



## BANGLADESH

### **Prolonged unjustifiable State of Emergency increases lawlessness and abuses of human rights**

Bangladesh has been under a State of Emergency since January 11, 2007, which was proclaimed by the President of the country following an upsurge in violence between rival political groups. The State of Emergency has been prolonged for the whole year even though this violence has subsided, and it is presumed that it may be continued for an indefinite period over coming months and perhaps years.

The State of Emergency has been accompanied by the Emergency Powers Ordinance-2007, which has supplemented the Emergency Powers Rules-2007. Provisions contained within these laws run contrary to a range of international human rights norms and standards. For example, section 5(1) of the Emergency Powers Ordinance-2007 declares that *"No question should be raised before any court regarding the orders passed on the basis of this ordinance or by the authority of this ordinance"*. On the other hand, section 5(2) declares, *"If it is deemed that any order has been passed or signed by any authority according to the power delegated under this ordinance that order, passed or signed by that authority, shall be deemed admissible under the definition in the Evidence Act-1872 (Act X of 1872) in the courts."*

This section has been repeatedly abused by law-enforcement agents in the country, notably to carry out arbitrary arrests of people without the need for any justification. The law effectively legalizes arbitrary arrests and detention. Any person arrested in Bangladesh runs the risk of being subjected to torture, so this law has in reality facilitated the process of torture of persons by the police, the armed forces, and paramilitary forces such as the notorious Rapid Action Battalion (RAB) and the Bangladesh Rifles (BDR), border security force. Coercion, including torture, is used to make arrested persons sign blank documents, which the authorities then complete in order to suit any needs they may have, including exonerating themselves from wrong-doing, justifying their actions or falsely incriminating the persons in question. Statements are also being forcibly extracted from victims and recorded using audio-visual equipment for the same reasons. This 'evidence' is then used against persons in court, and under the provisions of the emergency, cannot be challenged.

#### **Rule of Armed Forces instead of rule of law:**

Before the proclamation of the State of Emergency in the country the government of Bangladesh deployed thousands of its armed forces 'to aid the civil administration' offering magistracy power to them. In section 2 (a) of the Emergency Powers Rules-2007, the country's "law and order maintaining force" has been defined as including the Bangladesh Police, the Armed Police Battalion, the Rapid Action Battalion, Ansar (a village defence paramilitary group), Battalion Ansar (an armed village defence paramilitary group), the Bangladesh Rifles, the Coast Guard forces, the National Security



Intelligence service, the Defence Intelligence service and the Armed Forces. Under Section 16 (2) of the Emergency Powers Rules-2007, any member of the ‘law and order maintaining force’ is authorized to arrest any person on suspicion without a warrant. Since the state of emergency the involvement of the soldiers has been increased covering all the institutions and corporations as well as autonomous bodies.

The armed forces are playing a dominant role, and are perpetrating arbitrary arrests, torture and detaining people using the Emergency Powers Ordinance-2007 and Emergency Powers Rules-2007, while the police are following the commands, suggestions or recommendations of the armed forces.

### **The armed forces – an unchained, insane horse:**

The armed forces of Bangladesh have been enjoying unbridled power and have been abusing human rights according to their wishes and capacities during the State of Emergency; they are not accountable to any authority at all. Instead, they are allowed to do and undo whatever they want. Section 20 of the Emergency Powers Rules-2007 authorizes the ‘law and order maintaining forces’ to use force in order to execute any order issued according to the Rules.

All the institutions, corporations and autonomous bodies, including the sports federations, of the country are either occupied by the officers of the armed forces. A few offices where the soldiers are still unwelcome are facing tremendous pressure and paying the costs for their ‘unfriendliness,’ having been effectively cordoned off by the military.

### **Special Powers Act-1974- a supplementary license of detaining people:**

Autocratic authoritarian tools for abusing human rights have been incorporated into every-day governance by the military-backed rulers of Bangladesh. For decades, the people of Bangladesh have been suffering under the Special Powers Act-1974, which has been frequently abused to detain people arbitrarily. Section 21 authorizes the government to detain any person under the Special Powers Act-1974. Now, during the State of Emergency, things are worse, notably due to the Emergency Powers Rules-2007.

The above act has also been used to detain persons arbitrarily for longer periods. According to section 3 of the Special Powers Act-1974, the Government may detain any person for a prejudicial act [according to section 2(f) of the Act] or remove any person from Bangladesh. The relevant sections of the Act are as follows:

#### *Section 3. Power to make orders detaining or removing certain persons-*

- (1) The Government may, if satisfied with respect to any person that with a view to preventing him from doing any prejudicial act it is necessary so to do, make an order-*
  - (a) directing that such person be detained;*
  - (b) directing him to remove himself from Bangladesh in such manner,*



*before such time and by such route as may be specified in the order;  
Provided that no order of removal shall be made in respect of any citizen  
of Bangladesh.*

*(2) Any District Magistrate or Additional District Magistrate may, if satisfied with respect to any person that with a view to preventing him from doing any prejudicial act within the meaning of section 2(f) (iii), (iv), (v), (vi), (vii) or (viii) it is necessary so to do, make an order directing that such persons be detained.*

*(3) When any order is made under sub-section (2), the District Magistrate or the Additional District Magistrate making the order shall forthwith report the fact to the Government together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than thirty days after the making thereof unless in the meantime it has been approved by the Government.*

*(4) If any person fails to remove himself from Bangladesh in accordance with the direction of and order made under sub-section (1)(b), then, without prejudice to the provisions of sub-section (5), he may be so removed by any police officer or by any person authorised by the Government in this behalf.*

*(5) If any person contravenes any order made under sub-section (1)(b), he shall be punishable with imprisonment for a term which may extend to three years, or with fine, or with both.*

*Section 4. Execution of detention orders- A detention order may be executed at any place in Bangladesh in the manner provided for the execution of warrants of arrest under the Code.*

According to section 9 of the Act, *the Government is authorised to 'constitute an Advisory Board for the purpose of this Act'*. Another arbitrary section of the Act is following below:

*Section 12. Action upon the report of advisory board-*

*(1) In any case where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of a person, the Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit:*

*Provided that the Advisory Board shall, after affording the person concerned an opportunity of being heard in person review such detention order, unless revoked earlier, once in every six months from the date of such detention order and the Government shall inform the person concerned of the result of such review.*

Since the Special Powers Act seems to be extremely prejudicial to civil rights, and since it empowers the government with a wide range of powers for repression, the act has been



under severe public criticism from its inception. The opposition parties had always committed themselves to repeal it if they were voted into power. But in the last 33 years, the Act has yet to be defeated.

The ability to use force at will has increased the vulnerability of any persons that oppose the government, be they demonstrators, journalists or human rights defenders, for example. On August 23, 2007, some 12 journalists were arrested in one incident while covering the clashes between the military and Dhaka University students and other protesters. It is believed that several other journalists have also been arrested in separate incidents.

### **Another disastrous era for Bangladesh:**

The Government of Bangladesh wrongly depends upon the armed forces, who are quite detached from public functions unlike the police, in order to maintain law and order during different periods. Instead of correcting and reforming the policing system of the country, the government deploys the armed forces to handle crime and maintain law and order. In reply, the military brings about human rights disasters in the country through arbitrary arrests and detentions, torture, and by causing a severe fear psychosis among the people. During each of the operations by the armed forces, hundreds of innocent people become physically and/or psychologically injured, and potentially handicapped for life.

According to the information collected by local human rights groups, more than 200,000 people have been arbitrarily arrested and detained in the country during the State of Emergency thus far, with a high proportion of them having been subjected to ill-treatment or torture, which remains endemic in the country. Most of the victims of arbitrary arrest are brutally tortured by the soldiers at the scene of arrest, on the street, on the way to military camps, as well as inside the camps. Many victims are implicated in pending cases and framed with fabricated charges. When law-enforcers fail to bring any charges against the victims, they then send the arrested persons to the courts under section 54 of the Code of Criminal Procedure. Finally, the arrested persons are detained in prison for indefinite periods.

Many of the victims who experience brutality at the hands of the army are socially stigmatised despite their resultant permanent physical and psychological ailments, and this can last for generations. The State of Emergency has been continuously causing arbitrary arrests and detentions, ill-treatment, torture, physical disabilities, psychological fear and panic, deaths in custody, deprivation of medical treatment, distortion and destruction of medico-legal evidence, the concealment of the truth regarding cases of custodial torture, extreme suppression of the public voices and absolute injustice for victims. It has engendered the disappearance of fundamental civil and political rights. The basic human rights of the citizens in Bangladesh have effectively been banished.

### **Suspension of fundamental rights - the denial of the freedom of expression:**



The State of Emergency has suspended many fundamental rights, including the freedoms of expression and assembly. Section 3 of the Emergency Powers Rules-2007 absolutely forbids any kind of association, procession, demonstration or rally in the country without special permission from the authorities. Under Section 3(4) of the above, any person found guilty of holding any meeting or demonstration faces two to five years rigorous imprisonment. Additionally, Section 5 completely prohibits the publishing of any criticism of the activities of the government that is deemed to be ‘provocative’ by the authorities, in news bulletins, video footage, talk shows, features, articles, editorials or cartoons. A large number of grass-roots-level newspapers have reportedly been ordered to close indefinitely.

Two private television channels, ETV and CSB News have been accused of broadcasting ‘provocative’ video footage and reports concerning recent riots in the country, and on August 23, 2007, the Press Information Department ordered them not to publish any more such programmes. This was supplemented by an order to close down the CSB News TV channel. The AHRC was informed that the transmission of the CSB News was reportedly cut from 6:35 pm on 6 September 2007 for seven days through the intervention by the Bangladesh Telecommunications Regulatory Commission (BTRC). The BTRC chairman, who is a retired major general of the army, was accompanied by a number of military officers at this time. It is believed that the BTRC stopped the transmission of the CSB News due to its broadcasting of the brutality of the armed forces and the police during the protest in the Dhaka University area. It is alleged that the government has intentionally stopped the transmission the TV channel without any guaranteed possibility of resuming its programme after the said seven days; it is still closed.

The officers of the armed forces monitor the television news bulletins and newspapers and threaten and intimidate editors by phone or in person. Television channels have stopped broadcasting many of their issue-based discussions and talk show programmes and newspapers are also engaged in heavy self-censorship. The media now only publish items that the government will like. The stories of arbitrary arrests, torture and extra-judicial killings at the hands of the armed forces and other law-enforcement agents, including incidents of fabricating charges against innocent people by the law-enforcement agencies, are rarely published in the print and electronic media.

### **Human Rights Defenders facing high risks:**

Human rights defenders are becoming increasingly vulnerable in Bangladesh. Numerous human rights defenders have been threatened and intimidated, arbitrarily arrested and detained for months at a time, tortured and/or implicated in fabricated cases. As a result, most human rights organizations have put a halt to most controversial work, such as fact-finding missions to ensure the documentation of cases of human rights abuses. This could give rise to a situation where human rights abuses are increasing, but fewer reports are surfacing, which could send the erroneous signal to the outside world that the human rights situation is improving, while in reality it is getting worse.



**Case Study-1: Jahangir Alam Akash arbitrarily arrested, detained, tortured and charged in fabricated cases**

Mr. Jahangir Alam Akash, a human rights defender and journalist by profession, was arbitrarily arrested by the Rapid Action Battalion (RAB)-5 deployed from the Rajshahi region, from his residence at around 2 am on 24 October 2007. The RAB personnel (in plain clothes) reportedly dragged Mr. Akash, who was sleeping at the time, out of his house and took him away. It is alleged that Mr. Akash was arrested because of a number of his reports in the newspaper Daily Sangbad and TV news channel CSB News, regarding a number of reports on the alleged torture and extra-judicial killings committed by RAB personnel.

After the arrest, Mr. Akash was allegedly hung from the ceiling until the afternoon of October 24 and severely beaten by the RAB personnel in the army camp, Rajshahi. Mr. Akash later informed one of his relatives that Major Rashidul Hassan Rashed and other army officers brutally assaulted him in the army camp. The AHRC reported that Major Rashidul Hassan Rashed had seriously intimidated the victim on 3 May 2007 for broadcasting news on the attempted extra-judicial killing of an alleged terrorist on a private television channel.

Mr. Akash was then handed over to the Boaliya police, who then produced him before the Chief Metropolitan Magistrate Court, Rajshahi, under arrest for Section 16(2) of the Emergency Powers Rules-2007. Under Section 16(2) of the Emergency Powers Rules-2007, any member of the 'law and order maintaining force' is authorized to arrest any person on suspicion without a warrant.

The magistrate of the said CMMC-Rajshahi then ordered Mr. Akash to be remanded at Rajshahi Jail. Due to his serious condition, Mr. Akash is currently in Rajshahi Jail Hospital. We have received information that his legs are horribly swollen, that there are injury marks all over his body and that he is unable to walk now due to his injuries. However, the jail hospital does not provide appropriate medical treatment to Mr. Akash. The AHRC has also learned that Mr. Akash has been implicated in another fabricated extortion case under Sections 385 (extortion), 386 (extortion by putting any person in fear of death or of grievous hurt) and 506 (criminal intimidation) of the Bangladesh Penal Code (Case number: Boaliya Thana No.13 of 2007). It was filed by a person named Harun, son of Jalil, at the Puthia Police Station in Rajshahi district on October 23.

In his complaint, Harun alleged that he was forced to give a bribe to Mr. Akash, who threatened him with a sharp weapon. However, Harun had reportedly been convicted in a rape case in which Mr. Akash had conducted the fact-finding mission and identified him as the offender. Subsequently, Harun was convicted for a jail-term and fine by court. The local human rights groups believe that this is a plot against Mr. Akash to restrict his freedom of expression and human rights activities.

Mr. Akash is the coordinator of the Task Force against Torture (TFT)-Rajshahi city as well as the regional coordinator of the Bangladesh Institute of Human Rights (BIHR) in



the Rajshahi region. He is also a journalist by profession working as the bureau chief of private news television channel CSB News and the Daily Sangbad, a Dhaka based national newspaper.

According to the most recent information, he was released on November 9, 2007, but was shortly afterwards charged with extortion and now faces what is expected to be a summary trial under the Emergency Powers Rules-2007. There are therefore grave concerns for Mr. Akash's rights, freedoms and personal integrity.

### **Case Study-2: Nasiruddin Elan threatened and intimidated by Navy officers**

At around 2 pm on 26 April 2007, Mr. ASM Nasiruddin Elan, the acting director of the ODHIKAR, a human rights organization based in Dhaka, received a phone call from Lieutenant Commander Mr. Mehedi of the Bangladesh Navy. Mr. Mehedi asked Mr. Elan to meet Mr. Zubayer, Captain of the Bangladesh Navy, at their Naval Headquarter in Banani, Dhaka. Soon afterwards another phone call was received by Mr. Elan from a person allegedly attached to the Naval Headquarter Intelligence. The caller informed that Captain Mr. Zubayer wanted to discuss with him regarding two incidents of deaths in naval custody in the Bhola district, which was earlier investigated by the Mr. Elan's fact-finding teams representing ODHIKAR.

At around 10:15 am on May 2, Lieutenant Commander Mr. Mehedi called to the office of ODHIKAR and once again asked Mr. Elan to go to the Navy Headquarters. Mr. Mehedi told Mr. Elan that Captain Zubayer wanted to discuss with him regarding the death of two persons, and insisted him to meet Captain Zubayer. Mr. Elan, however, told Lt. Commander Mehedi to instead send an official letter from the Navy Headquarter. At 12:15 pm and at 3:30 pm, Lt. Commander Mehedi made repeated phone calls insisting for him to report to their Headquarters at 9 am on May 3. Lt. Commander Mehedi told Mr. Elan that their office would never send any official letter to his organization. At 4 pm, Lt. Commander Mehedi once again called Mr. Elan informing him that his colleague, Captain Zubayer would meet him, at 9 am on May 3.

On May 3, at around 9 am, a man wearing plain clothes went to the ODHIKAR office. He introduced himself as Mr. Mizan, a radio operator and said that he was sent by the Navy officers to take Mr. Elan to the Headquarters. Mr. Elan was taken in a scooter with registration number: Dhaka Metro-Tha-03-3766. It was Mizan who driven the scooter towards the Navy's Headquarters and arrived there at 9:40 am. At 9:45 am, a Sub Lieutenant named Mr. Enayet Hossain, had called from the Navy Headquarters to inquire whether Mr. Elan had left from the Naval Headquarters or not.

At around 9:50 am, Mr. Elan was taken inside the Navy Headquarter and was made to wait until 11 am inside the communication room. A navy staff came in and took him to the room of Captain Zubayer. Two navy officers were present there at that time. Within a while another two officers wearing plain clothes entered the room. Captain Zubayer addressed them as officers of the Directorate General of Forces Intelligence (DGFI). Soon after the two DGFI officers came in, Captain Zubayer started casting abusive words



against Mr. Elan telling him: “How dare you criticize the Navy?” and proceeded on threatening him as: “If I kill you now, who will save you?”

The other persons inside the room likewise started interrogating Mr. Elan using rough and harsh language. They mentioned that they knew a lot about ODHIKAR and if necessary they would interrogate even the President of ODHIKAR, Mr. Hassan Arif, who is a former Attorney General of Bangladesh. Showing a number of paper clippings of ODHIKAR’s fact-finding report. They also accused all the staffs of ODHIKAR as involved in seditious and anti-state activities and that they are all traitors.

“You all are agents of (abusive language) America, India and Pakistan from where you receive money.” The officers continued on casting abusive language saying: “We (expletive) ODHIKAR, American Embassy and your admirers.” One of them said: “I will hand you over to the DGFI for further action.” The navy officers then told Mr. Elan to: “Stop you activities immediately! You must keep in mind that you are working in a State of Emergency”. Captain Zubayer said to Mr. Elan that “it is better for him to start agricultural farming than engaging in human rights activities.” He also warned Mr. Elan not to mention about their meeting to anyone, otherwise he could be arrested.

At the end of the meeting, Mr. Elan was asked to wait in the next room. His cell phone was switched off and kept away from him while he was being blocked from communicating with his colleague, Mr. Elyus. Mr. Elyus had earlier accompanied him to the place but was refused entry into the office of Captian Zubayer.

### **Case Study-3: Human Rights Defender and father went on hiding following military threats**

On 24 January 2007, at around 11:00 am, a Chowkidar (messenger and security guard of village) of the local Union Council namely Mr. Rabindra Nath went to Mr. F M Abdur Razzak's house in Godaipur village under the Paikgachha police station. Chowkidar Rabindra told Mr. Razzak's wife Mrs. Rahima that Major Mr. Mizanur Rahman, commander of the army in Paikgachha upazilla (sub district), asked Mr. Razzak and his father Mr. Nur Ali Fakir to go to the Paikgachha Army Camp (temporarily established in the Lona Pani Kendra Motso Gobeshana (Saline Water Fisheries Research) Institute in the Paikgachha town at 10:00 am on the following morning (25 January 2007). At around 5:00 pm, the same Chowkidar came to Mr. Razzak's house to deliver the same message, and warned Mr. Razzak's wife that the failure to meet the Army Camp Commander would bring about danger to Mr. Razzak's family.

Since the first summon Mr. Razzak requested his friends over telephone to check the reason of asking him to meet the Major. In reply, his friends informed him that one of his neighbours, namely Mr. Mohor Ali Sana, made a complaint to the Army camp that Mr. Razzak forcibly took Taka 35,000 (USD 523) from that person, which should be refunded now with the assistance of the military personnel. It has been learned that one Mr. Mohor Ali Sana (55) had some dispute with his neighbour Mr. Shaheb Ali Mollik over lands and financial reciprocations. They lodged several charges against each other



with the local police station and court. In one stage, the both parties had arbitration in presence of their respective lawyers where they came to an agreement to solve the problems; Mr. Mohor was found guilty in the arbitration and paid Taka 35,000 to his counterpart Mr. Shaheb. All these dealings were recorded in black and white by lawyers of both parties and witnesses to the arbitration. Mr. Razzak was among the witnesses of the said arbitration. Recently, when a state of emergency was proclaimed by the President in the country Mr. Mohor lodged a complaint with the army camp that Mr. Razzak forced him (Mohor) to pay Taka 35,000 as a toll. The army without verifying the allegation summoned Mr. Razzak and his father to meet the commander of the camp, Major Mizan.

Meanwhile, Mr. Razzak's friends informed some senior officials of the army about the attempts of the Paikgachha army. On January 25, two senior army officers asked Major Mizan to verify the allegation against Mr. Razzak and then take lawful actions following the verifications.

Mr. Razzak has been in hiding since the proclamation of the state of emergency in the country assuming the trend of conspiracy by his family rivals. Now, his father Mr. Nur Ali Fakir is hiding fearing further military brutality on him as he sustained in 2002.

On January 29, Paikgachha Army Camp Commander Major Mizan discussed the allegation of receiving money by Mr. Razzak from Mr. Mohor Ali Sana in presence of the concerned persons and ordered two members of the Godaipur Union Council namely Mr. Kazi Abul Bashar and Mr. Mir Anwar Elahi to solve the issue through arbitration. The allegation against Mr. Razzak proved false when they sat together on January 31. According to the decision Mr. Mohor Ali Sana paid Taka 1,000 (USD 15) penalty to his neighbour Mr. Shaheb Ali Mollik for unnecessary harassment. The army officers have already been informed by the union council members.

Following Urgent Appeals issued by the Asian Human Rights Commission (AHRC), the Assistant Superintendent of Police (ASP) of the Dakope Circle of the Khulna district reportedly went to Paikgachha, on 8 March 2007, to investigate the case of the harassment of a human rights defender Mr. F M Abdur Razzak and his father Mr. Nur Ali Fakir since the state of emergency imposed in the country. The ASP Mr. Shugen Chakma called Mr. Razzak to the Paikgachha police station on the morning of March 8. The ASP informed Mr. Razzak that they received a letter from the Asian Human Rights Commission (AHRC) regarding the alleged torture of his family members during the Operation Clean Heart in 2002 and the recent harassment of him by the Army. Upon the request of the ASP, Mr. Razzak described the details of sufferings that he and his family sustained.

The police officer asked Mr. Razzak to prepare a written statement regarding his harassment and torture and that of his family, and told him to submit the statement to the on-duty officer of the Paikgachha police station. It is reported that Mr. Shugen Chakma talked to the lawyers and the police officials of Paikgachha regarding Razzak's professional background, activities and the alleged harassment and torture of his family. It is also reported that the police authority asked Mr. Shugen to submit his investigation report by 14 March 2007 to the concerned office.



Mr. Razzak is afraid of being subjected to harassment by the alleged perpetrators again in near future. He alleges that in the past the government also conducted investigations regarding harassment of his family. However, they did not take any action against the alleged perpetrators.

**Overcrowded prisons and unconvincing remedial actions by the authorities:**

The country's prisons are overcrowded to the point that the government recently released several hundred detainees who were either convicted of lesser crimes, such as theft, or had been detained for lengthy periods during their trials. In order to accommodate high-profile prisoners such as former ministers, law-makers and businessmen who have been arrested in recent months under the interim military-backed government's anti-corruption drive, the authorities have begun using public and private houses, which they are declaring as being 'sub jails'.

Custodial deaths resulting from torture at the hands of the law-enforcement and security forces continue to occur, with over 60 reportedly thought to have occurred in the last seven months alone, and around 100 such deaths for 2007 in total. The authorities claim that they all result from heart attacks or the victim having jumped from roof-tops or tall trees (the victims apparently have access to roofs and trees during searches for evidence of their alleged crimes, according to the authorities). This practice is reminiscent of the notorious Operation Clean Heart in late 2002, in which an estimated 58 persons died in suspicious circumstances in detention following mass arrests. There is no mechanism to punish the perpetrators of torture, as the practice has not yet been criminalized by the authorities, even though Bangladesh is a State Party to the UN Convention against Torture (CAT). It must be recalled that Bangladesh made a reservation on article 14(1) of the Convention, which asserts the State's obligation to provide medical treatment and compensation to the victims of torture, which greatly undermines the value of Bangladesh's ratification of this important instrument and is indicative of the country's real intent with regard to the respect of human rights, regardless of the rhetoric used by the country's representatives at the United Nations Human Rights Council, body that counts Bangladesh amongst its membership.

**The iron-clad impunity enjoyed by armed forces concerning extra-judicial killings:**

Extra-judicial killings have been on the increase at the hands of the armed forces and paramilitary forces during the State of Emergency, adding further to an already serious situation. Such killings are covered up and justified as being encounter or accidental crossfire killings, and go unpunished. According to local human rights groups, at least 148 persons have become the victims of extra-judicial killings by members of the law-enforcement and security forces in the first ten months of the State of Emergency. The killings are reportedly being deemed as a competition among the armed forces, police and the paramilitary forces.



Not a single case of victims of such gross human rights abuses as torture, death resulting from torture or extra-judicial killings can even be pursued in courts at present.

**Case Study-1: Extreme torture, child abuse and an extra-judicial killing as Navy runs rampant**

On 20 February 2007, at around 10:00 am, a group of 11 naval officers, 9 of whom were in plain clothes and two who were armed and in uniform, went to the Char Fashion Municipality office located within Bhola district. The team went to the office room of the Commissioner of Ward No. 6 of the Municipality, Mr. Khabirul Islam Dulal, who was in a meeting with local citizens. One of the group members introduced himself as Mr. S M Reza who is the Lieutenant of the Bangladesh Navy Contingent deployed in Char Fashion. Following the command of Lt. Reza, the Navy personnel asked the victim to hand over the arms allegedly in his possession. When Mr. Dulal denied possessing any, the navy personnel severely beat, handcuffed and blindfolded him in the meeting. The Navy team pushed Mr. Dulal into one of their vehicles and brought him to the temporary camp in the upazilla Dak Banglo (a public rest house in the town used by the visiting government officials).

Over the next 4 hours, the commander, Lt. Reza allegedly kept physically assaulting the victim with roller sticks, fists and boots. The victim was kept handcuffed and blindfolded for almost the entire period. At around 3:30 pm, the navy took the victim to one of his aunt's house at Masterpara village in the Char Fashion municipality. At the house, the soldiers used abusive languages and threatened the family at gun point, including her 26 year-old and 16 year-old daughters.

Lt. Reza then ordered the navy officers to ransack the house. The victim was brought to the backyard and was again beaten by soldiers. The officers kept searching in the house for about 20 minutes.

At around 4:00 pm, the officers once again blindfolded and handcuffed the victim before proceeding to his house. Lt. Raza who was holding the rope that tied the victim's hands together, ordered the two armed soldiers to ransack the house. Lt. Raza again beat Dulal with a roller stick in the yard, this time in front of his family and relatives. At this time, Dulal's cousin's wife, Mrs. Parul Begum, attempted to save the man; however, officers pointed their guns at her head while two soldiers beat her with sticks on the lower part of the body.

Unbelievably, the soldiers also beat an 11-years-old girl named Moni who was carrying Parul's 6-month-old son. A soldier pressed against Moni's throat and strangled her. The 6-month-old infant, Abir, was thrown around 10 meters away from Moni's lap. While this was happening, Parul's son-in-law Mr. Nur Uddin and his brother Mr. Mosleh Uddin came to visit the house and were also beaten by the soldiers.



Dulal's two sons, eight year-old Ziaur Rahman Jim and three year-old Jibon, were held at gun point while their mother, Mrs. Jasmine Akhter Khuku, was beaten in front of the family. Dulal's aunt Mrs. Moyful Begum and Dulal's 58-years-old mother Mrs. Hajera Khatun were also beaten by the navy personnel. Mrs. Khuku alleges that Lt. S M Reza beat her on the hips with stick; pushed her against the wall and hurt her right eye and foot, before knocking her to the ground. Also, about 1.5 million Taka (USD 21,740) was stolen from the house, money that was to be used as payment for labourers working on the "Abashan" and "Adarsha Gram" housing projects. Gold ornaments worth approximately 1 million Taka (USD 14,500) and belonged to the projects contractors were also taken from the house.

After the raid on the house, two Navy personnel lifted Dulal's body and put a long roller stick under his arms, since Dulal's hands were tied behind his back. The men put the body by the side of a pond outside Dulal's house. Meanwhile, Dulal who had been unconscious returned to his senses and asked for water. A Naval staff brought dirty water from the pond in a pot and poured it in Dulal's mouth. Then, Dulal was taken to Mrs. Fatema Begum's home. As Dulal could not walk by himself, the Navy personnel held his arms and dragged his legs on the street. The Navy personnel asked Mrs. Fatema to give up the guns that were suspected of being kept in the house. Fatema then gave them a toy pistol, which her son plays with. Later on, Dulal was taken to the house of a former Member of Parliament (MP) and a leader of the Bangladesh Nationalist Party (BNP) Mr. Nazim Uddin Alam, who was not at home at that time. The security guards at the house Mr. Hafizur Rahman was also beaten by the Navy soldiers.

Then Lt. Reza brought Dulal to the rooftop and ordered him to stand up alone; however, Dulal was not able to do it by himself and fell down on the floor. Lt. Reza kicked him and ordered the soldiers to collect red chilli powder, salt and rice husks from a next door neighbour named Mrs. Helena's. The spices were mixed together with water in a bucket and poured in Dulal's mouth. About 20 minute later, Mr. Reza forced Mrs. Helena to give hot water, which was also poured into Dulal's mouth. Dulal's relatives claim that many people living in the adjacent houses including the house of Mrs. Rina Khanom, a municipal commissioner of Reserved Ward No. 3 of the Char Fashion Municipality, had witnessed the scene of torture on the roof of Mr. Alam's house.

Later at around 9:30 pm, navy personnel picked up Dulal in a vehicle and took him to the Navy camp. Arriving at the camp, Lt. Reza kicked Dulal's motionless body, which was handcuffed and blindfolded in the back of the vehicle. Then, he held the rope and proceeded to kick Dulal's body severely and dragged him toward the nearby pond. As witnessed by many locals, Dulal's body rolled into the pond. For roughly five to six minutes, the body was under water. Later, Dulal's body was taken to the Emergency Unit of the Char Fashion Upazilla Health Complex. The Medical Officer (MO), Dr. Ekramul Kabir, found that Dulal was already dead. The MO then lodged a complaint with the Char Fashion police station. In his application, Dr. Kabir mentioned that at 10:55 pm, Navy personnel brought the dead body of Mr. Dulal to the hospital. It was alleged that Dr. Kabir was forced by Lt. Reza of the Navy to lodge the complaint with the local police.



The Officer-in-Charge (OC) of the Char Fashion police station, Mr. Zakir Hossain Fakir, recorded this case as an Unnatural Death (UD) case (No. 6, date: 20 February 2007) following Dr. Kabir's complaint at 11:45 pm. The OC, however, denied that the incident involved arbitrary arrest, torture and murder. However, the OC does note that when he went to the navy camp, S.M. Reza had refused to hand over the body so that he could return it to the victim's family.

According to a fact-finding report prepared by human rights organization ODHIKAR, "Doctor Ekramul Kabir of Char Fashion Upazila Health Complex also noted that Dulal died long before being admitted to the hospital. Observing the state of the body, he requested other four doctors for their opinion. After that they sent a report to the Char Fashion Police Station. In answer to a question Doctor Ekramul Kabir told ODHIKAR that there was a lot of water inside the dead body and the marks of ropes were clearly demarcated around the wrists. He also noticed that pieces of skin were falling off the body due to severe bruising and that the testicles were also bruised. Dulal's throat was distended, and some of his toes and finger nails were missing too."

The following morning (21 February 2007), the on-duty police also refused to return the body of the victim to the relatives of Dulal at the hospital. Magistrate Mr. Foyez Ahmed prepared the Inquest Report of Dulal's dead body at the Char Fashion hospital. The Inquest Report mentioned injuries on the legs, hands and in the back. A medical board comprising of Dr. Rathindra Nath and two others conducted the post mortem of the body at the Bhola Sadar Hospital morgue at around 4:30 pm. The complete post mortem report is pending until the viscera examination report is conducted in a chemical laboratory in Dhaka.

Dulal's father-in-law, Mr. Shahidul Haque, alleges that the Dome of the Bhola Sadar Hospital, namely Mr. Bhanu, demanded a bribe from Shahidul if the deceased's family wanted a "fair post mortem report". This was done in front of Dr. Rathindra Nath, who did not comment or say anything to the Dome. Mr. Shahidul, then, allegedly responded the Dome to lodge a complaint against him with the Magistrate's Court.

Although the dead body was handed over to the family from the hospital morgue at around 5:15 pm the Char Fashion police finally gave the body to the family at around 7:40 pm at the police station. But, the family had to pay the transportation cost of the dead body from Bhola district town to the Char Fashion police station.

On February 22, the relatives buried the dead body of Dulal in their family graveyard. Two naval staff also joined the rituals in plain cloths while some soldiers were patrolling around the area.

Mr. Shahidul alleged that he was told not to announce about the funeral to the public by the Chairman of the Char Fashion Municipality Mr. Amirul Islam Mintis before the victim's funeral. It has also been reported that the Chairman told the victim's family to sign on a blank paper that the death of Dulal was "unnatural" and urged them not to lodge any complaint against the Navy officers about the murder of Dulal. Then the Chairman



urged the family to leave the town and do not seek any further proceedings regarding the death of Dulal.

It has also been reported that the Police officers from the Char Fashion police station also urged the family to compromise with the Navy officers about the case. Mr. Shahidul also received a phone call from an Assistant Sub Inspector (ASI) Zakir Hossain of the Char Fashion police station who told him that he should not pursue any further persecutions against the Navy officers and offered money in exchange for his silence.

Mr. Shahidul and the wife of Dulal have lodged a complaint with the office of the Superintendent of Police (SP) of Bhola district on 26 February 2007. Both of them are asking the police officers to record the case of Dulal however the police officers allegedly refused to register the case. On 27 February 2007, Mr. Shahidul submitted another petition to the Upazilla Nirbahi (sub-district executive) Officer (UNO) seeking further post mortems of Dulal's dead body by impartial medical doctors. The application was addressed to the Deputy Commissioner of Bhola.

Meanwhile, Mr. Shahidul further alleges that he received threats to his mobile phone from unidentified callers, who warned him not to step forward regarding this case. On 6 March 2007, at around 11:00 pm, Shahidul received two calls from phone number +8801720494851 and +8801725440257. Mr. Shahidul, along with his daughter Mrs. Jasmin Akhter Khuku (Dulal's wife) and her two sons are now in hiding. Mrs. Khuku is now questioning whether they will have right to achieve justice. She is extremely worried about the future of her two minor-aged sons as she has no assets left by her husband and has no job.

It is also alleged that the Navy officers threatened human rights defenders, who conducted the fact-finding mission regarding the death of Dulal. According to the report of ODHIKAR, "The ODHIKAR fact-finding officer visited the Navy Contingent to talk with Lieutenant SM Reza. Lieutenant Reza tried to shake him off and ultimately threatened to have him arrested as a member of the JMB (an underground radical group). He claimed that he did not have the intention to kill or arrest Dulal and that if that was their intention; they would have done so in 'crossfire'. He commented that Dulal was not meant to live a long life and met his fate by drowning."

Local journalists also alleged that they received threats from the Navy and were told to only write that "Dulal jumped into a pond and died when trying to flee". The Navy personnel also threatened the local journalists that they would kill them like Dulal if they disclose anything more regarding the murder.

However, Lieutenant Commander Ashraf of Char Fashion Navy Contingent told ODHIKAR's fact-finding team that Khabirul Islam Dulal was a threat to the people of his locality. Dulal was arrested on the basis of a number of verbal and written complaints from the people of the locality against him, including toll collection, harassment of women, land-grabbing and other anti-social as well as criminal offences. Mr. Ashraf claims that the complaints were preserved in the Khulna and Chittagong Navy



headquarters. According to Dulal's statement they conducted an arms recovery operation in various places; an Indian pistol was recovered from the house belonging to Fatima, beside his home. On recovering the pistol, they returned with him to the base and untied his wrists in order to take a picture of him with the pistol. Dulal tried to flee but fell into the pond. He was rescued and sent to the hospital, where he died.

### **Legislation provides prior impunity to the perpetrators of human rights abuses:**

Bangladesh has further entrenched its culture of impunity during the State of Emergency. Section 6 of the Emergency Powers Ordinance ensures prior impunity to any perpetrators of gross human rights abuses. Section 6(1) declares that "*Any order relating to any authority delegated by or under, this Ordinance shall not be challenged before any court.*" Furthermore, according to Section 6(2), "*Unless any provision under this Ordinance stipulates otherwise, no civil or criminal case, or any other legal proceedings shall be lodged against the government for any harm incurred as a result of any action, or any action done in good faith under, by the authority of this Ordinance.*" Impunity has been legislated in the past in Bangladesh. For example, the government passed the Joint Drive Indemnity Act-2003 following the disastrous Operation Clean Heart, ensuring impunity for the perpetrators of torture and killings committed under this operation.

### **Failure to criminalize torture despite membership in the United Nation's Human Rights Council:**

Bangladesh has been a member of the UN Human Rights Council since its creation 9 May 2006, and has been present for more than one and a half years in the world's top human rights forum. Before having been elected to the Council, Bangladesh made voluntary pledges, as was the case with other candidates. The country affirmed its "deep commitment to the promotion and protection of human rights of all of its citizens."

The UN Convention against Torture and other cruel, inhuman or degrading treatment or punishment (CAT) was ratified by the Bangladesh government in October 1998. However a reservation on article 14 paragraph 1 of the CAT was made at the time. This article states that "Each 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 the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependants shall be entitled to compensation." While ratifying the CAT Bangladesh declared that it "will apply article 14 para 1 in consonance with the existing laws and legislation in the country."

On one hand the Bangladesh government promises to implement the provisions of international human rights instruments into its domestic legislation. Unfortunately, on the other, in reality, violations of human rights, particularly torture, remain rampant in the country.

Torture is an integral part of the policing and the law-enforcement system, in all parts of the law-enforcing agencies and the military, paramilitary and security forces and is used



against persons both in custody and otherwise. Death due to torture at the hands of the law-enforcers is a regular phenomenon in the country. Torture is used as a method of extracting money and confessions from the detainees. The term, ‘interrogation’ in police remand, the Joint Interrogation Cell and “Task Force of Interrogation” as part of criminal investigation is synonymous with torture. Passing an hour in the custody of these forces without experiencing torture is considered as being a miracle. Now, in the ongoing State of Emergency, according to local human rights groups, around 200,000 people have been arrested and detained within a period of only six months; and of course, there are allegations of torture in almost all cases as well as reports of as many as one hundred custodial deaths.

The consequences of torture which are visible concerning such persons indicate the very harsh methods being used. Persons who are arrested by the police or any other forces, are ill-treated or tortured throughout the duration of their arrest in almost all cases. It is common that in custody people are tortured if they fail to pay bribes to escape the brutality. Payment of inadequate bribes is reason in itself for torture which often results in serious physical injuries. Often, failure to pay the demanded amount of money to the police will also add one or a number of fabricated charges against the person for which he or she and family-members will be required to appear before the courts for years; the investigations will also be performed by the same police officer, or perhaps a close colleague, with a view to ensuring no progress is made and ruining the victims in the process.

Nine years have passed since Bangladesh ratified the CAT, but still the reservation is imposed on the article 14 para 1 of the Convention; meaning that the government does not want to ensure the right to compensation and adequate medical treatment for victims of torture. The authorities never want to punish the perpetrators of torture; they have not yet made any legislation criminalizing torture in compliance with the CAT although the government promised to do so a long time ago. Instead, the culture of impunity enjoyed perpetrators has been deeply entrenched by a number of laws. Indemnity Act-2003, which was made to ensure impunity for the armed forces and the police for killings, torture, arbitrary arrests and detentions during the notorious Operation Clean Heart in late 2002 and early 2003, is still in effect.

Nobody knows how long the Bangladeshi authorities will take to criminalize torture in domestic legislation, however international pressure has not been anything near adequate to make the country respond and honour its responsibilities to its citizens. The Bangladeshi authorities seem blissfully unashamed about the extreme inconsistencies between their pledges and practices regarding abuses of human rights. It is a black comedy indeed when one listens to Bangladeshi diplomats attempting to sound like human rights experts at the Human Rights Council.

### **The absence of the right to information leading to a culture of torture:**

Usage of torture has become so deeply rooted in the system, especially, in the governmental institutions, that medical doctors in many cases collude with the



perpetrating law-enforcement agencies. They conceal the truth in cases of custodial torture, which helps the alleged perpetrators destroy evidence and deny justice to the victims. Either medical doctors support the perpetrators who use torture or they fear harassment by these so-called law-enforcers.

In the case of arbitrary arrest, torture and detention of NGO leader Mr. Shadhidul Islam despite not having any case against Mr. Shahidul, the Tala police could not lay any specific charges against him. The police called in two medical doctors to the police station to check the physical condition of Mr. Shahidul. Dr. Md. Hedayetul Islam, Upazilla Health & Family Planning Officer of Tala, and Dr. Md. Zahirul Hassan, Resident Medical Officer (RMO) of the Tala Health Complex, examined Mr. Shahidul in the police station. He was detained in the police station in the night. However, the two medical doctors did not disclose the physical problems. When asked what the about the victim's condition, the medical staff avoided the question and kept providing vague information by answering, "He (Shahidul) is weak physically and mentally". The medical doctors of the Satkhira district Sadar Hospital also allegedly assisted the armed forces by injecting pain-killer vaccines instead of appropriate medical treatment, and concealing Shahidul's health conditions to his lawyers and relatives while asked repeatedly. After having been released after his seven months long detention the physicians of renowned private hospitals based in Dhaka told Shadhidul that he had excessive wrong treatment immediately after having sustained injuries by the armed forces.

Many medical doctors have little commitment to the ethics of the profession and the concept of providing care for the people. Rather, they are drawn to the profession by their love money and power. Under the auspices of the Official Secrecy Act, they deny information to the media, conceal the truth, and in most cases help State-agents buy time to cover up their offences so that the latter can avoid punishment. As a result of not having a right to information, the victims cannot achieve justice; the absence of right to information ensures the absence of rule of law through the expansion of harassment, exploitation and the denial of justice for victims of torture.

### **The mockery that is Bangladesh's subordinate judiciary:**

According to Article 33 (2) of the Constitution of Bangladesh, a person arrested should be brought before the nearest magistrate within 24 hours after the arrest. Further, Article 33(3) of the Constitution clearly states that clause (2) of Article 33 shall apply to any person including an enemy alien or person arrested or detained "under any law providing for preventive detention".

However, during the current State of Emergency, all fundamental rights of the Constitution (from article 26 to 42, except article 41) have been suspended. It seems that the Bangladesh administration, the army and the police are taking advantage of this situation to abuse the fundamental rights of its own citizens.

The Magistrates, who had been controlled by the Home Ministry for the decades until 31 October 2007, do not consider or verify the facts during the production of persons having



arrested by the law-enforcers. The Magistrates do not consider whether the arrested persons have any evidence of having committed crime against them or whether the persons were brutalized or tortured by the authorities. They also do not consider whether the persons have received or are going to receive adequate medical treatment for any injuries sustained due to torture. The Magistrates are blind to visible injuries. They are deaf to the victims of torture.

The lawyers, who are accustomed to a corrupt judicial system are at best demoralized by years of working with the system and do not fight for innocent victims of arbitrary arrests and other abuses. Sometimes, they fear the army and the Rapid Action Battalion, and avoid clashing with the law-enforcement agents. As a result, the victims never get justice.

However, the Code of Criminal Procedure of Bangladesh still maintains its legal force even during the State of Emergency, and NGO leader of Satkhira district Mr. Shahidul's case is in clear violation of Section 61 of the Code, as well as illustrating the lawlessness prevailing in the country. Section 61 clearly states that "persons arrested should not to be detained for more than twenty four hours" and "no police-officer shall detain in custody a person arrested without warrant for a longer period than all the circumstances of the case make reasonable".

The concerned government authorities have still not given any valid explanation as to why Mr. Shahidul has not been produced before any court despite weeks passing since his arrest, which was made without any arrest warrant, or charges or cases against him.

### **Case Study-1: Justice denied to NGO leader Mr. Shadhidul Islam of Satkhira after his arbitrary arrest, torture, detention and the fabrication of charges**

At around 11:00 am on 27 January 2007 two army personnel, one warrant officer (WO) Mr. Amir Hossain and one army constable, came on a motorcycle to the UTTARAN Training Center based in Mobarakpur village, Tala upazilla (sub district), Satkhira district, Bangladesh. At around 11:25 am, the warrant officer Mr. Amir told Mr. Shahidul that Major Mehedi Hasan of the Tala army camp would like to talk to him. The officer did not inform Mr. Shahidul that he would be arrested and did not produce any arrest warrant or other valid documents. Within five minutes, an army van full of army personnel arrived at the UTTARAN training center and told Mr. Shahidul to go with them to the Tala Army Camp, which was temporarily established in the Government B Dey High School in Tala town.

Mr. Shahidul was put into the army van and taken before Major Mr. Mehedi Hasan of the army camp. The military officers then started interrogating Mr. Shahidul, while accusing him of depositing black market money and asked him to reveal its sources. They also accused him of involvement in terrorism activities and underground politics.

Meanwhile, a relative of Mr. Shahidul (the name is withheld for security reasons) was informed about Mr. Shahidul's arrest and went to the army camp within 40 minutes after the arrest was made. However, the army personnel did not allow him to meet either Mr.



Shahidul or Major Mehedi Hasan and simply assured him that Mr. Shahidul would never be tortured in army custody and that they would hand over him to the Tala police when the interrogation is finished.

No sooner had the relative left the army camp, a group of soldiers, namely Mr. Gopal, Mr. Mizan, Mr. Newaz, Mr. Didar and Mr. Shakil blindfolded Mr. Shahidul, tied his arms and took him to a toilet in the army camp, where Mr. Shahidul was severely assaulted with hockey sticks on his legs and back. It was alleged that different groups of soldiers assaulted Mr. Shahidul in turn in several phases.

Due to brutal torture, Mr. Shahidul was severely injured. At around 2:15 pm, the army then called Dr. Hedayetul Islam, the Upazilla Health and Family Planning Officer of Tala town to the army camp to treat Mr. Shahidul. Eyewitnesses reported that Dr. Hedayet's behaviour was very unusual when he returned to the hospital from the army camp and he shouted at his colleagues not to go to the camp when they received any phone calls from the army.

According to local people, including journalists and Mr. Shahidul's relatives, who were present about 50 meters away from the army camp premises (the school campus), heard the cries of Mr. Shahidul and immediately the army personnel chased them away from the campus.

At around 3:00 pm, Mr. Shahidul was carried by four army men before Major Mehedi Hasan, who simply ordered them to hand him over to the Tala police. Four army men then carried Mr. Shadidul by the arms and handed over him to the Tara police at around 3:30pm.

According to eyewitnesses, Mr. Shahidul could not walk due to his injuries and his eyes were blindfolded and arms tied when he was taken to the police station. Inspector Mr. Md. Abdur Razzak, the Officer-in-Charge (OC) of the Tala police station, did not agree to take Mr. Shahidul because he has received no complaints and charges against him. He was also concerned with the victim's severe physical condition. At this point the army men got angry and called doctors from the Upazilla Health Complex, which is the only public hospital in the town.

The Resident Medical Officer (RMO) Dr. Zahirul Hassan and Medical Officer Dr. Humayan Kabir Apu of the Upazilla Health Complex rushed to the Tala police station to treat Mr. Shahidul, who was lying on the floor and not able to move and speak due to severe pain. When the doctors and the police tried to raise him to a sitting position, Mr. Shahidul fell unconscious. There were multiple red and black bruises all over him body, especially, on the lower limbs, back of the chest and abdomen as a result of beating with blunt weapons. Further, both sides of his feet were dark due to beating with blunt weapons.

On the evening of January 27, Mr. Shahidul was sent to the Satkhira District Jail without being produced before any court of the country, which is in a clear violation of law. The



prison authority then sent him to the medical unit of the jail. On the following morning on January 28, the jail authority transferred Mr. Shahidul to the Satkhira Sadar Hospital due to his deteriorating condition. The X-ray report at the hospital showed fractures in the second and fifth toes of his right foot. A medical source informs that Mr. Shahidul's blood pressure status was, then, 90/60, which was normally 150/90 before his arrest, according to his relatives. Mr. Shahidul is now in police custody at the hospital, while being handcuffed at the hospital bed.

The Deputy Commissioner ex officio District Magistrate, Mr. Md. Kefayet Ullah, later issued an order sheet dated on 27 January 2007 (the date was changed from January 28 to January 27 on the certificated copy of the order sheet that Mr. Shahidul's lawyers received), that Mr. Shahidul received 30-day detention order under the Special Powers Act-1974. This Act is one of the country's laws being abused for arbitrary detention of the arrested without any judicial review in the current situation of the State of Emergency in the country. Mr. Shahidul has never been produced before any court since his arrest on January 27. It is a clear violation of Article 33 of the Constitution of Bangladesh and Section 61 of the Code of Criminal Procedure of Bangladesh.

#### **A case of false implication in a murder by the army:**

It is reported that in order to cover up the illegal arrest and detention of Mr. Shahidul, the army allegedly pressured the Magistrate's Cognizance Court-Ga Area of Satkhira district to show that Mr. Shahidul was arrested relating to one murder case. This murder case is bearing case number 3 dated 05/05/2004 at the Tala police station relating to the assassination of the Chairperson of the Tala unit of the Bangladesh Nationalist Party (BNP), Mr. A B M Altaf Hossain on 4 May 2004.

According to the information received, Mr. Badrul Alam, Joint Secretary of Satkhira district unit of the BNP, was arrested by the joint forces from Mr. Abdul Latif's house in Khajra village under the Ashashuni police station of Satkhira district on 30 January 2007. Since the arrest, Mr. Badrul was kept in military custody, while he was allegedly beaten and intimidated to be killed in pre-planned "crossfire", unless he gives a false statement accusing Mr. Shahidul of involving in Mr. Altaf's murder. Mr. Badrul finally gave the false statement against Mr. Shahidul fearing for his life.

It is alleged that at around 2:00am on 2 February 2007, the army handed over Mr. Badrul to Inspector Mr. Haripado Bishwas of the Criminal Investigation Department (CID) of Satkhira district. Although this is not the office hours, the army officers also contacted First Class Magistrate Mr. Saidur Rahman to come to the court and record Mr. Badrul's "confessional statement" under section 164 of the Code of Criminal Procedure. The magistrate then came to his office room of the Deputy Commissioner cum Magistrate's Court building at around early hours at 2:00am and recorded Badrul's statement by 3:45pm.

According to the magistrate court's administrators, on February 6, Mr. Shahidul was "shown arrest" in the Altaf murder case with an order signed by a magistrate of the



Magistrate's Cognizance Court-Ga Area, which was issued based on "confessional statement" of Mr. Badrul. The decision of "shown arrest" of Mr. Shahidul was only disclosed on February 7 but strangely the court order's signed date is February 6 (the paper carries the wrong date of 16-2-2007 by mistake).

However, interestingly, on February 2, the Investigation Officer (IO) of the said murder case, CID Inspector Mr. Haripado Bishwas, submitted a remand prayer, which is also signed on 6 February 2007, in advance before a magistrate seeking 7-day police remand of Mr. Shahidul for an inquiry. It should be noted that based on the court arrest order dated 6 February 2007, Mr. Shahidul was not under arrest relating to the said murder case till February 6. According to the legal procedure, the police can only apply for taking Mr. Shahidul in their remand after February 6 because the court order document shows that the magistrate signed the arrest order on February 6.

The certificated copy of the court documents shows that on February 6 the magistrate signed on both the papers: the custody warrant (shown arrest) order sheet and the remand prayer of the police both dated on 6 February 2007. However, we suspect that the magistrate might have signed on both papers on February 2.

Meanwhile, the hearing on the remand prayer officially held at the Magistrate Cognizance Court-Ga Area on February 7 and the magistrate later decided to hear the police's remand prayer after Mr. Shahidul's 30-day detention is over. Mr. Shahidul was not produced before court at this time.

The irregularities of the court documents and unusual police action are extremely confusing. While the custody warrant of Mr. Shahidul shows that the magistrate signed the order on February 6 (or 16) but the police unusually moved Mr. Shahidul's remand prayer on February 2, four days before Mr. Shahidul was under arrest in this murder case. This has been a proof of distortion of the truth and fabrication. This, together with the unlawful and unusual actions of the magistrate and the police clearly indicates that all these things were set up and coordinated by the army to justify their illegal arrest and detention of Mr. Shahidul.

On February 8, Mr. Shahidul's lawyer Advocate Mr. M Shah Alam lodged a petition seeking bail for the victim before the Magistrate's Cognizance Court-Ga Area of Satkhira. However, the Second Class Magistrate Mr. Zahid Hassan rejected the bail prayer. The lawyers then filed a Criminal Miss case (case no. 126/2007) with the Session Judge's Court of Satkhira on 14 February 2007. The next hearing for bail application is fixed for 6 March 2007.

Meanwhile, the Magistrate Court refused to supply the certified copy of Mr. Badrul's statement to Mr. Shahidul's lawyers. Advocate Mr. M Shah Alam, the General Secretary of the Satkhira District Bar Association, applied three times separately on February 7, 8 and 11 seeking the certified copies of the First Information Report (FIR) of the murder case that Mr. Shahidul was implicated with, the copy of Mr. Badrul Alam's statement, the copy of the "shown arrest" order and the copy of the remand prayer by the IO of the



murder case. On February 11, Third Class Magistrate of Satkhira Magistrate Court Record Section, Mr. Manjurul Islam, approved all the papers to be provided to the lawyers except the copy of Mr. Badrul's statement and the lawyers received those copies on February 13.

Mr. Shahidul's relatives claim that the deceased Mr. Altaf's family alleges that the former Member of Parliament elected from Satkhira-1 constituency, Mr. Habibul Islam Habib, was directly involved in the killing of Mr. Altaf. In fact, Mr. Altaf's family openly claimed this allegation in their written statements in two press conferences held in Varsa village under Patkelghata police station in Satkhira district separately held on 2 and 6 November in 2006.

They further claimed that the political leaders and the police managed one Mr. Abdur Rahman, who is known as "Goru Chor (cattle thief)" in the area, to lodge the murder case of MR. Altaf with the Tala police station, while the family received death threats from the armed cadres of the former MP Mr. Habib to pressure them not to lodge a case against the real murderer.

Meanwhile, Mr. Shahidul's elder brother Mr. Nazrul Islam lodged a writ petition with a High Court Division Bench on 31 January 2007 challenging his brother's arrest and detention. The judges of the Bench then issued a rule nisi and directed the concerned authority to explain why the arrest of Mr. Shahidul shall not be declared unlawful within two weeks time. However, the concerned authority has not furnished the required explanation before High Court to date although the deadline of submission was expired on February 13.

Mr. Shahidul is currently warded in a private hospital in Dhaka after having been released from the prison after his prolonged arbitrary detention without any reason as well as a protracted legal battle in the lower and higher courts.

There is no explanation from the government as to why the magistrate became so serious as to need to record Mr. Badrul Alam's "confessional statement" in early hours (at 2:00am) in relation to a murder case that occurred more than two years ago. Such an unusual action was taken by the magistrate; while the former MP Mr. Habibul Islam Habib was never arrested, despite the open accusation from the deceased man's family. Two separate written statements of the family were not recorded by the police and judicial authorities.

Furthermore, the magistrate's refusal to supply a certified copy of the "confessional statement" made by Mr. Badrul Alam to Mr. Shahidul's lawyers without any explanations violates Mr. Shahidul's fundamental rights.

Meanwhile, no investigation has been made and no one has been arrested so far relating to the alleged torture of Mr. Shahidul.

**The lack of truly independent courts:**



In Bangladesh it has been little more than a formality for the Home Ministry to have the courts release persons from prosecution on the grounds that the cases have been politically motivated. For instance, the brother of a government minister escaped prosecution over a series of bomb blasts that occurred in 1998. After a similar order the Home Ministry had no hesitation in deciding itself qualified to adjudicate these cases on behalf of the courts, which are compliant with its wishes and are not independent. In this manner, justice is mocked and political expediency reigns supreme.

The manner in which the Home Ministry chooses to withdraw cases against its people suggests that either it itself does not have any faith in the judicial system, or it is harbouring killers. If it did, and the accused in these cases were truly innocent, then surely it could let a trial run its course and see the accused redeemed before the law and the country through full proceedings. Instead, by acquitting them itself it sends a message to the country that the courts cannot be trusted to make a reliable decision. The only other conclusion that can be reached about this behaviour is that the accused persons in these cases are in fact guilty and the purpose of withdrawing charges against them is to free them from legitimate punishment. The message sent in this case is that anyone with ruling party connections is guaranteed impunity. In either case, judges and the judiciary are severely discredited.

The same concerns arise with regard to the police and public prosecutors. All of the accused that have been released as above were charged following criminal investigations. Were the police investigators also politically motivated? Can their investigations be trusted? If the Home Ministry is so confident that the charges were brought without any basis, what action will then be taken regarding those who carried out the investigations? And what can be said of the public prosecution each time a case such as this is withdrawn, other than that it is an open humiliation concerning its role and personnel? Again, the ordinary person will be forgiven for lacking confidence in these institutions when they are rubbished by the government itself.

It takes considerable time and money for an ordinary person to get a case lodged in a court. One reason for this is to prevent frivolous complaints. In Bangladesh, it takes relatively more time and money than in other countries. The families of victims felt that there were charges to be answered against those accused who have now been acquitted by the Home Ministry. They have seen their time and money wasted due to the politicised condition of the country's courts. They may now themselves be subjected to attacks for having filed their complaints. Frustrated and hounded, they are left with less and less hope for justice each passing day.

The separation of powers has just taken place in Bangladesh, on 1 November 2007. The notion of independent courts has been unknown to the people of Bangladesh so far. There is in its stead the notion that courts are an asset of the State, and specifically, whichever party is in power at the time. Faith in the system will only be restored over time if a concerted effort is made to establish a certain mindset among the judges, prosecutors,



investigators, lawyers and staff of the concerned offices by separating the courts from the government ministries, and therefore, from the clutches of the political parties.

The judiciary in Bangladesh must be completely reformed through removal of the culture of politically biased recruitments of judges, prosecutors and related officials, who are substandard in quality at present.

There is no independent prosecution department or attorney service in Bangladesh. The Ministry of Law, Justice and Parliamentary Affairs appoints prosecutors on a temporary basis following politically motivated decisions by ruling party leaders and law-makers. This is known as a disposable prosecution system, which contributes nothing to the nation's next generation. The prosecutors come with zero experience and leave the same way from office, and in many cases, create a number of problems as a result of corruption and ignorance.

Criminal investigations in the country are performed by the police without any credibility. The same person works as protocol officer, an on-duty officer in the police station, controlling mobs and beating persons whenever possible, and investigates cases of criminal offences without having specialized training, knowledge, skills or time. Moreover, the police are for the most part corrupt. Such faulty, inefficient and corrupt policing is a great obstacle to justice, regardless of the quality of the judiciary.

### **The role of the higher courts:**

The role of the Supreme Court, especially that of the Chief Justice's, have significantly increased in Bangladesh since the subordinate courts were separated from the executive on 1 November 2007. The Judicial Service Commission headed by the Chief Justice is to control judicial matters, which requires drastic changes in order to reinstate public faith in the judiciary.

In reality, the concerned people and the professionals are not completely convinced with the role of apex court of the country. On one hand, it is true that the Supreme Court played a strong role in order to ensure the separation of the judiciary since December 1999 by declaring 12-point directives aimed at the government as part of the verdict handed out concerning the famous Masdar Hossain case.

Besides, in several public meetings the present Chief Justice admitted that massive harm had already been done to the top-most judiciary for which the nation will likely feel the repercussions for more than two decades. However, the Chief Justice did not take the problem to the Supreme Judicial Council to assess and address the problem. Moreover, according to an admission made by the Chief Justice in public that "Some points of laws are being relaxed for some people and made tougher for some others. As a result, what verdict a judge delivers on a point today gets changed the next day." This is a very bad picture of the country's apex judicial body.



The lengthy process of hearings as well as the inefficiency of judges and the Attorney General causes major barriers for persons seeking justice. The High Court Division Benches and the Appellate Division of the Supreme Court spent several months hearing a few writ petitions, and issuing rulings upon the concerned departments of the government, of which all complainants were influential political or business leaders of the country.

Due to the established corruption in the offices of the courts, especially the offices of the bench clerks, the Attorney General's department and record offices, and the high fees of the Supreme Court Bar Association's practicing lawyers, poor victims cannot hope to seek redress from the High Court Division Benches of the Supreme Court in Bangladesh. Ultimately, the have-nots remain unable to seeking justice in the country.

### **The establishment of a National Human Rights Commission- a smoke screen:**

Bangladesh has no National Human Rights Commission, although the government has formed a committee comprising bureaucrats to draft a concept paper concerning the establishment of such a Commission, but nine months have passed without any news of progress by this committee. The government of Bangladesh has been promising its citizens and the international community that it will establish a National Human Rights Commission in the country for some 17 years now, without any actual progress.

On 19 March 2007, Bangladesh's present government has "in principle decided to establish a National Human Rights Commission in the country". This was announced during a regular weekly meeting of the Advisory Council which was chaired by Chief Adviser Dr. Fakhruddin Ahmed. Following a proposal by the Foreign Affairs Ministry, the Advisory Council approved the proposal in principal. A committee was reportedly formed headed by the Cabinet Division Secretary comprising representatives from the Ministries of Law, Home and Foreign Affairs. This committee was supposed to look at the human rights commissions in South Asia to sketch a possible structure and guidelines of the proposed Commission and would take suggestions from representatives from civil society. Following the announcement, it was also recalled that the formation of a national human rights commission was one of the election pledges made in part by the past government. A similar committee had been formed on 10 December 2001. A final draft was then sent to the Cabinet Division on January 23, 2003; however, it had been shelved at the ministry since the Cabinet sent it back on January 29, 2003.

Although the government had put the idea on hold for several years, the announcement was a welcome message to everyone concerned about human rights issues in Bangladesh. At the same time, this "in principle decision of the formation of a national human rights commission" has been commissioned by a government which was born within a State of Emergency, when all fundamental human rights remain under suspension; law-enforcement in the country has been militarised; deaths in custody, extra-judicial killings and brutal torture cases have occurred almost everyday, while arbitrary arrests, detentions and denial of justice, including to human rights defenders, have become a very common phenomenon. Naturally, one question arises, what is the real "principle" behind the



government's motivation? There are also supplementary questions such as whether the government is only going to make a toothless national human rights commission, whose "principles" are contradicted and ridiculed by human rights violations that go unchecked? In the past, the international community has observed that there is a gulf between the pledges and practices of governments of Bangladesh.

In addition, the committee appointed to design the structure and guidelines of the commission is another surprise. An influential bureaucrat assisted by three others has been given the task of setting up the human rights commission. These bureaucrats are often more concerned with keeping their jobs than ensuring an effective service to the citizens of the country. There is not much hope that such a committee will lead to the creation of an effective system.

According to the Bangladeshi system, all of these bureaucrats have worked as magistrates in the early years of their careers. What was their role and records as such that can qualify them to understand human rights? How much have they contribute to the protection and promotion of human rights? It is a very serious concern that this commission may be nothing more than another bureaucratic mechanism that acts like a toothless tiger.

Moreover, human rights commissions in South Asia are not shining examples of human rights bodies. Although it is not bad to learn from your neighbours' experiences in combating human rights violations, the government must consider how much benefit the people of South Asia received from their nations' human rights commissions. Despite the existence of the national human rights commissions in several countries, the culture of impunity is deeply rooted there, much as it is in Bangladesh.

The Asian Human Rights Commission (AHRC) therefore urges the Bangladeshi authorities to involve human rights defenders working at the national and grass-roots level as well as victims of brutal human rights abuses in the committee, so that the real problems of human rights and the needs of the people are adequately reflected in its recommendations. The Bangladeshi authorities must clarify their level of commitment to human rights, especially since rampant human rights violations are occurring during the current State of Emergency. Useless human rights commissions can only bring about further frustration amongst the victims of human rights violations and undermine the government's credibility.

### **No place left for redress and reparations for the victims of torture:**

Victims of torture and gross human rights abuses have no place to go. The police stations of the country do not register complaints of torture at the hands of other law-enforcers even though their offices are responsible and legally obliged to record these.

At present, police officers from among the perpetrators are usually assigned for the investigation into a case in order to ensure that the complaint appears as a "false allegation" against "reputed officers of the government". In the event that any court is kind enough to order a judicial probe it will result in nothing but a farcical report - with



the ultimate intention of saving the perpetrator, as the magistrates and the police are colleagues . In this manner the doors to justice are closed on victims of torture.

This brings about the destruction of faith in the justice system and victims and their family become financially exhausted by the burden of attempted actions. They are socially stigmatised for the brutal humiliation at the hands of the law-enforcers. Victims of torture not only become physically and psychologically handicapped in most cases, but also their families as well as themselves become isolated from society as people are reluctant to mix with them .

Nobody sees the law-enforcers as an assisting force to uphold the law. Instead they are seen as perpetrators of gross human rights abuses. The people’s faith in the judicial system has disappeared. As a result, the common people avoid the police and the courts in order to avoid further harassment by the “licensed terrorists” of the country, as the police are known.

The AHRC has learned of these matters through a large number of cases documented in Bangladesh. The authorities in Bangladesh promise and pledge rather than taking any effecting measures to address the human rights abuse issues.

Ultimately, the poor and helpless victims of the human rights abuses are completely deprived of their right to seek redress and reparations from any institutions in Bangladesh.

### **Recommendations:**

The Asian Legal Resource Centre (ALRC), a sister organization of the Asian Human Rights Commission (AHRC), in its written submissions in February and September, urged the UN Human Rights Council to call on the Bangladeshi authorities to withdraw the State of Emergency from the country immediately. The Council was also urged to insist that the country reinstate the fundamental rights of its citizens, as enshrined in the Constitution of Bangladesh, as well as the international human rights instruments to which the country is party. Arbitrarily arrested citizens should be immediately released. Adequate compensation must be provided to victims of arbitrary arrests and detention, and all reports of torture and extra-judicial killings must be fully investigated and punishment and reparation must be provided in compliance with international human rights laws and standards. All laws that run contrary to the enjoyment of rights, such as the Emergency Powers Ordinance-2007, the Emergency Powers Rules-2007 and the Special Powers Act-1974 must be repealed without delay.

The AHRC also recommends that an independent and effective national human rights institution be established in Bangladesh, which would mandated with receiving complaints, conducting investigations and providing redress to victims of human rights abuses. This system should supplement the criminal justice system rather than replacing it, and legislation criminalising torture should be promulgated without delay to strengthen this system. As a member of the Human Rights Council, Bangladesh is urged to issue



standing invitations to all the Special Procedures' mandates, especially mandates dealing with arbitrary arrests and detention, with torture and with extra-judicial killings. The ALRC also urges the Office of the Secretary General of the United Nations and the Human Rights Council to take all measures necessary to ensure the increased monitoring of the situation in the country, as they are so far failing to address a deepening crisis. Bangladesh is clearly becoming a serious embarrassment to the Human Rights Council, as it is flouting every acceptable norm and standard while occupying a position on the Council. The question is, does the Council have the ability to take any credible action against its members or will membership on the Council equate with immunity for even very grave rights violators?

The Asian Human Rights Commission welcomes the announcement of the formal separation of the lower judiciary from ministries in Bangladesh, being among the organisations who have for some time pushed for this step. However, it shares the concerns of lawyers and others in Bangladesh that there remains a long way to go until the country's judiciary is made properly independent. It is the hard work towards this end that must now begin. Among the next steps must be the:

1. Establishing of a separate secretariat with sufficient funds and personnel for the Judicial Service Commission;
2. Drafting and implementation of a clear and well-defined plan for the amended Rules on the Code of Criminal Procedure;
3. Swift appointment of new judicial magistrates to criminal courts around the country;
4. Further action to depoliticise the public prosecution department, which has in Bangladesh for years kept the rule of law at bay in collusion with the magistracy.

The Asian Human Rights Commission also urges all legal and related professionals to concentrate their efforts on the desperately-needed reforms to the criminal justice system in order to ensure that the people of Bangladesh may at last enjoy some of the rights that they have so long been promised.