



REF: TG ASA.13.2022.001

AI Index Number: ASA 13/5518/2022

27 April 2022

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Senior Secretary

ICT Division

Government of the People's Republic of Bangladesh

by email: secretary@ictd.gov.bd

SUBJECT: FEEDBACK ON PROPOSED "DATA PROTECTION ACT, 2022" OF BANGLADESH

Dear Secretary Alam,

Amnesty International appreciates the Bangladeshi government's effort to seek feedback on the draft "Data Protection Act, 2022".

The right to privacy is a critical human right guaranteed under Article 17 of the International Covenant on Civil and Political Rights, to which Bangladesh is a state party.

In line with Bangladesh's international human rights obligations, we believe that the law requires significant amendments to some of the sections to bring it in line with international human rights guarantees.

The proposed Data Protection Act states that it will have precedence over all existing laws. This **overriding effect** of the proposed law takes away people's right to seek information under Bangladesh's Right to Information Act (RTI Act), 2009 and makes the RTI Act ineffective. The RTI Act is a key instrument that protects people's right to information. The right to information is an inalienable aspect of freedom of thought, conscience and speech, that must not be violated. The proposed Data Protection Act, if passed, would breach the Bangladeshi government's commitment to ensure accountability of all public, autonomous and statutory organisations and of other private institutions as articulated in the preamble of the Right to Information Act, 2009.

Article 17 of the International Covenant on Civil and Political Rights stipulates that "No one shall be subjected to arbitrary or unlawful interference with his privacy" and "everyone has the right to the protection of law against such interference or attacks." Article 43 of Bangladesh's constitution stipulates that every person shall have the right "to privacy of his correspondence and other means of communication", subject to reasonable restrictions imposed by law.

Exemptions granted under the proposed Data Protection Act gives authorities legitimacy to violate an individual's right to privacy solely on the basis of preventing a law-and-order deterioration without judicial oversight, where it should provide a justification behind such preemption. The provisions in its current form may empower law enforcement agencies, prosecutors and other authorities of the state to access personal data of an individual on the basis of facilitating an investigation or court procedure without judicial oversight.

This provision would contravene Bangladesh's constitutional and international commitment to protect everyone's right to privacy.

The proposed law further raises serious privacy and civil liberty concerns for the people of Bangladesh. Considering the actions stipulated by authorities in other domestic laws of Bangladesh including the "Digital Security Act, 2018", the proposed "Regulation for Digital, Social Media and OTT Platforms" and the proposed "Data Protection Act", the **localization** of the data within Bangladesh gives authorities broad powers to access people's personal data without judicial oversight and without accountability for any violation of people's right to privacy.

The UN Human Rights Committee on Civil and Political Rights states that "the relation between right and restriction and between norm and exception must not be reversed". (CCPR/C/GC/34) The **powers of the government** to issue directions to the Director General of the Digital Security Agency in the proposed Data Protection Act legitimizes actions not defined by authorities on vague terminologies such as "sovereignty", "integrity", "friendly relations with foreign State". When read together with the exemptions granted to authorities for access to personal data and harms caused to individual in the process, the proposed law contains dangerous provisions that only protects the authorities, empowers them to take any action without accountability and may lead to the violation of the rights to privacy and information of people.

The proposed law grants full immunity to the authorities in case an individual is harmed or is likely to be harmed due to any action taken in "good faith". If an individual's personal data is subjected to unlawful access by the authorities physically or remotely, they would not be able to take them to any court of law or seek redress. This broad exemption from legal protection and accountability seizes all guarantees of the right to privacy entitled to individuals within Bangladesh's constitution and international commitment under the ICCPR.

In line with our concerns stated above, Amnesty International urges Bangladesh's government to:

Address the concerns and amend the proposed law in line with Bangladesh's constitutional and international commitments;

Ensure public ownership, participation, transparency and accountability in the law before it is approved by the cabinet or passed at the parliament;

Ensure that the right to equality and equal protection is guaranteed to all, including under the provisions of the proposed law, and no one including the authorities are exempted from accountability for human rights violation;

Ensure the protection of people's Right to Information and that it is not overridden by any other law of the country, in the interest of transparency and accountability of governmental, semi-governmental, autonomous and non-governmental institutions except in the circumstances recognized under international human rights law;

Amend provisions within the proposed Data Protection Act and all other existing and proposed laws to provide an effective protection and promotion of human rights guarantees and to provide for effective remedy and adequate reparations for human rights violations, including undue restrictions of the right to freedom of expression and breaches of privacy.

Yours sincerely,

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South Asia Regional Director