



ASIAN HUMAN RIGHTS COMMISSION

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Ms Louise Arbour
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Open letter to the UN High Commissioner for Human Rights to mark International Human Rights Day 2005

Dear Ms. Arbour,

Re: Bangladesh should criminalize torture and appoint independent investigation bodies to conduct prompt inquiries into torture, extra-judicial killings and other serious violations of human rights.

The simple fact is that there is no redress of any sort regarding gross violations of human rights in Bangladesh. There is no law recognising torture as a crime, despite of the fact that the country acceded to the Convention Against Torture (CAT) in 1998. Accession without implementation does not serve any purpose in protecting the rights of people. The government should be urged to make torture a crime, in line with the terms of the CAT, and thereby take the most important initial step towards the protection and promotion of human rights.

The rule of law in Bangladesh is greatly flawed, and extreme corruption within the police force is a symbol of the denial of rights of the people. Human rights groups are of the view that over 50% of the people who are arrested and tortured are innocent persons belonging to the poorer sections of Bangladesh. The monetary gains that the police can make by way of arrest and detention, threats of torture and actual torture, are often the grounds for arrest. Often, persons actually implicated in crimes can buy their freedom, and innocents are arrested in their place, and tortured to force confessions of guilt.

The spread of crime and political violence have caused the establishment of new units such as the Rapid Action Battalion (RAB). From the inception of the RAB, the number of 'crossfire killings' - otherwise known as 'encounter killings' has increased. The overwhelming perception is that many such deaths are in fact due to extra-judicial killings after arrest. However, within the judicial system there are few possibilities to contest these issues, so such killings are not investigated and go unpunished.

While there is a long list of human rights abuses that can be mentioned - as for example the gross abuse of the rights of women and children, the rights of minorities such as the Ahmadiyyas, Hindus, Christians and indigenous people - the main cause of such violations are the defects in the justice system, which deny the possibility of having effective rule of law in the country.

AHRC has highlighted its concerns relating to Bangladesh in a special report produced for the International Human Rights Day, December 10, 2005.

The AHRC kindly requests that you intervene with the authorities in Bangladesh, in order to urge them to make torture a crime, in line with the Convention Against Torture. AHRC also requests that you intervene with UN and other international agencies to push for a policy of improvement of the rule of law, through the strengthening of basic institutions of justice, as the key way to improve the protection and promotion of human rights.

Thank you for the kind consideration you will give these matters.

Yours sincerely,

Basil Fernando
Executive Director



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FOR IMMEDIATE RELEASE

December 7, 2005

A report by the Asian Human Rights Commission (AHRC) marking International Human Rights Day 2005

BANGLADESH: A society floundering in corruption, fear and arbitrary killings

For the ordinary citizen of Bangladesh, the realisation of basic human rights enshrined in the covenants and conventions and also, to some extent, embodied in the Constitution, remains very much a distant dream.

This is mostly due to the fact that the contradictions involved in the development of the state in Bangladesh. On the other hand, new factors such as political violence among the parties and religious fundamentalism have begun to seriously challenge the state through the use of violence and the psychological impact thereof. This is creating enormous stress and tension in society. The unresolved problems of discrimination against minorities, and against women in particular, run into all areas of life and maintain a state of violence, not only in the area of politics, but also in the community and domestic life. The increase of crime due to the weaknesses of the rule of law is often used as an excuse to create agencies with extraordinary powers and impunity such as the Rapid Action Battalion (RAB). These and other special units often engage in extra-judicial killings under the pretext of crossfire, meaning that the killings were done in retaliation to attacks on members of such agencies.

The state is unable to deal with any of these major issues, as the state apparatus has not been developed to be capable of carrying out its normal obligations towards its citizens. The increase of conflict and violence has pushed the state in the direction of further degeneration. The limited developments to the state apparatus are being reversed, and the rule of law, democracy and human rights are in critical condition.

The following cross-cutting considerations should be taken into account in any discussion on human rights in Bangladesh.

Fundamental cross-cutting considerations

The conflict between democracy and the weak rule of law: by its constitution Bangladesh is a democracy. However, this democracy is not based on well-founded institutions of the rule of law. The contradiction that exists in many countries outside the developed world between the constitutionally accepted democratic form of governance and the weak nature of rule of law institutions also exists in Bangladesh. In fact, it is this vast contradiction that creates all the problems that require preventive approaches from the community and civil society.

Political violence: the contradiction between democracy and the rule of law manifests itself in the sharpest way in the violent conflicts which exist between the ruling political party (whichever party may be in power at any given time) and the opposition. For several decades, it has been acknowledged feature in Bangladesh that the ruling party uses its power to violently suppress the opposition. There is a constant climate of tension and conflict within the country. Sometimes, as part of these conflicts, the ruling parties and other parties exploit religious and ethnic factors for their benefit, leading to religiously-fuelled violence to erupt.

The problem posed by weak institutions, notably the police and the judiciary: the weakness of the rule of law manifests itself through the basic institutions of justice, which are: the police, the prosecution and the judiciary. The policing system in Bangladesh is extremely corrupt. Police officers are, in all respects, incapable of performing the usual functions that a police service is supposed to provide within a rule of law system. As for the prosecution, it is replaced every time a new political regime comes into power. This means that a regular, stable system with a prosecutor's officer which benefits from a strong tradition of prosecutions does not exist in the country. There are also many weaknesses within the judicial system. The part of the judiciary that consists of magistrates remains a branch of the executive. Only the higher judiciary is not part of the executive. The independence of the judiciary is not possible as there is no basic separation of powers. The magistrates who are part of the executive are also often suspected of being corrupt. Furthermore, the country suffers from one of the most primitive medico-legal systems, which is a significant hurdle for victims trying to achieve justice. Despite Bangladesh's considerable population, there is no recognized forensic laboratory.

International obligations: Bangladesh has ratified several international human rights and humanitarian law, as follows: the Four Geneva Conventions of 1949 (1971) and Additional Protocol I and II to the 1949 Geneva Conventions (8 September 1980); the International Convention on the Elimination of All Forms of Racial Discrimination (11 June 1979); the Convention on the Elimination of All Forms of Discrimination against Women (6 November 1984); the Convention on the Rights of the Child (3 August 1990); the Convention on the Prevention and Punishment of the Crime of Genocide (5 October 1998); the International Covenant on Economic and Social Rights (5 October 1998); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (5 October 1998); the International Covenant on Civil and Political Rights (6 September 2000).

However, the implementation of all these treaty obligations is hampered by the extreme weaknesses that are inherent in the legal system and the rule of law in Bangladesh. Bangladesh provides the classic example of how people can be deprived of the most basic of human rights, often in an extreme manner, despite the state having ratified an important number of UN conventions.

Torture: as for torture, it is institutionalised within the Bangladeshi system. The prevalence of torture in the country has been constantly noted by international monitoring bodies. In recent times, particularly since October 2002, with the beginning of the notorious "Operation Clean Heart" that was followed by the establishment of the Rapid Action Battalion, the complaints of torture have significantly increased. Although Bangladesh ratified the Convention against Torture in 1998, it has not yet enacted legislation making torture a criminal offence. The absence of a law against torture is a tremendous impediment to those who wish to pursue the prevention of torture.

Near complete impunity: both local and international human rights monitors agree that near complete impunity exists for state officers who engage in torture. The lack of laws to deal with human rights abuses, weaknesses of implementation mechanisms (that is, mechanisms of

investigation and prosecution), and the general tolerance for corruption within state institutions, as well as the psychology of a people who have been frightened by extreme abuses of power, combine with the experience of failures in obtaining redress to guarantee that state officers can engage in the abuse of rights without fear of consequences.

Torture

Torture is not a crime under national law: although the government of Bangladesh ratified the U.N. Convention against Torture in November 1998, no enabling legislation has been passed to make torture a crime under national law. Old British laws prevail-made when the colonial regime tortured supporters of national independence. The lack of a domestic law is an obstacle to developing local jurisprudence to eliminate torture, into which international jurisprudence can be assimilated. There is also no immediate plan to introduce such a law.

No means exist to compensate and rehabilitate torture victims: no legal provisions exist to enable victims of torture to make claims for compensation or rehabilitation. The state does not provide medical facilities for physical and psychological injuries suffered due to torture. Again, there is no immediate plan to introduce such legal provisions.

Criminal justice remains very primitive: the criminal justice system has hardly changed since the British colonial times. Many laws go back over a hundred years. At no stage has there been a serious attempt to modernise the criminal justice system and to take advantage of significant developments happening elsewhere. The system for the implementation of laws is even worse, moving so slowly as to be completely out of touch with the rapid developments in communications, transportation and the sense of time among people in other parts of the world.

No specialised police officers exist for criminal investigations: police officers have a range of day-to-day duties on top of criminal investigations. For every 13,000 citizens there is one badly paid and poorly trained member of the police. The very idea of specialised police officers for criminal investigations does not yet exist. One of the most needed reforms is for a separate criminal investigation branch with the necessary training and equipment to fulfil its duties.

Public prosecutors are politically controlled: all public prosecutors are changed every time a new government comes to power. As a result, they do not accumulate experience or build an institutional legacy to pass from generation to generation. The skills needed for proper prosecuting do not develop, and instead political bias is the determining factor in prosecution cases. The appointments of Public Prosecutors are, in particular, made as favours to the ruling political party leaders.

No link exists between the prosecuting and investigating branches: the prosecuting and investigating branches are completely detached. If the police do not investigate a crime, the prosecutor has no responsibility. The prosecuting branch needs to be informed when serious crimes are being investigated, so as to advise the investigators on basic legal issues. This would reduce the opportunities for police to fabricate cases against innocent persons. By collaborating, while preserving the independence of each branch, it is possible to avoid prosecutions that lack sufficient evidence and also ensure successful cases, which are few at present. Most of the time, the Public Prosecutors, who are not legal experts in many places in the country, accepts and agrees with the Charge Sheets prepared by the police officers, solely as the result of bribes taken from different parties regarding the respective cases.

No independent branch exists to investigate police officers over gross violations of human rights: at the moment, police investigate all crimes. Naturally, when police officers investigate their colleagues over alleged torture, extra-judicial killings and other grave violations, there is undue influence on the outcome. As the public lacks confidence in these investigations, many people may not even complain when suffering abuse at the hands of the police. On the other hand, complaints from victims or human rights organizations are only recorded but cannot be processed, due to the Section 197 of the Criminal Procedure Code (Cr.PC), which places barriers on filing cases against the police. Cases can only be filed with the consent of the accused policemen's superior hierarchical authority.

No witness protection programme exists: people do not want to complain or give evidence—especially in the growing number of serious crimes—as they fear serious repercussions and lack any form of protection from the perpetrators. This also applies to the victims of human rights violations complaining about law enforcement officers, who hold great power locally and can cause serious harm to the victims, their families and their property. This issue must be seriously addressed if the justice system is to obtain popular cooperation.

Torture is politically motivated: often torture results from deliberate attempts to harm political opponents. The party in power typically harasses the opposition in this manner. Despite torture and law enforcement being used for the purposes of political repression, no serious attempts have been made to address the problem.

Torture victims are disregarded because most of them are poor: the poor are badly treated in all areas of life, and this does not attract interest. Bad treatment of the poor at police stations is therefore no exception. The poor have little access to the law, and therefore, most torture cases do not come to the public attention. Constant reporting on all cases of torture is not yet being practised.

No human rights institution exists to monitor law enforcement agencies: despite years of discussion - and some drafting of legislation - towards establishing a national human rights commission, no practical steps have been taken to this end. No reason has been given for the delay; no timetable has been set for its establishment. The government has not even committed itself to establishing such an institution, and opposition or civil society groups not taken up the issue with the urgency it requires.

Violence is prevalent across society, but the state remains inert: throughout Bangladesh, violence is committed daily in a wide range of social, political and religious institutions, particularly against women. It is often defended on ideological grounds, and a general ethos of intolerance permits daily acts of brutality to continue unabated. Such violence may constitute torture in cases where the state is cognisant of what is happening and does nothing to stop it.

All these obstacles are commonly acknowledged, including by all the major political parties; nonetheless, no strong lobby exists to call for action. There is agreement that something is wrong, but no sense of the need to do anything about it. Civil society organisations must take a lead role in building public opinion capable of changing this situation. To do this requires imagination and creativity. By effective lobbying with specific demands for action, steps can be taken to see victims make complaints, police investigate torture, prosecutors win cases and to motivate other persons to act to eliminate torture.

Police and other law enforcement agencies

There are two expressions that give rise to abject fear among all sectors of society in Bangladesh. These terms are 'cross-fire' and 'Rapid Action Battalion'. The government uses 'cross-fire' to mean gun fights between any section of the armed forces and civilians, such as criminal gangs and terrorists. The popular understanding of the term is persons being extra judicially killed by the armed forces, which is justified as being 'an unavoidable death by cross-fire'. Like the term 'encounter killings' used in Bangladesh and elsewhere, 'cross-fire' is a term that people refer to tongue in cheek. The sinister connotation associated with the word demonstrates the utter powerlessness of the general population of Bangladesh in the face of the extra judicial killings that are taking place around them. As one senior lawyer expressed, 'cross-fire' is becoming a form of mental torture: "One is living with the fear all the time that he or she can be the next victim of cross-fire".

The Rapid Action Battalion (RAB), refers to a military force (comprising specially trained officials and soldiers from the Army, Air Force, the Navy, Police, BDR and other paramilitary forces) that has been increasingly associated with 'cross-fire' incidents across the country. The RAB, introduced after the "Clean Heart" operation, which caused the extra-judicial killings of hundreds of persons, including forty in police custody, is generating enormous fear within the country. Operation Clean Heart came under severe local and international criticism and was withdrawn. The RAB, however, has taken its place, and is engaged in the same function of instilling fear in the population, albeit in a different manner. This Battalion's legal function is merely to assist the police in arresting, detaining and handing over persons whom the police have difficulty in arresting. However, their actual functioning is very different and they operate as an independent unit operating above the law.

This is happening in a country where there is already little faith in the normal policing system. The popular view of the police is that they either use crime investigations to make money for themselves or they conduct illegal services on behalf of politicians. That the police demand money from complainants, accept money from alleged perpetrators and take money from third parties, is a common belief shared at all levels of society. Whether it is the ordinary man in the street or lawyers, doctors or journalists, all state the same view on the policing system. In order to raise money, the police use torture as an instrument. To escape torture people have to pay. Those who are unable to pay are not only tortured, but later, cases are fabricated against them.

Along with this tragic situation, Bangladesh citizens have no legal mechanisms through which they can make their complaints. If they complain to the higher authorities within the police, the matter is not usually investigated, unless there is some form of public pressure to do so. Even when there is public pressure, all that is done is to release a person who is falsely charged, stop the abuses being performed on a person who is being tortured, or not object to bail being given to a citizen who is in remand on the basis of false police reports. A system of disciplinary inquiries barely exists. Under public pressure an errant officer, particularly of lower rank, may occasionally be transferred to another area. That is more or less where the disciplinary process ends. There is also the public view that when there are complaints regarding junior officers, some senior officers use the occasion to obtain money from the juniors. There are no complaint avenues outside the police; for example there is no National Human Rights Commission. This is despite the two major political parties having spoken about such a commission, received assistance from international agencies regarding it and even having drafted a law concerning it. Evidently, despite almost unanimous public opinion to change the present state of policing, those persons that hold powerful positions within the country are unwilling or unable to bring about such a change.

Although Bangladesh has ratified the Convention Against Torture (CAT), as well as the International Covenant on Civil and Political Rights (ICCPR), and thereby obtained some international respectability, the State has done nothing to bring about local legislation in terms of their international obligations to eliminate torture. In other words, torture has not been made a crime in Bangladesh. In neighbouring Sri Lanka ratification of the CAT was followed by local legislation, which imposed a seven-year mandatory sentence on anyone who is found guilty of the offence of torture. In Hong Kong torture carries the punishment of life imprisonment. In Bangladesh, however, torture is treated only as physical assault. Furthermore, while the police in Bangladesh are under obligation to investigate cases of torture in the country, there is no procedure to deal with investigations into alleged perpetrators that are members of the police. Because of this, and due to the general situation of policing in the country, people are too afraid of the repercussions in pursuing a complaint of torture, particularly when it involves the police.

In ratifying the CAT, the government has reserved Article 14 of the convention, which stipulates “that the state party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation including means of full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture his dependents shall be entitled to compensation.”

The state party of Bangladesh has kept themselves outside the jurisdiction of the CAT by entering a reservation on this right. This means that the government of Bangladesh does not accept the legal responsibility to provide compensation to the victim or their families for torture, or to provide for rehabilitation to torture victims. In failing to accept this obligation, which is one of the core elements of the CAT and all the legal doctrines associated with the elimination of torture, the government has virtually made article 35 (5) of the Bangladesh constitution, which forbids torture, meaningless. Despite the provision of the constitution, the government imposed an Ordinance named ‘Indemnity Ordinance’ on January 10 in 2003, which was passed in the parliament later on and ensures impunity is enjoyed by the perpetrators involved in the notorious Operation Clean Heart. This situation helps the errant police institution and all other battalions, like the RAB and many other task forces, to operate above the law. Thus, impunity has been strongly endorsed.

Such is the institutional framework within which people live in Bangladesh. The boundaries of freedom are clearly demarcated and limited by the use of torture. This state of terror is not only a human rights issue, it is also a fundamental development problem. The widespread situation of loss of belief in rational behaviour is conditioned by the irrational that is allowed to exist within the law enforcement agencies. When money motivated or politically driven police officers interfere in the lives of people and institutions, it is not possible for successful ventures in development to take place. Fear kills all initiatives, including those for greater investment with clearly defined strategies to be developed and applied. All strategies are warped by the grand strategy of fear and corruption, which is the most important political and cultural factor of Bangladeshi life today. This situation also leads to an enormous 'brain drain' within the country. Qualified people who want to live free lives with their families, and don't want to be involved in corruption, find no prospects for prosperity in Bangladesh. Those who wish to be successful must learn to cohabit with a corrupt police system, which in turn corrupts all other political and bureaucratic systems. The case of an industrialist who was implicated in a crime merely for the purpose of demanding one million Taka (nearly US \$ 16,000), and was tortured when he refused to pay the money, is a glaring example. Under torture and the threat of being made a victim of ‘cross-fire’ he agreed to pay 300,000 Taka (US \$ 5000). Although the threat of ‘cross-fire’ was removed by this, he was charged with a fabricated charge, for which he is still in remand.

The civil society of Bangladesh is unanimously opposed to the existing policing system, including the normal political apparatus as well as other units, such as the RAB. However, the two major political parties have not yet arrived at any serious assessment or strategy to overcome the problem. Instead, anti-terrorist propaganda is being used to stifle any attempt to change the current situation. New units like the RAB are essentially used to reinforce terror among the population, through the use of extraordinary forms of violence such as extra judicial killings. Such conduct has come under the criticism of the Supreme Court itself. The Chief Justice Muhammad Habibur Rahman stated at a public meeting held in January 2005 “we have belatedly decided to get a report on every death in cross-fire. We ought to have asked for a report when the first incidents of death occurred. That would make the law and order men more cautious.” (Quoted in the Daily Star local newspaper on January 19, 2005) Other leading figures have condemned the closing of all doors for inquiries by passing an indemnity bill with regards to extra judicial killings during the operation “Clean Heart”. The call for collective efforts or private entrepreneurs and civil society organisations to engage in assisting people distressed by this system is also very common.

Violence and intimidation arising from fundamentalist groups

The simultaneous bomb blasts which occurred on the August 17, 2005, throughout many parts of Bangladesh are well known. Although the actual killings by these blasts were limited, the impact of these attacks, which were carried out in a number of cities and towns throughout the country, has further increased the climate of fear. The State agencies have not found much cooperation in identifying the perpetrators. The aspect of threats from fundamentalist elements is likely to remain a further destabilizing factor threatening the rule of law in the country.

Attacks on the Ahmadiyyas Minority

The threat of fundamentalist terror attacks also has a direct bearing on the issues of the minorities, both within the Muslims themselves, as well as with others. Among the Muslims, the Ahmadiyyas are a small minority which maintain their own interpretation of the history of Islam. The complaints of persecution of this minority date back to the very inception of the Bangladeshi State. There have been attacks on the Ahmadiyya community, including a bomb attack on its headquarters. Sometimes, thousands of opponents participate in such attacks on the homes and places of worship of this minority. The government has failed to take any effective action to eradicate such attacks. Sometimes the police themselves participate in the mob attacking the Ahmadiyyas. The international community has expressed their protest against the attacks on this minority, however, there have not been any effective measures taken to provide protection.

Hindu and Christian Minorities

There has been near-continuous mob violence carried out by fundamentalist elements against the Hindu and Christian minorities. Often, the aim is to get these minorities to leave Bangladesh and thereby allow their properties and their businesses to be transferred to others. As these attacks are of an overwhelming nature, they often have their intended result. Weaknesses in the rule of law, as mentioned above, deprive these minorities of any protection.

Severe violence against women

Despite Bangladesh's government's promises to eliminate all forms of violence against women, the actual enforcement of the laws and other measures remain extremely poor. There are numerous incidents of rape, and many complaints of rape and sexually related crimes, allegedly committed by law enforcement agencies.

The limited achievements women have made in the economic and social spheres have also been seriously undermined by the development of religious fundamentalism, which opposes the empowerment of women and their participation in social life. Dowry-related death and violence continue to be reported on a large scale.

Attacks on the freedom of expression and journalists

Bangladesh is one of the countries in which the killings of journalists are the highest in Asia. Other forms of intimidation of journalists are also constantly being reported. The investigations into such actions do not provide any successful prosecutions. The issue of the weaknesses of law enforcement agencies and justice institutions, as mentioned above, act to encourage such violence against journalists and others engaged in the freedom of expression. High levels of intimidation have spread among journalists, as well as those engaged in research on human rights related issues in every field, including civil rights, the rights of women and children, environmental and ecological concerns and all areas of economic, social and cultural rights. The attacks on the freedom of expression, combined with the extreme weaknesses in the enforcement of the rule of law, are likely to have a tremendously adverse effect, not only on the development of democracy in Bangladesh, but also on economic development.

Attacks on NGOs

Bangladesh depends for the most part on NGOs concerning work on development. However, in recent years NGOs have come under serious attack. There have been a number of fabricated cases made against NGO leaders and many other forms of attacks on those who promote development coupled with basic rights and democracy. The aim of these attacks is to control NGOs and to obstruct all attempts at development that emphasises the improvement to the situation of the poor and the marginalized, and those suffering from various forms of discrimination.

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About AHRC The Asian Human Rights Commission is a regional non-governmental organisation monitoring and lobbying human rights issues in Asia. The Hong Kong-based group was founded in 1984