

## Electronic Evidence Country Fiche: BANGLADESH

### 1) DEFINITIONS

Bangladesh
<b>What are the definitions in your laws/regulations, if any, of:</b>
<b>Electronic evidence</b>
<p>There is no specific definition of “electronic evidence”. However, according to the latest amendments to the Evidence Act of 1872 (Act No. 1 of 1872), in November 2022, now “document” includes apart other matters “digital record or electronic record”.</p> <p>According to amended Section 3 of the Evidence Act of 1872 digital or electronic record means any record, data or information generated, prepared, sent, received or stored in magnetic or electro-magnetic, optical, computer memory, micro film, computer generated micro fiche including audio, video, Digital Versatile Disc or Digital Video Disc (DVD), records of Closed Circuit Television (CCTV), drone data, records from cell phone, hardware, software or any other digital device as defined in Digital Security Act, 2018 (Act No. 46 of 2018).</p> <p>According to Section 2 Information and Communication Technology Act of 2006 (Act No. 39 of 2006) "electronic" means electrical, digital, magnetic, wireless, optical, electromagnetic or any technology having equivalent such capability; "electronic data interchange" means transferring data from one computer to another computer electronically by following a standard threshold for the purpose of organizing information; "electronic form" with reference to information means storing or generating, receiving or sending any information through media, magnetic, optical, computer memory, microfilm, computer generated microfiche or similar device or technology.</p> <p>Moreover, this legislation defines “electronic record” as any data, record, picture or photo-picture or sound prepared from any data which is stored, received or sent through any electronic form, microfilm or computer-generated microfiche (section 2(7)).</p>
<b>Computer system</b>
<p>Specifically, the term “computer system” is defined by the Digital Security Act (Act. No. 46 of 2018) which means the communication process between one or more computer(s) or digital device(s) that are capable of collecting, sending and storing data singly or by connecting with each other.</p> <p>As regards to definition of “computer” quite similar provisions are incorporated in section 2 of the Information and Communication Technology Act of 2006 (Act No. 39 of</p>

2006), which defines "computer" as any electronic, magnetic, optical or other high-speed data processing device or system which performs logical, arithmetical and memory functions by manipulations of electronic, magnetic or optical impulses, and includes all input, output, processing, storage, computer software or communication facilities which are connected or related to the computer in a computer system or computer network. This legislation also defines "computer network" as the interconnection of one or more computers through the use of satellite, microwave, terrestrial line, wireless equipment, wide area network, local area network, infrared, WiFi, bluetooth or other communication media; and terminals or a complex consisting of two or more interconnected.

**Computer data**

The term computer data does not appear to be defined within legislation of Bangladesh. However, the Digital Security Act No. 46 of 2018 defines "data storage" means information, knowledge, event, basic concept or guideline presented as text, image, audio or video format which— (i) is being or has been processed by any computer or computer system or computer network in a formal way; and (ii) has been processed for use in any computer or computer system or computer network (Section 2(b)) ; "digital device", which means any electronic, digital, magnetic, optical or information processing device or system which by using electronic, digital, magnetic, optical or information processing device or system, will perform logical, mathematical and memory programming, and any digital or computer device system or computer network connected with it or all kinds of input, output, processing, accumulating digital software device or communication facilities will be included (Section 2(j)). Moreover, "digital" means the working procedure based on binary system (0 or 1) or digit based system, and to fulfil the objective of this Act, electrical, digital, magnetic, optical, biometric, electrochemical, electromechanical, wireless or electro-magnetic technology will be the part of it (Section 2(i)).

**Categories of computer data (e.g. basic subscriber information, traffic data and content data)**

The legislation of Bangladesh does not provide definitions for specific types of data. However, according to section 2 of the Information and Communication Technology Act of 2006 (Act No. 39 of 2006) "data" means a representation of information, knowledge, facts, concepts or instructions which are being prepared or have been prepared in a formalized manner, and is intended to be processed, is being processed, or has been processed in a computer system or computer network, and may be in any form including computer printouts, magnetic or optical storage media, punch cards, punched tapes or stored internally in the memory of the computer; and "data message" means electronic, electronic data interchange including optical, electronic mail, telegram, telex, fax,

telecopy, short message or created something similar, sent, received or stored information.

Any specific definition of content data or traffic data seem to be available.

**Electronic surveillance or real-time collection of computer/communication data**

There are no specific provisions either in the Information and Communication Technology Act, 2006 or in the Digital Security Act, 2018. However, as per section 46 of the Information and Communication Technology Act, 2006 the Controller can authorize in writing any law enforcing agencies of the government to restrict any data transmission/broadcasting for the sake of sovereignty, integrity and security of Bangladesh, preserving friendly relations with foreign countries, maintaining public order and safety. The Controller can also declare any computer, computer system or computer network as reserved/restricted system (section 47 of the Act of 2006). It seems resemblance of the electronic surveillance or real-time collection of communication data.

There are provisions of blocking or removing of electronic contents or data from digital platform through the interference of Bangladesh Telecommunication Regulatory Commission if the same is subversive to state's integrity and sovereignty, economic functions, national security, religious sentiments, public order and safety, and dissemination of ethnic hatred etc. (section 8 of the Digital Security Act, 2018).

**Service provider (e.g. ISP, hosting)**

The Digital Security Act 2018 contains a definition of "service provider". It means: i) any person who through computer or digital process enables any user to communicate; or ii) any such person, entity or institution who or which preserves or process data in favour of the service user.

**2) DATA RETENTION REGIME**

Bangladesh

**Do you have any domestic laws that stipulate a mandatory retention period of electronic data? If so, for what types of data and for how long?**

Section 9 of the Information and Communication Technology Act, 2006 provides rules about Retention of electronic records.

Where any law provides that any document, record or information shall be retained for any specific period, then such requirement shall be deemed to have been satisfied if such documents, records or information, as the case may be, are retained in the electronic form if the following conditions are satisfied-- (a) the information contained therein remains accessible so as to be usable for a subsequent reference; (b) the electronic record is retained in the format in which it was originally generated, sent or received, or in a format which can be demonstrated to represent accurately the

information originally generated, sent or received; (c) such information, if any, as enables the identification of the origin and destination of an electronic record and the date and time when it was sent or received, is retained. Provided that this sub-clause does not apply to any information which is automatically generated solely for the purpose of enabling an electronic record to be dispatched or received.

A person may satisfy the requirements referred to in sub-section (1) of this section by using the services of any other person, if the conditions in clauses (a) to (c) of that sub-section are complied with. Nothing in this section shall apply to any law that expressly provides for the retention of documents, records or information.

According to section 44 of the Digital Security Act, 2018, as regards to data preservation the Director-General of Digital Security Agency in his own accord or upon an application of the investigating officer shall order respective persons or entities responsible for managing computer or computer system for preservation of any data for 90 days. The time of preserving data can be extended for 180 days by the order of the respective Cyber Tribunal.

### **3) ADMISSIBILITY OF ELECTRONIC EVIDENCE IN THE CRIMINAL TRIAL**

Bangladesh

**What is the requirement under your domestic law for electronic evidence to be admissible in criminal trial?**

The Information and Communication Technology Act (2006), the Anti-Terrorism Act (2009), the Digital Security Act (2018), the Human Trafficking Prevention Act (2012), the Money Laundering Prevention Act (2012) and the Evidence Act (1872) recognized for the admissibility of the electronic evidence.

Additionally, art. 3 (4) (5) of the Mutual Legal Assistance Act, 2012 establishes that any evidence received by the central authority pursuant to a request under sub-rule (1) and (2) may, subject to the provision of the Code of Criminal Procedure, 1898 and the Evidence Act, 1872 be admitted as evidence in any criminal proceedings to which such a request relates. Evidence acquired through mutual assistance are admissible in court of law. However, it can only be used for prosecution, investigation, trial, and for prevention of any imminent threat to the public security (sec 34 and 36).

In estimating the weight, if any, to be attached to a statement contained in anything received by the central authority pursuant to a request under sub-rule (1) the court shall have regard to- (a) whether it was possible to challenge the statement by questioning the person who made it; and (b) whether the law of the foreign country concerned

allowed the parties to the criminal proceedings to be legally represented when the evidence was being taken.

According to section 24 (MLA Act) the documents may be authenticated applying the law relating to the admissibility of evidence, due to which any document that is obtained, provided, or produced pursuant to a request made under this Act and that is duly authenticated is admissible in evidence in any criminal proceedings. Additionally, a document is duly authenticated if it purports to be signed or certified by a judge, magistrate, or official of a foreign country, and either it is verified by the oath of a witness, or of an official of the government of that country or it purports to be sealed with an official or public seal of that country or of a department or official of the Government, of that country. Nothing in this rule prevents the proof of any matter, or the admission in evidence of any document, in accordance with any other provision of this Act or any other law of Bangladesh.

According to the Evidence Act 1872, as amended in 2022, opinion of forensic experts on digital or electronic evidence, and opinion of the Certifying Authority on digital signature are relevant (sec 47 and 47A).

Content of the digital records are admissible in court of law with some preconditions (sec 64A and 64B). Oral admission as to the content of the digital records is admissible upon genuineness of such record is assured (sec 22A).

Court shall presume the genuineness of every digital record if such record is kept substantially in the form required by law and is produced from proper custody (sec 81A). Five years old digital records consider proper if custody of such record is proved (sec 90A).

As to digital communication if a communication is made from one end to another end the court may presume that the communication exists, but it cannot presume as to the person who made the communication. It requires some other corroborating evidence. Again, the court may presume as to the involvement of a particular person if he has any connection through forensic evidence according to sections 88A and 89A of the Information and Communication Technology Act, 2006 (Act No. 39 of 2006)).

#### **4) RECEIVING REQUESTS FOR ELECTRONIC EVIDENCE FROM OTHER STATES**

##### **4.1. Direct requests from foreign authorities to service providers**

###### **4.1.1. Requests for preservation**

Bangladesh

**What legal framework(s) is/are applicable, if any?**

There is no legal framework applicable. In fact, the Digital and Security Act of 2018, Chapter VIII, section 55 related to Regional and international cooperation, affirms that if any regional or international cooperation is necessary in case of conducting an investigation or trial of an offence committed under this Act, the provisions of the Mutual Assistance in Criminal Matters Act, 2012 (Act No. IV of 2012) shall be applicable.

The Digital Security Act, 2018 has also been given extra-territorial jurisdiction as per section 4 of this Act, and as Mutual Assistance in Criminal Matters Act, 2012 is applicable for these offences, provisions relating to preservation of data as enunciated in section 44 of the Digital Security Act, 2018 is also applicable for requests for preservation from foreign states. Moreover section 28 of MLA law of 2012 enables foreign states to make such type of request to the Central Authority of Bangladesh.

**Are the service providers in your country prohibited from or have limited capacity for executing such requests from foreign authorities?**

Service providers are not obliged to respond to foreign authorities' requests for data preservation. Although there is no legislation specifically prohibiting service providers from responding to requests from foreign authorities.

**If they are prohibited or if there are limitations, are there any alternative options to preserve the data from your country, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or mutual legal assistance (MLA)?**

- 2000 United Nations Convention against Transnational Organized Crime (Palermo Convention). Spontaneous information sharing under Art. 18 (4) and (5) of the United Nations Convention against Transnational Organized Crime. The letter specifies the type of MLA that can be requested including, among others, "taking evidence...", "providing evidentiary items...", "executing searches and seizures...", and "other type of assistance not contrary to the domestic law of the requested State".
- The United Nations Convention Against Corruption (2003). Art. 43 on international cooperation, due to which States Parties shall consider assisting each other in investigations relating to corruption; and art. 46 related to MLA mechanisms in relation to the offences covered by this Convention.

For countries who have not ratified nor implemented the above-mentioned instruments, the following legal framework(s) can be applicable:

- Other bilateral treaties:
- Mutual legal Assistance Act, 2012.



Bangladesh, at the present time is not part of the Budapest Convention, thus it is necessary to refer primarily to the Mutual Legal Assistance in Criminal Matters Act, 2012. Under his provision is possible to request assistance for obtaining electronic evidence from another state, as well as executing foreign request of assistance made by a foreign country. The legal framework to provide a foreign country with assistance in obtaining electronic evidence is given by Part III “Request to Bangladesh”, sections 8 to 25 of the MLA Act 2012.

Section 9 of the MLA Act 2012 provides that an appropriate authority of a foreign country may request central authority of Bangladesh for assistance to preserve data accordingly to the national legislation of Bangladesh.

Specifically, section 44 of the 2018 Digital Security Act, provides the rule for the preservation of data in Bangladesh. According to it, if the Director General on his own accord or on the basis of an application by the investigation officer believes that, any data-information stored in a computer should be preserved for the interest of an investigation under this Act or there is possibility that such information could be harmed, destroyed, altered or lost, then, he/she can order the person or institution responsible for that computer or computer system to preserve such data-information for 90(ninety) days.

Cyber tribunal may, on application, extend the period of preservation of such data-information but it should not be for more than a total of 180 (one hundred and eighty) days.

Bangladesh, as member countries of Interpol, hosts an INTERPOL National Central Bureau (NCB). This connects their national law enforcement with other countries and with the General Secretariat via our secure global police communications network called I-24/7.

**Is a judicial order required from the requesting state?**

However, section 9(3) of MLA law says application should be made through prescribed form along with the rules and procedures formed by the Centra Authority, the law does not directly refer to whether it deserves any judicial order of requesting state.

**Are there any time limits for data preservation? Any possibility of extension?**

It does not seem to be provided by the law.

**Would service providers in your country notify the data subjects of the request?**

It does not seem to be provided by the law.

4.1.2. Requests for voluntary disclosure



Bangladesh

**What legal framework(s) is/are applicable, if any?**

There is no legal framework applicable.

**Are the service providers in your country prohibited from or have limited capacity for executing such requests from foreign authorities?**

All requests should go through the Central Authority in Bangladesh. The authority is determined in accordance with section 3 of the MLA Act. The Ministry of Home Affairs and the Attorney General's Office act as the central authority for sending and receiving MLA requests.

**If they are prohibited or if there are limitations, are there any alternative options to preserve the data from your country, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or mutual legal assistance (MLA)?**

Police-to-Police cooperation (Interpol): Bangladesh, as member countries of Interpol, hosts an INTERPOL National Central Bureau (NCB). This connects their national law enforcement with other countries and with the General Secretariat via our secure global police communications network called I-24/7.  
Spontaneous information sharing under Art. 18 (4) and (5) of the United Nations Convention against Transnational Organized Crime.

**Is a judicial order required from the requesting state? Are there any time limits?**

It does not seem to be provided by the law.

**Would service providers in your country notify the data subjects of the request?**

It does not seem to be provided by the law.

**How can the process be simplified or quickened in emergency situations?**

The legislation of Bangladesh does not regulate simplified process related to emergency situation in the specific context of a request made directly to service provider.

However, under the Digital Security Act 2018 at section 9 is indicated the Emergency Response Team, which is an emergency response team under the agency, which will operate round the clock. This team will fulfil responsibilities which include, among others, to fulfil the objectives of this Act, with prior permission of the government, to take overall cooperation initiatives including information exchange with any similar type of international team or organization. The Agency shall supervise and make co-ordination among the Computer Emergency Response Teams.



The regulation related to emergency disclosure of evidence is provided within the legislation of Bangladesh for carrying out the purpose of this Act, which is for ensuring digital security and identification, prevention, suppression and trial of offences committed through digital device and for matters ancillary thereto.

#### 4.2. Requests received by your central authority for **Mutual Legal Assistance (MLA)**

Bangladesh

**How do you execute MLA requests for electronic evidence stored by domestic service providers (e.g. through a domestic court order or a search warrant)?**

##### Procedure for an Incoming Requests

According to section 9 of the MLA Act 2012 every request by a foreign country to Bangladesh for assistance shall be made to the central authority. Such request shall among other requirement indicated in the same provision- specify the purpose of the request and the nature of the request sought for; identify the authority that initiated the request; be accompanied by a certificate from the appropriate authority of that country to the effect that the request is made in respect of a criminal matter within the scope of the Act; specify a description of the nature of the criminal matter and a statement setting out a summary of the relevant fact and laws; specify details of the procedure that the requesting foreign country wishes to be followed by Bangladesh in giving effect to the request, including details of the manner and form in which any information or thing is to be supplied to that country pursuant to the request; contain any other information that may assist in giving effect to the request or which is required under the provisions of this Act.

Section 10 establishes the procedure that shall be followed in executing the request. The central authority of Bangladesh may determine competent authority depending on the subject matter for execution of the request for assistance by issuance of office order. In executing the request, laws and practices in the related field as applied in Bangladesh shall be followed (unless otherwise provided in the Mutual Legal Assistance Act, 2012). Having received the request of assistance the competent authority shall acknowledge as to the acceptance of the request to the central authority immediately. Where execution of a request is sent to the higher authority as competent authority, he may by himself or by taking assistance of his competent subordinate may execute the same. If in any case the execution of a request becomes impossible due to conflict of laws, force majeure, technicalities or for some other reasonable cause, the competent authority shall forthwith communicate it to the central authority recording reasons thereof.

There shall be an Advisory Board to assist the competent authority by giving opinion in any case where there is possibility of involving the question of sovereignty and national security, important public interest, international relation or military offences in the matter of receiving assistance from any foreign State or giving assistance to any foreign State.

The Advisory Board is composed as indicated by section 5. The Advisory Board deliberates as indicated in section 6. However, whether the Central Authority does not agree with the opinion of the Advisory Board, the matter shall be referred to the Minister in charge of the Ministry of Law, Justice and Parliamentary Affairs and in this regard his decision shall be final.

**Can you provide assistance in real-time collection of non-content and/or content data (e.g. through electronic surveillance) upon the receipt of a MLA request? If yes, are there any limitations or conditions (e.g. limited to certain crime types or penalties thresholds)?**

In pursuance of a request, the requested country shall take the appropriate action to give effect to it providing assistance to the extent permitted by its law.

#### National Provisions

While there not seem to be *ad hoc* provision which ground the legal bases for issuing specifically an order for retention and acquisition expressly of data, metadata, traffic data, access data and content data, the Digital Security Act of 2018 allows the identification/ investigation (including computer system).

Section 8, Power to remove or block some data-information.

Section 30, Access to computers and data.

Section 41, Power of Investigation Officer.

Section 42, Search and Seizure through Warrant.

Section 43, Search, Seizure and Arrest without Warrant.

Section 44, Preservation of information (indicated above).

Section 45, Not to hamper the general usage of computer.

Section 46, Assistance in investigation.

Section 77, Confiscation.

**What are the central and competent authorities in your country to:**

**a) Receive a request for MLA in criminal matters?**

According to At. 9 every request by a foreign country to Bangladesh for assistance shall be made to the Central Authority. The authority is determined in accordance with section 3 of the MLA Act. The Ministry of Home Affairs and Attorney General's Office act as the central authority for sending and receiving MLA requests.

**b) Execute/recognize the measure (if other than the receiving authority)?**

Art. 12 of MLA Act indicates that the Central Authority may by notice in writing authorize a First-class Magistrate to take the evidence and transmit the evidence to the appropriate authority of that foreign country.

Ministry of Home Affairs:

- Traffic in Narcotic Drugs and Psychotropic Substance

- Judicial cooperation requests for terrorist cases

Attorney General:

- Corruption

**What are the accepted languages for MLA requests?**

Section 4 (2) of the MLA Act 2012 provides that requests, supporting documents and other communications made pursuant to this Act, shall be accompanied by a translation into English language, if those were in Bengali or in any other language other than English. (3) If requested country considers that the information contained in the request is not sufficient to enable the request to be dealt with, it may request additional information.

**Can the request be submitted electronically to the central authority?**

Information not officially provided.

[CNA Search \(unodc.org\)](http://unodc.org)

**Can the request be submitted directly to the central authority?**

Information not provided.

**What are the specific requirements (e.g. dual criminality, minimum penalty thresholds, etc.) that the requesting states have to meet under your domestic laws for MLA requests seeking for the provision of electronic evidence?**

Assistance matters affecting enquiry, investigation, prosecution, trial; sovereignty of Bangladesh, national security, important public interest and public order, international relationship, repugnant to the existing laws of Bangladesh, prejudicing social status, and military offences are usually be refused. Section 11 establishes Refusal of assistance by Bangladesh.

A request by a foreign country for assistance under this Part may be refused by the central authority of Bangladesh-

- (a) pursuant to the terms of any treaty, memorandum of understanding or other agreement between Bangladesh and that country;
- (b) if, in the opinion of the central authority, the provision of the assistance would, or would be likely to, prejudice the safety of any person (whether in Bangladesh or elsewhere);
- (c) if, in the opinion of the central authority, the assistance would impose an excessive burden on the resources of Bangladesh; or
- (d) if, in the case of any assistance the appropriate authority of that foreign country fails to give an undertaking to the central authority that the requesting foreign country will comply with a future request by Bangladesh to that country for similar assistance in a

criminal matter involving an offence that corresponds to be the foreign offence for which assistance is sought.

## 5) REQUESTING ELECTRONIC EVIDENCE ACROSS BORDERS

### 5.1. Direct requests to foreign service providers

#### 5.1.1. Requests for preservation

Bangladesh
<b>What legal framework(s) is/are applicable, if any?</b>
There is no legal framework applicable.
<b>Which authority(ies) in your country is/are allowed to request data preservation to foreign service providers?</b>
The appropriate law enforcement agency overseeing the offence underlying the request.
<b>If the requested foreign service providers are prohibited or limited to preserve the data, are there any alternative options to preserve the data, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or MLA?</b>
Requests can be made through Interpol or police-to-police channels.
<b>Can a court order or a search warrant be issued for data preservation by foreign service providers? If not, what are the reasons?</b>
A local court order or search warrant would not be enforceable on foreign service providers due to the lack of jurisdiction over them.

#### 5.1.2. Requests for voluntary disclosure

Bangladesh
<b>What legal framework(s) is/are applicable, if any?</b>
There is no legal framework applicable.

<b>Which authority(ies) in your country is/are allowed to request data disclosure to foreign service providers?</b>
The appropriate law enforcement agency overseeing the offence underlying the request.
<b>If the requested foreign service providers are prohibited or limited to voluntarily disclose the data, are there any alternative options to obtain the data, e.g. through police-to-police cooperation, specialized networks (e.g. G7/8 24/7 Network) or MLA?</b>
Requests can be made through Interpol or police-to-police channels.
<b>Can a court order or a search warrant be issued for data disclosure by foreign service providers? If not, what are the reasons?</b>
A local court order or search warrant would not be enforceable on foreign service providers due to the lack of jurisdiction over them.

## 5.2. Requests sent by your central authority for **Mutual Legal Assistance (MLA)**

Bangladesh
<b>What is your central authority to send requests for MLA in criminal matters?</b>
The Ministry of Home Affairs is the central authority for sending and receiving MLA requests.
<b>Are informal contacts with the central authority of the requested states allowed and used?</b>
Information not provided.