹ FIDH and Odhikar, “Joint Statement for International Justice Day by Odhikar and FIDH”, 17th July 2015, <http://odhikar.org/joint-statement-for-international-justice-day-by-fidh-and-odhikar/>

⁵² *Idem*.

⁵³ Odhikar, “Human Rights Monitoring Report, July 1 –31, 2015”, 1st August 2015, <http://1dgy051vgyxh41o8cj16kk7s19f2.wpen-gine.netdna-cdn.com/wp-content/uploads/2015/08/human-rights-monitoring-July-Monthly-report-2015-eng.pdf>

men dressed in police uniforms and claiming to belong to one of these three agencies⁵⁴. Although these agencies frequently deny having arrested the person, the victims frequently appear under police custody⁵⁵ or in court, which allows us to identify a common pattern in the cases of enforced disappearances in Bangladesh. However, there are several cases in which the whereabouts of the victim remain unknown.

43. Several organizations have documented dozens of cases of politically motivated enforced disappearances⁵⁶, which confirms the seriousness and depth of this particular problem in Bangladesh. The year 2015 marks the last episode of a longer historical pattern of enforced disappearances in the country: Amnesty International reported 80 cases of disappearances in the country just in 2014⁵⁷.
44. The case of Salah Uddin Ahmen, spokesperson and joint-secretary of BNP⁵⁸, took widespread international attention and was the focus of political tensions between domestic parties. Mr. Ahmen was disappeared for two months after several witnesses declared that men identifying themselves as part of the DB took him on 10th March

⁵⁴ Asian Human Rights Commission, "Bangladesh: Stop Disappearances and extrajudicial executions", 28th January 2015. Doc ID: AHRC-STM-023-2015 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-023-2015>

⁵⁵ This is the case of Mahmud Rahman Manna –Convenor of the Nagorik Oikko (Citizen's Unity)– who, according to AFAD, disappeared on 24th February 2015; but the RAB confirmed his arrest 21 hours later. Asian Federation Against Involuntary Disappearances (AFAD), "Open Letter Urging an Immediate Investigation into the Disappearance of Mr. Salah Uddin", 16th March 2015, <http://www.afad-online.org/news/12-open-letters/230-open-letter-urging-an-immediate-investigation-into-the-disappearance-of-mr-salah-uddin>

⁵⁶ Amnesty International, "Bangladesh: Disturbing increase in disappearances, clampdown on press freedom", 2nd September 2014, <https://www.amnesty.org/en/articles/news/2014/09/bangladesh-disturbing-increase-disappearances-clampdown-press-freedom/>; and Asian Human Rights Commission, "Bangladesh: Stop disappearances and extrajudicial executions", 28th January 2015. Doc ID: AHRC-STM-023-2015 <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-023-2015>

⁵⁷ Amnesty International, "Amnesty International Report 2014/15: The State of the World's Human Rights", 2015, ISBN: 978-0-86210-488-7, p. 72.

⁵⁸ Human Rights Watch, "Bangladesh: Investigate Case of Enforced Disappearance", 18th March 2015, <http://www.hrw.org/news/2015/03/17/bangladesh-investigate-case-enforced-disappearance>

2015⁵⁹. He later “appeared” completely disoriented in the border with India and, allegedly told reporters “that he found himself in the hill city after being kidnapped, blindfolded and dumped”⁶⁰. He is currently facing either a criminal case in India for crossing the border illegally, or extradition to Bangladesh, where he will also face criminal charges.

45. Both extrajudicial killings and enforced disappearances constitute two of the gravest violations of human rights and are prohibited by customary international law and multilateral treaties. They affect a varied list of human rights, including the right to life and the right to freedom, and according to article 7 of the Rome Statute for an International Criminal Court (ICC)⁶¹, they could be constitutive of international crimes if they are part of a widespread and systematic attack against a civilian population. Enforced disappearances are, indeed, considered a continuous crime. Consequently, they can be unlimitedly prosecuted years after the disappearance formally started.
46. Despite ample evidence of human rights violations, impunity prevails and investigations are a clear exception Bangladesh. Only a handful cases have been investigated and prosecuted. This lack of investigation has been severely criticized not only by the Human Rights Council in the last Universal Periodic Review of Bangladesh⁶², but also

⁵⁹ Human Rights Watch, “Bangladesh: Investigate Case of Enforced Disappearance”, 20th March 2015, <http://www.hrw.org/news/2015/03/19/bangladesh-investigate-case-enforced-disappearance>

⁶⁰ Bergman, D. and Rashid, M., “Anatomy of a disappearance, and a Reappearance”, 23rd May 2015, <http://thewire.in/2015/05/23/anatomy-of-a-disappearance-and-a-reappearance-2289/>

⁶¹ UN General Assembly, *Rome Statute of the International Criminal Court (last amended 2010)*, 17th July 1998, ISBN No. 92-9227-227-6, <http://www.refworld.org/docid/3ae6b3a84.html>

⁶² Human Rights Council, “Report of the Working Group on the Universal Periodic Review”, UN Doc: A/HRC/24/12, 8th July 2013, p. 19.

by several important international human rights organizations, such as Amnesty International⁶³ and Human Rights Watch.⁶⁴

47. This impunity for such heinous and grave crimes as enforced disappearances is contrary to recommendations from the Human Rights Council in the last Universal Periodic Review of Bangladesh, which called upon Bangladesh to “thoroughly and impartially investigate and, if credible evidence emerges, prosecute all allegations of human rights violations, in particular enforced disappearances, custodial torture and extrajudicial killings”⁶⁵. It also contradicts the 1992 Declaration for the Protection of All Persons Against Enforced Disappearances, the International Covenant on Civil and Political Rights (ICCPR)⁶⁶, the International Covenant on Economic, Social and Cultural Rights (ICESR)⁶⁷ and the Convention Against Torture (CAT)⁶⁸.

IV. *Judicial Process*

48. As regards the notion of addressing the crimes committed during the War of Liberation of 1971 it is quite right that this deserves a judicial process; to that end there can be no debate. Bangladesh emerged from a brutal conflict in 1971 and it is obliged,

⁶³ Amnesty International, “Bangladesh: Excessive police force not the answer to horrific petrol bomb attacks”, 29th January 2015, <https://www.amnesty.org/en/articles/news/2015/01/bangladesh-excessive-police-force-not-answer-horrific-petrol-bomb-attacks/> and Amnesty International, “Bangladesh: human Rights deteriorate as political violence escalates”, Public Statement, 20th January 2015.

⁶⁴ Human Rights Watch, “Bangladesh: End Deadly Cycle of Crimes”, 6th February 2015, <http://www.hrw.org/news/2015/02/06/bangladesh-end-deadly-cycle-crimes>

⁶⁵ Human Rights Council, “Report of the Working Group on the Universal Periodic Review”, UN Doc: A/HRC/24/12, 8th July 2013, p. 18.

⁶⁶ UN General Assembly, *International Covenant on Civil and Political Rights*, 16th December 1966, United Nations, Treaty Series, vol. 999, p. 171, <http://www.refworld.org/docid/3ae6b3aa0.html>

⁶⁷ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16th December 1966, United Nations, Treaty Series, vol. 993, p. 3, <http://www.refworld.org/docid/3ae6b36c0.html>.

⁶⁸ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10th December 1984, United Nations, Treaty Series, vol. 1465, p. 85, <http://www.refworld.org/docid/3ae6b3a94.html>

under international law, to bring an end to a culture of impunity that has existed for more than forty years. The Tribunal was established with this in mind; to bring an end to a culture of impunity and to bring 'justice' to the victims. However, when one talks about justice and accountability in the context of Bangladesh, it is important to identify what is meant by that very broad term. This broadly stated concept should mean that an international judicial process is established, sufficiently funded, that is mandated to try cases of those bearing the greatest responsibility for crimes committed during the 1971 conflict - this was certainly the recommendation made by the International Commission of Jurists in 1972 that pre-dated the 1973 legislation. Moreover, when one talks of 'those responsible' it is important to understand what is meant in this regard as well. In this context it is vital for all those responsible, including members of the warring factors, namely the Pakistan, Indian and national Liberation forces as well as civilians and auxiliary forces that fought on either side of the conflict if it may be shown that they bear criminal liability. The rhetoric of the Government remains that only those who fought for liberation were victimized and therefore only those that opposed liberation should face trial. This is not a statement that has any proper basis. Arguably, those persons suffered a greater level of victimization at the hands of the Pakistan Military, but there were losses on all sides; it would be irresponsible to suggest otherwise. However, this has become the Government mantra and now defines a divided nation.

49. Maintaining such a position only serves to further the anger felt towards the Government and its supporters by those who are seen as being on the wrong side of history. The rhetoric of the Government now merely serves to support the notion that any who do not support the Government are traitors and ought to be treated as such.
50. It is quite clear that unless there is a system by which everyone bearing individual *criminal* responsibility will be brought to justice; the whole process will have little meaning. At the same time this does not mean that individuals from all sides to the conflict

should be brought to justice solely for the purpose of providing balance; the point is that prosecutions must be based on individual criminal responsibility and reliable evidence. Once again, this does not mean prosecuting those that opposed independence or those that merely advocated for the maintenance of a sovereign Pakistan. A criminal justice process must serve the ends of justice and not politics.

III. Flawed Trial Process

51. The shortcomings of the standards and procedures adopted were discussed in my previous document, however, they are of such importance, and so inextricably linked to the issues that Bangladesh faces today that I would respectfully ask that they be reconsidered.
52. Not only is the Bangladesh Government adopting a position of belligerence to those respected international NGO's such as Human Rights Watch, but it is also in abject defiance of the United Nations Special Procedures Branch and further, its responsibilities under international law.
53. Thus far, Bangladesh has ignored every opinion issued by the Working Group on Arbitrary Detention and other offices within the Special Procedures Branch. Its refusal to engage with the process and lack of respect for the opinions speaks volumes insofar as its position is concerned. In particular, it is respectfully submitted that the following matters are representative of a number of breaches of the ICCPR:
 - a. Insufficient information as to the nature of the allegations were given following arrest;
 - b. Information concerning the investigation was provided to the Tribunal, but not the defense;

- c. The investigative report and Case Diaries have never been disclosed to the defense;
- d. The investigation is effectively conducted in a shroud of secrecy;
- e. The Prosecution is not required to serve unused or exculpatory material to the defense;
- f. The accused are not afforded privileged communication with legal representatives of their own choosing during the course of the investigation;
- g. The accused were not served copies of Prosecution Motions or Tribunal Orders during the course of the investigation;
- h. The accused were all interrogated in the absence of counsel;
- i. Members of the investigative agency subsequently informed the media that the Accused-Petitioner had confessed during the course of the investigation.

IV. *Death Penalty*

- 54. International law is clearly moving towards disallowing the death penalty and this is continuing apace. The primary human rights treaty, the ICCPR, encourages states to abolish the death penalty, and the United Nations Human Rights Committee has supported this encouragement with strong statements promoting abolition. International custom is also becoming increasingly abolitionist, with more states regarding the death penalty as being inconsistent with human rights standards. While the death penalty remains legal under international law at the current time, it is highly likely that progress towards abolition will continue. Arguments in favour of retaining the death penalty often appear to rely on unproven allegations, such as its deterrent effect, or focus solely on the argument that the decision to abolish or retain capital punishment remains within national sovereignty. It is further argued that all the international tribunals, as well as national tribunals trying cases of war crimes, have abolished the death

penalty. However, of particular importance here is that if the accused are executed following a trial in flagrant denial of due process rights, it will amount to summary execution in breach of international law. This matter has been raised with the United Nations Working Group on Summary Execution.

55. Again however, the Bangladesh Government has chosen to ignore this position, and further, appears to either be ignorant to the increase in civil unrest *because* of the imposition of the death penalty in such circumstances, or, is aware of this likely consequence and is seeking to manipulate it, so as to further its political agenda and continue to undermine democracy.

V. *Further Appeals*

56. The Supreme Court decision concerning the case of *Nizami* is expected before the end of 2015, and given recent precedent, it is widely expected that the previous conviction and sentence will be upheld without any real consideration of the grounds of appeal before the court.
57. We should recall, that in the case of *Nizami*, one of the witnesses confirmed in an interview to the media that his evidence had been coached and further, that he had been ordered to give that evidence by the Awami League Government.
58. Further, the case of *Nizami* saw the bench of judges presiding change part way through the trial, resulting in one of the judges only having heard part of the evidence, and a second judge having heard no evidence at all.
59. Further, the case of *Nizami* is now synonymous with manipulation and political interference given it was in this case that the 'Skypegate'⁶⁹ scandal was uncovered, in which the judge chairing the tribunal was found to have colluded with a third party; a third

⁶⁹ <http://www.economist.com/news/briefing/21568349-week-chairman-bangladeshs-international-crimes-tribunal-resigned-we-explain>

party who had demanded certain orders be made, and who had drafted the judgment convicting the defendant part way through the trial.

60. All of the matters before the ICT have been rife with fair trial violations, however it would appear that the case of Nizami surpasses even those others.
61. To uphold the convictions and sentences, and seek to execute an individual in such circumstance will truly signal the end of justice in Bangladesh.
62. Of equal importance however is the effect that such an attack may have on society, and the resurgence of unrest across party, and often sectarian lines.

VI. Sectarian Violence

63. No one would seek to deny that Bangladesh has seen an upsurge in attacks on civilians that would appear to be on a sectarian basis. The issue however is how the Government is choosing to characterize and deal with the issue.
64. In 2015, 5 individuals, loosely grouped as 'secularist bloggers' have been subjected to particularly gruesome murders.
65. A radical and extreme islamist group with admitted ties with IS has claimed responsibility, and further, warned that there will be more.
66. The approach of the Bangladesh has not been that of condemnation however, it has been one of ignorance and further manipulation.
67. On the one hand, there has been a degree of silence from the Government; on another, one of tacit collusion in that a number of individuals have been subjected to arrest over the years for apparent 'derogatory comments against Islam'⁷⁰.

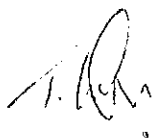
⁷⁰ http://www.huffingtonpost.com/2013/05/18/bangladesh-bloggers-death-threats_n_3294831.html

68. Finally, an approach of manipulation. Instead of condemning these and all extremist groups, the Bangladeshi Government has sought to deny that IS are present in the state, this is despite IS suggesting that Bangladesh is a target⁷¹, and have instead sought to blame the murders, and for that matter, many of the States ills, on Jamaat-e-Islami, a nonsensical position to adopt.
69. Terrorism today is a global threat, and not one that can be ignored or manipulated for political gains. Bangladesh must accept the reality of the position and address the threat of IS; where it refuses to do so, it is incumbent upon its international partners, and the wider international community to address the issue, and seek to highlight the very real threat.
70. The adoption of the current Bangladesh Governmental position in effect furthers the extremist cause. The curtailment of freedom of speech, the undermining of democracy, the pursuit of an autocratic political philosophy, and to act with impunity all contribute to the resentment of society who will increasingly look to more violent means with the removal of the middle ground.

Respectfully,

⁷¹ <http://www.ft.com/cms/s/0/3dfa3e8a-9294-11e5-bd82-c1fb87bef7af.html>

Toby M. Cadman

A handwritten signature in black ink, appearing to read 'T. Cadman', with a stylized flourish at the end.

Washington DC, 30 November 2015