



**UNIVERSAL PERIODIC REVIEW
BANGLADESH
THIRD CYCLE 2017
Joint stakeholder submission**

Freemuse is an independent international membership organization advocating and defending the right to artistic freedom worldwide. Freemuse has held Special Consultative Status with the United Nations Economic and Social Council (ECOSOC) since 2012.

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PEN Bangladesh, founded in 1972, is formed of a membership of over 100 writers, journalists and academics. The Centre strives to promote the universal mission of PEN International through both public events and advocacy.

Freemuse, Drik, PEN International and PEN Bangladesh welcome the opportunity to contribute to the third cycle of the Universal Periodic Review (UPR) process of Bangladesh. Our organisations’ focus is on Bangladesh’s compliance to its commitments under international human rights instruments relating to **cultural rights, freedom of expression, creativity and the arts**, as well as guarantees under the Constitution, and to recommendations accepted by Bangladesh during the second cycle of the UPR in 2013.

This submission is based on a legal study, a journalistic report, interviews, desk research and a UPR workshop held in Dhaka in May 2017 with local artists, journalists and human rights advocates.

SUMMARY

1. In the 2013 UPR, Bangladesh accepted several recommendations relevant to the right to artistic freedom of expression, including to ensure freedom of expression and promote cultural rights.¹ Today, however, legal provisions, policies and practices are still in place that limit the right to freedom of artistic expression, in violation of international law, and has in several incidents deteriorated.
2. The Constitution of Bangladesh recognises the right to freedom of speech and expression, which includes freedom of artistic expression. However, the Constitution itself, as well as many laws and regulations including the Bangladesh Penal Code, the Anti-Terrorism Act, the Information, Communication and Technology Act, the Special Powers Act, and the Pornography Control Act condition the exercise of this right to the adherence to moral, political and religious codes, not consistent with international law ratified by Bangladesh – including ICCPR and ICESCR.
3. Many artists in Bangladesh, as well as organisers of artistic festivals and summits, face significant restrictions in their artistic freedom – particularly if they are involved in filmmaking, are well-known members of the opposition parties, or wish to be explicitly critical of the government or government policy through their art.
4. The killings of bloggers and publishers who wrote on issues of religion, secularism, atheism, justice for war crimes, and sexuality, by Islamic fundamentalist groups, have significantly contributed to a climate of fear and self-censorship among secular writers and in the broader artistic community – this fear contributes, at turn, to the shrinking space for civil society.

¹ Austria, Bhutan, Canada, Malaysia, Norway, Portugal, South Africa, and the Russian Federation made recommendations to Bangladesh concerning freedom of expression.

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PREVIOUS UPR RECOMMENDATIONS

5. During Bangladesh's second cycle Universal Periodic Review (UPR) that took place on 29 May 2013, no recommendations focused specifically on artistic freedom. However, eight states made a total of 12 recommendations within the broader realm of freedom of expression and cultural diversity, including Austria,² Bhutan,³ Canada,⁴ Malaysia,⁵ Norway,⁶ Portugal,⁷ South Africa,⁸ and the Russian Federation.⁹
6. We welcome the fact that Bangladesh accepted all but two recommendations, which we also encourage the Bangladeshi government to act on, within the broader realm of freedom of expression and cultural diversity.

INTERNATIONAL LEGAL FRAMEWORK

7. Bangladesh ratified the ICESCR in 1998. Articles 3, 4 and 15 of the ICESCR oblige states parties to recognise and protect the right of everyone to freedom of artistic expression and to participation in cultural life.
8. Bangladesh also ratified the ICCPR in 2000. Article 19 of the ICCPR recognises the right to freedom of expression, including artistic expressions, and establishes a series of guidelines for permissible limitations, which must be necessary and proportionate, and established by legal rules that are transparent and consistently applied in a non-discriminatory way.¹⁰

² **129.77:** "Ensure the effective investigation and sanctioning of attacks against journalists and take measure to create a safe and enabling working environment for journalists" (Accepted), online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/155/20/PDF/G1315520.pdf?OpenElement>

³ **129.160:** "Continue its efforts to promote and protect human rights, in particular the economic, social and cultural rights of its citizens with the support and assistance of the international community" (Accepted), online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/155/20/PDF/G1315520.pdf?OpenElement>

⁴ **129.103:** "Take steps to ensure that civil society can operate without intimidation and to ensure freedom of the press, including for independent media" (Accepted), online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/155/20/PDF/G1315520.pdf?OpenElement>

⁵ **129.119:** "Continue its efforts in further enhancing the protection of economic, social and cultural rights of its people" (Accepted) online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/155/20/PDF/G1315520.pdf?OpenElement>

⁶ **129.72:** "Treat those in custody in accordance with international human rights principles, and bring to justice perpetrators of attacks on journalists" (Accepted); **129.101:** "Take effective measures to ensure freedom of expression and a safe enabling environment for social media" (Accepted); **129.104:** "Step up its efforts to ensure that human rights defenders are protected and allowed to conduct their work without hindrance, intimidation or harassment both at the national and local level" (Accepted); **130.17:** "Issue an early invitation to the Special Rapporteur on the Freedom of Expression" (Noted), online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/155/20/PDF/G1315520.pdf?OpenElement>

⁷ **129.50:** "Present the initial report on the implementation of the International Covenant on Economic, Social and Cultural Rights, as a matter of priority" (Accepted); **130.01:** "Sign and ratify the Optional Protocol to the ICESCR" (Noted), online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/155/20/PDF/G1315520.pdf?OpenElement>

⁸ **129.35:** "Continue to prioritise policies aimed at improving the enjoyment of economic, social and cultural rights by its citizens" (Accepted), online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/155/20/PDF/G1315520.pdf?OpenElement>

⁹ **129.102:** "Continue taking necessary measures to observe the balance between exercising individual rights including the right to freedom of opinion and expression, and the protection of rights and interests of others, including in terms of ensuring their security" (Accepted), online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/155/20/PDF/G1315520.pdf?OpenElement>

¹⁰ Para 25 of 'The right to freedom of artistic expression and creativity' a Report of the UN Special Rapporteur in the field of cultural rights, Farida Shaheed, 2013. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/118/44/PDF/G1311844.pdf?OpenElement>

9. Despite a recommendation during the 2013 UPR to “sign and ratify the Optional Protocol to the ICESCR”,¹¹ Bangladesh has yet to ratify and sign the First Optional Protocol to the ICCPR and the Optional Protocol to the ICESCR.
10. Bangladesh is a state party of the UNESCO 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions since 2007.¹²

NATIONAL LEGAL FRAMEWORK

11. The 1972 Constitution of Bangladesh establishes fundamental rights including to freedom of expression. Many prevailing laws, however, including the general system of criminal and civil justice, stem from the British colonial period.
12. The four fundamental pillars of the original 1972 Constitution were nationalism, socialism, democracy and secularism.¹³ The pillar of secularism now stands alongside a provision making Islam the state religion, subject to a requirement to ensure equal status with other religions.¹⁴
13. The preamble of the Constitution also states that it shall be a “fundamental aim of the State to realise [...] a society in which the rule of law, fundamental human rights and freedom, equality and justice, political, economic and social, will be secured for all citizens.”
14. The constitutional “fundamental rights” include the right to equality, non-discrimination on grounds of sex, race, religion, caste and place of birth, equal treatment under law, personal liberty, freedom of religion and protection of home and correspondence among others.¹⁵ Due process and protection against arbitrary action is also guaranteed for all persons.¹⁶
15. The right to freedom of speech and expression may according to Article 39(2) be limited “in the interest of” one of seven grounds, which are the **security of the state, friendly relations with foreign states, public order, decency or morality, contempt of court, defamation and incitement to an offence**. Such grounds must be “reasonable” and “imposed by law”.
16. Some of the restrictions, including on expressions deemed “indecent”, “in contempt of court”, or an “incitement to an offence”, may constitute a breach of Article 19 of the ICCPR, as they are imposed for purposes other than the Convention’s permitted protections to “the rights or reputation of others”, “national security”, “public order”, or “public health or morals”.

¹¹ **130.01**: “Sign and ratify the Optional Protocol to the ICESCR” (Noted), online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/155/20/PDF/G1315520.pdf?OpenElement>

¹² For a detailed description of how the right to artistic expression is protected under international law see Appendix A.

¹³ See Preamble of the Constitution, http://bdlaws.minlaw.gov.bd/pdf_part.php?id=367.

¹⁴ Article 2A, Constitution of Bangladesh. The full article reads: “The state religion of the Republic is Islam, but the State shall ensure equal status and equal rights in the practice of the Hindu, Buddhist, Christian and other religions.” After the assassination of the country’s first President, in 1979, under the military rule of General Ziaur Rahman, these provisions were repealed, and secularism was substituted by the principle of “trust and faith in almighty Allah.” Subsequently, in 1988, under the rule of another military general, Lt General HM Ershad of the Jatiyo Party, the Constitution was amended to establish the state religion as Islam. Ultimately, in 2011 this provision was retained by a later Government led by Prime Minister Sheikh Hasina Wajed, of the Awami League, albeit noting that “the State shall ensure equal status and equal right in the practice of the Hindu, Buddhist, Christian and other religions.” On 28 March 2016, the High Court Division of the Supreme Court of Bangladesh rejected a writ petition challenging this provision as being discriminatory and contrary to the basic structure of the Constitution itself. For more information, see David Bergman ‘As Bangladesh court reaffirms Islam as state religion, secularism hangs on to a contradiction’ <http://scroll.in/article/805988/as-bangladesh-court-reaffirms-islam-as-state-religion-secularism-hangs-on-to-a-contradiction>

¹⁵ Articles 27-43, Constitution of Bangladesh.

¹⁶ Article 31, Constitution, http://bdlaws.minlaw.gov.bd/sections_detail.php?id=367§ions_id=24579

17. The Constitution states that any law “inconsistent” with these rights is void¹⁷ and may be declared as such by the High Court. In addition, any person may seek redress to the High Court for violation of fundamental rights, or for judicial review of administrative action.¹⁸

CRIMINAL LAWS

18. Artistic freedom in Bangladesh is limited by the 1860 Bangladesh Penal Code (BPC),¹⁹ as well as the 2006 Information, Communication, and Technology Act (ICT Act),²⁰ the 2009 Anti-Terrorism Act (ATA) and the 2013 Pornography Control Act (PCA), which all contain arbitrary and unnecessary provisions that potentially criminalise peaceful artistic expressions, and are thus inconsistent with ICCPR, ICESCR, and other international human rights instruments.

Security of the State, Friendly Relations with Foreign States and Contempt of Court

19. The BPC offence of “**condemning the creation of Bangladesh**” allows a person to be prosecuted if, through “words, either spoken or written, or by signs, or by visible representations” s/he seeks to influence anyone to do something “prejudicial to the safety of Bangladesh, or to endanger the sovereignty of Bangladesh.” Conviction can result in up to 10 years’ imprisonment and a fine.²¹
20. The BPC offence of “sedition”²² allows for the prosecution of any speech or writing that brings “into hatred or contempt, or excites or attempts to excite disaffection towards the Government.” Conviction can result in up to seven years’ imprisonment and a fine.
21. It is also an offence under the ICT Act to publish or transmit anything on a website or in electronic form which “hurts the image of the state/nation.”²³ Conviction can result in between 10 to 14 years’ imprisonment and a fine.
22. Under the BPC, it is an offence²⁴ to say or write something, or to make, publish or circulate any statement, rumour or report deemed prejudicial to “**the maintenance of friendly relations of Bangladesh with foreign states.**” Under the 1974 Special Powers Act (SPA)²⁵, the Government may order pre-trial detention to “prevent” a person from doing such harm.²⁶ It should be noted that both the Film Censor Code and the Broadcast Policy contain similar provisions.
23. Bangladesh courts have wide discretion to prosecute people for “**scandalisation of the court.**” This has resulted in many contempt cases being brought against those who say or

¹⁷ Article 26, Constitution of Bangladesh.

¹⁸ Articles 44 and 102, Constitution of Bangladesh.

¹⁹ Bangladesh Penal Code, 1860. http://bdlaws.minlaw.gov.bd/pdf_part.php?id=11

²⁰ For a detailed legal analysis, please see: <https://www.article19.org/data/files/medialibrary/38365/Bangladesh-ICT-Law-Analysis.pdf>

²¹ Section 123A, BPC, http://bdlaws.minlaw.gov.bd/sections_detail.php?id=11§ions_id=2842

²² Section 124A, BPC, http://bdlaws.minlaw.gov.bd/sections_detail.php?id=11§ions_id=2844

²³Section 57, ICT Act. In the three years 2013 - 2016 a total 520 cases were filed under section 57 of the ICT Act 2006, though not all of them related to the part of the section dealing with “hurting the image of the nation.”

²⁴ Section 505A, BPC http://bdlaws.minlaw.gov.bd/sections_detail.php?id=11§ions_id=3567. Conviction can result in up to 7 years imprisonment or fine or both.

²⁵ Section 3 SPA, http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=462

²⁶ Such acts include actions which create or excite “feelings of enmity or hatred between different communities, classes or sections of people” or “endanger public safety or the maintenance of public order.”

write something critical of the judicial process or of judgments, with the common law “fair criticism” defence interpreted quite narrowly.

24. The International Crimes Tribunal brought contempt charges against 49 eminent citizens for having issued a public statement questioning the law of contempt as being a colonial relic which needed amendment. Those accused included the writer Tahmima Anam, the dancer Lubna Marium, the singer Anusheh Anadil, and the acclaimed photographer Shahidul Alam. Several of those concerned unconditionally apologised, but those who did not do so were only exonerated after a prolonged process, and amid threats and harassment on social and other media.²⁷
25. Criticism and public debate, including in the form of art, about public authorities, whether domestic or foreign, are protected under article 19 of ICCPR. **States should not prohibit criticism of the highest power of authority**, neither domestic nor foreign. As such, Section 123A, 124A, and 505A of the BPC and Section 57 of the ICT Act do not meet the obligations outlined in the Human Rights Committee’s General Comment No. 34.²⁸

Public order, decency or morality

26. The BPC makes it an offence to promote “**feelings of enmity or hatred between different classes** of the citizens of Bangladesh,”²⁹ or the induction to take part in any political activity deemed to disturb **public order**.³⁰ Conviction may result in up to two years imprisonment, a fine, or both.
27. It is also an offence to “make, publish or circulate any statement, rumour or report” that **induces fear or alarm** so that “any person may be induced to commit an offence against the state or against the public tranquillity.”³¹ Conviction can result in up to seven years’ imprisonment, a fine, or both.
28. It is an offence to say or write something, or to make, publish or circulate any “statement, rumour or report something prejudicial to the interests of the **security of Bangladesh** or **public order**, [...] or to the maintenance of supplies and services essential to the community.”³² Conviction can result in up to seven years’ imprisonment, a fine, or both.
29. With respect to online speech, it is an offence under the ICT Act to publish or transmit anything on a website or in electronic form which “causes or creates the possibility to cause deterioration of law and order.”³³
30. The ATA provides that a person shall be deemed to have instigated terrorist activities if s/he “prepares or distributes any document”, or “transmits any information [...], assists any person or entity knowing that the said [...] shall be used in committing any offence under this Act or any such person or entity shall use the same for committing similar offences.”³⁴ Conviction

²⁷<http://www.pen-international.org/newsitems/statement-on-the-situation-of-freedom-of-expression-in-bangladesh/>

²⁸ CCPR/C/GC/34, para. 38: “all public figures, including those exercising the highest political authority such as heads of state and government, are legitimately subject to criticism and political opposition.”

²⁹ Section 153A, BPC, http://bdlaws.minlaw.gov.bd/sections_detail.php?id=11§ions_id=2879

³⁰ Section 153B, BPC, http://bdlaws.minlaw.gov.bd/sections_detail.php?id=11§ions_id=2880

³¹ Section 505, BPC, Conviction can result in up to 7 years imprisonment or fine or both.

http://bdlaws.minlaw.gov.bd/sections_detail.php?id=11§ions_id=3566

³² Section 505A, BPC, http://bdlaws.minlaw.gov.bd/sections_detail.php?id=11§ions_id=3567

³³ Section 57, ICT Act.

³⁴ Section 13 of the Anti-Terrorism Act, 2009. http://bdlaws.minlaw.gov.bd/bangla_all_sections.php?id=1009

results in imprisonment for a term not exceeding two thirds of the maximum punishment prescribed for that offence, a fine, or both; special rules apply for capital offences.

31. The BPC makes it an offence³⁵ to sell, distribute, exhibit, or possess any graphic representation or to publicly sing, recite or utter any audible message that is deemed **obscene**.³⁶ Conviction for these offences can result in up to three months' imprisonment, a fine, or both.
32. With respect to online speech, it is an offence under the ICT Act to publish or transmit anything on a website or in electronic form which is “**false and obscene**” or the effect of which is such as “to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.”³⁷
33. Under the PCA³⁸ any fragment of an audio-visual material which is deemed to be obscene is an offence. The highest punishment for committing an offence under this Act is 10 years' imprisonment and a fine.
34. Limitations on expressions such as making it an offence to “promote feelings of enmity”, publish or poses expressions deemed obscene, and other vaguely defined offences lack the precision and justification needed under international human rights law to be a necessary restriction on freedom of expression. “The fear that some communities may protest should not be sufficient to lead to the conclusion that some artworks should not be displayed or performed; a certain level of contest and dispute is often inherent to contemporary art”, according to the Special Rapporteur in the field of cultural rights.³⁹ The vague nature of Section 153A and B, 292, 294, 505A of the BPC, and Section 57 of the ICT Act are inconsistent with the Economic and Social Council's General Comment No. 21 stating that limitations must be necessary and proportionate.⁴⁰

Defamation

35. Under the BPC, defamation covers any speech which constitutes “any imputation concerning any person” with an intention to harm or knowing that it will harm that person's “reputation”.⁴¹ It is also an offence to publish or sell a book or newspaper⁴² which is defamatory of any person. Conviction for these offences can result in up to two years' imprisonment, a fine, or both. Defences of truth and public interest are applicable.⁴³
36. Though the case law suggests that only a person personally aggrieved by something said or written may file a case of criminal defamation, courts have accepted cases filed by third parties regarding alleged defamation of others.⁴⁴

³⁵ Section 292, BPC, http://bdlaws.minlaw.gov.bd/sections_detail.php?id=11§ions_id=3110

³⁶ Section 294 BPC, http://bdlaws.minlaw.gov.bd/sections_detail.php?id=11§ions_id=3112

³⁷ Section 57 ICT.

³⁸ Sections 2(c), 8 and 9 of the Pornography Control Act, 2012.

http://bdlaws.minlaw.gov.bd/bangla_all_sections.php?id=1091

³⁹ Para 49 of ‘The right to freedom of artistic expression and creativity’ a Report of the UN Special Rapporteur in the field of cultural rights, Farida Shaheed, 2013. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/118/44/PDF/G1311844.pdf?OpenElement>

⁴⁰ E/C.12/GC/21, para. 19. See also para 25 ‘The right to freedom of artistic expression and creativity’ a Report of the UN Special Rapporteur in the field of cultural rights, Farida Shaheed, 2013. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/118/44/PDF/G1311844.pdf?OpenElement>

⁴¹ Section 499, BPC, http://bdlaws.minlaw.gov.bd/sections_detail.php?id=11§ions_id=3540

⁴² Section 501, BPC, http://bdlaws.minlaw.gov.bd/sections_detail.php?id=11§ions_id=3552

⁴³ Part of section 499, BPC, http://bdlaws.minlaw.gov.bd/sections_detail.php?id=11§ions_id=3541

⁴⁴ In recent case involving the editor of the *Daily Star*, activists of the ruling party filed 62 criminal defamation cases, in relation to the same issue, in different parts of the country.

37. The ICT Act also allows the prosecution of someone who “defames” or “hurts the image of [...] any person” (Section 57). Many cases⁴⁵ filed in recent years⁴⁶ involve allegations that someone has written critically of a politician from the governing party on social media.⁴⁷
38. In February 2016, 18 sedition and at least 62 criminal defamation cases were filed in different parts of the country against the editor of a leading English-language newspaper for having published articles, some nine years earlier, based on uncorroborated information provided by an intelligence agency.⁴⁸
39. **Criminal defamation is a disproportionate punishment** that has severe effect on freedom of expression. According to the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression “criminal defamation is not a justifiable restriction on freedom of expression; all criminal defamation laws should be abolished and replaced, where necessary, with appropriate civil defamation laws.”⁴⁹ Section 499 and 501 of the BPC Section 57 of the ICT Act and are inconsistent with the UN Special Rapporteur’s above recommendation.

Hurt to Religious Sentiment

40. Under the BPC, any speech is considered to insult the religious sentiments of citizens if it is done with the deliberate and malicious intention of outraging their religious feelings.⁵⁰ Conviction for this offence may result in up to two years’ imprisonment, a fine, or both.
41. Regarding online speech, it is an offence under the ICT Act to publish or transmit anything on a website or in electronic form which “causes or may cause hurt to religious belief.”⁵¹
42. Laws that make it an offence to hurt religious sentiment have a stifling impact on the enjoyment of freedom of expression and religion and limit a healthy dialogue and debate on religion. “Prohibitions of displays of lack of respect for a religion [...] are incompatible with ICCPR, except in the specific circumstances envisaged in article 20, paragraph 2, of the Covenant”, according to the Human Rights Committee’s General Comment No. 34.⁵² Section 295A of the BPC and Section 57 of the ICT Act do not meet the criteria for limitation, as stated in article 20 paragraph 2 of ICCPR.

⁴⁵ According to an application filed by the Bangladesh Legal Aid and Services Trust under Section 8(1) of the Right to Information Act, 2009, the Information and Communication Technology Division stated that from July 2013 to February 2016 a total of 520 cases were filed under the ICT Act out of which 320 cases had been disposed, and out of which in 90 cases, women or girls were the victims. Information obtained through the Bangladesh Legal Aid and Services Trust.

⁴⁶ Interview with Cyber-crimes Tribunal Prosecutor, Nazrul Islam Shamim, on June 19, 2017.

⁴⁷ See: ‘Bangladesh: Dissenting Voices Trapped between Fear and Repression’. Amnesty International, May 2, 2017, available at <https://www.amnesty.org/en/press-releases/2017/05/bangladesh-dissenting-voices-trapped-between-fear-and-repression/>

⁴⁸ See Committee to Protect Journalists, ‘79 cases and counting: Legal challenges pile up for Daily Star editor who admitted error in judgment’, <https://cpj.org/blog/2016/02/79-cases-and-counting-legal-challenges-pile-up-for.php#more>. 62 cases of defamation were also filed against him. Also see ‘More defamation, sedition cases filed against Daily Star Editor Mahfuz Anam’, <http://bdnews24.com/media-en/2016/02/15/more-defamation-sedition-cases-filed-against-daily-star-editor-mahfuz-anam>

⁴⁹ International Mechanisms for Promoting Freedom of Expression, Joint declaration by the UN Special Rapporteur on Freedom of Opinion and Expression, the OSCE Representative on Freedom of the Media and the OAS Special Rapporteur on Freedom of Expression online : <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=87&>

⁵⁰ Section 295A, BPC, http://bdlaws.minlaw.gov.bd/sections_detail.php?id=11§ions_id=3116

⁵¹ Section 57, ICT Act.

⁵² CCPR/C/GC/34, para. 48. See also para 48 of ‘The right to freedom of artistic expression and creativity’ a Report of the UN Special Rapporteur in the field of cultural rights, Farida Shaheed, 2013. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/118/44/PDF/G1311844.pdf?OpenElement>

REGULATORY LAWS

Cinema

43. Cinematic film-making in Bangladesh is strictly regulated by law, and constitutes one of the art forms suffering more artistic freedom violations in the country. Censorship is widely practiced by the authorities, in contravention of international law.
44. Cinema in Bangladesh is governed by the 1963 Cinematograph Act, the 1963 Censorship of Films Act, and the 1977 Bangladesh Censorship of Films Rules. The 1963 Cinematograph Act requires licensing for use of any “cinematograph.”⁵³ It also sets out a requirement for certification prior to any public screening of a film. The 1963 Censorship of Films Act (CFA) establishes a Bangladesh Film Censorship Board (BFCB) with powers to consider whether to certify a film on the basis of Rules⁵⁴ created under the CFA. It also gives the government the power to “decertify” any film, if it finds that this is “in the interest of law and order, the local film industry, or any other national interest.”⁵⁵ The BFCB may order the police to seize any film or related publicity materials if they are being shown/displayed without a certificate.⁵⁶
45. The 1977 Bangladesh Censorship of Films Rules (BCFR),⁵⁷ adopted under the CFA, set out the “broad principles”⁵⁸ to be followed in determining whether a film should receive a certificate.⁵⁹ The BCFR provides additional requirements for the import and distribution of foreign films.⁶⁰
46. In 1985, the Ministry of Information issued additional instructions “for the purpose of examining and certifying films for public exhibition”.⁶¹ These instructions state that a film is unsuitable for public exhibition if it has certain features,⁶² or breaches this “censorship code”. This wide scope allows the BFCB to refuse to certify a film, or require parts of a film to be cut before providing certification for a wide range of reasons.
47. It is clear from interviews with filmmakers, an examination of recent BFCB annual reports, petitions before the courts, as well as news reports that the Board is involved in significant

⁵³ Defined as “a composite equipment including a video-cassette recorder used for production, projection and exhibition of motion picture film.” See Sections 3 and 5 http://bdlaws.minlaw.gov.bd/print_sections_all.php?id=108

⁵⁴ Section 5 of Censorship of Films Act 1963.

⁵⁵ Section 7 http://bdlaws.minlaw.gov.bd/sections_detail.php?id=334§ions_id=17373

⁵⁶ Section 7A http://bdlaws.minlaw.gov.bd/sections_detail.php?id=334§ions_id=17374

⁵⁷ Bangladesh Censorship of Film Rules 1977,

http://www.bfcb.gov.bd/index.php?option=com_content&view=article&id=161&Itemid=151

⁵⁸ These principles are as follows: (a) the film shall not impair or be likely to impair “the moral standards of the audience by extenuating vice or crime or by depreciating social values”; (b) the story, incident or dialogue in the film shall not offend or be likely to offend “the sentiments of any section of the public”; (c) the effect of the story, incident or dialogue of the film on children under twelve years of age shall not be “harmful”; (d) the film shall not in any way “impair the national ideology, namely, absolute trust and faith in the almighty Allah, nationalism, democracy and socialism meaning economic and social justice”; (e) the film is not plagiarised; (f) it should avoid impairing good relations between Bangladesh and other nations.

⁵⁹ Rule 13 of Bangladesh Censorship of Films Rules 1977.

⁶⁰ In respect of the imported film, the import documents, the Clearance Permit, Import License or Permit and Bill of Entry and an affidavit in the prescribed form shall be submitted in order to establish the legality of import of the imported film. In the case of films of foreign missions in Bangladesh their mode of import may only be specified and no affidavit shall be necessary (Section 14(5)(d)). See Article 14(5)(d) of the Bangladesh Censorship Films Rules, 1977.

⁶¹ Film Censorship Code, see http://www.bfcb.gov.bd/index.php?option=com_content&view=article&id=162&Itemid=152

⁶² These include: ridiculing or bringing into contempt the Defence Forces, Police Force or any other Force responsible for maintenance of law and order in the country; giving a general impression of predominance of violence and lawlessness in the country and showing forces of law absent or inactive; adversely affecting friendly relations with another country or wounding the susceptibilities of foreign nations; portraying maliciously incidents or sequences which are prejudicial to the prestige or history of any people, race or nation; over emphasising, glamorising or glorifying immoral life; tending to lower the sanctity of institution of marriage; containing dialogue, songs or speeches of indecent interpretation; and indecently portraying national institutions, traditions, custom or culture (including kissing, hugging and embracing).

levels of censorship requiring filmmakers to cut scenes that could be politically sensitive to the government. The extent of the political sensitivity of the BFCB is high, and it appears to be highly concerned about the image of the country, censoring content appearing to put it in a bad light.

48. In 2015, the BFCB refused a certificate to Bangladesh's first Chakma-language feature film, **'Bicycle'** made by director Aung Rakhine.⁶³ Rakhine received a letter from the BFCB stating that he had to make a number of significant changes to the film.⁶⁴ Rakhine refused to make all the cuts requested stating, "If I deleted this first scene then the film would be reduced to nothing, as important elements I wanted to portray in the film would be lost. I had already sacrificed one scene and did not want to sacrifice another one." The film still does not have a censorship certificate owing to his refusal to make the cut.
49. In 2014, producer Shamima Akter and director Nazrul Islam Khan submitted their film, **'Rana Plaza'** – a fictionalised account of a factory collapse in Bangladesh⁶⁵ – to the BFCB. The BFCB initially raised objections in relation to the film's content being too close to the truth, breaching privacy laws, having strong political leanings and to the fact that the building collapse was sub-judice. An appeal by the producers, defending the fictionality of the film, was rejected.⁶⁶
50. Following the backing of the High Court, the BFCB attempted to impose further conditions⁶⁷ on certification. Despite obtaining a censorship certificate, third party complaints resulted in court proceedings delaying the film's distribution. Further appeals by the filmmakers resulted in a temporary viewing certificate being granted, but yet again a third party appeal intervened. The film was decertified in January 2016 and a further high Court review is now pending, while the filmmakers report that they are running out of money to pay the legal fees. "The film is like a child of mine, and it feels like the child has been imprisoned" said Nazrul.⁶⁸
51. **Bangladeshi regulations regarding film certification, censorship and display are inconsistent with international conventions.** Specifically, the Cinematograph Act and the Censorship of Films Act violate the right to artistic freedom of expression, as protected on Article 19(2) of the ICCPR, on Article 15(3) of the ICESCR, and on the UNESCO 2005 Convention, all of which are ratified by Bangladesh.

⁶³ Interview with Aung Rakhine conducted by Freemuse on 25 April 2017. The correspondence between BFCB and Rakhine has not been seen by Freemuse.

⁶⁴ This included cutting a scene at the end of the film involving showing soldiers marching past the house of the film's main character, and stamping on a toy belonging to the son. This scene had been used as a symbol of army occupation within the CHT. Rakhine told the board that he would agree to make this cut, but then received another letter, asking him to cut a scene at the beginning of a film which involved references to people having lived in Kaptai Lake in the CHT before the area was, at that time, controversially flooded in the early 1960s to allow for a hydroelectric power station.

⁶⁵ In April 2013, a building, known as Rana Plaza, collapsed on the outskirts of Dhaka causing the deaths of over 1000 garment workers who worked in a number of factories based in the building. One of the garment workers that survived the collapse was Reshma, who survived for seventeen days before being pulled free from the collapsed building.

⁶⁶ "For the greater good of the country and to maintain peace and stability in the RMG [Ready Made Garment] sector and to keep negativity off Bangladesh RMG sector from the outside world, and as some issues involving Rana Plaza are in court, the censor board decides to keep its previous decision of not giving a certificate, and advises the producers to remove scenes of destruction and the accident and to keep romantic parts of the film and to make it into a romantic film." Letter sent by Appeal Committee on July 24, 2017.

⁶⁷ These included: changing the name of the character Reshma; cutting the dialogue involving her rescue; cutting the use of the name of armed forces; cut all live-footage of the Rana Plaza collapse; cutting a comic scene, with sexual innuendo, in which one person says "Didn't we break the bed."

⁶⁸ Interview with Nazrul Islam Khan on May 2, 2017.

52. The implementation of the law is inconsistent and at times arbitrary, leaving much room for interpretation. The examples given above show that, by delaying access to ticket boxes and prolonged judicial processes, financial losses often may push artists to concede cuts to films, or to practice self-censorship.
53. **Prior-censorship** is a violation of the right to artistic freedom of expression as protected in the ICCPR, the ICESCR and the UNESCO 2005 Convention. The BFCB may ask for excisions to any film before providing a certificate. It must approve any publication materials relating to a certified film before these are displayed.⁶⁹ Certification is needed even for films shown at private functions, if these are organised by a foreign mission.⁷⁰
54. Prior-censorship of films and other artistic expressions is not compatible with State obligations under international law. The Special Rapporteur on freedom of opinion and expression considers that prior-censorship bodies “should not exist in any country”⁷¹, and the Committee on Economic, Social and Cultural Rights affirms that States must “abolish censorship of cultural activities in the arts and other forms of expression.”⁷²
55. According to the Special Rapporteur in the field of Cultural Rights, “classification bodies or procedures may be resorted to for the sole purpose of informing parents and regulating unsupervised access by children to particular content.”⁷³

Print Media

56. Artistic freedom is also overly limited in print media, as regulatory laws remain incompatible with international human rights standards. The Press Council, established under the 1974 Press Council Act⁷⁴ may “warn, admonish or censure a newspaper, news agency, editor or journalist”⁷⁵ if it is found that anything published in a newspaper has offended “public taste” or is in breach of a “code of journalistic ethics”.⁷⁶
57. The Printing Presses and Publications (Declaration and Registration) Act 1973 provides that any book or paper that contains words, signs or visible representations which are “indecent”,

⁶⁹ Rule 26 Bangladesh Censorship of Films Rules 1977.

⁷⁰ According to Rule 17 Bangladesh Censorship of Films Rules 1977, on receipt of an application from a foreign mission in Bangladesh for certification of a 16 mm or 35 mm print of newsreel, documentary or a feature film for screening at private gatherings, a Committee shall examine the film and in case of its being suitable for exhibit shall issue a certificate in the prescribed form and in case of a newsreel, or documentary, there shall be put a rubber stamp to the effect that the film is for “non-commercial” exhibition by a diplomatic mission only and in the case of a feature film, a special certificate may be issued indicating the date and place of public exhibition of the film. Further, according to Section 18, Foreign Missions shall obtain permission from the BFCB for holding film shows in any place other than their diplomatic premises.

⁷¹ A/HRC/20/17, para, 25.

⁷² E/C.12/GC/21, para. 49 c)

⁷³ Para 89(c) of ‘The right to freedom of artistic expression and creativity’ a Report of the UN Special Rapporteur in the field of cultural rights, Farida Shaheed, 2013. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/118/44/PDF/G1311844.pdf?OpenElement>

⁷⁴ Press Council Act, 1974. See here http://bdlaws.minlaw.gov.bd/pdf_part.php?id=466

⁷⁵ Section 12, Press Council Act, 1974. http://bdlaws.minlaw.gov.bd/sections_detail.php?id=466§ions_id=11365

⁷⁶ The Code of Journalistic Ethics, or 1993 Code of Conduct, states in its rules 1 and 2 that papers should not publish “any news or publication detrimental to national integrity, independence, sovereignty, unitariness of the State and Constitution of Bangladesh” and that “the War of Liberation and its spirit and ideals must be sustained and upheld, and any publication repugnant to it shall be stopped.” Its rule 10 states that “newspapers shall refrain from publishing news which is contemptuous or disrespectful to caste, creed, nationality and religion of any individual or the community or the country. For upholding national unity, communal prejudices and feelings of hatred and malice shall be discouraged.”

“obscene” or “scurrilous” may be forfeited and seized by the police.⁷⁷ The Press Council publishes the judgments and appeal cases in its website.⁷⁸

Electronic Media

58. Similarly, the 2014 National Broadcast Policy (NBP) includes restrictions on speech and expression, which could affect artistic expression. Though the Policy does not have the force of law, it is reportedly a precursor to anticipated legislation that will set up a Broadcast Commission with powers to invoke the Policy to regulate speech. The Policy states that “during broadcast the ideology and the spirit of great liberation war, the basic principles of state functioning and the ideology and policies of Bangladesh state have to be upheld.”⁷⁹
59. In relation to entertainment programmes, the NBP states that “broadcasters have to be careful about programmes that are obscene, contain misleading information, contain indecent language and have violence, which create a negative influence on children’s psychological, humanitarian and moral development.”

POLICE

60. Under the Code of Criminal Procedure (CrPC), the police may seize any newspaper, book or document alleged to contain material which is considered to constitute a number of different offences⁸⁰ under the BPC.⁸¹
61. Under the CFA, the police may seize any film or related publicity materials which have not received a certificate from the BFCB, if so directed by the BFCB. Under the ICT Act, the police may also seize computer equipment or electronic records, in relation to the commission of any offence under the Act.
62. At the **annual Book Fair (*Boi Mela*)** in Dhaka in February 2016, the police shut down a publishing stall, Badwip Publications, for selling a book titled ‘*Islam Bitarka*’ (‘the Islam Debate’) whose contents allegedly hurt the religious sentiments of Muslims.⁸² Two of the stall’s employees were also detained for questioning. It is not clear from press reports which powers the police were using, although it was noted in reports that Section 13.13 of the Book Fair’s ‘Rules and Regulations’ stated that before the book fair authorities close a stall, they must give a deadline to the publisher for removing books with objectionable content.⁸³ Shamsuzzoha Manik, author of the book and owner of Badwip Publications, is currently standing trial under the ICT Act on charges of “hurting religious sentiments” and could face 14 years in prison, if convicted.
63. The vague nature of the police’s mandate to seize materials is concerning. It leads to a high risk of arbitrary and discriminatory implementation – the lack of an independent mechanism is an additional concern. According to the Special Rapporteur in the field of cultural rights,

⁷⁷ Section 20A of the Printing Presses and Publications (Declaration and Registration Act 1973). See http://bdlaws.minlaw.gov.bd/sections_detail.php?id=437§ions_id=12623

⁷⁸ See, <http://www.presscouncil.gov.bd/index.php/judgement>, at present the website has published full text on fourteen judgments and four appeal cases.

⁷⁹ http://old.moi.gov.bd/National_Broadcasting_Policy.pdf

⁸⁰ These include: the condemnation of the creation of the state or sedition, to create enmity between classes, to be obscene, or to be deliberate and malicious and intended to outrage religious feelings, or to constitute public mischief or prejudicial acts.

⁸¹ See Section 99A of CrPC. http://bdlaws.minlaw.gov.bd/sections_detail.php?id=75§ions_id=14875

⁸² <http://www.clickitfaq.com/police-close-stall-in-ekushey-boi-mela-for-selling-book-that-hurt-religious-sentiments/>

⁸³ <http://www.currentbdnews.com/book-fair-stall-shut-down-by-police/>

“avenues for the appeal before an independent entity of any decision to exercise prior restraint should be guaranteed.”⁸⁴

KILLING OF BLOGGERS AND PUBLISHERS

64. In the 2013 UPR, Bangladesh accepted several recommendations regarding the effective sanctioning and investigation of attacks against journalists and the creation of an enabling environment. The state also accepted a recommendation to take effective measures to ensure a safe and enabling environment for social media.⁸⁵
65. However, between 2013 and 2015, six bloggers and publishers⁸⁶, who wrote on issues of religion, secularism, atheism and justice for war crimes, were killed by Islamic fundamentalist groups. The attacks have widened to include civil society actors, academics, students, and religious figures; in 2016 three others were killed.⁸⁷ They all lacked police protection, in some instances despite having requested this or notified the police of threats received. While acknowledging that there have been several arrests and prosecutions of militants in connection with attacks on bloggers, the government continues to offer no protection to bloggers and a climate of fear prevails. Scores of secular writers have fled the country, while those that remain often resort to self-censorship.
66. While condemning the attacks, the Bangladeshi authorities have repeatedly made statements and taken actions implying that the responsibility for avoiding such attacks lies with the victims.⁸⁸ The state continues to tell writers not to write on controversial topics, and bloggers and journalists face arrest and prosecution for “hurting religious sentiment” under the ICT Act, spending months in pre-trial detention.

WOMEN’S RIGHT TO ARTISTIC FREEDOM

67. The Bangladeshi Constitution requires equality before the law, and there is no specific legal restriction applicable to female artists.⁸⁹ Some female artists, however, informed Drik that they feel portrayed as “male-dominated” and “undignified” in media.⁹⁰ A female artist ascertained that “in a country like Bangladesh, where women are considered as subjects and

⁸⁴ Para 89(b) of ‘The right to freedom of artistic expression and creativity’ a Report of the UN Special Rapporteur in the field of cultural rights, Farida Shaheed, 2013. <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/118/44/PDF/G1311844.pdf?OpenElement>

⁸⁵ **129.77:** “Ensure the effective investigation and sanctioning of attacks against journalists and take measure to create a safe and enabling working environment for journalists” (Accepted); **129.72:** “Treat those in custody in accordance with international human rights principles, and bring to justice perpetrators of attacks on journalists” (Accepted); **129.101:** “Take effective measures to ensure freedom of expression and a safe enabling environment for social media” (Accepted); **129.103:** “Take steps to ensure that civil society can operate without intimidation and to ensure freedom of the press, including for independent media” (Accepted), online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/155/20/PDF/G1315520.pdf?OpenElement>.

⁸⁶ Ahmed Rajib Haider, Avijit Roy, Ananta Bijoy Das, Washiqur Rahman, Niloy Neel, Faisal Abedin Dipon.

⁸⁷ Editor of Bangladesh’s only LGBT magazine Roopbaan and leading gay rights activist, Xulhaz Mannan; law student Nazimuddin Samad, who had regularly written about religion on social media; university professor and writer, Rezaul Karim Siddique.

⁸⁸ A month after Ahmed Rajib Haider’s murder in February 2013 – rather than unequivocally supporting the right to freedom of expression and focusing on bringing the perpetrators to justice – a government committee was formed to track bloggers and social media users who made allegedly derogatory remarks about Islam and the Prophet Muhammad. Subsequently, in April 2016, Prime Minister Sheikh Hasina condemned violence in the name of religion, but said that it was not acceptable to write things which hurt the religious sentiments of others, stating, “[e]veryone should maintain decency; otherwise, in case of any uncivilised attitude, the government wouldn’t take the responsibility.” <http://www.bssnews.net/newsDetails.php?cat=0&id=568097&date=2016-04-14>

⁸⁹ Article 27 and 28 of the Constitution.

⁹⁰ Identities of all female artists informing this section are withheld.

expected to lead a life under male supervision, it is often observed that female artists' lifestyle and work patterns are subjected to humiliation and discouragement.”

68. Some of the artists attributed these circumstances to lack of education and awareness, and to a rise in religious fundamentalism in the country. They also mentioned that as female artists, they could rarely attain financial security through their work.
69. Sexual exploitation of women was also identified by female artists as a damaging factor. A female artist defined it as an “open secret” that actresses are frequently expected to trade sexual favours for roles or career advancements. Some female artists also reported being treated as sexual objects, both by administration officials and their own colleagues.
70. In rural areas, cultural restrictions may affect women disproportionately in terms of mobility and visibility. In many villages there are more cultural prohibitions on women, and this has for example affected female dancers performing in *Jatra Palas*, which are a long standing village tradition involving dancing and theatre. In recent years, female dancers in some parts of Bangladesh are not allowed to dance in the *Jatra Palas*.⁹¹ This appears to be in part a response to increasing fundamentalism and a rise in conservative morality, with women being depicted by some groups as involved in “immoral activities” simply for the act of dancing.
71. Bangladesh ratified the Convention on the Elimination of All Forms of Discrimination against Women, which targets all forms of discrimination based on gender – including against female artists- in 1984. As a State party to the Convention, Bangladesh must take all appropriate measures to end discrimination against women.

ACTION AGAINST OPPOSITION-ALIGNED ARTISTS

72. Singers and other artists linked to the opposition Bangladesh Nationalist Party (BNP) have found that they cannot receive permission to hold concerts, are forced out of government jobs, and are no longer invited to perform on government-controlled media.⁹²
73. **Asif Akbar**, a pop singer and former member of the BNP executive committee, told Freemuse that police and district commissioners in different parts of Bangladesh refused to provide him the permission necessary to allow him to hold public open-air concerts. He also claims that even when he is invited to perform abroad, cultural activists linked to the Awami League party put pressure on the organisers to stop his invitations.⁹³
74. **Monir Khan**, a professional singer and the former General Secretary of JASAS⁹⁴, lost his job as a musician in the Bangladesh Ansar orchestra after the AL came to power in 2008. Members of JASAS also informed Freemuse that they felt they were no longer invited onto government television or radio, nor invited to perform in government-controlled or -owned venues.⁹⁵
75. On 20 July 2016, **Teerondaz Reportary** Theatre Company was putting on a play called ‘Sun Stuck in our Throat’ at the government’s main subsidised theatre venue, Shilpa Kola,

⁹¹ Interview with Saymon Zakaria, Assistant Director at Bangla Academy on May 8, 2017.

⁹² Similar actions were taken by the BNP when it was in power during 2001 and 2006.

⁹³ Interview with singer Asif Akbar on May 2, 2017.

⁹⁴ The BNP’s Cultural Wing.

⁹⁵ Interview on June 20, 2017, identities of interviewees withheld.

followed by a debate on the controversial government-sponsored Rampal power plant. Albeit set to start at 5pm, theatre authorities reportedly locked the gate, and at 7pm they read out an official order stating that the performance could not take place. Unofficially, the organisers were told that the performance was stopped as it was “anti-state”.⁹⁶

76. Government parties targeting artistic opposition voices is counterproductive. The party in power will eventually become opposition itself, as Bangladeshi history has shown. Governments should be open to criticism and lead by example.

SHRINKING CIVIL SOCIETY SPACE

77. During the 2013 UPR, the Bangladeshi government agreed to “take steps to ensure that civil society can operate without intimidation.”⁹⁷ However, the passage of the Foreign Donations (Voluntary Activities) Regulation Act 2016 signals a further shrinking of civil society space and an increasingly repressive climate for free expression. The Act was passed despite the urging of the UN Special Rapporteur on the rights to freedom of assembly and of association in November 2015.⁹⁸

78. Under the Act, the authorities may cancel or withhold the legal registration of any non-governmental organisation that is deemed to engage in “anti-state activities” or seen to have made “derogatory comments about the Constitution and constitutional institutions” of Bangladesh. NGOs seeking foreign funding must register with the NGO Affairs Bureau and submit regular reports, as well as seek permission for all planned activities before receiving any such grants.

SELF-CENSORSHIP

79. In the current political climate, **artists use a high degree of self-censorship**. Artists interviewed by Freemuse generally felt their creativity was affected by a climate of fear, and that they needed to scale down their work in order to be seen as “appropriate” by the authorities.

80. In a workshop with artists⁹⁹, self-censorship was ranked among the top three challenges to artistic freedom in the country. Self-censorship is a widespread practice, while a climate of fear has been developed to a substantial degree. One photographer noted, in relation to this: “My observation is that, at present, anything that might challenge the power structures has been hugely curtailed by artists themselves, the artists’ community does not rock the boat. That is across the board.”¹⁰⁰

⁹⁶ Interview with Deepak Kumar Goswami, manager of Teerondaz Reportary Theatre Company, conducted by Freemuse on 8 May 2017. He also says that “After lunch, I was in the office when I was called and told that we could not hold the performance that evening because of the debate. Shilpa Kola officials said that it was [in] opposition to the government, should not happen there. We argued back that Shilpa Kola was such a place where artists can say anything, and that debate was a kind of performance. It was going to be a dramatic performance.”

⁹⁷ **129.103:** “Take steps to ensure that civil society can operate without intimidation and to ensure freedom of the press, including for independent media” (Accepted), online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G13/155/20/PDF/G1315520.pdf?OpenElement>

⁹⁸ Office of the High Commissioner of Human Rights, 6 November 2015, ‘Bangladesh NGOs: UN expert warns against proposed funding bill’, online: <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=16720&LangID=E>

⁹⁹ Workshop on artistic freedom, organised by Drik and Freemuse in Dhaka on 17-18 May 2017.

¹⁰⁰ Interview with Shahidul Alam on April 3, 2017.

81. Another artist pointed out that the nature of self-censorship practices has evolved over time: “It is not that the government is going to come and say that you can’t make it, but what happens is that perhaps your co-workers or supervisor or boss, will say “this is not appropriate.” He added that, as a result, anything remotely controversial – whether for social, moral or political reasons - is rarely made.¹⁰¹
82. Religion has always been a sensitive subject in Bangladesh, but according to artists, the murders and attacks from the Islamists have resulted in any critical examination of the subject being curtailed.¹⁰²

¹⁰¹ “What ends up happening is that everyone in charge of making decision are afraid and that has become the big problem even if the government or others would actually not respond.” Interview with Nuhash Humayon on June 20, 2017.

¹⁰² The writer Mahmud Ahmed said this to Freemuse: “The attack in 2004 on the writer Humayun Azad, and the more recent attacks on bloggers and publishers have certainly had a chilling effect on people writing books or pieces on religion. There is also the concern that they could be prosecuted under the ICT Act for “hurting religious sentiment.” (E-mail exchange on May 10, 2017).

RECOMMENDATIONS

83. Repeal Section 57 of the Information, Communication, and Technology Act (ICT Act), that criminalizes several forms of artistic expressions and is open to misuse, in its entirety.
84. Amend Sections 123A, 124A, 153A, 153B, 292, 294, 295A, 499, 501, 505A of the Bangladesh Penal Code (BPC), which criminalize defamation, criticism of authorities, sedition, expressions deemed to disturb public order, decency and morality, and hurt to religious sentiment, not meeting international standards of necessity and proportionality.
85. Amend all provisions that criminalize defamation, as well as artistic expressions, alleged to be obscene, hurt religious feelings or insult foreign states, including in the **Anti-Terrorism Act (ATA)**, **Special Powers Act (SPA)**, and **Pornography Control Act (PCA)**.
86. Repeal the **Cinematograph Act** and the **Censorship of Films Act**, which validate pre-censorship in violation of the fundamental right to freedom of artistic expression, and in clear contravention of ICCPR, ICESCR and the UNESCO 2005 Convention provisions.
87. Amend Article 39(2) of the **Constitution** that allows for restrictions on expressions deemed “indecent”, “in contempt of court”, or an “incitement to an offence” to make it consistent with Article 19 of the ICCPR.
88. Ensure **police provide adequate protection** for all dissenting and minority voices, however controversial, particularly those who have been publicly targeted for attack; and ensure that all those requiring protection are able to access information about available measures and to request them with ease.
89. Eliminate all forms of discrimination against female artists based on gender, and ensure access to equal opportunities in accordance with articles 27 and 28 of the Bangladeshi Constitution and CEDAW.
90. Take concrete measures, including educational programs, police training, and policies for the conservation, development and diffusion of culture to promote a tolerant society where artists and audiences are free to express themselves creatively and participate in cultural events without fear of reprisal, and without artists being forced to self-censor even if they address sensitive moral, political and religious issues.
91. Sign the **First Optional Protocol to the ICCPR** and the **Optional Protocol to the ICESCR**.

APPENDIX A

THE UNIVERSAL RIGHT TO ARTISTIC FREEDOM

Artistic creativity and expression and the freedom indispensable for this is increasingly recognised as an important human right under international law. In a 2013 report, ‘The Right to Artistic Freedom and Creativity’, the UN Special Rapporteur in the field of cultural rights, Ms Farida Shaheed, observed that the “vitality of artistic creativity is necessary for the development of vibrant cultures and the functioning of democratic societies. Artistic expressions and creations are an integral part of cultural life, which entails contesting meanings and revisiting culturally inherited ideas and concepts.”

The right to artistic freedom and creativity is explicitly guaranteed by international instruments: most importantly, Article 15(3) of the International Covenant on Economic, Social, and Cultural Rights (ICESCR), under which state parties to the treaty “undertake to respect the freedom indispensable for . . . creative activity” and in International Covenant on Civil and Political Rights (ICCPR) Article 19(2), which provides that the right to freedom of expression includes the freedom to seek, receive and impart information and ideas of all kinds “in the form of art”.

Under UNESCO’s 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions, States shall endeavour to create “an environment which encourages individuals and social groups to create, produce, disseminate, distribute and have access to their own cultural expressions, paying due attention to the special circumstances and needs of women as well as various social groups, including persons belonging to minorities and indigenous peoples.”

According to UNESCO’s 1980 Recommendation concerning the Status of the Artist, “freedom of expression . . . is the essential prerequisite for all artistic activities, Member States should see that artists are unequivocally accorded the protection provided for in this respect by international and national legislation concerning human rights.”

Furthermore, artistic freedom is protected by other fundamental rights: chiefly, liberty and security of persons; freedom of association, assembly, and movement; freedom of thought, conscience, and religion; and equal protection of the law. The exercise of artistic freedom supports these fundamental rights and freedoms by engendering cultures that affirm the inherent and equal dignity of the person as well as reflecting actual or potential violations.