



Bangladesh v. Muhammad Yunus

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TRIALWATCH FAIRNESS REPORT
A CLOONEY FOUNDATION **FOR** JUSTICE INITIATIVE

ABOUT THE AUTHOR

TrialWatch is an initiative of the **Clooney Foundation for Justice**. Its mission is to expose injustice, help to free those unjustly detained and promote the rule of law around the world. TrialWatch monitors criminal trials globally against those who are most vulnerable — including journalists, protesters, women, LGBTQ+ persons and minorities — and advocates for the rights of the unfairly convicted. Over time, TrialWatch will use the data it gathers to publish a Global Justice Index evaluating countries' justice systems.

EXECUTIVE SUMMARY



Based on TrialWatch monitoring of the proceedings against Professor Muhammad Yunus, there are substantial grounds for finding that the case was brought for improper motives – in other words, that it was politically motivated.

On January 1, 2024, just one week before general elections characterized by a crackdown on the political opposition,¹ a Labour Court in Bangladesh convicted Professor Muhammad Yunus, a Nobel-laureate and prior target for criticism by Bangladesh’s Prime Minister, for alleged violations of Bangladesh’s Labour Act 2006 (“Labour Law” or “Labour Act”). He and his three co-defendants were given prison sentences of six months. Professor Yunus and his co-defendants have appealed their convictions, with an appeal hearing set for March 3, 2024. They have been granted bail until then.

Professor Yunus’s conviction follows years of public criticism by Bangladesh’s recently re-elected Prime Minister, Sheikh Hasina. For instance, in 2011, Prime Minister Sheikh Hasina called Professor Yunus a “blood-sucker of the poor.”² In 2022, she alleged that he had blocked a World Bank loan for personal reasons, asserting that “[h]e blocked the funds for Padma bridge merely for the post of MD [Managing Director of Grameen Bank]. He should be plunged into the Padma River twice. He should be just plunged in a bit and pulled out so he doesn’t die, and then pulled up onto the bridge. That perhaps will teach him a lesson.”³ Before trial in this case, she sought to rebut concerns expressed about the proceedings by stating, “[i]f one of their [U.S. and UK] favourites is corrupt, they treat it as if they did nothing wrong.”⁴ While the authorities have consistently suggested that they had no role in bringing the case,⁵ in fact the case was filed by officials in the Department of Inspection for Factories and Establishments (“DIFE”).

¹ Mujib Mashal & Saif Hasnat, “Bangladesh Leader Headed to 4th Straight Term in Vote Marred by Crackdown”, N.Y. Times, Jan. 7, 2024 (characterizing the election as “a low-turnout election that had been marred by a widespread crackdown on the opposition”), available at <https://www.nytimes.com/2024/01/07/world/asia/bangladesh-election.html>.

² Ruma Paul & Sudipto Ganguly, “Bangladesh’s Tangles with Yunus, Nobel Winner and Microloan Founder”, Reuters, Jan. 2, 2024, available at <https://www.reuters.com/world/asia-pacific/bangladeshtangles-with-yunus-nobel-winner-microloan-founder-2024-01-02/>.

³ Prothom Alo, “Dr Yunus Blocked Padma Bridge Funds”, May 18, 2022, available at <https://en.prothomalo.com/bangladesh/politics/dr-yunus-blocked-padma-bridge-funds>.

⁴ bdnews24, “Government Is Not Influencing Labour Cases Against Yunus, Says Hasina”, Aug. 29, 2023, available at <https://bdnews24.com/bangladesh/hv3dh3wp21>.

⁵ They appear potentially to be conflating proceedings launched by workers at Grameen Telecom with this case. Cf. *Dhaka Tribune*, “Hasan: Dr Yunus Sued for Not Paying Workers’ Dues”, Jan. 1, 2024, available at <https://www.dhakatribune.com/bangladesh/335541/hasan-dr-yunus-sued-for-not-paying-workers%E2%80%99-dues>; Salah Uddin Shoaib Choudhury, “Being Sued by His Own Workers & Convicted by Bangladesh Court, Nobel Laureate Muhammad Yunus Tries to Play Victim Game”, Organizer, Jan. 3, 2024 (quoting Bangladesh’s Information and Broadcasting Minister, Dr. Hasan Mahmud, to the effect that “[t]he Government is not a party here and it didn’t file the case. The workers of Grameen Telecom sued Dr Yunus as he didn’t pay dues of the workers.”), available at

The accusations against Yunus and his co-defendants are based on their roles as members of the Board of Directors of Grameen Telecom,⁶ one of several interconnected entities involved in providing mobile phone service to the poor in Bangladesh.⁷ The core allegation is that Grameen Telecom failed to comply with profit-sharing provisions of the Labour Law with respect to its workers.

And yet only four members of the Board of Directors of Grameen Telecom (out of a total of eight), including Professor Yunus, were selected for criminal prosecution. Further, DIFE did not make specific allegations or offer specific evidence regarding Professor Yunus's level of control over the policies at issue in this case, as seemingly required by the statute under which he was charged. Compounding these irregularities, the case moved unusually quickly, was marked by procedural anomalies, and reflected an aggressive understanding of the immediate enforceability of the key provisions of the Labour Law through criminal proceedings, even while workers were already pursuing civil remedies for the same alleged violations.

For these reasons, and in light of the political backdrop to this case, this preliminary report finds that the proceedings against Professor Yunus meet the standards for an improperly motivated prosecution as laid out under international and regional human rights law. Further, the proceedings violated Yunus's right to be informed of the charges.

<https://organiser.org/2024/01/03/214166/bharat/being-sued-by-his-own-workers-convicted-by-bangladesh-court-nobel-laureate-muhammad-yunus-tries-to-play-victim-game/>.

⁶ Yunus and two of the co-defendants are members of the Board. The fourth defendant is listed as 'managing director' but is not the current holder of that role; he is currently also a member of the Board. Since the conclusion of trial, there have reportedly been efforts to change the composition of the Board. See Dhaka Tribune, "Yunus Centre Responds to Grameen Bank's Allegations", Feb. 19, 2024 ("[I]ndividuals claiming to represent Grameen Bank had cited the foundational documents from 1995/96 to justify naming new chairmen and directors for Grameen Telecom."), available at <https://www.dhakatribune.com/bangladesh/339776/yunus-centre-furnishes-details-of-grameen-telecom>.

⁷ Yunus was at relevant times Chairman of the Board of Grameen Telecom.

BACKGROUND INFORMATION

A. CASE BACKGROUND

This case is just one of numerous cases against Professor Yunus.⁸ A second case against Yunus that also concerns the affairs of Grameen Telecom remains at the pre-trial stage, with a chargesheet reportedly recently approved.⁹

Apart from Grameen Bank, the microfinance and microcredit entity for which Yunus is most famous and alongside which he won the Nobel Peace Prize in 2006, Yunus has reportedly established nearly fifty other entities for social and economic development in Bangladesh. Grameen Telecom, a registered not-for-profit entity, is among these.¹⁰ Grameen Telecom has a program called Village Phone that is intended to “give poor women entrepreneurs the opportunity to sell phone services in the village.”¹¹

Meanwhile, together with Telenor,¹² Grameen Telecom is a major shareholder in Grameenphone, a separate entity that provides telecommunications services across Bangladesh. Grameenphone has shared significant profits with its shareholders over the years.¹³ In turn, Grameen Telecom has stated that it uses these funds for social projects.¹⁴

In 2017, Grameen Telecom employees, and their employee association, began filing civil labor cases against Grameen Telecom alleging that they were owed a share of the funds

⁸ Faisal Mahmud, “Bangladeshi Court Asks Nobel Laureate to Pay \$4.5M in Outstanding Taxes”, AA, Feb. 13, 2024 (stating that “Yunus, 83, currently faces around 168 cases in different courts”), *available at* <https://www.aa.com.tr/en/asia-pacific/bangladeshi-court-asks-nobel-laureate-to-pay-45m-in-outstanding-taxes/3135685>; Amnesty International, “Bangladesh: Stop Weaponizing Labour Law to Harass Nobel Laureate Mohammad Yunus”, Sept. 18, 2023, *available at* <https://www.amnesty.org/en/latest/news/2023/09/bangladesh-stop-weaponizing-labour-law-to-harass-nobel-laureate-mohammad-yunus/>.

⁹ See Daily Star, “ACC Approves Charge Sheet Against Yunus, 13 Others in Embezzlement Case”, Jan. 29, 2024 (“Anti-Corruption Commission (ACC) today approved the charge sheet against Nobel laureate Prof Muhammad Yunus and 13 others”), *available at* <https://www.thedailystar.net/news/bangladesh/crime-justice/news/acc-approves-charge-sheet-against-yunus-13-others-embezzlement-case-3531266>.

¹⁰ Grameen Telecom, Press Release, “Grameen Telecom’s Rejoinder to the Statement of the Ministry of Foreign Affairs in Regard to the Open letter from Global Leaders”, Sept. 10, 2023, *available at* <https://www.grameentelecom.net.bd/press-release/4>.

¹¹ Yunus Centre, “Responses to Allegations Made by the Honourable Prime Minister”, June 29, 2022, *available at* <https://www.muhammadyunus.org/pages/2255/responses-to-allegations-made-by-the-honourable-prime-minister>.

¹² Telenor is a Norwegian majority state-owned multinational telecommunications company.

¹³ Netra News, “The Shakedown of Yunus”, Sept. 14, 2022 (stating that “GT’s own records show that since 2003, after tax, the dividends since 2003 have totalled \$919 million (Taka 8,735 crore)”), *available at* <https://netra.news/2022/the-shakedown-of-yunus/>.

¹⁴ *Id.* (explaining that “as the dividends [from Grameenphone] started to arrive, the not-for-profit company [Grameen Telecom] began to use its income to establish large numbers of social businesses”); Trial Monitoring, Oct. 11, 2023.

provided to Grameen Telecom on account of its stake in Grameenphone.¹⁵ The criminal charges against Professor Yunus were filed while the civil case was still open.

Over the course of 2020-2021, DIFE inspectors visited Grameen Telecom twice. Among the alleged violations they identified during these inspections were (1) that Grameen Telecom had failed to comply with the profit-sharing rules stipulated by the Labour Law; (2) that Grameen Telecom did not give workers permanent employment status after their probation period; and (3) that Grameen Telecom had not followed the leave rules in the Labour Law.¹⁶ After each visit, DIFE sent Grameen Telecom a letter enumerating the alleged violations, to which Grameen Telecom responded in each case. The civil cases remained pending at the same time.

After the second visit, and believing that “the [second] reply given by the defendant [wa]s not satisfactory,” on September 9, 2021, a Labour Inspector filed a criminal complaint against Yunus and three other directors of Grameen Telecom before the Labour Court, alleging criminal responsibility for three of the violations identified.¹⁷ Notably, the complaint was not filed against the company, i.e., Grameen Telecom.

In May 2022, Grameen Telecom reportedly settled the civil cases with its workers. It memorialized the settlement in an agreement approved by Bangladesh’s courts and reportedly paid the requisite amounts for “the year 2010 up to [the] 2021-2022 financial year to bank accounts of the employees.”¹⁸

Yunus and his co-defendants also sought to quash the labour criminal complaint. Among the arguments were that Professor Yunus “had no role in the management of financial or administrative affairs of the GTC [Grameen Telecom].”¹⁹ The defense also argued that “[t]he Directors of the company do not get any profit from the Company. As such, the labor and employees of the company are not legally entitled to get 5% of the net profit in their

¹⁵ Grameen Telecom, “Press Release, Grameen Telecom’s Rejoinder to the Statement of the Ministry of Foreign Affairs in Regard to the Open letter from Global Leaders”, Sept. 10, 2023, (“From time to time, starting from 2017, a total of 106 employees of Grameen Telecom filed 106 B.L.A (I.R) cases against the organization with the Labour Court. The Grameen Telecom Employee Association (CBA) also filed an industrial dispute case (Case No. 1666/2019) with the Labour Court.”), *available at* <https://www.grameentelecom.net.bd/press-release/4>.

¹⁶ Several other alleged violations were indicated in the reports of the inspections, but were not preferred in the criminal complaint. *See infra*.

¹⁷ BLA (Criminal) Case No. 228/2021, Application for Criminal Prosecution.

¹⁸ Grameen Telecom has said that “[o]ut of the 164 beneficiaries, 156 have already received their payment.” Grameen Telecom, Press Release, “Grameen Telecom’s Rejoinder to the Statement of the Ministry of Foreign Affairs in Regard to the Open letter from Global Leaders”, Sept. 10, 2023, *available at* <https://www.grameentelecom.net.bd/press-release/4>.

¹⁹ Bangladesh High Court, *Yunus v. The State*, Criminal Miscellaneous Case No. 49766 of 2021, Judgement, Aug. 17, 2022, p. 4.

welfare fund.”²⁰ In August 2022, the High Court (the High Court Division of the Supreme Court) heard arguments and ultimately decided not to quash the case.²¹

The Court found “from above replies of the GTC [to the letters sent by DIFE following each inspection] . . . that the GTC has in fact admitted all the allegations made in the complaint.”²² The Court further held, while noting that any profits from the stake in Grameenphone were invested in social projects, that “[s]ince the GTC is a profit earning company it is not understandable as to why the company will not contribute a very insignificant part of its net profit for the welfare of its labors.”²³ In May 2023, the Appellate Division of Bangladesh’s Supreme Court affirmed.

Separately, in May 2023, the Deputy Director of the Anti-Corruption Commission lodged a First Information Report (“FIR”) against 13 individuals associated with Grameen Telecom, including Yunus, alleging that Grameen Telecom had misappropriated Tk. 25,22,06,780 “by way of fraudulently creating false and fake settlement and fraudulently us[ing] the fake settlement agreement for criminal breach of trust.”²⁴ The principal factual allegations were that the settlement agreement with the workers mentioned a bank account number (into which funds were to be transferred) before the date the account was formally opened and that amounts had been transferred to the leadership of the employee association for union fees (and eventually for lawyers’ fees).²⁵

On June 6, 2023, the Labour Court framed charges against the four accused—Yunus and three other directors (approving charges against the defendants and authorizing the case to go to trial).²⁶ The defendants sought to quash the order framing the charges, an effort again rejected by the High Court on August 8, 2023.²⁷ On August 20, 2023, the Appellate

²⁰ Bangladesh High Court, *Yunus v. The State*, Criminal Miscellaneous Case No. 49766 of 2021, Judgement, Aug. 17, 2022, p. 4.

²¹ Bangladesh High Court, *Yunus v. The State*, Criminal Miscellaneous Case No. 49766 of 2021, Judgement, Aug. 17, 2022.

²² *Id.*, p. 8.

²³ *Id.*, p. 9.

²⁴ First Information Report, Case No. 12 of ACC, May 30, 2023.

²⁵ *Id.* (“[T]he money was transferred from there directly to the personal CBA leaders of different levels of Grameen Telecom, including advocates, under the shelter of fraud for unrelated purposes.”). The FIR specifically alleges that one of the lawyers was at the same time working for the “Directorate of Factory and Establishment Inspection and therefore he cannot receive any professional fee from the employees.” The FIR also alleged that the attorneys’ fees were calculated on the basis of an erroneous (higher) settlement figure. At the same time, public reporting has suggested that the workers consented to the transfer of funds for union expenses. See Netra News, “The Alleged Fraud and Money Laundering Case Against Muhammad Yunus”, Oct. 30, 2023 (“On May 24th 2022, each worker signed a letter stating that ‘I have no objections to ... the deduction of 6% for legal and other expenses for Grameen Telecom Employees Union.’”), available at <https://netra.news/2023/the-alleged-fraud-and-money-laundering-case-against-muhammad-yunus/>; cf. *id.* (“It should also be stressed that these deductions were an internal arrangement involving the trade union, its lawyers and the workers. The employees are obviously entitled to give to their union as much money as they agree to. The company and its board members were not involved in this arrangement”).

²⁶ BLA (Criminal Case) No. 228/21, Certified True Copy of Order No. 18-19, June 6, 2023.

²⁷ *Yunus and Others v. The State and Others*, 18 SCOB [2023] HCD 275.

Division of the Supreme Court affirmed the High Court's decisions, clearing the case for trial.²⁸

In August 2023, approximately 18 other employees who were reportedly not covered by the civil settlement also sought payment of the 5% dividend that they alleged was owed them.²⁹

The labour case at issue went to trial on August 22—two days after the Supreme Court's decision. The trial concluded on December 24, 2023, and the judgement was pronounced on January 1, 2024.

Overall, the case proceeded more quickly than others. A spokesperson for the U.S. Department of State said that the case had progressed “with unusual speed.”³⁰ While Amnesty International, likewise, cited the trial's timing in criticizing the proceedings as “a form of political retaliation,” noting that it stood in “stark contrast” to other labor cases in Bangladesh.³¹

B. LEGAL BACKGROUND

The core allegation in this case is that Grameen Telecom violated Section 234 of Bangladesh's Labour Law, which requires that “[e]very Company to which this chapter applies” pay 5% of profits at the proportion of “80:10:10 to respectively the Participatory Fund, Welfare Fund and Workers Welfare Foundation Fund.”³² The Chapter applies “to a company or establishment” which satisfies certain conditions relating to capital or value of assets.³³

There is some uncertainty in this definition, however. The Labour Law as originally adopted in 2006 applied this Chapter only to companies engaged in industrial undertakings. The 2013 amendments to the Law appear to have eliminated this limit from the scope of application of the Chapter, while nevertheless retaining specific definitions

²⁸ Jagonews24.com, “SC Clears Way for Labour Court Proceedings Against Dr Yunus”, Aug. 20, 2023, *available at* <https://www.jagonews24.com/en/national/news/70025>.

²⁹ The Business Standard, “Grameen Telecom Workers Sue Dr Yunus for 'Misappropriating' Dividend”, Aug. 28, 2023 (Yunus's lawyer asserted that “[t]he plaintiffs are former workers who held positions prior to 2006”), *available at* <https://www.tbsnews.net/bangladesh/court/former-grameen-telecom-workers-sue-dr-yunus-misappropriating-dividend-690358>.

³⁰ The Business Standard, “Labour Case Against Yunus 'Tried with Unusual Speed': US State Dept”, Feb. 14, 2024, *available at* <https://www.tbsnews.net/bangladesh/labour-case-against-yunus-tried-unusual-speed-us-state-dept-793038>.

³¹ @amnestyasia, Twitter (Jan. 1, 2014, 11:11 AM), *available at* <https://twitter.com/amnestysasia/status/1741854701509837165>.

³² See Bangladesh Labour Act 2006, Section 234; Bangladesh Labour Act Amendment, Section 65.

³³ Bangladesh Labour Act 2006, Section 232 (“This Chapter shall apply to a company or establishment which fulfils any one of the following conditions, namely: (a) the amount of its paid up capital on the last day of an accounting year is not less than taka 1 (one) crore; (b) the value of its permanent assets on the last day of an accounting year is not less than taka 2 (two) crore.”).

for the terms “industry related activities” and “industrial establishments.”³⁴ Further, the amendments appear to have left unchanged several other provisions of the Chapter that seemingly presuppose that it is applicable to “industrial undertakings.”³⁵ This raises questions regarding whether elimination of the “industrial undertakings” limit was a scrivener’s error.

In any event, Grameen Telecom has long argued that the profit-sharing scheme does not apply to it, since it was established as a not-for-profit entity under Section 28 of the Companies Act, and thus there are no “profits” to invest in the various funds. Indeed, Section 28 by its terms specifies that any entity seeking registration under that section must “prohibit the payment of any dividend [sic] to its members.”³⁶ In fact, this very issue was being litigated in the civil case brought by Grameen Telecom workers at the same time that the criminal case was filed against Yunus and his co-defendants.

The other two principal allegations in the case are (1) that workers were not given permanent employment status after completing their probation and (2) that Grameen Telecom had not followed the leave rules in the Labour Act.³⁷ Section 4(7) of the Labour Act provides that “[a] worker shall be called a permanent worker if he is employed in an establishment on a permanent basis or if he has satisfactorily completed the period of his probation in the establishment.”³⁸ Section 117 further provides for a certain amount of earned leave once an employee has completed twelve months’ service, and that leave not taken is added to the next year’s total, subject to certain limits.³⁹ Under Rule 107(2) of the Bangladesh Labour Rules, “[a]ny worker can have cash money against the unspent Earned leave. However, more than the half of the Earned leave cannot be cashed out at the end of the year. This type of cashing can be done only once in a year.”⁴⁰

Grameen Telecom had argued to the labour inspectors that its employees were contractual and given three-year renewable appointments: its “core business is village phone operations and providing after-sales service for Nokia mobile handsets. The village phone program is managed through a contract with Grameenphone and is renewed every 3 years. Similarly, the after sales service of Nokia handsets is managed through contract with Nokia and can be terminated by either party on 3 months’ notice as per contract.”⁴¹ It therefore asserted that it could not provide ‘permanent’ employment.⁴² Grameen

³⁴ See Act No. 30 of 2013, *available at*

<https://www.refworld.org/legal/legislation/natlegbod/2013/en/122778>.

³⁵ *E.g., Id.* Sections 250 (“Special provisions for industries working seasonally”) and 251 (“Companies engaged in activities relating to more than one industry”).

³⁶ Companies Act 1994, Section 28.

³⁷ BLA (Criminal) Case No. 228/2021, Application for Criminal Prosecution, Sept. 9, 2021.

³⁸ Bangladesh Labour Act 2006, Section 4(7).

³⁹ *Id.*, Section 117.

⁴⁰ Bangladesh Labour Rules, Section 107.

⁴¹ Letter to Mr. Md. Tarikul Islam, Mar. 9, 2020.

⁴² *Id.*

Telecom further stated that even so, its workers were given the same entitlements as permanent workers.⁴³

Grameen Telecom had also argued that it provided *more* leave than required by the Labour Law. It nonetheless noted in a response letter to the labour inspectors that “[i]n light of the decision of the 102nd Board Meeting, the existing rules have been amended and made effective as per the provisions of the Labor Law from 1st January 2021.”⁴⁴

Finally, the prosecution alleged at trial that Grameen Telecom had violated Section 303(e) of the Labour Law, which criminalizes wilful failure to adequately maintain books and records.⁴⁵ During the inspections, the inspectors had alleged failure to provide workers with appointment letters, identity cards, and service books, and failure to maintain attendance and overtime records.⁴⁶ These allegations were not among those explicitly preferred in the application for initiation of criminal proceedings.⁴⁷

Bangladesh’s Labour Law provides for various means of enforcement. For instance, Section 236 creates specific civil enforcement mechanisms for violations of Section 234 (the profit-sharing provision), such as personal liability for fines under the Law. At the same time, the Law also has a catch-all provision, Section 307, which appears to *criminalize* all violations of the law that do not have an otherwise-specified penalty.⁴⁸

Further, under Section 312 of the Labour Law (‘offenses by companies’), “[w]here an offence punishable under this act . . . is committed by a company . . . every director partner manager secretary or other officer or agent thereof shall, if actively concerned in the conduct of the business of such company . . . be deemed to have committed the offence unless he proves that the offence was committed without his knowledge or consent or that he exercised all due diligence to prevent the commission of the offence.”⁴⁹

During the various proceedings seeking to quash the case, the High Court held that “there is no legal bar against proceeding under section 307 [the criminal provision] without taking recourse to the provisions of section 236 [the civil enforcement provision].”⁵⁰ In particular, the Court reviewed a prior judgement, which had held that “no complaint under above

⁴³ BLA (Criminal) Case No. 228/2021, Statement of Respondents under Section 342, para. 2.

⁴⁴ Md. Nazmul Islam, Letter to Deputy Inspector General, “Sub: Regarding compliance of Bangladesh Labor Law 2006 and Labor Rules 2015”, Aug. 29, 2021.

⁴⁵ Trial Monitoring, Dec. 24, 2023. See Bangladesh Labour Act 2006, Section 303(e) (“willfully neglects or fails to maintain or furnish any plan, list record, register, information, return, report or other document he is required to maintain or furnish under this act or under any rules regulations or schemes”).

⁴⁶ Letter to Managing Director, Grameen Telecom, Letter No. 3982, Mar. 1, 2020.

⁴⁷ BLA (Criminal) Case No. 228/2021, Application for Criminal Prosecution, Sept. 9, 2021.

⁴⁸ Bangladesh Labour Act 2006, Section 307 (“Whoever contravenes, or fails to comply with, any of the provisions of this act or the rules, regulations or schemes shall, if no other penalty is provided by this act or by such rules, regulation or schemes for such contravention or failure, be punishable . . .”).

⁴⁹ Bangladesh Labour Act 2006, Section 312.

⁵⁰ *Yunus and Others v. The State and Others*, 18 SCOB [2023] HCD 275, para. 40.

[Labour Act] should be made directly under section 307 without seeking redress to the Labour Court for nonpayment of service benefits.”⁵¹ However, the High Court concluded that this case was distinguishable on the ground that the prior “case was filed by an individual labourer for realization of his service benefits. On the other hand this case was filed by an authorized Inspector of the Government . . . to prosecute the petitioners for continuous infringements of sections 4, 117 and 236 of above Act and their refusal to stop above infringements and taking of remedial measures.”⁵²

This finding was affirmed by the Supreme Court, which likewise held that a criminal case could proceed in parallel with a workers’ case, because the workers’ “case was filed for getting service benefits of the workers. But the instant [criminal] case has been filed by the complainant bringing allegation of criminal offence alleged to have been committed by the petitioners for continual violations of the provisions of the Act and also for taking remedial measures.”⁵³

Defense and Prosecution Arguments

In this case, Professor Yunus and his co-defendants argued in various ways and on various grounds that their prosecution was selective, not tenable, and based on bad faith.⁵⁴

First, the defense argued the accused were selectively targeted, and were not “actively concerned” with the management of Grameen Telecom. Under Section 312 of the Labour Act, directors, managers, or other officers of a company are only liable “if actively concerned in the conduct of the business” of the company.⁵⁵ If an individual affiliated with a company *is* “actively concerned,” then they are subject to a rebuttable strict liability provision, holding them liable “unless [they] prove [] that the offense was committed without [their] knowledge or consent or that [they] exercised all due diligence to prevent the commission of the offense.”⁵⁶

The imposition of the burden of proving lack of knowledge and consent on the accused person, coupled with the wide swath of employees potentially liable for company violations, means that the phrase ‘actively concerned’ must be applied carefully to each individual at issue. The prosecution, however, appears to have taken the view that their

⁵¹ *Yunus and Others v. The State and Others*, 18 SCOB [2023] HCD 275, para. 13.

⁵² *Id.*, para. 41.

⁵³ Bangladesh Appellate Division of the Supreme Court, *Yunus and Others v. The State and Others*, Criminal Miscellaneous Case No. 41984 of 2023, Judgement on Criminal Petition for Leave to Appeal No. 2000 of 2023, Aug. 20, 2023, p. 29.

⁵⁴ Before the Supreme Court, for instance, Yunus argued that “a litigant should not indulge in its animosity or vindictiveness through a legal procedure against a person by misapplication of the provisions of law.” *Id.*, p. 11. He also argued that the proceedings should be quashed to “prevent abuse of the process of Court.” *Id.*, p. 12.

⁵⁵ Bangladesh Labour Act 2006, Section 312.

⁵⁶ *Id.*

“role is to assess the presence of any violations, not to individually detect each one” or to specify how the allegations apply to each of the accused in the case.⁵⁷

The defense alleged that the labor inspectors “selectively chose individuals from the board of directors,” and brought accusations against individuals who were “not actively involved” in the management or oversight of the implementation of labor rules by Grameen Telecom.⁵⁸ Specifically, they alleged that the prosecution’s failure to submit any proper documentation of Yunus’s actual involvement in the company, much less the specific policies at issue, “raised questions about how the accused, particularly the Chairman, were selected.”⁵⁹ They also pointed to a prosecution witness statement conceding that it was true Grameen Telecom was not managed by the four accused.⁶⁰

By contrast, the witness stated that the accused were identified “according to the information received from the institution authorities,”⁶¹ and “because their names are coming during the checklist.”⁶² (That is, that Grameen Telecom employees had provided these specific names during the inspections. The defense on the other hand countered at trial that the four defendants were not specifically identified by Grameen Telecom employees, but instead included as part of a complete list of Grameen Telecom’s Board of Directors.⁶³) During cross-examination, a DIFE witness also referred to provisions in Grameen Telecom’s Memorandum and Articles of Association as evidencing the Board’s broad powers over the affairs of the company. (The defense responded that merely holding a position is not sufficient for potential liability.⁶⁴)

Second, the defense argued that the provisions of the Labour Law they were alleged to have violated were either self-enforcing, or had civil enforcement schemes, which DIFE had bypassed to go straight to criminal trial, and that therefore the case was not tenable on this ground as well.

Thus, for instance, the defense argued that employees eligible for ‘permanent’ status were automatically given that status under the law.⁶⁵ Likewise, they argued that under Section 117(7), “[a]ny leave applied for by a worker but refused by the employer for any reason, shall be added to the credit of such worker beyond the aforesaid limit mentioned in sub-section (5) and (6).”⁶⁶ That is, employees must either apply for and be given leave

⁵⁷ Trial Monitoring, Dec. 24, 2023.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ PW-1 (Prosecution Witness-1) Examination, Sept. 20, 2023 (“It is true that Grameen Telecom is not managed by the 4 persons who have been made accused or it is managed by the Board of Directors of Grameen Telecom is true. However, 4 defendants are part of the Board of Directors.”).

⁶¹ PW-1 Examination, Sept. 13, 2023.

⁶² Judgement of Case No. BLA (Criminal) 288 of 2021, p. 9.

⁶³ Trial Monitoring, Dec. 6, 2023.

⁶⁴ Trial Monitoring, Dec. 24, 2023.

⁶⁵ *Cf.* Trial Monitoring, Nov. 21, 2023.

⁶⁶ Bangladesh Labour Act 2006, Section 117(7).

due them under the law, or leave would be automatically deemed added to their accounts. On this basis, the defense asserted that “[t]hey never said that application for earned leave was given and it was not accepted. If one does not give an application, we do not have the power to grant the leave.”⁶⁷ Finally, as to the allegation that Grameen Telecom had failed to comply with profit-sharing rules, the defense cited the civil enforcement scheme set forth in Section 236,⁶⁸ which had not been pursued before launching a criminal case.⁶⁹

Third, and relatedly, the defense argued that the Labour Law’s profit-sharing rules should not apply to a not-for-profit entity, and that this issue was under litigation on the civil side at the time the complainant lodged the case. On the one hand, the defense asserted that the Companies Act, under which they were registered, should prevail in the event of a conflict between that law and the Labour Law. (The prosecution by contrast argued that in the event of a conflict between the Companies Act and the Labour Act, the latter would prevail.⁷⁰) The defense also argued that they were not an “industrial undertaking”⁷¹ (appearing to take the view that this limitation still applied).

Fourth, the defense argued that Grameen Telecom was not on notice that their contractual and leave schemes were not approved by the Labour Inspectorate. Under Section 3(1) of the Labour Law, “an establishment may have its own rules regulating employment of workers” so long as such service rules are “no less favorable to any worker than the provisions of th[e] chapter.”⁷² Defense counsel pointed out that Grameen Telecom had submitted their own service rules to the Inspector General’s Office for approval, but never received a reply, despite the fact that Section 3(2) states that the Inspector General ‘shall’ respond within six months.⁷³ The prosecution, by contrast, pointed to Section 3(3) to assert that Grameen Telecom was explicitly prohibited from implementing their service rules “except with the approval of the chief inspector.”⁷⁴

Fifth, the defense argued that they did not have requisite notice of potential criminal liability for the alleged violation of Section 303(e) (the books and records provision). The defense counsel’s argument relied on two points. The defense emphasized that although the complaint filed with the Labour Court mentioned and described alleged violations under Sections 4(7) and (8), 117, and 234, there was little mention of Section 303(e) other than a passing citation. Defense counsel also referenced various witness testimonies to emphasize that the allegations under Section 303(e) were not sufficiently described to

⁶⁷ Trial Monitoring, Nov. 21, 2023.

⁶⁸ *Id.*

⁶⁹ As described above, the High Court rejected this last point only by distinguishing prior precedent.

⁷⁰ Trial Monitoring, Nov. 16, 2023.

⁷¹ Trial Monitoring, Nov. 21, 2023.

⁷² Bangladesh Labour Act 2006, Section 3(1).

⁷³ *Id.*; Trial Monitoring, Dec. 19, 2023.

⁷⁴ Bangladesh Labour Act 2006, Section 3(3); Trial Monitoring, Dec. 24, 2023.

provide the notice required by law.⁷⁵ By contrast, the prosecution asserted that a review of the totality of evidence and statements, including the reports of the two inspections, provided sufficient details about the elements of the alleged Section 303(e) violation.⁷⁶

Sixth, the defense argued that there were procedural anomalies during the pre-trial proceedings. For instance, the case was allowed to go forward following the death of the Labour Inspector who originally brought the complaint, without the court being made aware of the complainant’s death and without a clear delegation of authority to a different Labour Inspector to take it forward until much later. Accordingly, defense counsel alleged that the Court did not have jurisdiction over the case during the ten-month period between when the original complainant died and when authority was delegated to a different Labour Inspector, arguing that proceedings are supposed to be halted without rendering a judgement when the complainant is not present.⁷⁷ In particular, defense counsel pointed out that various hearings had been held after the complainant’s death, and before anyone else was authorized to carry on the case. Further the defense asserted that, in one hearing, the records appeared to reflect that the dead complainant was ‘present.’⁷⁸

Final Judgement

The Court in its judgement rejected each of the defense’s arguments.

Defense’s Argument	Final Judgement
The accused individuals were chosen selectively.	As to the choice of defendants, the Court explained in its judgement that “[i]t is clear that the names mentioned in the information section of the management authority of the checklist have been supplied by the Grameen Telecom Authority.” ⁷⁹
The accused individuals were not “actively concerned” in the conduct of business as required by Section 312.	The Court relied on company documents—specifically, provisions stating that the Board of Directors “shall exercise full management and financial control over GTC” and “shall be responsible for the management and administration of the affairs of GTC”—to

⁷⁵ Trial Monitoring, Dec. 14, 2023

⁷⁶ Trial Monitoring, Dec. 24, 2023.

⁷⁷ Trial Monitoring, Nov. 21, 2023.

⁷⁸ *Id.*

⁷⁹ Judgement of Case No. BLA (Criminal) 288 of 2021, p. 51.

	conclude that the Directors were “actively concerned in the conduct of the business.” ⁸⁰
The Labour Inspectorate bypassed other remedies that should have been exhausted to go straight to criminal trial.	The Court found that other remedies need not have been exhausted before the prosecution brought a criminal case because “there is no legal impediment to file a criminal case even if a civil suit is pending on the self same allegations provided the ingredients of the offence are present.” ⁸¹
The Labour Law’s profit-sharing rules did not clearly apply to a not-for-profit entity.	The Court concluded that “Section 28 of the Companies Act does not exempt any company from paying profits to workers.” ⁸²
Grameen Telecom was not on notice that their contractual and leave schemes were not approved by the Labour Inspectorate.	The Court held that Grameen Telecom could not have assumed that their service rules were approved, whether or not the Labour Inspectorate had responded within the timeframe stipulated by law, concluding that “[i]f Grameen Telecom could not be informed about the matter, Grameen Telecom had the opportunity to know it through the court in this case. But Grameen Telecom did not subpoena any record or make any other arrangements to present it before the court. Without ascertaining the action taken by the Inspector General, no rational reason can be found to hold that their appointment rules were approved by the Inspector General.” ⁸³
The accused did not have notice of potential criminal liability for the alleged violation of Section 303(e) because it was	The Court deemed the presence of the alleged record-keeping violations in the two inspection reports and Grameen

⁸⁰ Judgement of Case No. BLA (Criminal) 288 of 2021, p. 52.

⁸¹ *Id.*, p. 69.

⁸² *Id.*, p. 67.

⁸³ Judgement of Case No. BLA (Criminal) 288 of 2021, p. 55.

not sufficiently described in the criminal complaint.	Telecom's responses to have been adequate bases for potential criminal liability, even if not described in detail in the criminal complaint. ⁸⁴
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⁸⁴ Judgement of Case No. BLA (Criminal) 288 of 2021, p. 70-81.

ANALYSIS



Right to be Informed of Charges

Article 14(3)(a) of the ICCPR entitles every person charged with a criminal offence “to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.”⁸⁵ The references to ‘nature’ and ‘cause’ of the charge mean that a defendant must be informed both of the legal characterization of the facts (nature of the charge) and the underlying facts allegedly giving rise to a violation (cause).⁸⁶ Indeed, the United Nations Human Rights Committee has specifically held that an accused person must be informed of “both the law and the alleged general facts on which the charge is based.”⁸⁷ Relatedly, the Committee has explained that “‘promptly’ requires that information be given as soon as the person concerned is formally charged with a criminal offence under domestic law.”⁸⁸

While the court found Yunus and his co-defendants guilty of violating Section 303(e) of the Labour Law, which criminalizes failure to adequately maintain books and records, they were not sufficiently informed of this charge before trial. Although the prosecution asserted that a review of the totality of evidence and statements provided sufficient details about the elements of the alleged Section 303(e) violation, the following factors indicate that the Article 14(3)(a) right to be informed of charges was violated.

First, the complainant’s original application for a criminal case did not describe the material facts underlying the alleged violation of Section 303(e). When the complainant filed the original application for a criminal complaint with the court on September 9, 2021, he included a “brief description of the violation[s]” for Section 4(7)(8), 117, and 234. However, the document does not include any description of the alleged failure to maintain books and records.⁸⁹ In fact, the single mention of Section 303(e) merely notes that “it appears that the defendant is not respecting the existing Labour Laws. In such a situation, the plaintiff thinks that the defendant has committed an offense which is punishable under Section 303(e).”⁹⁰ Absent additional details about what conduct the labour inspectors observed to warrant such a conclusion, the petition’s vague and passing reference to

⁸⁵ ICCPR, Article 14(3)(a).

⁸⁶ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, Aug. 23, 2007, para. 31. *See also* Human Rights Committee, *Giménez v. Paraguay*, U.N. Doc. CCPR/C/123/D/2372/2014, July 25, 2018, para. 7.10.

⁸⁷ Human Rights Committee, General Comment No. 32, U.N. Doc. CCPR/C/GC/32, Aug. 23, 2007, para. 31.

⁸⁸ *Id.*

⁸⁹ BLA (Criminal) Case No. 228/2021, Application for Criminal Prosecution, Sept. 9, 2021, p. 2.

⁹⁰ *Id.*

Section 303(e) did not inform Yunus and his co-defendants of the “alleged general facts on which the charge is based.”⁹¹

Second, and relatedly, while the order framing charges did explicitly state that “the case has been brought against the accused persons for violation of the provisions of Section 4(7)(8), 117, 234 and Rule 103 of the Bangladesh Labor Act,” like the application, it also made no reference to alleged record-keeping violations, other than a passing reference to Section 303(e).⁹² Because the order did not include any substantive information about conduct that allegedly ultimately gave rise to criminal liability under Section 303(e), and even though the prosecution raised the issue of Section 303(e) violations during the trial, Yunus and his co-defendants could not meaningfully prepare a defense to alleged violations they were not explicitly informed of in the order framing charges.

In finding that Yunus and his co-defendants were in fact on notice of the Section 303(e) charges, the Court relied primarily on the fact that alleged violations of Section 303(e) were described in the notices sent to Grameen Telecom after the inspections in 2020 and 2021. The inspection notices did not, however, meaningfully inform Yunus of the basis for the prosecution’s case, because he was ultimately explicitly charged with just three of the eight potential violations listed on the inspection notices.⁹³ Absent information about which of the alleged observations would result in criminal charges and which would not, the inspection notices alone did not sufficiently inform Yunus of the grounds for charging him with violating Section 303(e).

Moreover, whether Yunus could have pieced together the basis of the alleged violation by referring to the original inspection notice and the references to Section 303(e) in the application for a criminal case and order framing charges does not have any bearing on the prosecution’s obligations. As the UN Human Rights Committee has made clear in the context of efforts to notify an accused person of proceedings, it is the authorities that bear the burden of providing “all due notification.”⁹⁴ In *Mattochia v. Italy*, the European Court further found that a defendant’s failure to request all of the case files or acquire available facts before trial does not “release the prosecution from its obligation to inform the

⁹¹ In fact, a witness for the prosecution conceded that there was no mention of the 303(e) allegation or related facts in the complaint. (“It is true that, in the petition, the defendants do not have any design, list, registered documents; reports or other petition documents are not preserved purposefully or failed to submit or misrepresented as per the Labour Act or rules; such allegation is not mentioned.”). See Judgement of Case No. BLA (Criminal) 288 of 2021, p. 7.

⁹² BLA (Criminal Case) No. 228/21, Certified True Copy of Order No. 18-19, June 6, 2023, p. 4.

⁹³ The following violations were listed on the inspection notice dated August 19, 2021: Section 3(3), Section 4(7) and (8), Section 5, Section 6, Section 9, Sections 46-48, Section 117, and Section 234. Of these violations, only the following were included in the original application for a criminal complaint: Sections 4(7) and (8), Section 117, and Section 234. The alleged violations under Section 3(3), Section 5, Section 9, and Section 46-48 were omitted from the order framing charges. See BLA (Criminal Case) No. 228/21, Certified True Copy of Order No. 18-19, June 6, 2023.

⁹⁴ Human Rights Committee, *Mbenge v. Zaire*, U.N. Doc. CCPR/C/18/D/16/1977, Mar. 25, 1983, para. 14.1.

accused promptly and in detail of the full accusation against him.”⁹⁵ Though the defendant in that case had been informed of the facts of the allegations against him, the prosecuting authorities failed to update the defendant with additional information they had acquired during the defendant’s subsequent indictment or during later interviews. The Court found that the “obligation to inform the accused promptly and in detail of the full accusation against him ... rests entirely on the prosecuting authority’s shoulders and cannot be complied with passively making information available without bringing it to the attention of the defense.”⁹⁶

In addition to the 303(e) charge, Yunus’s right to be informed of the charges against him was also violated because the prosecution failed to inform him of any details or material facts evidencing that he was “actively concerned” in the affairs of Grameen Telecom, a necessary element of holding a director liable for company violations. Notably, no such factual support or details of Yunus’s alleged ‘active concern’ in the conduct of business was included in the inspection notices, the original criminal complaint, or even the order framing charges.

Nevertheless, the Court was willing to summarily conclude that the combined effect of one prosecution witness’ testimony about the source of the names on the checklist and the scope of authority articulated in the company documents supported the conclusion that “there is no irregularity or error in filing of the case against the defendant and it cannot be said that the defendant No. 1-4 was not responsible for the allegation made in the case, i.e. permanent employment of the workers, annual leave with wages, guaranteeing the payment of profit to the workers.”⁹⁷

Given the above, Yunus’s right to be informed of the charges was violated.

Improper Motive

Although the UN Human Rights Committee has repeatedly held that the ICCPR proscribes improperly motivated prosecutions,⁹⁸ it has yet to establish clear criteria for assessing such situations. The European Court has established robust case law to identify cases brought for ‘ulterior motives.’

Article 18 of the European Convention on Human Rights states that “restrictions permitted under this Convention to the said rights and freedoms shall not be applied for any purpose other than those for which they have been prescribed” and is meant to protect against

⁹⁵ European Court of Human Rights, *Mattoccia v. Italy*, App. 23969/94, July 25, 2000, para. 65.

⁹⁶ *Id.*

⁹⁷ Judgement of Case No. BLA (Criminal) 288 of 2021, p. 52.

⁹⁸ Human Rights Committee, *Khadzhiyev and Muradova v. Turkmenistan*, U.N. Doc. CCPR/C/122/D/2252/2013, Apr. 6, 2018, para. 7.7. See also Human Rights Committee, *Melnikov v. Belarus*, U.N. Doc. CCPR/C/120/D/2147/2012, Sept. 4, 2017, para. 8.8; Human Rights Committee, *Nasheed v. Maldives*, U.N. Doc. CCPR/C/122/D/2851/2016, Apr. 4, 2018, paras. 2.19, 8.7.

measures of State repression “which, while made with the pretext of ... safeguarding the letter the law, have the opposite effect.”⁹⁹ For example, in *Kavala v. Turkey* the Court found that Mr. Kavala’s detention was not aimed at investigating the criminal charges alleged against him, but was instead intended to stifle Mr. Kavala’s work as an activist and dissuade other human rights defenders.¹⁰⁰ The Court remarked that “at the core of the applicant’s Article 18 complaint is his alleged persecution, not as a private individual, but as a human-rights defender and NGO activist. As such, the restriction in question would have affected not merely the applicant alone, or human-rights defenders and NGO activists, but the very essence of democracy.”¹⁰¹

Acknowledging that it is often impossible to adduce direct evidence of a state’s bad faith, the European Court has held that proof of an improper motive may be shown by circumstantial evidence¹⁰² and a “combination of the relevant case-specific facts.”¹⁰³ Among the criteria on which the Court has relied in determining whether an improper motive exists are the following: The political context in which the prosecution was brought,¹⁰⁴ such as where the case is part of a pattern of arrests and prosecutions;¹⁰⁵ the timing of the proceedings;¹⁰⁶ whether the underlying acts giving rise to the defendant’s prosecution were protected under human rights law;¹⁰⁷ whether the prosecution had reasonable suspicion to bring the charges;¹⁰⁸ whether there was the appearance of political interference in the case, for instance where there is a correlation between charges and hostile statements by public officials;¹⁰⁹ whether the accused or the group to which the accused belongs appears to have been targeted;¹¹⁰ whether the prosecution

⁹⁹ Council of Europe, Preparatory Work on Article 18 of the European Convention of Human Rights, CDH (75) 11, p. 3.

¹⁰⁰ European Court of Human Rights, *Kavala v. Turkey*, App. No. 28749/18, Dec. 10, 2019, paras. 221, 231-232.

¹⁰¹ *Id.*, para. 231.

¹⁰² European Court of Human Rights, *Merabishvili v. Georgia*, App. No. 72508/13, Nov. 28, 2017, paras. 316-317.

¹⁰³ European Court of Human Rights, *Kavala v. Turkey*, App. No. 28749/18, Dec. 10, 2019, para. 220.

¹⁰⁴ European Court of Human Rights, *Merabishvili v. Georgia*, App. No. 72508/13, Nov. 28, 2017, paras. 320-322.

¹⁰⁵ European Court of Human Rights, *Ibrahimov and Mammadov v. Azerbaijan*, App. No. 63571/16, Feb. 13, 2020, paras. 151-152.

¹⁰⁶ European Court of Human Rights, *Selahattin Demirtaş v. Turkey* (no. 2), App. No. 14305/17, Dec. 22, 2020, para. 429; European Court of Human Rights, *Merabishvili v. Georgia*, App. No. 72508/13, 2017, Nov. 28, 2017, paras. 320-322.

¹⁰⁷ European Court of Human Rights, *Kavala v. Turkey*, App. No. 28749/18, Dec. 10, 2019, paras. 223-224.

¹⁰⁸ European Court of Human Rights, *Khodorkovskiy v. Russia*, App. No. 5829/04, May 31, 2011, para. 258; European Court of Human Rights, *Khodorkovskiy and Lebedev v. Russia*, App. Nos. 11082/06 and 13772/05, July 25, 2013, para. 908.

¹⁰⁹ See, e.g., European Court of Human Rights, *Kavala v. Turkey*, App. No. 28749/18, Dec. 10, 2019 at paras. 229-230, (finding significant that authorities brought charges shortly after speeches by the President of Turkey naming the defendant); European Court of Human Rights, *Ismayilova v. Azerbaijan* (No. 2), App. No. 30778/15, Feb. 27, 2020, para. 117 (finding relevant the “stigmatizing” statements of officials at time of arrest of the defendant).

¹¹⁰ European Court of Human Rights, *Azizov & Novruzlu v. Azerbaijan*, App. Nos. 65583/13 and 70106/13, May 18, 2021, para. 71.

was brought in the context of awareness that the authorities' practices were inconsistent with international standards;¹¹¹ how the criminal proceedings were conducted, such as any irregularities;¹¹² and whether the ultimate decision was well-reasoned and based on law.¹¹³

The European Court has made clear that a legal proceeding may have both proper and improper motives; in such cases, it will find a violation where the improper motives "predominated."¹¹⁴ Specifically, the Court examines whether "the prescribed purpose, while present, was in reality simply a cover enabling the authorities to attain an extraneous purpose, which was the overriding focus of their efforts."¹¹⁵

Here, based on the totality of factors implicated in this case, it appears that Professor Yunus's prosecution was not aimed, or at least not principally aimed, at affixing liability for the alleged labour law violations, but rather was a tool of judicial harassment.

First, with respect to the political climate, proceedings against Professor Yunus took place in the leadup to national elections in January 2024, during which over 20,000 individuals consisting largely of opposition figures and activists, were reportedly arrested¹¹⁶ in what has been described as "an attempt at a complete clampdown on dissent."¹¹⁷ Professor Yunus's conviction was pronounced on January 1, six days prior to the general election held on January 7. This case is just one of more than 150 cases filed against Professor Yunus since the ruling Awami League and Sheikh Hasina assumed power.¹¹⁸ As per news reports, Prime Minister Sheikh Hasina's administration began a series of investigations against Professor Yunus a year after he floated the idea of founding his own political party (plans that he eventually abandoned).¹¹⁹ It was in this context that the

¹¹¹ European Court of Human Rights (Grand Chamber), *Navalnyy v. Russia*, App. No. 29580/12, Nov. 15, 2018, para. 171.

¹¹² *Id.*

¹¹³ European Court of Human Rights, *Nastase v. Romania*, App. No. 80563/12, Dec. 11, 2014, para. 107.

¹¹⁴ European Court of Human Rights, *Merabishvili v. Georgia*, App. No. 72508/13, Nov. 28, 2017, paras. 292, 305.

¹¹⁵ *Id.*, para. 303.

¹¹⁶ See The Daily Star, "Over 20,000 Opposition Men Arrested Since October 28", Nov. 30, 2023, available at <https://www.thedailystar.net/news/bangladesh/crime-justice/news/over-20000-opposition-men-arrested-oct-28-3482176>.

¹¹⁷ Amnesty International, "Bangladesh: Repeated Cycle of Deaths, Arrests, and Repression During Protests Must End", Oct. 30, 2023, available at <https://www.amnesty.org/en/latest/news/2023/10/bangladesh-repeated-cycle-of-deaths-arrests-and-repression-during-protests-must-end/>.

¹¹⁸ Amnesty International, "Bangladesh: Stop Weaponizing Labour Law to Harass Nobel Laureate Mohammad Yunus", Sept. 18, 2023, available at <https://www.amnesty.org/en/latest/news/2023/09/bangladesh-stop-weaponizing-labour-law-to-harass-nobel-laureate-mohammad-yunus/>.

¹¹⁹ Peter Beaumont and Agencies, "Nobel Laureate Muhammad Yunus Convicted of Violating Bangladesh's Labour Laws", The Guardian, Jan. 1, 2024 available at <https://www.theguardian.com/world/2024/jan/01/nobel-laureate-muhammad-yunus-convicted-bangladesh>; Solamain Salman, "Nobel Laureate Yunus Faces 174 Cases in Bangladesh, New Age Bangladesh", Sept.

conviction of Professor Yunus, who has been at odds with Sheikh Hasina (as described below), was handed down. Analogously, in *Demirtas v. Turkey (No. 2)* the European Court found that the fact that the applicant's detention was "not an isolated example" but followed "a certain pattern" and that it took place "during two crucial campaigns relating to the referendum and the presidential election" was evidence that it "pursued the ulterior purpose of stifling pluralism and limiting freedom of political debate."¹²⁰

Second, with respect to hostile statements by public officials, Prime Minister Sheikh Hasina has repeatedly made comments condemning Professor Yunus over the years. As mentioned above, in 2011, she called Professor Yunus a "blood-sucker of the poor."¹²¹ In 2022, she alleged that he had blocked a World Bank loan for personal reasons, asserting that "[h]e blocked the funds for Padma bridge merely for the post of MD [Managing Director of Grameen Bank]. He should be plunged into the Padma River twice. He should be just plunged in a bit and pulled out so he doesn't die, and then pulled up onto the bridge. That perhaps will teach him a lesson."¹²² Before trial in this case, she sought to rebut concerns expressed about the proceedings by stating, "[i]f one of their [U.S. and UK] favourites is corrupt, they treat it as if they did nothing wrong,"¹²³ indicating that Professor Yunus was 'corrupt.' In a similar scenario, the European Court in *Kavala* relied on "speeches by the country's highest-ranking official" – the President – and the correlation between comments in the President's speeches and the indictment against Kavala to find that his detention was intended to silence him.¹²⁴

Third, the timing and selective nature of the case gives rise to concern, particularly when taken in conjunction with the overarching political climate and Sheikh Hasina's remarks about Professor Yunus. Unlike the vast majority of cases in Bangladesh, the case appeared to have been fast-tracked, proceeding with unusual speed. The spokesperson for the U.S. Department of State, for instance, stated that "we note that the labor case was tried with unusual speed," while stating that the Department "share[d] the concerns voiced by other international observers that these cases may represent a misuse of Bangladesh's labor laws to harass and intimidate Dr. Yunus."¹²⁵ Amnesty International, likewise, criticized the proceedings as "a form of political retaliation," citing the trial's

9, 2023, available at <https://www.newagebd.net/article/211670/nobel-laureate-yunus-faces-174-cases-in-bangladesh>.

¹²⁰ European Court of Human Rights, *Selahattin Demirtaş v. Turkey (no. 2)*, App. No. 14305/17, Dec. 22, 2020, paras. 428-429, 437.

¹²¹ Ruma Paul & Sudipto Ganguly, "Bangladesh's Tangles with Yunus, Nobel Winner and Microloan Founder", Reuters, Jan. 2, 2024, available at <https://www.reuters.com/world/asia-pacific/bangladeshs-tangles-with-yunus-nobel-winner-microloan-founder-2024-01-02/>.

¹²² Prothom Alo, "Dr Yunus Blocked Padma Bridge Funds", May 18, 2022, available at <https://en.prothomalo.com/bangladesh/politics/dr-yunus-blocked-padma-bridge-funds>.

¹²³ bdnews24, "Government Is Not Influencing Labour Cases Against Yunus, Says Hasina", Aug. 29, 2023, available at <https://bdnews24.com/bangladesh/hv3dh3wp21>.

¹²⁴ European Court of Human Rights, *Kavala v. Turkey*, App. No. 28749/18, Dec. 10, 2019, paras. 229-230.

¹²⁵ Department Press Briefing, February 13, 2024, available at <https://www.state.gov/briefings/departments-press-briefing-february-13-2024/>.

timing—which, they said, stood in stark contrast to other labor cases in Bangladesh.¹²⁶ For example, though almost 100 factory workers were killed due to fires caused by “the employer’s alleged negligence and non-compliance with safety standards” at the BM Container Depot in 2022 and the Hashem Foods Factory in 2021, company owners still face no known criminal liability and paid minor compensation.¹²⁷ Even more notable is the fact that the Rana Plaza and Tazreen Fashion cases, which resulted in over 1,117 deaths, have not been resolved in the more than 10 years since the events took place.¹²⁸ Meanwhile, Professor Yunus’s case took a little more than half a year between the framing of charges and judgement. The expedited proceedings are especially notable given that at the time the authorities brought the charges there were parallel civil proceedings underway in which a court was adjudicating many of the same issues and which ultimately resulted in a settlement between Grameen Telecom and the workers on profit-sharing—with this very profit-sharing issue forming one of the principal bases of the criminal case against Professor Yunus. That his judgement was scheduled for New Year’s Day, when many international and domestic observers would be otherwise occupied, is likewise telling.

Fourth, Professor Yunus appears to have been singled out for criminal prosecution. Out of a broad swath of individuals affiliated with Grameen Telecom who could potentially have been held liable – as stipulated by Section 312, “every director partner manager secretary or other officer or agent” – just Yunus and three others were selected for prosecution. Notably, during cross-examination a prosecution witness acknowledged that “[t]here seem to be 12 or 13 directors of the organization [in fact 8] as per the article of memorandum” and that “the rest were not charged.”¹²⁹

Fifth, the criminal proceedings were marked by irregularities. On the substantive issues, the authorities adopted a highly aggressive and potentially unforeseeable interpretation of the law. Though Section 312 clearly articulates that an individual director may only be held liable if the director is “actively concerned in the conduct of the business,” the prosecution did not put forth and the Court did not have before it any evidence that the individual directors, including Yunus, were in fact so concerned. Rather, the Court concluded that the directors were “actively concerned in the conduct of the business” primarily on the basis of a reference to Grameen Telecom’s Articles of Incorporation by a

¹²⁶ @amnestyasia, Twitter, *available at* (Jan. 1, 2014, 11:11 AM), <https://twitter.com/amnestysasia/status/1741854701509837165>.

¹²⁷ Amnesty International, “Bangladesh: Stop Weaponizing Labour Law to Harass Nobel Laureate Mohammad Yunus”, Sept. 18, 2023, *available at* <https://www.amnesty.org/en/latest/news/2023/09/bangladesh-stop-weaponizing-labour-law-to-harass-nobel-laureate-mohammad-yunus/>.

¹²⁸ Yudhajit Shankar Das, “Nobel Peace Laureate Muhammad Yunus’s Battle with Sheikh Hasina Government,” India Today, Jan. 3, 2024, *available at* <https://www.msn.com/en-in/news/india/nobel-peace-laureate-muhammad-yunus-battle-with-the-sheikh-hasina-government/ar-AA1mrr7K>.

¹²⁹ Judgement of Case No. BLA (Criminal) 288 of 2021, p. 9.

DIFE witness and the company documents themselves, which state that the Board of Directors “shall exercise full management and financial control of the GTC.”¹³⁰

Further, while Section 312 is titled ‘offenses by companies’ and refers to circumstances where “an offence punishable under this act . . . is committed by a company,” the DIFE witnesses explicitly disclaimed that they were focused on the company’s own alleged misconduct.¹³¹ The prosecution said specifically that “our issue is not with the company but with the people who have committed the violations” and that “the offence is not committed by the Company, it has been committed by a person.”¹³² Indeed, while the authorities have pursued criminal proceedings against Professor Yunus, there has yet to be any action taken against the company.

This is a particularly aggressive interpretation in the context of a potential prison sentence¹³³ and where Grameen Telecom had already resolved the primary issue at stake: that of profit sharing. As stated by “a former judge who presided over trials of hundreds of cases on the first labour court in Dhaka for nearly three years,” prosecutions by DIFE “were so rare that their share would be less than five percent.”¹³⁴ Professor Yunus’s conviction on the basis of such an aggressive interpretation of the law is not only indicative of improper motive but also implicates the principle of legality (which requires the potential for criminal liability to be reasonably foreseeable).¹³⁵ In *Navalnyye v. Russia*, the European Court held that where the law was “extensively and unforeseeably construed to the detriment of the accused” and applied in an arbitrary manner, it flawed the proceedings “in such a fundamental way that it rendered other criminal procedure guarantees irrelevant.”¹³⁶

¹³⁰ Judgement of Case No. BLA (Criminal) 288 of 2021, p. 52.

¹³¹ Trial Monitoring, Dec. 24, 2023.

¹³² *Id.*

¹³³ In fact, in many systems, directors are either held individually criminally liable, with proof of their active role and intent, or on the basis of a vicarious liability theory. It is not clear whether Section 312 follows either of these approaches or is a combination of them.

¹³⁴ Kamal Ahmed, “Dr. Yunus’s Conviction Sets a Repugnant Precedent”, The Daily Star, Jan. 3, 2024, available at <https://www.thedailystar.net/opinion/views/news/dr-yunus-conviction-sets-repugnant-precedent-3509821>.

¹³⁵ Article 15(1) of the ICCPR provides that “[n]o one shall be held guilty of any criminal offense 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.” The UN Human Rights Committee has noted, “the principle of legality in the field of criminal law” includes “the requirement of both criminal liability and punishment being limited to clear and precise provisions in the law that was in place and applicable at the time the act or omission took place, except in cases where a later law imposes a lighter penalty.” See UN Human Rights Committee, General Comment No. 29: States of Emergency (Article 4), Aug. 31, 2001, U.N. Doc. CCPR/C/21/Rev.1/Add.11, para. 7. The European Convention on Human Rights has the same protection under Article 7. Interpreting that provision, the European Court has explained that under the principle of legality the potential for criminal liability has to be reasonably foreseeable, and such foreseeability must be assessed from the accused’s perspective. See European Court of Human Rights, *Del Rio Prada v. Spain*, App. No. 42750/09, Oct. 21, 2013, para. 112.

¹³⁶ European Court of Human Rights, *Navalnyye v. Russia*, App No. 101/15, Oct. 17, 2017, paras. 81-84. While the Court did not examine the Article 18 claim in this case on the basis of a technicality (see para.

Apart from the authorities' interpretation of the Labour Law, there were also allegations of significant procedural irregularities. For instance, the case was allowed to go forward following the death of the Labour Inspector who originally brought the complaint, without the court being made aware of the complainant's death and without a clear delegation of authority to a different Labour Inspector to take it forward until much later. Accordingly, defense counsel alleged the court did not have jurisdiction over the case during the ten-month period between when the original complainant died and when authority was delegated to a different Labour Inspector, as proceedings are supposed to be halted without rendering a judgement when the complainant is not present.¹³⁷ In particular, defense counsel pointed out that various hearings had been held after the complainant's death, and before anyone else was authorized to carry on the case. Further, the defense asserted that, in one hearing, the records appeared to reflect that the dead complainant was 'present.'¹³⁸ Finally, as described above, Yunus received insufficient notice of the charges against him.

In combination, the factors described above meet the standard for finding that Yunus's prosecution was improperly motivated.

87), this case formed the basis of an Article 18 finding in a subsequent case brought by Navalny, see European Court of Human Rights, *Navalnyy v. Russia*, App. No. 29580/12, Nov. 15, 2018, para. 171.

¹³⁷ Trial Monitoring, Nov. 21, 2023.

¹³⁸ *Id.*

CONCLUSION



Yunus should never have been charged or prosecuted for Grameen Telecom's alleged violations of the Labour Law absent any evidence of his 'active concern' in the relevant decision-making by Grameen Telecom. Based on the totality of the indicia described above – the fraught political climate in which the trial took place, the many other cases brought against Yunus, the statements made by Sheikh Hasina about Yunus, the expedited nature of the proceedings, the apparent selective targeting of Yunus amongst many other individuals at Grameen Telecom arguably subject to the same law, the authorities' unusually aggressive and potentially unforeseeable interpretation of the Labour Law, and the reported procedural irregularities – there are significant grounds to conclude that the trial and conviction of Yunus was driven by improper motive. The Labour Appellate Tribunal should overturn his conviction on appeal.