

***HUMAN RIGHTS MANIFESTO  
BANGLADESH PERSPECTIVE***

***BANGLADESH JAMAAT-E-ISLAMI***

## **Mission Statement**

*“Seeking to ensure equity and justice for all citizens in adhering to domestic and international principles of justice.”*

**TABLE OF CONTENTS**

Executive Summary ..... 4  
Set of Principles ..... 6  
Higher Standard of Procedural Safeguard Required for Death Penalty Cases ..... 16  
Closing Statement and Recommendations ..... 18

## **Executive Summary**

1. Bangladesh emerged on the global map as a sovereign, independent nation following the liberation war of 1971 with huge sacrifice of the valiant freedom fighters and the general masses. Bangladesh became independent, determined to establish democracy, the rule of law, basic rights, and human rights in the society. But regrettably those desires and dreams of the people are as yet unfulfilled.
2. Bangladesh over the past four decades has seen numerous instances of persistent and widespread human rights violations, and along with it, a culture of impunity. This culture has emerged as arguably one of the most compelling social problems in the People's Republic of Bangladesh.
3. It ought to be noted, that Jamaat-e-Islami supported the unity of Pakistan, on a political basis during the war of independence in 1971, as did many other parties.
4. Jamaat-e-Islami is disturbed that the Awami League Government has brought politically motivated cases, without any clear evidential basis, against the leadership of opposition political parties, including Jamaat-e-Islami. Of further concern and as evidence of its motivation, the Government amended the original 'International Crimes (Tribunal) Act, 1973' to achieve its political purpose.
5. In seeking to divide society on this basis, a new culture of sectarianism and impunity has been born. Legislative and Executive bodies, law enforcement agencies, prosecutors, judges, religious and civil society groups must now strive to seek to eradicate society of this pervasive problem.
6. The manner in which the legacy of 1971 is being addressed is arguably the catalyst behind many of the problems that face Bangladesh society today; as much as this manifesto does not seek to address issues arising out of the current International Crimes Tribunal, it must be seen as a the background to those other human rights issues that are in urgent need of attention.
7. The establishment of the Tribunal was welcomed by the international community. However, it also urged the Bangladesh Government to follow its recommendations in order to ensure that the rule of law and principles of fairness were respected. The Bangladesh Government, unfortunately, has paid no heed to those recommendations,

despite the fact that it is a member of both the International Covenant on Civil and Political Rights and the Statute of Rome for the International Criminal Court, and has been since 6 September 2000 and 23 March 2010 respectively.

8. Jamaat-e-Islami recognises the need for accountability for all crimes whoever committed during the liberation war of 1971. It therefore supports the premise that those alleged to have committed 'war crimes', ought to be properly investigated and tried under competent law, however, the ICT in its present guise lacks any discernable fair trial standard.
9. The manner in which those trials before the ICT have been approached, has resulted in a government sponsored crackdown on political dissent, and further, it has resulted in the manifest and significant violation of the fundamental freedoms and human rights of Bangladesh citizens who have merely sought to exercise their rights.
10. The international community must now assist in the long-term resolution to this problem, ensuring that the future democratic institutions in Bangladesh have the long-term sustainability to cope. It is absolutely essential that this matter be placed on the agenda of the United Nations Human Rights Council. Bangladesh is flouting its international obligations as a state party to the International Covenant on Civil and Political Rights and the Rome Statute of the International Criminal Court. The international community must ensure that the culture of impunity, whether by individuals, interested groups, or members of the Government, is brought to an immediate end.
11. Root and branch reform of the security, investigative, and judicial departments, is essential for the long-term stability of Bangladesh. This initiative, with the full support of a number of national and international actors, ought to be used to reassert principles of democracy; to reaffirm citizens faith in government, and democratic institutions, and to bring about the necessary reform and development of the justice sector; the re-establishment of trust in the judicial and political institutions in Bangladesh and the meeting of reasonable expectations in terms of transparency, fairness, equality and justice, according to the highest national and international standards.
12. The last two years has clearly demonstrated the devastating impact a disillusioned public can have and the way in which it can further divide a nation if a certain part of society feels aggrieved or discriminated against. The manner in which human rights are upheld or ignored, will have a significant effect on civil society and any societal and economic development will be held back unless the process is transparent and inclusive. In order

to address this, Jamaat-e-Islami repeats its demand for an independent international investigation, under the auspices of the United Nations, into the widespread human rights violations by the ruling Awami League administration and the State Security Forces.

13. Bangladesh politics and society is broken, and will only degrade further unless appropriate action is taken. Reconciliation, through a transparent process of justice and accountability in Bangladesh must be recognized as everyone's concern and everyone's responsibility. Bangladesh as a nation, will never progress unless and until the issue of respect for the human rights of citizens is given the appropriate focus and the current politicization is removed. This is not owned by any one political party and should not be driven solely by any ruling party.

## **Set of Principles**

### **A. *Introduction***

14. Bangladesh is at a critical stage in its development as a democracy.
15. It is therefore imperative that the foundations upon which a nation was built are strengthened, and respected by all Bangladeshi citizens regardless of their political or religious affiliation.
16. It is incumbent on any and all political parties in a nation to ensure that impunity is not tolerated.
17. It remains a central pillar of any functioning democracy that *all* those accused of crimes face justice regardless of their political alliances and loyalties at the time. To allow individuals to escape justice solely on the basis of their loyalties undermines any and all attempts at reconciliation.
18. It is deeply saddening therefore that in last few years, we see those democratic principles being eroded and replaced with oppression and authoritarianism.
19. All political parties have an obligation to uphold democratic principles and further their development.
20. Jamaat-e-Islami is committed to democracy, and committed to the respect and furthering of its principles.

21. In particular, Jamaat-e-Islami seeks to re-establish the rule of law which at present is severely lacking, ensure appropriate justice principles are re-affirmed, and that at all times, all parties to the judicial system respect the core principles as recognised by those national and international laws and treaties to which Bangladesh has made commitments.
22. Jamaat-e-Islami firmly believed that the society and the state are based on justice and equity, where all are free from oppression to work for the welfare of citizens.
23. It is imperative that such core principles also reflect the principle of 'freedom of expression' and 'freedom of speech'. A citizen cannot be prevented from voicing a concern or protesting and what is perceived to be an injustice that undermines the very principles upon which the state of Bangladesh was founded
24. It is therefore the very basis of the party that core Islamic principles are adhered to, as entrenched in its constitution.
25. There is no dispute between Islamic principles and democratic values as they amount to one and the same in that equity and justice between all peoples is a paramount consideration.
26. In order to continue to develop as a nation, the core principles of democracy and of Islam must be recalled and reaffirmed thus ensuring that the citizens of Bangladesh can live in peace and security, and whereupon there are those that act outside of these principles, an appropriate, but judicial and equitable process is followed.
27. Such principles must be equally applied to all citizens regardless of their political, ideological or faith based affiliation.
28. Impunity has been rife, tolerated, and often encouraged during the last 45 years. To enable Bangladesh to continue to develop and mature, law, justice, and security must be applicable to each and every citizen.

***B. Outline of the Party Core Principles***

29. Bangladesh Jamaat-e-Islami recognise the state of Bangladesh as democratic and accordingly uphold its principles.
30. Principles of autocracy or even theocracy are rejected.
31. Accordingly, the core principles of the party relate to those principles of democracy,

including:

- a. The right to vote and freely partake in elections;
- b. The right to equal protection of the law;
- c. The right of Freedom of Expression and Freely to express one's views;
- d. The right to a free media;
- e. The right to Peaceful Protest; and
- f. The right to fundamental protections under the Constitution to all persons without discrimination.

### **C. Analysis**

#### *i. Violence against Opposition Members/Supporters*

32. In making pledges to change the current situation in our nation we must have an understanding of those issues that currently affect each and every citizen and prevent such citizens from leading a life of peace as should be expected within a democratic state.
33. The position adopted by the ruling Awami League is suggestive of the fact that not only is violence against opposition members/supporters to be tolerated, it is to be actively encouraged.
34. Barely a day passes without a political activist being killed or seriously injured.
35. A particular mention must be made of the Rapid Action Battalion (RAB). The RAB has been singled out for significant criticism from a number of international parties including Human Rights Watch.
36. As recent as 25 January 2015, when asked to account for allegations of extrajudicial killing, a senior RAB official remarked and which was published in a number of daily newspapers in Bangladesh "What is extrajudicial killing? Should the law enforcers remain a mute spectator while criminals commit crime? Why have the arms been issued to the law enforcers? Is it to play Haduddu?". Such comments clearly suggest that the actions of the RAB and other groups loyal to the ruling Awami League are supported and encouraged, thus cultivating

an air of impunity, as a result of the Bangladesh Government neither condemning their heinous deeds nor taking any action.

37. Sheikh Hasina, the Prime Minister of Bangladesh has effectively allowed the state security services to act with complete impunity, ordering them to control the on-going disruption “*at any cost*”, and that “*there should be no hesitate, no two ways about it. Whatever happens I will take liability*”.
  38. She is further reported to have declared “*It is you who have to ensure security for the people. And to do so, whatever stern measures are needed, take them without any hesitation; I give you the liberty,*”.
  39. The use of language is of significant concern given that there is a clear inference that those who act in favor of Awami League will be protected thus allowing them to act with the impunity that the Awami League have complained of since 1971 and sought to address with the ICT.
  40. Of even more concern, is that a senior Police officer of Dhaka range is quoted that “*We have been given weapons to protect the lives and properties of the citizens of this country. If anyone tries to destroy or kill, then are we going to sit and suck our thumbs? Do whatever is needed. Don’t just shoot –destroy their entire descendants.*” In a speech organised by a group of district police.
  41. Such language encourages crimes against humanity and gives it state approval. Such a position cannot be maintained nor can it be allowed to continue.
  42. The increasing levels of violence must be addressed and must stop if there is to be any hope of peace being restored.
  43. Such actions as described above have no place in any country, and certainly not in a democracy.
  44. Jamaat-e-Islami undertakes to adopt a zero tolerance approach to such issues.
  45. It is not down to the government, or the security services to seek silence such protest.
  46. It is however acknowledged that such freedom of expression and freedom to protest must be done within the confines of accepted and established principles of law.
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47. Jamaat-e-Islami does not seek to curtail any inherent democratic rights of citizens.
48. There is no intention to make such laws any more restrictive than they are at present. There is however a need to reform the manner in which such offences are viewed within the criminal justice system.
49. As is noted throughout this manifesto, the death sentence must be reserved for the most serious of all offences and can only be applied after due process of the law to the highest international standards.

*ii. Shoot on Sight Policy*

50. Cabinet members of the government have openly admitted that they are considering a 'shoot on sight' policy against members of the opposition they deem to be arsonists, thus deliberately attempting to circumvent the rule of law and due process.
51. The rule of law is paramount and a central pillar to any democracy.
52. It cannot, and must not be circumvented at the behest of the government.

*iii. Arbitrary Detention/Enforced Disappearance*

53. Over 100,000 citizens have been detained by the security services for nothing more than simply being a member of or supporter of an opposition party.
54. It was the ruling Awami League who sought to ban any form of assembly or protest, thus seeking to remove the inherent democratic right of a citizen.
55. This has now been taken that much further, in that anyone seeking to express such a right is detained without judicial oversight and without charge.
56. Of those thousands detained, there are a significant number whose whereabouts are not known nor are they being disclosed. They have effectively been made subject to enforced disappearance by the security services.
57. Credible allegations of torture whilst being held in custody have been made on numerous occasions.
58. The widespread detention and torture of citizens is no different than many other regimes across the world that are rightly met with condemnation.

59. This silencing of dissent by force is a worrying development, and adds further weight to the argument that the Awami League are taking steps to ensure that Bangladesh becomes a one party state.
60. Arbitrary detention and enforced disappearance is to be immediately outlawed.

*iv. Impunity*

61. Impunity is common theme throughout all of the above sub-headings but we seek to re-assert the comments of the leader of the Rapid Action battalion (RAB) which has already been the subject of allegations of crimes against humanity, and the comments of the Deputy Inspector General of the Dhaka police whose comments cannot be seen as anything other than a call to murder *en masse*, arguably giving approval to the commission of Genocide. There is no difference between such comments and those heard in Rwanda where certain groups were referred to as ‘cockroaches’ and that they should be ‘exterminated’.
62. It is no coincidence therefore that hundreds of innocent civilians have now been killed during the unrest, by the security forces either on the street, or whilst in custody/detention.
63. Further, there has been an absolute refusal on the part of the Government of Bangladesh to initiate any credible investigation into any instance of violence against an opposition party member or supporter, thus underlying the point that there are those who operate with complete impunity given their state support,
64. Impunity is the scourge of any democracy, and cannot be allowed to flourish.
65. It is clear, given the rhetoric of the government, that there will be no contact with the opposition parties unless there is demand for dialogue by the international community.

**D. Fundamental Issues**

66. Bangladesh is a country founded upon the principles of democracy.
67. Those principles were hard fought for during the 1971 War of Independence.
68. It is therefore wholly disappointing and concerning that those principles are being undermined on a daily basis by the ruling government.

69. Issues that require immediate attention to ensure that those founding democratic principles are re-asserted and Bangladesh continues to develop as a nation are as follows:

- a. Instances of enforced disappearance;
- b. Instances of extra judicial killing;
- c. The general restriction to civil liberties;
- d. The removal of the right of freedom of expression;
- e. The removal of the right to peaceful protest/assembly;
- f. Incitement to murder as supported by the ministers of state, state and non-state actors;
- g. The impunity afforded to the security services;
- h. The impunity afforded to members, or those that support the ruling Awami League;
- i. Politicisation of all constitutional bodies, such as the Election Commission, the Anti-Corruption Commission, Law Commission and Public Service Commission.
- j. The clear attempts to entrench power by removing democratic opposition parties; and
- k. Politicisation of the judicial process generally;

**E. List of Pledges**

70. In accordance with its guiding principles, Jamaat-e-Islami undertake to:

- a. Ensure that instances of arbitrary detention are eradicated;
- b. Ensure that instances of extra-judicial killings are eradicated;
- c. Ensure that there can be no instance of political influence in the judicial process;

- d. Ensure that there is judicial oversight of all instances where someone is detained in custody;
- e. Ensure that anyone appearing before the courts has the principle of a right to a fair trial upheld;
- f. Establish a moratorium on capital punishment;
- g. If capital punishment is to remain, to ensure that it is only imposed for the most serious of offences, and only where the trial giving rise to the sentence meets all universally recognised international standards, including such standards that relate to a fully independent and impartial appeal process.
- h. Where there are instances of crimes committed by the state or its actors, or non-state actors that nevertheless have explicit or implicit state support, an immediate and independent investigation will be commenced.
- i. Respect for the principle of 'Freedom of Expression' and ensure that the principle is enshrined within domestic law; and
- j. To ensure all offences are punishable with appropriate sentences with their seriousness reflected as such.

**F. A Policy for Ensuring those Pledges will be Realised**

- 71. A number of separate policies must be enacted to ensure that the core policy of equity, justice, and fairness is upheld.
- 72. As a first step however, Jamaat-e-Islami commit to commissioning an immediate independent review of the whole Bangladeshi Judicial system, to include initial arrest, detention, and investigation at the beginning of the process, through to the appellate courts, including the jurisdiction of the Supreme Court.
  - a. Such a review is not with any intention of influencing the security services or any judicial office holder, but to ensure that such influence cannot be brought to bear in the future.

- b. The independence of the judiciary and the court process is a central pillar in any democracy and one from which there can be no derogation. The review therefore is to ensure that this principle is entrenched.
- 73. The review cannot be carried out alone domestically. To ensure fairness, transparency, and complete independence, we can take assistance from recognised international experts.
- 74. The Security services are also to be subjected to a review and where appropriate, recommendations for prosecution should be made if there is evidence to substantiate charges.
- 75. A thorough review should be undertaken by an independent and competent commission regarding the functions of the Rapid Action Battalion (RAB).
- 76. The establishment of an investigatory board to deal with all allegations against the police and other security services.

#### **G. The Role of Other Parties in Civil Society**

- 77. As much as those in government in a democracy have a responsibility towards citizens, citizens and therefore civil society have that same responsibility to each other, a responsibility to uphold those principles of democracy.
- 78. Civil society plays an important role in the process of judicial reform, especially in a country that has hitherto been subject to authoritarian control.
- 79. Jamaat-e-Islami welcomes the input of civil society, whether it be individuals or groups, so as to assist in the shaping of its policy.
- 80. A government runs the country through its citizens and therefore it is wholly appropriate for those citizens to seek to influence policy.
- 81. In terms of this justice manifesto, lawyers, scholars and those affected by the policies should be the primary protagonist in the shaping and development of such reforms.
- 82. A healthy state must have a participative society and strong institutions. A vigorous civil society will ensure that the state respects rights, and further, ensures transparency in government.

83. The Bangladesh justice system is at a critical juncture, and therefore, as much as civil society institutions may be at the beginning of their development, they are seen as fundamental to the reform of the process.
84. Such institutions ensure that the proposed reforms remain highlighted on the political agenda and thus render government accountable to the people.
85. Jamaat-e-Islami would seek to engage with civil society institutions and maintain a dialogue.
86. Jamaat-e-Islami therefore commits to raising social awareness within society, ensuring that issues are raised, and that dialogue is welcome.

#### **H. The Role of the International Community**

87. The role of the international community in the reform of the security and judicial system in Bangladesh is essential, however, this should not be at the cost of national sovereignty and Jamaat-e-Islami are overtly aware of the potential for influence beyond a given remit.
88. Therefore, as much as the assistance of the international community is to be welcomed, it is also to be accepted within the confines of strict parameters.
89. Jamaat-e-Islami therefore sees any invitation extended to the international community to assist, to be in terms of oversight.
90. Bangladesh as an entity, its state organs, and its citizens are perfectly capable of bringing about reform and ensure equity and justice, however, it is also acknowledged that a young democracy must also be willing to accept assistance and cooperation when it is offered.
91. Further, the past has seen numerous instances of political influence in what has been heralded as a free and independent process. This influence has permeated all corners of supposedly independent organs.
92. The role of the international community therefore is to oversee domestic lead investigation and review, not to impinge on domestic sovereignty, but to ensure that all such reviews and investigations truly are independent and thus the conclusions drawn can be relied upon by citizens as true reflection of the process.

93. Jamaat-e-Islami rejects all notions of a ‘vested interest’, or ‘political agenda’ in the proposed process of review and investigation.
94. Jamaat-e-Islami therefore welcomes the assistance of the international community both at a state level, and those individuals/groups who are deemed to be experts in their field.

### **Higher Standard of Procedural Safeguard Required for Death Penalty Cases**

95. The protection of the rights of individuals is even more important and demands an even higher standard of procedural safeguards and guarantees in cases that potentially carry the death penalty. Its universal recognition is confirmed in Article 3 common to the 1949 Geneva Conventions, which proscribes the carrying out of executions, “without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognised as indispensable by civilized peoples.” The norms of common article 3 are recognised as expressing norms of customary international law<sup>2</sup> and form the minimum standards to be applied in non-international armed conflicts. This principle is reinforced by the inclusion of execution or sentencing without due process as a war crime under Article 8(2)(c)(iv) of the Rome Statute.
96. Critically Article 6 of the ICCPR which enunciates the right to life is regarded as, “the supreme right from which no derogation is permitted even in public emergency which threatens the life of the nation.”<sup>3</sup> The Human Rights Committee held, “it follows from the express terms of article 6 that it can only be imposed in accordance with the law in force at the time of the commission of the crime and not contrary to the Covenant. The procedural guarantees therein prescribed must be observed, including the right to a fair hearing by an independent tribunal, the presumption of innocence, the minimum guarantees for the defence, and the right to review by a higher tribunal. These rights are applicable in addition to the particular right to seek pardon or commutation of the sentence.”<sup>4</sup>
97. The former United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Amos Wako, has reiterated this point, stating that trials held without

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<sup>2</sup>*Military and Paramilitary Activities in and Against Nicaragua (Nicaragua v United States)* [1986] ICJ Reports 14, paras 218, 255, 292(9).

<sup>3</sup> Human Rights Committee: General Comment No. 06: The Right to Life (Art 6) 04/30/1982

<sup>4</sup> Ibid. paragraph 7. The view was reiterated in the case of *Carlton Reid v. Jamaica, Communication No. 250/1987*, paragraph 11.6

fulfilling the guarantees of article 14 of the Covenant are to be considered “summary executions” and therefore a breach of Article 6, where a capital sentence is imposed.<sup>5</sup>

98. This reaffirms that Article 47(3), and Articles 47A(1) and 47A(2) of the Constitution of Bangladesh, the ICTA and the Rules of Procedure must be interpreted so that they accord with Article 6 of the ICCPR in the light of the fundamental procedural guarantees:

“Article 6(1) Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

“Article 6(2) In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgment rendered by a competent court.”

99. As per the ‘pledges’ noted above, it must be recognised that the death penalty is the ultimate sanction and therefore such a sentence must be reserved for offences of the utmost severity, and must only be implemented where the preceding trial can be shown to have strictly adhered to all universally recognized international standards, including appropriate standards

### ***Establishment of a National Human Rights Council***

100. The National Human Rights Council is to be established to consider alleged or apparent violations of human rights as provided under the International Covenant on Civil and Political Rights (and the other treaties to which Bangladesh is a State Party), and alleged or apparent discrimination arising in the enjoyment of the rights and freedoms provided for under national and international law. Particular priority will be given to allegations of especially severe or systematic violations, as well as those founded on alleged discrimination on prohibited grounds.
101. The Council would be established to replace the existing National Human Rights Commission that operates as an advisory body and has become a political organ of the

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<sup>5</sup>Report- Summary of Arbitrary Executions’, UN Doc. E/CN.4/1983/16, page 15.

State.

102. The Council should be composed as a mixed judicial inquiry institution with national and international jurists. The judges to be appointed would be distinguished lawyers in the field of human rights and would bring to the Council a wide variety of experience in different backgrounds including the judiciary, the academic sphere, private legal practice, administration and politics, and international, criminal and human rights law.
103. The legal framework and rules of procedure will be modeled on those of the UN Human Rights Committee.
104. The Council will be mandated to receive applications concerning such human rights violations directly from any person, non-governmental organization or group of individuals claiming to be the victim of a human rights violation by any State body or acting on behalf of alleged victims who are deceased or missing.
105. The jurisdiction of the Council will be limited to receive applications concerning matters that are within the responsibility of the State. The time period for when a violation occurred will need to be determined as this will be a complex matter.
106. The subject matter jurisdiction of the Council will be set out in the legal framework and will not include the criminal jurisdiction of the ordinary Bangladesh criminal courts or the court of crimes against humanity, if any.

### **Closing Statement and Recommendations**

107. The principles of justice and fairness to all must be upheld at all times by the state and its citizens.
108. Bangladesh cannot hold itself out to be a true democracy unless all such principles are entrenched in within the workings of government, and both state and non-state actors.
109. The principles of justice and fairness to all are a central pillar upon which a democracy is built.
110. Jamaat-e-Islami therefore commits to the principles outlined within this manifesto, those general principles of justice, and the observation of each and every citizen's human rights.

111. It is only through the enacting these pledges that the impunity rife within Bangladesh can be eradicated.
112. A justice system must apply to all, and not just those that the state directs.
113. It is time to move away from political divides, and a time to move away from secularist or theological debate. Justice is paramount.
114. In looking to achieve this aim, Jamaat-e-Islami would recommend the following is undertaken:
- a. A fully independent review into the Justice system in Bangladesh to ensure adherence to both domestic principles and international standards.
    - i. This review is to be provided with specific terms of reference and the ability to request all information required, and further, interview witnesses where appropriate so as to gain a full understanding and report accordingly.
  - b. An independent review into the alleged actions of the security service including RAB and where appropriate recommendations for prosecution of members accused of committing crimes.
  - c. Such a review board is to be given the power to recommend prosecution should substantiated allegations of criminality be made against members.



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