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| CRPD PLATFORM, BANGLADESH |
| Alternative Report to the United Nations Committee Against Torture |
| 22 June, 2019 |

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| Submitted by:  CRPD Platform, Bangladesh- a DPO led platform which is comprised of DPOs and NGOs working with persons with disabilities in Bangladesh.  6-22-2019 |

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# LIST OF CONTRIBUTORS

CRPD Platform, Bangladesh is comprised of DPOs, NGOs, INGOs and development partners who are working with and/or for persons with disabilities in Bangladesh. The organizations that contributed to the development of this alternative report are:

Access Bangladesh Foundation, Action on Disability and Development (ADD International), BRAC, Bangladesh Society for the Change and Advocacy Nexus (B-SCAN), Centre for Disability in Development (CDD), Centre for Services and Information on Disability (CSID), Disabled Child Foundation (DCF), Handicap International (Humanity & Inclusion), Impact Foundation Bangladesh, Leonard Cheshire-Bangladesh, Manusher Jonno Foundation (MJF), National Council of Disabled Women (NCDW), National Grassroots Disability Organization (NGDO), Society of the Deaf and Sign Language Users (SDSL), Society for Education & Inclusion of the Disabled (SEID), Visually Impaired People’s Society (VIPS), Women with Disabilities Development Foundation (WDDF), Youth Power in Social Action (YPSA).

This alternative report to the CAT Committee has been drafted by a lawyer with disability, Mr. Rejaul Karim Siddiquee (Physical Disability), who was closely associated with and mentored by a number of activists and scholars with disabilities including Nazma Ara Begum Popy (Visual Disability) and Shirin Akhter (Visual Disability).

# LIST OF ABBREVIATIONS

BLAST Bangladesh Legal Aid and Services Trust

VIPS Visually Impaired People’s Society

CAT Convention against Torture and other Cruel, Inhuman & Degrading Treatment or Punishment

CBR Community Based Rehabilitation

CRPD Convention on the Rights of Persons with Disabilities

DPO Disabled Peoples’ Organization

DWA Disability Welfare Act, 2001

FGD Focus Group Discussion

GOB Government of Bangladesh

INGO International non-governmental organisation

JPUF National Disability Development Foundation

MOSW Ministry of Social Welfare

NCDW National Council of Women with Disabilities

NCP National Coalition Project for Producing CRPD Shadow Report in Bangladesh

NDD Neuro-Developmental Disability

NDDT Neuro-Developmental Disability Trust

NDDTA Neuro-Developmental Disability Trust Act

NGDO National Grassroots Disabled Organization

NGO Non-governmental organisation

OHCHR Office of the High Commissioner on Human Rights

RPPDA Rights & Protection of Persons with Disabilities Act 2013

RTI Right to Information Act 2009

TPF Turning Point Foundation

VSC Victim Support Centre

WDDF Women with Disabilities Development Foundation

# EXECUTIVE SUMMARY

The Constitution of Bangladesh [Art. 35(5)] guarantees protection from torture and other cruel, inhuman or degrading punishment or treatment for every person, including persons with disabilities, within its territory. This protection is guaranteed as a fundamental right: any derogation is not permissible except under certain circumstances established by law. This Constitutional mandate reflects the commitment of Bangladesh towards prohibiting torture.

In compliance with the UNCAT, Bangladesh has enacted the Torture and Custodial Death (Prevention) Act, in 2013. Section 2(6) of the Act defines “torture” in a way which is similar to Article 1 of the UNCAT. There are few other legislations in Bangladesh that intends to protect people from both physical and mental torture, VAW, DV etc. However, neither the Anti-Torture Act nor other legal provisions address the issues of unique forms of physical and mental torture against persons with disabilities within home, institutions, educational settings, workplaces or in public places. To be noted, the existing laws that intend to protect people from torture but were formulated without consideration of the barriers in accessing justice faced by the persons with disabilities have largely been proved of being no use for this community. Persons, specially, women and girls with disabilities are often deprived of justice as the law, judicial system and practice do not ensure infrastructural, environmental and informational accessibility in the courts and custody.

In the given context, people with disabilities, especially those with an intellectual and/or psychosocial disability, are becoming more and more victims of torture, ill treatment, in human behavior, humiliation in all settings. They are often subjected to forced treatment, hate crimes and also being kept in chains. To ensure implementation of the UNCAT in Bangladesh, in particular with regard to persons with disabilities, the CRPD Platform recommends the following:

1. Formulate law criminalizing those acts that exclusively happen against persons with disabilities, in order to effectively protect them from torture, cruelty, inhuman behavior and ill treatment at all settings;
2. Amend and/or repeal the laws that discriminate towards persons with disabilities, that violate their equal rights or that pave the ways for the exercise of excessive powers on the disabled people;
3. Ensure respect for the free and informed consent and choice of persons with disabilities and protect their right to equal legal capacity and their equal right to live with DIGNITY;
4. Set an independent monitoring mechanism to oversee the implementation of the CRPD, the Rights & Protection of Persons with Disabilities Act 2013 (RPPDA) and other existing national and international laws, with adequate funding to collect data on the torture against persons with disabilities. In this regard, focus on the women and girls with disabilities should given and effective representation of DPOs should be ensured in the monitoring system.

# METHODOLOGY

This alternative report has been prepared based on secondary sources of data. International and domestic legislations have been reviewed to determine the degree of legal protection of persons with disabilities in Bangladesh. Research reports have been also reviewed. A coalition led by NGDO along with NCDW and BLAST, a legal service providing organizations to produce an alternative report focusing on eight[[1]](#footnote-1) articles of UNCRPD in 2013. Findings and recommendations related to each Article were collected following a method that involved certain data collection tools like consultation meetings, FGDs and survey in seven districts (Bogura, Cox’s Bazar, Dhaka, Faridpur, Kushtia, Rangpur and Sylhet). 14 consultation meetings were held with government officials, professionals, DPO leaders and civil society members, and 14 FGDs were conducted following a structured questionnaire. 14 categories of stakeholders (DPOs, civil society organizations, journalists, lawyers, and government officials among others were interviewed and two national consultation meetings were organized for data validation.

Later, after the submission of the initial report from the Bangladesh government, the coalition was converted into a wider platform of DPOs and NGOs in January 2018 for the purpose of producing a complete alternative report on all relevant CRPD articles. NGDO worked as the secretariat of the platform and BLAST provided technical support. The Visually Impaired People’s Society (VIPS), Women with Disabilities Development Foundation (WDDF) and the Turning Point Foundation (TPF) significantly contributed to this shadow report by analyzing the status of implementation of specific articles of the CRPD in Bangladesh. The CRPD Alternative report was sent to the UNOHCHR on 11 February 2019.[[2]](#footnote-2)

Findings on Articles 12, 13, 15 and 16 of the CRPD alternative report have been used during preparation of this UNCAT Alternative report. One consultation and a shared meeting with the platform members have been held to validate data.

# LEGISLATIVE ISSUES

## Criminalization of Disability Based Harassment in Educational Settings

Being harassed and insulted (for his disability) by his teacher, Modhushudhon Chokrabarty, a first-year student of Shaheed Ziaur Rahman Medical College in Bogra, committed suicide on December 11, 2010. Modhushudhon had speech impairment (a persistent stammer). Before committing suicide, he left a note and described the causes of his act: His fellow classmates laughed at him because of his disability. Moreover, one of his teachers insulted him by saying that someone with stammer will never be able to study medical science as students need to face verbal tests every day. Such behavior was not new to Modhushudhon as he got used to it in school. Because of the treatment received, he never took part in debate competitions, and as he never responded “present” during roll call in college to escape harassment, he resulted as non-attending classes Modhu’s medical teachers always discouraged him from studying medical science. He tried to cope up with the situation, starting to take medicine. But neither his neighboring people nor the medicine worked to remove his pains or cause of pains.

In his last note, Modhushudhon wrote, “I will never forget the humiliation by sir! Good bye my earth”

With the aid of BLAST, Modhu’s father filed a case (CR Case No, 424 of 2011) with Bogra Police Station under section 306/34 of the Penal Code 1860, accusing two teachers of Bogra Medical College. Unfortunately, the case was dismissed after submission of final investigation report by police on May 2, 2011. During investigation police did not find any ground to submit charge sheet against the accused teachers.

Feeling aggrieved by the death of his son, Modhu’s father Mr. Shankar Chakrabarty along with four other petitioners, including BLAST, instituted a Writ Petition titled ***Shankar Chakraborty and others vs. Govt. of Bangladesh and others[[3]](#footnote-3).*** The petition soughtguidelines regarding the prevention of harassment against PWDs in educational institutions and the investigation of such allegations in order to take action against responsible persons. In response to the petition, a bench comprised of Mr. Justice Farid Ahmed and Mr. Justice Sheikh Hassan Arif, issued a Rule Nisi on March 18, 2012 upon the respondents to show why their failure to conduct an effective inquiry into allegations of harassments against students with disabilities in educational institutions, and their failure to take action against responsible persons should not be declared a breach of their duties under the Disability Welfare Act 2001; hence, they shall not be directed to adopt certain guidelines regarding prevention of harassment against PWDs in educational institutions. The case is now pending for disposal of the Rule.

Expressing his grief against law enforcing agencies, Modhu’s father said “I have been deprived of justice. My child will never return but I hope the High Court will deliver a milestone judgment in the Writ Petition protecting rights of PWDs so that none become victim of degrading treatment or cruelty due to disability.”

## Criminalization of torture, cruelty and ill-treatment within four walls and beyond

According to the CRPD, no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. Moreover, no one shall be subjected without his or her free and informed consent to medical or scientific experimentation. Bangladesh is under the obligation to take all effective legislative, administrative, judicial or other measures to prevent persons with disabilities, on an equal basis with others, from being subjected to torture or cruel, inhuman or degrading treatment or punishment. According to the RPPDA, persons with disabilities have the right to protection against torture and harassment; if this right is violated, victims may file a complaint for compensation to the District Committee formed under RPPDA.

However, no other law criminalized torture against persons with disabilities in home settings, asylum, hostel, shelter homes or in custody of guardians. Due to poor protection level and because of the lack of accessible judicial forums, torture and degrading treatment against persons with disabilities are alarmingly increasing. The manner and place of occurrence may be summarized as below:

1. Persons with disabilities are not equally treated by both public and private service providers;
2. Women with disabilities suffer multiple discrimination and are seriously insulted when they want to engage themselves in public activities;
3. During recruitment examinations, persons with disabilities are asked humiliating questions, sometimes the examiners compel the candidate to admit that s/he is not the right person for the position due to his/her disability;
4. Persons with disabilities residing in hostels, asylum, hospitals, shelter homes, development centers suffer corporal punishment.

Case-01

X, aged around 17, is a person with psychosocial disabilities kept in chains by his family members in the Kishoreganj district. Just before the day of Eid-Ul-Fitre, his family members set him free on June 4, 2019. After his release, the boy entered into a house of a local elite. The caretaker of the house caught the boy as thief and mercilessly beat him in front of hundreds of people. As the victim was a person with psychosocial disabilities, he was not allowed to say anything to defend himself. People were enjoying the “beating of a thief”! After being seriously injured, the boy was admitted to a public hospital. Police recorded the case under traditional Penal Code and arrested the person who beat him.[[4]](#footnote-4)

Case-02

“X”, a person with psychosocial disabilities resides with his mother. X’s mother is very poor and earn livelihood by working as domestic help in the residences of other people. Every morning she brings X to nearby street, locks him with a pillar and goes to work. Returning from work she takes her son to home. The boy stands whole day on the street, even during rains he stay under open sky if his mother fails to come to unlock him. If the mother do not work, both will have to starve. In an interview his mother told, “If I do not lock him, in my absence, he might be injured by accident or people may beat him…only almighty knows what kind of pain I suffer when I lock my son… if there is someone to take care of him, I would have been relieved before my death.”[[5]](#footnote-5)

## Detention of Persons with Intellectual/Psycho-social Disabilities

According to Vagrants and Shelter less Person (Rehabilitation) Act, 2011 persons with disabilities might be arrested by police not below the rank of Sub-Inspector, magistrate or any authorized person from any place.[[6]](#footnote-6) Under the same Act the arrested person may be detained subject to assessment in due process of law for a period up to two years.[[7]](#footnote-7) Under the Metropolitan Police Ordinances including Dhaka Metropolitan Police Ordinance, 1976 police can arrest any person who are found as vagrants or beggars. Due to their being ultra-poor or being having intellectual or psychosocial disabilities, or being abandoned by the families, a significant number of persons with disabilities have become shelter less or street dwellers. In this situation persons with disabilities are under serious threat of detention without any criminal charges. This situation is violative of personal liberty too. According to Prison Authority of Bangladesh, in 2018, 8 (eight) persons with disabilities were found in different prisons who have no address.

## Protection of Persons with Neuro-Developmental Disability Trust Act, 2013

According to this Act, any person (natural and artificial) can be a guardian of a person with Neuro-developmental disabilities (of any age) subject to written consent of natural guardians i.e parents of the persons with disabilities. But there is no requirement of taking consent or knowing choice of the persons whose guardian or custodian is being determined by the NDDTA. This is may cause serious mental torture if the newly appointed guardian/custodian is disliked by the concerned person with disabilities. Also ignoring the consent shall cause violation of well recognized constitutional right to equal legal capacity as the persons with NDDs are not of unsound mind.

## Mental Health Act, 2018

Recently GOB of Bangladesh has passed the Mental Health Act, 2018 which repeals the draconian law Lunacy Act, 1912. This Act deals with the persons who have mental disability, mental illness or psychosocial disabilities and provides for treatments to two types of patients, one type who are defined as non-protesting patients and the other type is protesting patients. It is very positive that this law ensures free and informed consent of non-protesting patients for the treatment. Even this type of patients are eligible to seek release from hospitals or to refuse treatment whenever they wish [Section 12]. But it is a great concern that the law snatches the right to consent/choose doctors or medicine from those who don’t want to get treatment or to take medicine or to be institutionalized [Section 14].

## Suggested questions

We kindly suggest the CAT Committee to consider asking the following questions to the State Party:

1. Provide information on the measures taken to abolish legislative provisions that authorize detention on mental health grounds;
2. Provide information on the measures taken to ensure that all mental health services are based on the free and informed consent of the person concerned and to abolish all legal provisions that authorize any forced or non-consensual interventions or treatments in the mental health setting.
3. Provide information about Bangladeshi individuals being granted access to an effective mechanism to obtain release from confinement or forced interventions in mental health services
4. Provide information on the steps taken to replace forced treatment and commitments with a wide range of community based services that meet the needs of persons with disabilities, and that respect the person’s autonomy, choices and dignity, including peer support and other alternatives to the medical model of mental health.

## Proposed Recommendations

We kindly suggest the CAT Committee to consider addressing the following recommendations to the State Party:

1. Immediately fulfill the obligation to stop ill-treatment from being carried out through forced psychiatric interventions, and undertake the necessary steps to repeal legislation that authorize forced treatment and coercive detention;
2. Take effective measures to ensure no one is subjected to mental health treatment without their free and informed consent;
3. Ensure that all persons with disabilities are continuously being informed of their rights, including the right to leave and the right to refuse any or all medical treatments.
4. Immediately enact the Witness Protection Law.
5. Amend the Evidence Act and all procedural provisions requiring the victim of alleged acts of torture and ill-treatment to prove the allegation by shifting the burden of proof to the accused.
6. Amend the “Women and Children Repression Prevention Act 2000” and the RPPDA by inserting special provisions for the protection of women and children with disabilities.
7. Amend the NDDTA so that the appointment of guardians or custodians is taken with the free and informed consent of the person with disability, so as to pave the way for supported decision making.

# EXECUTION ISSUES

## Protection in Prisons

In response to the request of information under the RTI Act, 2009, the Prison Headquarters of Bangladesh, on 16 September 2018, informed that, no lift facilities is available in the prisons of Bangladesh.[[8]](#footnote-8) Ramps will be constructed in old buildings and ramps are being constructed in new buildings. Special, accessible toilet (daytime) and wheel chair facilities are being provided. According to the authority 334 prisoners with disabilities were staying in the prisons. Among them 21 prisoners are visually impaired, 5 prisoners are hearing impaired, 131 prisoners have physical disabilities, 145 prisoners are with mental disability and 32 prisoners have other types of disabilities. According to jail code all facilities are being provided to prisoners with disabilities. 9 women prisoners out of 20 are in the have mental disabilities. Among these 9 women prisoners, 8 had no address.

## Lack of Proper Investigation

It has already been mentioned that due to lack of proper investigation by police, Modhushudhon Chokrabarty’s family did not get justice, the accused persons were released from the charge. On the other hand, it is frequently seen that innocent persons with disabilities are prosecuted just because of improper investigation and negligence of law enforcing agencies. According to laws of Bangladesh no act committed by a persons with unsound mind is offence. But police files cases against persons with psychosocial disabilities.

Case-03

Police filed a case against “X”, aged about 70, a person with visual disabilities. Police brought charges against him for committing subversive activities and rioting by setting fire to a motorbike on December 22, 2019 just eight days before parliament election in Bangladesh. “X” is unable to move alone and live by begging. X’s wife and two sons died many years ago and he has none to take care of. However, X came to the High Court along with 39 co-accused for anticipatory bail on December 24, 2019. As, “X” is unable to involve him with any such activity due to his visual disability, he has just been victimized by harassment by police.[[9]](#footnote-9)

## Barriers of Accessing Justice, Lack of Effective Remedies and Reparation

According to Article 13 of the CRPD, States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodation, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages. In order to help ensuring effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

There are several barriers in accessing justice with regard to torture, ill-treatment of persons with intellectual and psychosocial disabilities in Bangladesh.

When ill-treatment is carried out in the name of medical treatment, authorized by national legislation, there is no real protection or access to effective remedies and the perpetrators are not prosecuted. While persons with psychosocial disabilities are constantly subjected to discrimination and ill-treatment through forced psychiatric treatments and detention, the legal system of Bangladesh has failed to provide basic human rights protection to this people.

It is also notable that statistics about violence and torture against persons with disabilities are not publicly available. Plus, the victim is deprived from getting effective remedy.

State-run Victim Support Centres (VSCs) provide protection to women and children survivors of violence or exploitation. However, concerns remain as to whether the authorities and staff of VSCs have sufficient training in communicating with persons with disabilities, or whether or not such centres are physically accessible to persons with disabilities.

It is a cause for concern that despite having a national law that protects their rights, persons with disabilities themselves refrain from approaching justice mechanisms, and do not utilize them, due to the physical and attitudinal barriers within such institutions. This is due to lack of knowledge, limited access to quality legal services, inaccessible procedural law and the fear of discrimination that they may face and thus, they must be given assurance from the state that their grievances will be redressed. Police fails to duly investigate and prosecute incidents of VAW.

* Lack of appropriate information about laws, government and non-Government legal aid services and lack of circulation in accessible manner for all including Women with Disabilities.
* Law implementing and justice related institutions, i.e police stations, court premises, counseling centres and legal aid centres have no infrastructural and informational accessibility for justice seekers with disabilities.

## Training Officials

According to the Art. 10 of UNCAT, a state party is required to ensure that all law enforcement personnel, medical professional, public officials and other persons who may be involved in custody, interrogation or treatment of any person are trained regarding the prohibition against torture, and that the rules relating to their duties incorporate the prohibition. However, the abovementioned personnel, (i.e law enforcement related officers, judicial officers, medical professionals and staff members of the safe homes) is not trained on the rights of Persons with Disabilities.

## Suggested questions

We kindly suggest the CAT Committee to consider asking the following questions to the State Party:

1. Provide information on the steps taken to remove barriers in the access to justice to persons with disabilities.
2. Provide information on the measures taken to release persons with psychosocial disabilities from prisons.
3. Provide information on the initiatives undertaken to ensure adequate training to the relevant professionals to enhance their capacity to address the needs of persons with disabilities and to make them aware of prohibition of torture, inhuman treatment against persons with disabilities.

## Recommendations

We kindly suggest the CAT Committee to consider addressing the following recommendations to the State Party:

1. Make available in accessible formats and circulate information about relevant laws, government and non-government legal aid services to persons with disabilities s.
2. Justice institutions, i.e police stations, courts, counseling centres and legal aid centres should have infrastructural and informational accessibility for all persons with disabilities, such as a a sign language interpreters.
3. Include disability issues in the training curriculum of law enforcement, with a particular emphasis on handling the cases of women with disabilities.
4. Give membership to persons with Disabilities and their representative organization to the District Legal Aid Committees (DLAC).
5. All costs for conducting litigation for persons with disabilities/women with disabilities should be covered by the DLACs and proper counseling services should be available for all persons with disabilities.

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1. Articles 6, 9, 13, 16, 24, 25, 27 and 29 of the CRPD [↑](#footnote-ref-1)
2. <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCRPD%2fICO%2fBGD%2f33891&Lang=en> [↑](#footnote-ref-2)
3. Writ Petition No. 1576 of 2012 [↑](#footnote-ref-3)
4. <https://www.jagonews24.com/country/news/505255?fbclid=IwAR3hRKZ_c3aZyZVgKAZCRAgb7EWrs08apqGCP1xJQBBaecynl5TjDieHub4> (last accessed on June 19, 2019) [↑](#footnote-ref-4)
5. http://h5.share2.wshareit.com/video?id=v2hon4&uid=6Iz9k&ty=sv&f=j&ref=more&fbclid=IwAR0fYel\_XtucSJbhpFcKcLp1Ms9Y-cDUfmoDPQNWjakPXPAQyZrHTGdY3Uc [↑](#footnote-ref-5)
6. Section 9, Sub Section (1) of the Vagrants and Shelter less Person (Rehabilitation) Act, 2011 [↑](#footnote-ref-6)
7. Section 10, Sub Section 3(b) of the Vagrants and Shelter less Person (Rehabilitation) Act, 2011 [↑](#footnote-ref-7)
8. BLAST requested five specific information on the prisoners with disabilities in 2018. [↑](#footnote-ref-8)
9. <http://www.newagebd.net/article/63865/70-year-old-visually-challenged-karamat-in-hc-in-gayebi-mamla> [↑](#footnote-ref-9)