OHCHR Technical Note to the Government of Bangladesh on review of the Digital Security Act

June 2022

A. Introduction

1. Since 2019, in several meetings with the Office of the High Commissioner for Human Rights (OHCHR), the Government of Bangladesh has expressed its readiness to receive OHCHR's technical inputs in its review of the Digital Security Act (DSA). Bangladesh has also supported a number of recommendations issued by Member States during the Universal Periodic Review of the Human Rights Council in 2018, which called on Bangladesh to guarantee freedom of expression by reviewing and amending legislation relating to freedom of expression, including the DSA, to ensure that it fully complies with international human rights law.[1]

2. Despite the Government's stated intentions behind the law, OHCHR has previously expressed its concern at the impact the DSA has had on freedom of expression in Bangladesh, in particular on journalists, academics and human rights defenders. On 3 June 2020, in a press release regarding freedom of expression during the COVID-19 pandemic, the High Commissioner for Human Rights (HC) highlighted that the pandemic had added a new dimension to concerns about the DSA with dozens of people reportedly having had cases filed against them or having been arrested under the DSA for allegedly spreading misinformation about COVID-19 or criticizing the Government's response.[2] In a statement issued in March 2021, the HC raised concerns about the death in custody of writer Mushtaq Ahmed and allegations of torture of the cartoonist, Ahmed Kishore, and called for an overhaul of the DSA.[3] Special Procedures of the Human Rights Council also expressed their concerns about the draft DSA law in 2018 opining that it would create a chilling effect on legitimate exercises of the right to freedom of expression, and have raised concerns about the DSA in several communications.[4]

3. OHCHR welcomes the opportunity to offer these comments and recommendations for repeal and revision of certain provisions of the DSA with a view to ensuring their compliance with international human rights standards and preventing possible arbitrary application or abuse. OHCHR looks forward to continued exchanges on this issue with the Government of Bangladesh.

B. Overview of the areas of particular concern of the Digital Security Act 2018

I. Vague and overly broad provisions criminalizing various legitimate forms of expression with overly harsh sentences, including life imprisonment for repeat offenders

4. Several of the provisions of the Act, which criminalize various legitimate types of expression are overly broad and are not sufficiently precise to allow the public, and those executing the

[1] OHCHR | UPR | Universal Periodic Review - Bangladesh
[2] Asia: Bachelet alarmed by clampdown on freedom of expression during COVID-19 | OHCHR
[3] Bangladesh: Bachelet urges review of Digital Security Act following death in custody of writer | OHCHR
[4] *Internal Communication Clearance Form (ohchr.org)

law, to understand what kind of expression under the law is restricted, as required under article 19 (3) of the ICCPR. Overly broad and imprecise provisions also lend themselves to an increased risk of arbitrary application. Such vagueness coupled with the threat of a long prison sentence may stifle important debate on matters of public interest, thus putting in jeopardy the right to freedom of opinion and expression and the right to information.

5. Under **section 21**, those who publish "any kind of propaganda or campaign against liberation war, spirit of liberation war, father of the nation, national anthem or national flag", will be punished for up to 10 years and/or a fine and to life imprisonment and/or a fine for a repeat offence.[5] Given the overly broad language, section 21 risks criminalizing legitimate expression that cannot be limited under article 19 (3) of the ICCPR. Moreover, its lack of precision renders it difficult for individuals to regulate their conduct to avoid prosecution. The harshness of the penalty, including life imprisonment for repeat offences, could serve as a deterrent to legitimate public discourse. Importantly, in its General Comment 34[6], the Human Rights Committee has indicated its concern for laws that prohibit free speech on matters relating to, inter alia, respect for authority, State flags or symbols. It has also indicated that all public figures, including those exercising the highest political authority such as heads of state, are legitimately subject to criticism, that laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned and that laws penalizing the articulation of opinions regarding historical facts contravene the right to freedom of expression. Thus, OHCHR is concerned that this provision falls short of article 19 (3) of the ICCPR.

6. Proposed Review: OHCHR respectfully suggests that Bangladesh repeal this section of the DSA and may wish to consider absolving and affording adequate redress to anyone who has been sanctioned previously under this section, as suggested in the joint statement on universality and the right to freedom of expression by international human rights mechanisms.[7]

7. Section 28, which punishes those who publish "information in websites or in any electronic format that hurts the religious values or sentiment" also appears to lack the precision required by article 19 (3). In addition, OHCHR notes the nature of the sentence is harsher than for a similar offence under the Penal Code (295A - Deliberate and malicious acts intended to outrage religious feelings of any class by insulting its religion or religious beliefs). While the sentence under the DSA is up to 5 years and/or a fine, and 10 years and/or a fine if repeated, the Penal Code indicates a punishment of 2 years and/or a fine. Importantly, the Human Rights Committee has indicated that prohibitions of displays of lack of respect for a religion are incompatible with article 19 (3) of the Covenant, except in the specific circumstances envisaged in article 20 (2) of the Covenant. This means that acts of advocacy of religious hatred must rise to the high threshold of incitement to discrimination, hostility or violence to be considered an offence. The Committee has also explicitly stated that freedom of expression

[5] Under the DSA the meaning of "spirit of liberation war" means "the high ideals of nationalism, socialism, democracy and secularism which inspired our heroic people to dedicate themselves to, and our brave martyrs to sacrifice their lives in, the national liberation struggle."

[6] CCPR/C/GC/34

[7] International Mechanisms for Promoting Freedom of Expression (osce.org), https://www.osce.org/files/f/documents/6/4/517266.pdf.

should not be restricted to prevent or punish criticism of religious leaders or commentary on religious doctrine. Finally, OHCHR observes that the Committee against Torture, in its observations on Bangladesh, explicitly called for the repeal of legislation that criminalizes "hurting religious sentiments", such as the DSA, "given that such provisions are reportedly frequently abused as a means to enlist the authorities in the harassment of minority populations and seen as legitimizing the commission of private violence against persons accused of committing this offence".[8] Thus, OHCHR is concerned that this section falls short of article 19 (3) of the ICCPR and article 16 of the Convention against Torture.

8. Proposed Review: OHCHR respectfully suggests, in line with the recommendation by the Committee against Torture[9], that Bangladesh repeal section 28. Bangladesh may also wish to consider absolving and affording adequate redress to anyone who has been previously sanctioned under this section, as suggested in the joint statement on universality and the right to freedom of expression by international mechanisms[10].

9. **Sections 29** which criminalises "defamatory information", and **section 25,** which criminalises "offensive, false or threatening data-information", relate to acts that are considered civil liability issues in many other countries. OHCHR notes that these sections do not include defences, such as the defence of truth or a defence for public interest in the subject matter, as proposed by the Human Rights Committee[11], as a possible element of proportionality of the restriction and that the sentences for defamation in the DSA are harsher than those in the Penal Code (499): up to 3 years and/or a fine, and up to 5 years and/or a fine if repeated, in the DSA, as opposed to 2 years and/or a fine and an exception on the basis of public interest, in the Penal Code. OHCHR also notes the general view under international human rights law that defamation should be decriminalised, as it discourages the media from publishing critical information on matters of public interest, thus posing a threat to freedom of expression and access to information of all kinds, impeding inter alia journalists' legitimate performance of their work. Thus, OHCHR is concerned that these sections fall short of article 19 (3) of the ICCPR.

10. **Proposed review:** OHCHR respectfully suggests that Bangladesh should consider decriminalizing defamation and, in any case, it should countenance the application of criminal law only in the most serious of cases, bearing in mind that imprisonment is never an appropriate penalty for defamation.[12] It should consider replacing criminal defamation laws with civil laws

[8]Committee against Torture, Concluding observations on the initial report of Bangladesh, 26 August 2019 (CAT/C/BGD/CO/1), Treaty bodies Download (ohchr.org)
[9] Ibid.
[10] International Mechanisms for Promoting Freedom of Expression (osce.org), https://www.osce.org/files/f/documents/6/4/517266.pdf.
[11] CCPR/C/GC/34
[12] Human Rights Committee: Concluding observations on the seventh periodic report of the Russian Federation, 28 April 2015, CCPR/C/RUS/CO/7; Human Rights Committee, Concluding observations on the initial report of Macao, China, adopted by the Committee at its 107th session (11–28 March 2013), CCPR/C/CHN-MAC/CO/1; Concluding observations on the initial report of Turkey adopted by the Committee at its 106th session (15 October - 2 November 2012), CCPR/C/TUR/CO/1.

that are more narrowly defined and include defences, such as the defence of truth or a defence for public interest in the subject matter of the criticism.

11. **Section 31** relates to an offence of "deteriorating law and order, etc" for the publication of material that "creates enmity, hatred or hostility among different classes or communities of the society, or destroys communal harmony, or creates unrest or disorder, or deteriorates or advances to deteriorate the law and order situation." OHCHR notes the vague and broad nature of the language of this article and the harsh nature of the sentence, which is harsher than a similar offence under the Penal Code (153A – Promoting enmity between classes). In the DSA, the sentence is 7 years and/or a fine, which rises to 10 and/or a fine if repeated, while the latter indicates a punishment of 2 years and/ or a fine. OHCHR is concerned that this section, as currently formulated, falls short of article 19 (3) of the ICCPR and is not sufficiently precise to amount to prohibited expression, on the basis of incitement to hatred, as required by article 20 (2) of the ICCPR.

12. **Proposed Review**: OHCHR respectfully suggests that Bangladesh amend section 31 to comply with article 20 of the ICCPR, penalizing speech within the narrow scope of incitement to hatred. Under article 20, States are obliged to prohibit by law any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence. Such an amendment may also fulfil the intention behind section 28 of the DSA, which both OHCHR and the Committee against Torture recommend repealing (see above). OHCHR recommends that an amended version of section 31 should define incitement narrowly, as the broader the definition in domestic legislation, the more it opens the door for arbitrary application. Bangladesh may wish to look to the UN Rabat Plan of Action, which aims to provide guidance on how to balance article 19 on freedom of expression and article 20, on the prohibition of incitement to discrimination, hostility or violence. This Plan of Action also stresses the collective responsibility to prevent incitement to hatred.[13] OHCHR also suggests that when there are types of expression that do not rise to criminal or civil sanctions, but still raise concerns in terms of civility and respect for others, effort could be focused on addressing the root causes of such expression, including intolerance, racism and bigotry by implementing strategies of prevention.[14]

13. Section 27 relates to "committing cyber terrorism". OHCHR notes that this section is formulated in an overly broad and expansive way, not sufficiently accessible nor precise to allow the public to know how to regulate their conduct and uses terminology that is not properly confined to the countering of terrorism. For example, section 27 (d) criminalizes a broad range of acts of accessing or interfering with computers and computer networks and data-information without establishing any clear link to the elements commonly understood to define terrorism (see the following paragraph). This provision thus appears to address forms of cyber-crimes but with the harsh consequences of qualifying them as terrorism. It should also be noted that section 27 (d) does not appear to be limited to intentional acts, as would be international standard for cyber-crimes.[15] Moreover, the possibility of data-information to be used against

[13] OHCHR | OHCHR and freedom of expression vs incitement to hatred: the Rabat Plan of Action
[14] A/66/290
[15] See articles 2-5 of the Budapest Convention on Cybercrime.

"friendly relations with another foreign country" does not constitute a sufficient basis for the criminalization of accessing such information. The current section 27 carries the potential for arbitrary application and misuse of the term "terrorism". For this reason, OHCHR is concerned that this section falls short of article 15 of the ICCPR.

14. Proposed Review: OHCHR respectfully suggests that Bangladesh brings this section in line with the terrorism definition, as defined by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism. This means that counter terrorism offences, including cyber terrorism, should be confined to instances where the following three conditions cumulatively meet: (a) acts committed with the intention of causing death or serious bodily injury, or the taking of hostages; (b) for the purpose of provoking a state of terror, intimidating a population, or compelling a Government or international organization to do or abstain from doing any act; and (c) constituting offences within the scope of and as defined in the international conventions and protocols relating to terrorism. An amended section should also be accessible, formulated with precision, applicable to counter-terrorism alone, non-discriminatory and non-retroactive.[16] OHCHR also suggests that provisions on accessing or interfering with computer systems be limited to intentional acts and otherwise be aligned with international standards.

15. Section 32 refers to "breaching secrecy of the Government" for the commission or assisting the commission of an offence under the Official Secrets Act. OHCHR is concerned that the broad scope of this section, coupled with the harsh penalty of a maximum jail term of fourteen years and/or a fine, could have a negative impact on investigative journalism, important in ensuring accountability and transparency in the conduct of state affairs, thus falling short of article 19 (3) of the ICCPR.

16. Proposed Review: OHCHR respectfully suggests that this section could be brought more clearly in line with article 19, with some amendments, including adding the defences of public interest and truth and establishing meaningful whistle-blower protections.

II. Broad powers of police and the DSA agency

17. Section 8 relates to the "Power to remove or block some data-information". OHCHR notes that under the first paragraph of this section, the Bangladesh Telecommunications and Regulatory Commission (BTRC) can be asked to remove or block any data-information that threatens digital security, which is defined as "the security of any digital device or digital system". Moreover, according to the second paragraph, the BTRC can be requested by the law and order enforcing force to remove or block "any data-information published or propagated in digital media that hampers the solidarity, financial activities, security, defence, religious values or public discipline of the country or any part thereof or incites racial hostility and hatred". These formulations allow restrictions that go considerably beyond what is considered permissible under article 19 of the ICCPR. Grounds for blocking or removing content, such as "religious values", "solidarity" or "financial activities" are not recognized by article 19 (3) of the ICCPR. Furthermore, these and other grounds set out by section 8 are vague and broad and

[16] E/CN.4/2006/98

therefore open to excessive, disproportionate implementation. It should also be noted that blocking and removal measures often affect a wider range of content or a larger number of users than necessary, rendering them disproportionate.[17] OHCHR is concerned that the blocking and removal powers granted to the authorities are extremely broad, given the vagueness and vast scope of possibly affected material and that the removal orders do not require the content to be unlawful or criminal, thus unduly restricting freedom of expression and access to information. In this context, it is particularly concerning that section 8 does not contain any safeguards and requirement to limit any actions taken to strictly necessary measures, preventing overreach.[18] Moreover, OHCHR is concerned that the BTRC is not an independent but an executive body. Under international human rights law, content removal and blocking should only be carried out on the basis of a law clearly defining the circumstances in which these acts can be taken based on the decision of an independent, ideally, judicial body.[19] Thus, OHCHR is concerned that the current formulation of this section falls short of article 19 (3) of ICCPR.

18. Proposed review: OHCHR respectfully suggests that Bangladesh amend this section to more narrowly define the bases upon which data-information may be blocked or removed, ensuring that it is content specific, does not allow for bans on the operation of certain sites and systems, and does not allow the application of such powers in respect of material critical of the government or the political social system espoused by the government, as recommended by the Human Rights Committee. OHCHR also the DSA be amended to only allow the application of such powers based on a decision of an independent, preferably judicial, body, and be limited to content that constitutes serious crimes.

19. Section 43 allows warrantless searches, seizures and arrests when a police officer has "reasons to believe that an offence under this Act has been or is being committed, or is likely to be committed in any place, or any evidence is likely to be lost, destroyed, deleted or altered or made unavailable in any way". Thus, police officers are afforded "unfettered discretion", contrary to the recommendations of the Human Rights Committee,[20] to search or arrest individuals in criminal investigations without seeking prior court approval in the form of a search or arrest warrant. Such warrantless searches could be applied to anyone present in the place where the officer makes an arrest. OHCHR is concerned that this falls short of article 19 (3) of the ICCPR.

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[17] Report of the Special Rapporteur on freedom of opinion and expression, A/HRC/17/27, para. 31. See also Human Rights Committee, General Comment No. 34, para. 43, stating that "generic bans on the operation of certain sites and systems are not compatible with paragraph 3", and Human Rights Council resolution 45/18, which condemned unequivocally "measures in violation of international human rights law aiming to or that intentionally prevent or disrupt access to or the dissemination of information online and offline, …, including through practices such as Internet shutdowns or measures to unlawfully or arbitrarily block or take down media websites…"

[18] See European Court of Human Rights, Vladimir Kharitonov v. Russia, Application no. 10795/14, 23 June 2020, stating that the law must clearly circumscribe the exercise of blocking power to minimise its impact and to prevent collateral interferences with lawful content.

[19] Reports of the Special Rapporteur on freedom of opinion and expression, A/66/290, para. 17; Mission to the Republic of Korea, A/HRC/17/27/Add.2, para. 48.

[20] CCPR/C/GC/34, see para. 3 of the annex.

20. Proposed review: OHCHR respectfully suggests that Bangladesh amend this section to ensure that the powers of investigating officers are clear and well defined, that they are provided with sufficient guidance to enable them to ascertain what sorts of expression are properly restricted and what sorts are not and that they are subject to safeguards and oversight to prevent possible abuse of powers when enforcing the provisions of the DSA.

III. Non-bailable offences and pre-trial detention

21. Section 53 refers to the offences under the DSA that are cognizable and bailable. Many of the crimes recognized under this Act, including those that are the subject of this Note, are classified as "non-bailable" offences for which there is no recourse for defendants awaiting trial. These are sections 21, 27, 28, 31, 32. This means that the default approach is to keep accused persons in pre-trial detention. It is reported that 80% of detainees in Bangladesh are in pre-trial detention.[21] Under international human rights law, pre-trial detention (detention between the time of arrest and the time of judgment at first instance) shall be the exception rather than the rule. It should not be mandatory for all defendants charged with a particular crime but should be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. During pre-trial detention, there should be periodic re-examination of whether detention continues to be reasonable and necessary in the light of possible alternatives to avoid a categorisation of arbitrariness and courts must examine whether there are alternatives to pre-trial detention, such as bail. Thus, OHCHR is concerned that the apparent automatic pre-trial detention of those charged under sections 21, 27, 28, 31, 32 of the DSA, without the possibility for an individual assessment that detention is reasonable and necessary, nor the possibility of periodic re-examinations of whether pre-trial detention remains necessary, falls short of both articles 9, 14 of the ICCPR.

22. Proposed review: OHCHR respectfully suggests that Bangladesh amend the Act so that: release pending trial is the general rule; the use of non-custodial alternative measures is added, including bail, set at an affordable level; pre-trial detention is an exceptional, reasonable and necessary measure based on individual circumstances; pre-trial detention is as short as possible and it is reviewed on a regular basis.[22] The relevant factors should be specified in law and should not include vague and expansive standards such as "public security". In cases where an accused is denied bail by the court, it should not affect the presumption of innocence, under article 14 (2) of the ICCPR, there should be periodic re-examination of whether it continues to be reasonable and necessary in the light of possible alternatives and the accused must be tried as expeditiously as possible or released.

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Annex

International legal framework

[21] https://www.prisonstudies.org/country/bangladesh

[22] CCPR/C/BWA/CO/2 (CCPR 2021), CCPR/C/MUS/CO/5 (CCPR 2017)

1. Bangladesh has been a party to the International Covenant on Civil and Political Rights (ICCPR) since 6 September 2000 and thus has an obligation to respect and protect the right to freedom of opinion and expression under article 19 of that treaty.

2. Article 19 (1) of the ICCPR guarantees that all individuals "shall have the **right to hold opinions without interference".** Article 19 (2) of the ICCPR provides that **"[e]veryone shall have the right to freedom of expression**; this right shall include the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice." Thus, Bangladesh has a positive obligation to respect and ensure that those who "impart information" on matters of public interest enjoy an environment that promotes these actions because a "free, uncensored and unhindered" press is essential to the public's enjoyment of the right to seek, receive, and impart information along with the enjoyment of other ICCPR rights.[23] The scope of paragraph 2 embraces even expression that may be regarded as deeply offensive,[24] although such expression may be restricted in accordance with the provisions of article 19 (3) and article 20 of the ICCPR.

3. Under article 19, the **right to freedom of expression may only be restricted** in accordance with article 19 (3). Thus, restrictions must be "provided by law" and "necessary for respect of the rights or reputations of others" or for the "protection of national security or of public order (ordre public), or of public health or morals." Laws restricting freedom of expression must be formulated with sufficient precision to enable individuals to regulate their conduct and must be accessible so that the individual has a proper indication of how the law limits his or her conduct. A law may not confer "unfettered discretion" for the restriction of freedom of expression on those charged with its execution and must provide sufficient guidance to enable those charged with its execution to ascertain what sorts of expression are properly restricted and what sorts are not.[25] Restrictions on the right to freedom of expression must also be necessary, not overly broad, and proportionate. In particular, they must be "the least intrusive instrument" among those which might achieve the desired result and must be "proportionate to the interest to be protected."[26] The principle of proportionality "must also take account of the form of expression at issue as well as the means of its dissemination". The criteria for restrictions online are the same as for those offline.

4. As to **defamation**, the UN Human Rights Committee has concluded that defamation laws must be "crafted with care to ensure they comply with" article 19 (3). Such laws are more likely to be considered proportionate if they include defences such as the defence of truth or a defence for "public interest in the subject matter of the criticism". [27] The Committee has also urged States to "consider the decriminalization of defamation and, in any case, the application of the criminal law should only be countenanced in the most serious of cases and imprisonment is never an appropriate penalty"[28]. The Committee has raised concerns about the criminalization

[23] CCPR/C/GC/34
[24] Ibid
[25] Ibid
[26] Ibid
[27] Ibid
[28] Ibid

of defamation with deprivation of liberty on many occasions, which it has indicated may discourage the media from publishing critical information on matters of public interest, and which is a threat to freedom of expression and access to information of all kinds, impeding journalists' legitimate performance of their work.[29] Under the UPR procedure, many States have sought the decriminalization of defamation, lese majesty and "desacato" laws.[30]

5. Regarding **restrictions on government criticism and historical facts**, the UN Human Rights Committee has concluded that "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". The mere fact that forms of expression are considered to be insulting to a public figure is not sufficient to justify the imposition of penalties.[31] Accordingly, the Committee has expressed concern regarding laws on such matters as, lese majesty*, desacato,* disrespect for authority, disrespect for flags and symbols, defamation of the head of state and the protection of the honour of public officials, and indicated that laws should not provide for more severe penalties solely on the basis of the identity of the person that may have been impugned. States parties should not prohibit criticism of institutions, such as the army or the administration.[32] Also laws penalizing the articulation of opinions regarding historical facts contravene the obligation that States Parties have towards the protection of freedoms of opinion and expression.[33]

6. The UN Human Rights Committee has also opined that prohibitions of displays of **lack of respect for a religion** or other belief system, including blasphemy laws, are incompatible with the Covenant, except in the specific circumstances envisaged in article 20 (2), of the Covenant. Under article 20 (2), any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law. It would be impermissible for any such laws to discriminate in favour of or against one or certain religions over another. Nor would it be permissible for such prohibitions to be used to prevent or punish criticism of religious leaders or commentary on religious doctrine and tenets of faith.[34]

7. On the issue of **blocking or removing data-information**, under international human rights law, blocking and filtering of internet content by Governments imposed without a legal basis or when based on vague legislation is an impermissible prior restraint on expression[35]. Such restrictions are frequently disproportionate as they render inaccessible a wider range of content

[29] CCPR/C/CZE/CO/3 (HRC, 2013), CCPR/C/COD/CO/3 (HRC, 2006)
[30] Thailand, A/HRC/33/16 (UPR, 2016) Bolivia, A/HRC/19/12 (UPR, 2011) Tajikistan A/HRC/19/3 (UPR, 2011) Lesotho The Gambia A/HRC/14/6 (UPR, 2010)
[31] CCPR/C/GC/34
[32] Ibid
[33] Ibid
[34] Ibid. The Rabat Plan of Action is a useful guide highlighting the high threshold for defining restrictions on freedom of expression, and incitement to hatred under article 20 of the ICCPR. See OHCHR | OHCHR and freedom of expression vs incitement to hatred: the Rabat Plan of Action
[35] Report of the Special Rapporteur on freedom of opinion and expression, A/HRC/17/27, paras. 29-31. See also Human Rights Council resolution A/HRC/RES/20/8, para. 1 (affirming that the same rights people have offline must also be protected online); Reports of the Special Rapporteur on freedom of opinion and expression, Mission to the Republic of Korea, A/HRC/17/27/Add.2, para. 47-48; and A/HRC/7/14, para. 23-24.

than necessary, and/or restrict it to a larger number of users than necessary.[36] Permissible restrictions generally should be content-specific; generic bans on the operation of certain sites and systems are not compatible with article 19 (3). It is also inconsistent with paragraph 3 to prohibit a site or an information dissemination system from publishing material solely on the basis that it may be critical of the government or the political social system espoused by the government.[37]

8. On the issue of **pre-trial detention**, under article 9 (3) of the ICCPR, detention in custody of persons awaiting trial shall be the exception rather than the rule. Thus, it should not be the general practice to subject defendants to pre-trial detention. Detention pending trial must be based on an individualized determination that it is reasonable and necessary taking into account all the circumstances, for such purposes as to prevent flight, interference with evidence or the recurrence of crime. The relevant factors should be specified in law and should not include vague and expansive standards such as "public security". Pre-trial detention should not be mandatory for all defendants charged with a particular crime, without regard to individual circumstances. Courts must examine whether alternatives to pre-trial detention, such as bail, electronic bracelets or other conditions, would render detention unnecessary in the particular case. After an initial determination has been made that pre-trial detention is necessary, there should be periodic re-examination of whether it continues to be reasonable and necessary in the light of possible alternatives. Thus, the decision to keep a person in any form of detention is arbitrary if it is not subject to periodic re-evaluation of the justification for continuing the detention.[38] An arrest or detention may be authorized by domestic law and nonetheless be arbitrary. The notion of "arbitrariness" is not to be equated with "against the law" but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality. [39] In cases where the accused are denied bail by a court, it should not affect the presumption of innocence under article 14 (2) of the ICCPR and the accused must be tried as expeditiously as possible.[40] Addressing the issues of extremely prolonged pre-trial detention is a key part of implementing SDG 16.[41]

9. On the issue of **counter-terrorism laws, like those relating to cyber-terrorism, and in** the absence of a universally agreed definition of terrorism, article 15, paragraph 1, of the ICCPR provides some guidance in countering negative consequences: "No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed….." A requirement of article 15, is that the prohibition of terrorist conduct must be undertaken by

[36] Report of the Special Rapporteur on freedom of opinion and expression, A/HRC/17/27, para. 31. See also Inter-American Court of Human Rights, Case of "The Last Temptation of Christ" (Olmedo-Bustos et al.) v. Chile, Judgment of February 5, 2001, para. 71.
[37] CCPR/CO/84/SYR, E/C.12/TKM/CO/1, CCPR/C/IRN/CO/3, para. 27, A/HRC/17/27, paras. 29-31
[38] CCPR/C/GC/35
[39] Ibid
[40] CCPR/C/GC/32
[41] One of the indicators of SDG target 16.3. Promote the rule of law at the national and international levels and ensure equal access to justice for all is the number of unsentenced detainees as proportion of overall prison population (indicator 16.3.2).

national or international prescriptions of law, meaning that it is adequately accessible and formulated with sufficient precision. Terrorism offences should also plainly set out what elements of the crime make it a terrorist crime and where any offences are linked to "terrorist acts", there must be a clear definition of what constitutes such acts. It is essential that offences created under counter-terrorist legislation, along with any associated powers of investigation or prosecution, be limited to countering terrorism. Crimes not having the quality of terrorism, regardless of how serious, should not be the subject of counter-terrorist legislation. Nor should conduct that does not bear the quality of terrorism be the subject of counter-terrorism measures, even if undertaken by a person also suspected of terrorist crimes.[42]

10. In 2019, in its Concluding Observations, following a review of Bangladesh's first periodic report to the Committee against Torture, the Committee expressed it alarm that some civil society activists, lawyers and journalists had reportedly been subjected to torture and ill-treatment while detained in connection with charges brought against them in connection with their work and that the DSA had been used to carry out such harassment, raising issues under articles 2, 12, 13, 14 and 16 of the Convention against Torture. **The Committee recommended that the State amend this** and other **legislation**, to eliminate provisions prohibiting derogatory remarks being made about the Constitution and constitutional bodies, engaging in "anti-State activities", "tarnishing the image of the nation" and similar provisions that have provided a basis for arresting and prosecuting individuals who have publicized allegations of torture, disappearance, extrajudicial killings or ill-treatment, or criticized the State party's response to such allegations. **It also recommended considering repealing legislation that criminalizes "hurting religious sentiments", such as the DSA,** given that such provisions are reportedly frequently abused as a means to enlist the authorities in the harassment of minority populations and seen as legitimizing the commission of private violence against persons accused of committing this offence.[43]

[42] E/CN.4/2006/98

[43] Committee against Torture, Concluding observations on the initial report of Bangladesh, 26 August 2019 (CAT/C/BGD/CO/1), Treaty bodies Download (ohchr.org)