



THE STATE OF HUMAN RIGHTS IN BANGLADESH - 2008

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RIGHTS VOID RESULTING FROM INSIDIOUS MILITARISATION AND AN ILLEGAL EMERGENCY

INTRODUCTION

Bangladesh has struggled with poverty, environmental disasters, deeply entrenched corruption and a range of grave human rights violations since its independence in 1971. The lack of an independent judiciary has engendered a culture of impunity, which in turn increases the demoralization and fear in which those without power live. Furthermore, there is little interest at the international level for the plight of Bangladesh's population, with the United Nations Human Rights Council, in which Bangladesh holds membership, remaining all too silent in the face of grave and widespread abuses.

Illegal arrests, arbitrary detention, ill-treatment and torture in police custody are commonplace and constitute the means through which the authorities exert their control. Torture and ill-treatment are a core component of interrogation and criminal investigation. The police routinely abuse their power to extract money and "confessions" from detainees by using force while a person is in their custody. The fabrication of charges against detained persons is also used to threaten and punish persons. This is enabled by the lack of institutional checks and balances, notably as concerns the judiciary. Colonial-legacy laws and institutions are at the root of many problems, but the failure by the authorities to reform these, compounded by their willingness to abuse the powers granted as a result, make for an incendiary combination.

The country has never had an independent judiciary; it has had a disposable prosecution, with many members of the judiciary being replaced each time of one of the two main competing political parties comes to power. The justice system, as is the case with the police and other State institutions, is used as a weapon by the group in power against the other, with the people of Bangladesh caught in the crossfire. In September 2008, the authorities announced the establishment of a National Human Rights Commission (NHRC). In reality, the top three appointments of the NHRC, including its Chairperson and two members, were only made in late November. The institution lacks staff, other than a few bureaucrats who have been assigned to it, and, in addition, the law establishing the commission does not allow the body to function effectively and competently. Ultimately, there is no competent institution in the country that is functioning to provide redress to the victims of human rights abuses.

The country began its three-year membership as a founding member of the UN's Human Rights Council (HRC) in June 2006. However, during this period, human rights have been seriously undermined in the country. In 2008, the human rights situation in the country has degraded to a new low due to an ongoing unjustifiable and unconstitutional state of emergency, which has enabled the military to gain a strangled-hold on power and the further subjugation of individuals' rights. Under the state of emergency, fundamental rights have been suspended; mass arrests have taken place, with thousands having been subjected to ill-treatment or torture; and the pervasive militarization of State institutions leaves Bangladesh on the verge of absolute military control. The state of emergency was actually imposed on January 11, 2007, and has caused a significant decline in the human rights situation throughout 2007 and 2008.



The country is party to six major international human rights instruments,¹ but its implementation of the rights enshrined therein remains superficial and the victims of violations of these rights have virtually no access to remedies at the domestic level. For example, the country is party to the ICCPR, but has extrajudicially violated the right to life of hundreds of persons in recent years, with impunity. It has arbitrarily deprived hundreds of thousands of persons of their right to liberty. It is party to the Convention Against Torture, but torture remains endemic and perpetrators go unpunished.

Prior to its election to the HRC, Bangladesh pledged to protect and promote fundamental rights, but has since suspended many of these rights and violated many more.² It pledged to separate the judiciary from the executive, but it has, in reality, consolidated the executive's control. To promote its election bid, it cited constitutional guarantees, among them equality before the law, protection of life and liberty, and the freedoms of speech, assembly and association, but has since violated all of these rights on a grand scale and has severely undermined the constitution through the unjustifiable state of emergency, accompanied by illegal laws and actions.

The emergency has provided an opportunity for the military to consolidate its power and control in the country. For example, the National Coordinating Committee (NCC) was formed comprising senior generals of the army and several top officials. This included of a retired general occupying the position of adviser to the government. In this role, the retired general in question decides which allegations of corruption against politicians and businessmen will be filed and who will be charged. The NCC, which exercises supreme authority over all other institutions of the country regarding corruption cases, was established without any legal provisions enabling it to take up this role. In this way, the NCC illegally superseded the Anti Corruption Commission (ACC), which is the legally-mandated body concerned with fighting corruption in the country.

The armed forces remain deployed across the country. Military officers have insidiously taken up roles in the civil administration, diplomatic offices and at the local level. The whole nation, from the local operational administration to the national policy-making levels, is now under the grip of the armed forces. The development activities of all sectors of public administration have been curtailed. The justice delivery system has effectively collapsed, notably concerning any illegal actions perpetrated by the armed forces during their crackdown on the population.

The police and paramilitary forces such as the Rapid Action Battalion have also been responsible for abusing human rights on a grand scale. Illegal arrests, arbitrary detention, fabrication of charges against detainees being held under emergency laws, denial of judicial remedy, torture, ill-treatment and extrajudicial killings of persons while in custody have increased during the state of emergency. The long-standing problem of overcrowding in prisons has also worsened.

The Ministry of Home Affairs, the Anti-Corruption Commission and the National Coordination Committee, have ordered massive arbitrary arrests and detentions. Criminal charges have been lodged against many of these persons, including around 200 politicians and heads of business institutions. Special Tribunals have been set up to prosecute persons targeted by the authorities, which are evidently incapable of providing public access and fair trials.

1 Bangladesh is party to the ICCPR the: International Convention on Civil and Political Rights (ICCPR), Convention Against Torture (CAT), Convention on the Elimination of Discrimination Against Women (CEDAW), Convention on the Elimination of Racial Discrimination (CERD), the Convention on Economic, Social and Cultural Rights (CESCR), the Convention on the Rights of the Child (CRC), and the latter's two option protocols.

2 Please see Bangladesh's pledges at: <http://www.un.org/ga/60/elect/hrc/bangladesh.pdf>



Conversely, extra-constitutional bodies, such as the Truth and Accountability Commission, have been established to provide clemency to persons that the government is seeking to protect from prosecution.

Furthermore, in 2008 the higher judiciary created controversy by abdicating its inherent constitutional power to provide legal remedies concerning cases lodged by the State under the emergency instruments. Judicial standards and the rule of law have repeatedly been undermined as the result of the releases of high-profile political persons through executive order that bypass the courts.

The freedoms of expression and opinion have repeatedly been denied, notably for journalists and human rights defenders. The media has been monitored by the intelligence agencies and the armed forces, censoring any news and opinions critical of the actions of the government.

THE FAILURE OF THE INSTITUTIONS OF THE RULE OF LAW

The chronic human rights problems that are encountered in Bangladesh stem from the failings in the institutions that are meant to protect the country's citizens and instead contribute to their repression. On the front line between the State and the people is the police force, which in Bangladesh is corrupt, violent and undermines rather than enables the rule of law.

THE POLICE

The members of Bangladesh's police force are notorious for abusing their power in order to earn money. At the local level, the police regularly illegally arrest individuals without any specific complaint, justification or legal basis. The motive is to extract money from the detained persons or their relatives, who often, ironically, belong to the poorest sectors of society. Such persons are subjected to threats and ill-treatment during arrest. At the police station the police officers demand bribes, which are typically beyond the capacity of the arrested persons. Failure to pay typically results in severe ill-treatment or torture. Such abuses are not the exception but the rule.

Ill-treatment and torture are not the end of the victims' suffering, but rather can be the beginning of a process of abuse. Beyond physical abuse, the police use intimidation and threaten to implicate arrested persons in pending cases or fabricated charges concerning serious crimes, if the bribes are not paid. In case of partial payment, the police use torture to compel the person to pay more. If the person survives this and his relatives manage to get more money to the police as well as the intervention of persons in a position of power, they may produce the person before a Magistrate's Court on the basis of a minor offence, such as theft.

In many incidents, however, the police implicate innocent persons in pending serious cases, including robbery, murder, and possession of illegal arms or drugs. If there is considerable and irresistible pressure exerted by influential political groups or members of locally well-known rich families, the arrested person may be produced before a Magistrate's Court under Section 54 of the Code of Criminal Procedure-1898, which allows the police to arrest people on suspicion. This can enable the arrested person to secure release more easily than if charged directly with a serious offence. At best, the person may be released from the



police station without any valid records of the incident, with the victims having been forced sign blank papers ensuring impunity for those responsible.

The police abuse the powers to arrest granted to them under Section 54 of the Code of Criminal Procedure-1898. In most cases, the police officers appeal to the Magistrate's Court seeking a person's remand under Section 167 of the Code with the intention of detaining people to extract bribes by applying torture, ill-treatment and intimidation. The same police that conduct criminal investigations handle the prosecution in the Magistrates' Courts. Magistrates generally grant the remand applications.

The police investigators interrogate the alleged accused persons under Section 161 of the Code of Criminal Procedure-1898. This is one of the most abused clauses of the law, under which the police routinely pressurize the detainees to give confessional statements. The police also intimidate the suspects to deliver a prescribed statement before the Magistrate, when the Magistrate officially records statements under Section 164 of the Code. In such prescribed statements the police implicate various persons, often arbitrarily and at the behest of those whose interests they serve.

At each step in the criminal investigation the police officers compel those involved to pay bribes. A police Sub Inspector, who was assigned as an Investigation Officer in Narsingdi district told the Asian Human Rights Commission, *"I was asked to recover a dead body from some submerged land at around 10 o'clock in the night. The place was around 10 kilometers away from the police station. I went to the scene of crime on my personal motorbike. I found the decomposed body floating on the water. Nobody could go close to the body due to the bad smell. I called some local people to help me to recover the body. Everyone was avoiding me. Then, I shouted at the villagers that if they do not come to help me, I would fabricate cases against all of them. After the threat a few people came and I was able to send the dead body to the Narsingdi district hospital for a post-mortem by rickshaw. All together I had to spend around Taka 1200.00 for transportation and other related costs like buying a mat to cover the dead body."* When the police officer was asked who paid the money? He replied, *"The complainant of the case!"* The policeman added, *"I cannot pay money from my pocket. The government does not pay us sufficiently for accomplishing our official works. The authorities do not allocate an adequate budget for the fuel of our official car let alone my personal motorbike. The investigation officer has to buy paper and pen with his own money. So, we extract money from the parties involved in the cases. That's the way!"*

Recently, the police have increased the use of extra-judicial killings and threats of such killings as an extreme form of extracting money from citizens. The hundred of extra-judicial killings carried out with impunity by the Rapid Action Battalion have likely inspired this practice. An example of how this works is as follows: a man is arrested and accused of alleged involvement in a criminal gang or underground political party. The police threaten to kill him and cover it up by making it look like he was killed in a crossfire incident unless a significant bribe is paid. Insufficient payment leads to the man being killed.

By forcing victims to sign blank papers, the perpetrators of these abuses ensure they are protected from any legal proceedings initiated by the detainee. In many cases, especially in those involving the RAB, impressions of fingers and palms are taken in order to manipulate evidence against the detainees. Such methods are also used to ensure the continuing intimidation of victims of abuse, leading to very few complaints being registered.

Corruption in the police is multi-faceted. For example, a young man (whose identity shall not be disclosed here for security reasons) told the AHRC that his family had become worried about the security of his niece following sexual harassment that she had been subjected to on a regular basis. He went to the local police station to lodge a complaint out of concern for the security of his niece. At the police station he met a Sub Inspector and wished to lodge a complaint against the alleged perpetrators. In response, the police officer



discouraged him from recording a complaint and offered to help him personally saying: "Just give me 20,000 Taka and the name, address of the culprit with photo, if possible; removing my uniform I'll wear a plain cloth, take a gun and finish (kill) the bastard within few days!" - 20,000Taka is equivalent to around US\$ 290.

Local feudal leaders can effectively use the police as hired guns to do their bidding, further their business interests or settle conflicts with rival persons or communities. The police can also withdraw their support from a particular person or group if they receive a larger amount of money from elsewhere, ensuring that law-enforcement in the country is nothing more than a mercenary force, working for the interests of the richest and most powerful. These arrangements particularly penalize groups from ethnic or religious minorities. There are numerous examples of the police intervening in land dispute cases upon receiving bribes from locally influential groups, and suppressing the poor or minority groups involved, despite the fact that there have been cases pending before local civil courts concerning which there had been orders for the maintenance of the status quo.

Example 1

For example, a local revenue office in Khulna district leased land to Mr. Mokbul Hawladar in the Paikgachha Upazilla in 2007. Mokbul started a shrimp farm there. His neighbor Mr. Al-Amin, an owner of similar farm, wanted the land. As part of the plan to oust Mokbul from the land, Al-Amin and his fellow persons caused damage to Mokbul's farm. Arbitration, involving the representatives of the local government officials, did not solve the problem. Mokbul lodged complaint (case number: CR318/07) to the Magistrate's Cognizance Court of Paikgachha. The Magistrate, when Al-Amin refuse to appear before the Court, ordered Al-Amin's arrest. He was detained in Khulna District Jail. Al-Amin threatened that when he was bailed out, he would solve the problem through arbitration involving the local elites and public representatives.

Following his release on bail, Al-Amin reportedly paid bribes to the Paikgachha police and they jointly prepared a draft complaint against Mokbul. This was used to intimidate Mokbul to hand over the land. Sub Inspector (SI) Mr. Manjurul Alam signed a notice using the official rubber stamp of the Paikgachha police station summoning Mokbul along with his family to appear at the station at 4pm on February 17, 2008. Mokbul complied, along with his wife Mrs. Abirun Nesa, son Mr. Robiul Hawladar and a Member of the local Union Council, Mr. Ahendra. When they arrived at the police station, SI Manjurul changed the date to 24 February and told Mokbul to come back then.

When he returned, as requested, along with his daughter Ms. Rawshan Ara, who had also been summoned by SI Manjurul and a friend, Mr. Shahed Ali Mollik, SI Manjurul instructed him to measure the land and report to him before 5pm on March 29. On that day Mokbul provided the details of the land to SI Manjurul, who insisted that he surrender possession of the land to Mr. Al-Amin and take Taka 4,000 (around USD 59) from him. Mokbul and his relatives refused SI Manjurul's instruction as there was no lawful ground for doing so and left the police station.

On March 31, Mokbul, along with his family, went to the Paikgachha Surgical Clinic in order to visit one of their relatives who was undergoing treatment there. Hearing this from Al-Amin, SI Manjurul along with other police constables arbitrarily arrested Mokbul at about 11am from the clinic. The police detained Mokbul in their custody until midnight. SI Manjurul intimidated him during detention and told him that he would be implicated in fabricated cases of robbery and



extortion unless he gave the land to Al-Amin. A number of the local professionals, who went to the police station, urged SI Manjurul to release Mokbul as there was no charge against him; however, the police officer refused to release Mokbul unless the land issue was settled with Al-Amin. At around 11pm Mokbul's friend Shahed Ali brought the matter to the notice of the Officer-in-Charge (OC) Mr. Ali Hashem Khan. Following pressure from the local elites, he ordered SI Manjurul to release Mokbul. SI Manjurul did so after taking his signature on a blank sheet of paper.

Since these events, SI Manjurul has continued to intimidate Mokbul's family, insisting that they follow his instructions and give the land to Al-Amin. No action has been taken against those responsible.

Example 2

In another case, the same members of police favoured another group of influential people against the members of a Hindu community in a land dispute in Salubunia village, despite the fact that a Court had declared an injunction to maintain status quo. On receiving bribes from one Mr. Abdul Hamid Sardar the Paikgachha police arrested Mr. Dilip Kumar Dhali and Mr. Sujan Kumar Dhali, when they participated in a protest against the partisan role of the police regarding the disputed land. After their arrest, the police threatened to implicate them in cases of robbery and extortion unless they paid bribes to the police. Due to the intimidation, their relatives borrowed money from different people and paid Taka 17,000.00 (USD 250) to the police. The arrestees claim that the police released them without recording their arrest but forced them to sign blank papers and warned them not to make any trouble for Mr. Abdul Hamid Sardar, who leads the other party to the dispute. The police repeatedly intimidated the members of the Hindu community, who had been taking legal action against Mr. Abdul Hamid Sardar and his allies in the land dispute. As a result, the community's men were forced into hiding to avoid arbitrary arrest and detention. On February 22, 2008, the police sent SI Mr. Manjurul along with constables to the disputed land in order to construct a building. A group of women who objected to the police, reminding the officer about the court injunction, were beaten by the police. Three women - Mrs. Arati Rani Dhali, Ms. Devi Rani Dhali and Ms. Tripti Rani Dhali - were seriously injured as a result.

Political interference in the work of the police is another factor that prevents it from functioning as envisioned. In an official workshop held in late 2007, the Commissioner of the Dhaka Metropolitan Police (DMP) accused politicians of exerting unwarranted influence and pressure on the police administration, jeopardizing its freedom. He also stated that the main cause of harassment by the police is the decades-old absence of rules, for which the police is not responsible. The officer also observed that one of the main causes of public harassment by the police results from the appointment of inefficient persons as police officers. The Commissioner further admitted that professional inefficiency and lack of knowledge within the police department made things worse and that the police sometimes arrest people without reason, and



they intimidate innocent persons with arrest and abuse of law, particularly Section 54 of the Code of Criminal Procedure 1898 and the DMP Ordinance 1976.³

Such interference is indeed a major contributing factor to the breakdown of policing in the country, and is not limited to high profile cases. In fact, the police force makes use of this interference as an additional source for corruption and is therefore open to it being used in even petty cases.

In 2004, the UNDP, in collaboration with DFID and the Government of Bangladesh, initiated a US\$ 13,380,953 project called the "Police Reforms Programme" (PRP). The PRP "aims at improving the efficiency and effectiveness of the Bangladesh Police by supporting key areas of access to justice; including crime prevention, investigations, police operations and prosecutions; human resource management and training; and future directions, strategic capacity and oversight".

According to the reported information on the programme's website, it "complements other initiatives for reform in the broader justice sector and is designed to assist Bangladesh Police to improve performance and professionalism consistent with broader government objectives. Support to a functioning, accessible and transparent criminal justice system, institutions and services (including legal aid) means that poor people and other disadvantaged groups have protection, representation and recourse to hold the resource-rich accountable for commitments services included in the MDGs and their targets".

In the rationale of the PRP, it was mentioned that "an accountable, transparent and efficient policing service in Bangladesh is essential for the safety and well being of all citizens, national stability and longer-term growth and development, particularly the creation of a secure environment which is conducive to consumer and investor confidence. The Needs Assessment Report clearly outlines the rationale for a PRP to support the Bangladesh Police. In summary:

- *Significant problems exist with law and order, corruption, rule of law and access to justice in Bangladesh, and these issues adversely impact on the poor and vulnerable especially women and young people;*
- *The problems are so profound that they have serious implications for the social and economic well being of Bangladesh; and*
- *The police alone cannot solve these problems and need to work in close collaboration with the Ministry of Home Affairs, Government of Bangladesh, relevant Ministries, other agencies in the broader criminal justice sector, civil society and NGO and media, development partners and the community".*

The Ministry of Home Affairs is now proposing a bill to address the problems in policing in Bangladesh and there are concerns that the powers provided to the police under Sections 104 to 111 and the punishments proposed in Sections 129 and 130 could easily be abused. In spite of the provision of a Police Complaint Authority under Section 71 headed by a retired appellate division judge or a person having a high standing, and comprising four more persons, two of whom are to be retired police and civil officers, this system is unlikely to improve the situation concerning grave violations of rights. Complaints are to be dealt with as general complaints or serious complaints, but there is no definition concerning what these categories mean, which will leave room for the police officers to manipulate the complaints system.

³ Please see further details concerning this in an AHRC statement on January 3, 2008: <http://www.ahrchk.net/statements/mainfile.php/2008statements/1316/>



Under the PRP, the authorities declared a number of police stations as "Model Thana (police stations)" with the aim of "*demonstrating how pro-people policing can benefit the community and ensure their needs and expectations can be met. Personnel of this model Thanas will be gender inclusive and trained to enhance skill levels and prepare them to implement a more pro-people policing approach in their engagements with the local community. Standard Operation Procedure (SOP) would be developed for the model Thanas through workshops that are being held at each model Thana. People from various walks of life, government officers, representatives from various NGOs and local government department have been participating in the Model Thana workshop and contributing in preparation of SOP. Usually all model Thanas would be conducted following the SOP.*

To run the model Thanas effectively and efficiently logistic support such as vehicles, Motor Cycles, walkie-talkies, fax, computer systems, investigation kits, camera etc. are being provided. As per SOP regular training programme would be conducted to the model Thana officials".

In reality, the people's expectations have not been met. Abuses of power, the use of torture in custody, and the fabricating charges have not diminished as a result of the PRP. The Boalia Model Police Station in Rajshahi city is an example amongst many. The officers of the Boalia Model Police Station recorded a fabricated charge against Mr. Jahanagir Alam Akash, who is a journalist and human rights defender based in Rajshahi, following instructions by the Rapid Action Battalion (RAB) paramilitary force, which illegally arrested, detained and tortured Akash in 2007.

THE JUDICIARY

The above methods of abuse perpetrated by the law-enforcement agencies are enabled by the failure of checks on their powers and activities, notably as the result of a lack of an independent and functioning judiciary. Bangladesh has never had an independent judiciary. The judiciary, from the Supreme Court down, has been weakened through politically-motivated appointments made by successive regimes, in order to ensure that the judiciary acts in the interest of those in power. In its pledges to the HRC in 2006, Bangladesh promised to "separate the judiciary and the executive as soon as is feasible."⁴ Despite the directions of the Appellate Division of the Supreme Court on December 2, 1999, this has still not happened. Since the above pledge was made, the judiciary has instead been placed under greater control by the government, despite promises that it would separate the lower judiciary from the executive on November 1, 2007. The separation has been made on paper but not in reality.

After the separation of the Subordinate Judiciary from the executive it was expected that the judiciary would be better able to uphold the rule of law and to maintain equality amongst justice-seekers. However, since the official separation of the judiciary the reality has been disappointing, as exemplified by the following case.

Example 3

Following a protest demanding withdrawal of army camps from Dhaka University's campus

⁴ Please see Bangladesh's pledges at: <http://www.un.org/ga/60/elect/hrc/bangladesh.pdf>



after military brutality on students in August 2007, the government arrested four teachers and detained them in prison. The teachers were detained until January 22, 2008. The government spontaneously arranged a presidential mercy for the teachers, who were released on the same day, even though none of the convicted persons appealed for mercy to the President.

A judgment of the Speedy Tribunal No. 3 of Dhaka declared by Metropolitan Magistrate Mr. Md. Golam Rabbani on January 22, 2008, however, convicted three teachers from the University of Dhaka: Dr. Sadrul Amin, a Professor of English and President of Dhaka University Teachers' Association (DUTA); Dr. Md. Anwar Hossain, Professor and Dean of the Faculty of Biological Science as well as General Secretary of DUTA; and Dr. Harun-or-Rashid, Professor of Political Science and Dean of the Faculty of Social Science. These three teachers were imprisoned for two years for breaching Rule 3(1) and 3(4) of the Emergency Power Rules-2007, which prohibit meetings, processions and protests and assign punishment for these acts.

There were several glaring problems with this case. Firstly, the prosecution witnesses were all either public servants that had been forced by the military-controlled government to give depositions before the court or individuals influenced or intimidated by the government during the trial.

Secondly, the students and teachers involved in these incidents were prosecuted in three separate concurrent cases concerning the same event. However, under in Article 35(2) of the Constitution of Bangladesh, "No person shall be prosecuted and punished for the same offense more than once". In the first case, the police investigation report found that the allegation was not proven. In the second case, the teachers were acquitted by the Court after the trial. In the third case {No. 54, dated 23 August 2007} the teachers were sentenced to two years of rigorous imprisonment for breaching Rule 3(4) of the Emergency Power Rules-2007.

Furthermore, amongst a total of 26 prosecution witnesses only 12 persons made their depositions. Despite several inconsistencies amongst the depositions of different prosecution witnesses relating to the particular case, the Magistrate's Court convicted the academics.

The verdict was widely accused of being directed by the armed forces rather than being reached on the merit of the case. It is believed that this verdict was sought by the armed forces in order to create a deterrent against further action by students and teachers from Dhaka University, as it was feared that they may initiate a protest movement against the military-controlled government.

On February 25, 2008, the verdict of Magistrate Golam Rabbani was challenged by the Metropolitan Sessions Judge's Court of Dhaka who filed Criminal Appeal Case No. 106/2008, citing 16 specific grounds that required the Sessions Judge's Court to re-adjudicate the case. The appeal was still pending before the Metropolitan Sessions Judges Court of Dhaka at the time of writing.

Successive governments of Bangladesh have manipulated and rendered ineffective the criminal justice system by politicizing its institutions, notably through appointments of judges and magistrates. Selection and promotions of judicial officers depend on the interests of ministers and parliament members and the loyalty of the candidates to the incumbent regimes. This system undermines the establishment of justice



and favours those who pander to the wishes of those in power in the executive. In particular, judges and magistrates take care of the interests of lawyers belonging to the ruling parties as well as police officers working for them. This makes the prospect for victims seeking redress as the result of violations perpetrated by the police or those in power virtually impossible.

Bangladesh has three tiers of courts – the Supreme Court, Judge's Courts and Magistrate's Courts – with a long heritage of control by the executive branch over the judiciary. In October 2007, the government made a gazette notification that the Subordinate Judiciary – the Magistrate's Courts and the Courts of Sessions and District Judges – would be separated from November 1, 2007. The Supreme Court of Bangladesh, which is established according to the provisions of Articles 94 to 113 in Chapter I, Part VI of the country's Constitution, has retained some independence from the executive since the inception of the country. Chapter II of the Constitution describes the Subordinate Judiciary.

The Supreme Court of Bangladesh, the apex judiciary of the country, has two branches – the Appellate Division and the High Court Division. The High Court Division currently comprises around 72 judges, who serve in around 40 benches, including about 30 Division Benches comprising two judges and ten chaired by single judges. The Appellate Division comprises the Chief Justice, as the head of the whole judiciary of the nation, and six other judges. The Appellate Division Judges are elevated from the High Court Division. The Appellate Division comprises seven judges including the Chief Justice; however, there were two positions vacant in this branch during the second half of 2008.

In practice, prior to the separation of the judiciary on November 1, 2007, the Ministry of Law, Justice and Parliamentary Affairs had been recruiting judges to form a Judicial Cadre, through the Public Service Commission. All matters relating to judges, including their promotion, transfer, training and retirement, were under the control of the ministry. Working experience of ten years as a District and Sessions Judge makes a person eligible for a promotion to the High Court Division of the Supreme Court.

Magistrates have been recruited directly by the government and controlled by the Ministry of Establishment. The Magistrates' Courts have been operated under the Ministry of Home Affairs. Recruitment to the Supreme Court has been performed by the government through the Ministry of Law, Justice and Parliamentary Affairs. In practice, appointing or confirming judges in the High Court Division have been a political choice made by the incumbent regime. Following the separation of the judiciary from 1 November 2007, the Judicial Magistracy has officially been separated from the Ministry of Home. However, the same magistrates have been deputed or Assistant Judges have been transferred as Judicial Magistrates to fill up magisterial vacancies. There has been a fresh recruitment of around 200 magistrates since the separation.

There are frequent instances of arbitrary supersession concerning the appointment of Supreme Court judges in the Appellate Division and concerning the selection of a Chief Justice. The most recent instance was on May 25, 2008, regarding the appointment of Mr. M M Ruhul Amin as Chief Justice, superseding Justice Mohammad Fazlul Karim, who was the senior judge in the Appellate Division during this period and should therefore have been appointed Chief Justice. The Supreme Court Bar Association (SCBA) protested the supersession and abstained from its customary welcome to the new Chief Justice on the occasion of his assuming office.

The Supreme Court of Bangladesh has been divided in its rulings during the state of emergency, with the High Court Division ruling in line with the constitution and fundamental rights of persons detained under emergency powers, while the Appellate Division has stayed many of these orders upon requests by the Attorney General, thus violating individuals' rights.



Furthermore, there are allegations of military intervention in the proceedings of the Supreme Court. Senior Barrister, Mr. Rafique-ul Haque, publicly stated that an army major had been occupying a room on the second floor of the Supreme Court and had been deciding which case was to be heard by which judge. There has been no response to this allegation from the government or the armed forces.

THE PROSECUTION

Bangladesh effectively has a disposable prosecution service. Whenever a new government has taken over power, all prosecutors have been removed from their offices, and new ones have replaced them.

The prosecution system in every district consists of the posts of Public Prosecutor (PP), Government Pleader (GP) and Special Public Prosecutor (SPP). These law officers are accompanied by assistants, whose numbers vary depending on the number of courts they must cover and the size and population of the district.

There are no particular rules to appoint prosecutors in Bangladesh. The recruitment process is based on the political choice of the ruling political party of the day. Local parliamentarians, influential political leaders associated with the ruling party or bar association leaders with political affiliations, or perhaps all of these, make lists of lawyers to serve as prosecutors. They send these lists to the Ministry of Law, Justice and Parliamentary Affairs through the office of the local deputy commissioner, who is the *ex-officio* district magistrate, or directly to the ministry by 'selectors', depending on the extent of their power and influence. The government appoints prosecutors from among those recommended.

Younger and less-experienced lawyers seek appointment as prosecutors through personal and political channels. Those persons with the right connections can get one for free, but otherwise a down-payment, or at least a guarantee of suitable payments at a later date, is needed to secure a post. Prosecutors often have inadequate knowledge of law and experience in legal practice as a result, but have clear political affiliations. On the other hand, senior lawyers are reluctant to serve as prosecutors because of the lack of facilities and remuneration.

However, under the present military-backed interim government a slightly different type of procedure has been followed. In some cases, interested lawyers have sent applications to the offices of deputy commissioners to seek positions and the government has made its choices after inquiries conducted through the intelligence agencies as well as in view of the relationships between the applicants and officials in those agencies. The political affiliations of some prosecutors are less pronounced than before, although they are still screened in order to ensure a level of reliability concerning the government's purposes.

The president appoints the attorney general under article 64 of the Constitution and sections 492 to 495 of the Code of Criminal Procedure. The appointee must have the same qualifications as a judge of the Supreme Court, and serves the president. However, in reality the president has no power to select the appointee but merely formally approves the government nominee, who is selected for the same sorts of political reasons as ordinary prosecutors.

The additional attorney general, assistant attorney general and a number of deputies serve the attorney general. As in other cases, there are few criteria for their selection and little screening. The only real



condition is that they be lawyers capable of pleading cases individually. Nor is neither any specific recruitment process, like the holding of an examination for interested applicants.

Example 4

The case of Khodad Khan Pitu: the absence of special procedures to screen and appoint prosecutors became all too evident in the case of Khodad Khan Pitu, a lawyer of the Naogaon District Bar Association who was appointed as Public Prosecutor of Naogaon on June 13, 2007. The District Magistrate of Naogaon appointed him without any official permission from the Ministry of Law, Justice and Parliamentary Affairs.

It subsequently came to light that Khan was an accused in a criminal case relating the assassination of a leader of a pro-Islamic student organization, Azgor Ali, at the Rajshahi University, in a trial in the Rajshahi Session Judge's Court. Khan claimed that he was not aware of the murder case against him, although he admitted that he had been discharged from another murder case. Moreover, at time of appointment Khan was also an accused in another criminal case regarding the violation of electoral rules, under trial in the Magistrate's Cognizance Court of Naogaon.

In defence of his boss, Sajal Samaddar, the Additional District Magistrate of Naogaon, claimed that the district magistrate is able to appoint temporary public prosecutors according to his ex-officio power under section 17 of the Law Report Manual. He maintained that they had been unaware of the cases against Khan at the time of his appointment and only learned about them through the news reports. A probe committee later found the reports to be true.

Public prosecutors use their positions to advance their private practices, which results in unseemly events in court such as the appearance of a group of witnesses without any prosecutor on hand to examine them or prosecutors who have not prepared for a hearing who confuse and intimidate their own witnesses. Unsurprisingly, such cases result in acquittals. There are also frequent complaints of prosecutors (especially SPPs) who having won a hearing in the lower court where they have pleaded for the State reappearing in the appellate court representing the other party as a private lawyer.

Ironically, one cause of public prosecutors' ill discipline and tendency to engage in private practice when they are supposed to be working for the State is that they are independent. They cannot be sanctioned or punished if they fail to appear at their offices or in court. Only assistant and additional prosecutors are liable to their immediate superiors.

The most common preliminary step in seeking criminal justice in Bangladesh is to lodge a complaint with a police station in the jurisdiction where the offence allegedly occurred. Thereafter, police must investigate, collect evidence, obtain warrants, arrest the alleged criminals and produce them before the relevant court. Such cases are referred to as GR cases: those on the Government Register.

However, lodging complaints with police stations is oftentimes difficult for the poor and politically weak, especially if the complaints relate to wealthy and politically connected persons. The offenders or persons in league with them will invariably make arrangements with the police, even before a complaint is made, to block the victim.



In such cases, the other option is to lodge a complaint directly to a magistrate's court. The court can then order the officer-in-charge of the relevant police station to "take necessary steps" or "take legal steps followed by inquiry" or "register as a complaint following inquiry". Such cases are identified as CR cases: those on the Complainant Register.

CR cases are fraught with difficulties, as the police will usually thwart the investigation unless they have no personal interests in the outcome and the victim is now prepared to pay more than the other party to succeed. They may issue a final report, closing the inquiry without trial, or issue a report that will not stand up in court.

Example 5

The case of Shafikul Islam: the conviction rate in Bangladesh's courts is only around 10 per cent. The reasons for this include the political and transitory nature of the prosecutors' work and postings and the obstacles set up by the police.

The case of Shafikul Islam exemplifies this. Shafikul was a schoolboy who on 25 August 2000 was allegedly murdered by his stepbrothers and sisters and their relatives in Bhagalpur village in Narayanganj district. According to Shafikul's relatives, his paternal aunt had left her ancestral lands to him since she did not have any children of her own, leading to him being killed by his relatives.

Shafikul's mother, Sakerun Nesa, lodged a murder case against the alleged perpetrators with the Sonargaon police station. Sub Inspector Nazrul Islam was assigned to investigate. However, according to Sakerun, the investigating officer was bribed and did not record the witness statements correctly, instead preparing a report that would allow the suspects to walk free. The magistrate of the Cognizance Court of Narayanganj also allegedly framed the charge in a faulty manner, thereby weakening the case.

During the trial, the public prosecutors of the Narayanganj Session Judge's Court changed several times. They were absent from the court when evidence was taken from witnesses and were indifferent to the trial process. Judges also took leave and showed no interest in the case. Meanwhile, the accused had been released on bail and had threatened to also kill Sakerun.

It was suggested to her to apply to the Ministry of Home Affairs for the case to be transferred from the Narayanganj Session Judge's Court to the Speedy Tribunal of Dhaka, which has been appointed to try 'sensational criminal cases' in a speedy manner. The ministry approved her application and the case was transferred to Speedy Tribunal-4. On April 16, 2007, the tribunal refused bail for one of the accused while the others remained free and again went to threaten the victim's mother.

According to a prosecutor handling the case at the tribunal, the investigating police and prosecutor in Narayanganj had clearly collaborated to fix the case and get the accused off the hook. He concurred with the assertion of the victim's mother that the police had not recorded witness statements correctly and had framed the charges in a defective manner, recording them under both section 302 and 364 of the Penal Code (murder and kidnapping), when as the dead body had been recovered the charge should have been under section 302 alone. However, he noted that the court had already recorded the depositions of 12 witnesses for the prosecution



without either judges or prosecutors pointing to the defects of the charges.

The prosecutor in Narayanganj also caused undue delays in processing the case before the Speedy Tribunal, as he failed to send the case diary to the SPP's office for more than a month. As the tribunal must complete its work within 135 working days, the tribunal prosecutor had to call the prosecutor of the Narayanganj Session Judge's Court to receive the case diary, and was told that the prosecutor had not received a copy of the gazette notification for transfer of the case to the Speedy Tribunal-4 of Dhaka. The tribunal prosecutor had to make a photocopy of the notification, which he had received, and send it by courier to Narayanganj.

As regards the role of the police, persons who should have been included in the investigation report as accused were in fact made witnesses for the prosecution, while many persons who should have been listed as witnesses were ignored completely. The police investigation report did not properly record the full sequence of events, and the information given in the report is below the standards set by the Evidence Act.

After more than seven years, Sakerun's struggle for justice ended on November 4, 2007, with the acquittal of all the alleged perpetrators except her stepson, who was given life imprisonment: i.e. 14 years in jail. However, her lawyers are afraid that he may also be acquitted by the High Court Division as soon as the appeal is adjudicated, due to the inconsistencies in the investigation reports and prosecution process.

Police as prosecutors in magistrate's courts: under sections 492(2) and 495 of the Code of Criminal Procedure, the government assigns police to conduct the prosecution in the magistrate's courts, which deal with around 70 per cent of all cases in the country:

Section 492 (2). The Chief Metropolitan Magistrate or the District Magistrate, or subject to the control of the District Magistrate, the Sub divisional Magistrate, may, in the absence of the Public Prosecutors, or where no Public Prosecutor has been appointed, appoint any other person, not being an officer of police below such rank as the Government may prescribe in this behalf to be Public Prosecutor for the purpose of any case.

Section 495. Permission to conduct prosecution: (1) Any Magistrate inquiring into or trying any case may permit the prosecution to be conducted by any person other than an officer of police below the rank to be prescribed by the Government in this behalf but no person, other the Attorney General, Government Solicitor, Public Prosecutor or other officer generally or specially empowered by the Government in this behalf, shall be entitled to do so without such permission.

(2) Any such officer shall have the like power of withdrawing the prosecution as is provided by section 494 and the provision of that section shall apply to any withdrawal by such officer.

(3) Any person conducting the prosecution may do so personally or by a pleader.

(4) An officer of police shall not be permitted to conduct the prosecution if he taken any part in the investigation into the offence with respect to which the accused is being prosecuted.



A police officer at the rank of sub inspector normally deals with the prosecution of cases before the court, although these officers do not have law degrees or training in prosecution; they are just transferred from a police station to the job, sometimes as punishment.

In cases that are tried with police as prosecutors, the battle is imbalanced because the prosecution either fails to prove the charges or the accused are convicted on faulty evidence and reasoning and are acquitted on appeal.

Example 6

The case of Abul Kalam Azad: the problems associated with having the police also serve as prosecutors can be seen clearly in the case of Md. Abul Kalam Azad.

Azad, a 33-years-old small businessman with two shops selling household aluminium goods in Khalishpur, Khulna city, was tempted by the field officers of an NGO-based bank, BRAC Bank, to take a loan to improve his business. Following frequent offers by the officials of the BRAC Bank, Azad agreed to mortgage the deed of his home, which had an approximate value of 600,000 Taka (USD 8500), for which he received a 300,000 Taka loan on 10 April 2005 under a 'Medium-Term Loan' programme. Before granting the loan the bank insisted that Azad put his signature on two blank cheques, despite having the deed of his house as security.

After receiving the loan, Azad was asked to repay it in monthly instalments of 17,700 Taka. He calculated that the money to be repaid to the bank would be at an interest rate of nearly 38 per cent and insisted that the bank limit the interest rate to the agreed rate of 15 per cent.

In response, the BRAC Bank lodged charges of deception and breach of trust against him under sections 406 and 420 of the Penal Code on 13 December 2005, at the Gulshan police station in Dhaka, although the loan dealings were under the jurisdiction of Khulna city, more than 300 kilometers away. In the complaint, Md. Mizanur Rahman, an officer of the bank, alleged that Azad received money from the Head Branch of the BRAC Bank situated under the Gulshan police station in Dhaka and was refusing to repay. Sub Inspector Anisur Rahman submitted an investigation report with the Chief Metropolitan Magistrate's (CMM) Court (now Chief Metropolitan Judicial Magistrate's Court) on 28 January 2006, bringing the charges against Azad, who had meanwhile been paying money to the bank without knowing about the case against him and in 19 instalments had repaid 336,300 Taka.

On 25 September 2006, the Khalishpur police arrested Azad at his shop, following an arrest warrant issued by the CMM Court of Dhaka. He was detained in the Khulna District Jail for 23 days and then transferred to the Dhaka Central Jail where he was detained for five days. During the period of 28 days in detention he submitted a petition for bail; however, the court did not grant it. Only on October 23 did the CMM Court of Dhaka grant bail.

Having been released from jail, Azad paid a further 85,736 Taka to the bank. According to his lawyer, this should have discharged him from the charge; however, the police who were serving as the prosecution did not understand the legal points. The magistrate was also ignorant about the application.

Neither the police investigation report nor prosecution police has at any point suggested that it may not have been Azad who had lied but rather that it may have been the BRAC Bank, nor have



they raised any questions about the fact that the incident occurred far outside the jurisdiction of the Gulshan police station. Azad has had to sell one of his shops in order to pay the expenses associated with the trial. The case is still pending before the court.

NATIONAL HUMAN RIGHTS COMMISSION ESTABLISHED

Calls for the establishment of an institution to address the human rights problems and provide effective remedies to the victims had led to the establishment of the National Human Rights Commission of Bangladesh. The military-controlled government promulgated an ordinance on December 23, 2007, announcing the establishment of a national human rights body. On September 1, 2008, the government made an official announcement that the National Human Rights Commission had been in effect since that date.

Mr. Amirul Kabir Chowdhury, a retired judge of the Supreme Court of Bangladesh was made Chairperson and Prof Niru Kumar Chakma, a teacher of the Department of Philosophy of Dhaka University, and Ms. Munira Khan, former chairperson of Fair Election Monitoring Alliance (FEMA), a local NGO, were appointed as Members of the National Human Rights Commission (NHRC). The government asked the newly appointed officials to begin their terms in office on December 1, 2008.

The National Human Rights Commission Ordinance-2007, which enables the government to establish the NHRC rights body, allows the Commission (under Section 13) to give its recommendations to the government to file cases, if mediation or arbitration attempts fail. Many aspects on the methods of work and powers of this body give serious doubt as to whether it will be effective, however.

Section 14 of the Ordinance allows the Commission to recruit a mediator who will play a role to solve the problems of human rights abuses through arbitration between the perpetrators and the victims of abuses. Section 15 authorizes the Commission to investigate allegations of human rights abuses through issuing summons to the respondents, without any obligation for the relevant authorities to provide evidence and information. There is also no clarity about what happens when the summons are ignored.

The Commission, under Section 16, can make recommendations to the government based on its findings of the investigation; however, it is expected that these will be ignored, as there are hundreds of examples available in Bangladesh in which the authorities did not carry out the orders of the Supreme Court. Furthermore, under Section 16(4), the government and relevant authorities can deny or express their inability to implement the recommendations of the Commission in a reply letter.

Under Section 17 (2), any statement to the Commission confessing the crime of human rights abuses cannot be used as evidence in any criminal or civil court against the person who confesses the crime.

Under Section 27, the Commission can formulate its own rules in order to perform its duties after getting approval from the President. This means that executive will dominate what should be included or excluded in the rules.

Under Section 20 (3), the government will determine the salaries and benefits of the staff of the Commission until the Rules of the Commission are finalized. This situation will likely compel the



Commission to make or agree to a weak set of rules instead of those that would enable independent functioning.

While a national human rights institution had been demanded by rights groups and victims for decades, this has now been established by a military-controlled government working beyond its legal jurisdiction under a state of emergency. The government, which is responsible for gross violations of human rights, is using the establishment of a toothless rights body as a shield to protect itself from criticism.

THE STATE OF EMERGENCY – THE BIGGEST ELEPHANT IN THE ROOM

Although Bangladesh faces chronic human rights problems, an evaluation of the situation of rights in 2008 has to focus primarily on the state of emergency, as it and the ordinances and powers it provides to the authorities, have been the main causes of abuses and impunity in 2008. At the international level, the government has repeatedly denied committing abuses, and has even attempted to threaten and harass non-governmental organizations that attempt to bring up these matters. Despite being a member of the Human Rights Council and a party to six major international human rights instruments, the government of Bangladesh is not only failing to live up to its obligations under these instruments, but is actively flouting them.

The state of emergency was proclaimed on January 11, 2007, ostensibly due to violence prior to elections scheduled for January 22, 2007. Elections were to take place six months later. Under the Constitution of Bangladesh, an emergency may last for a maximum of 120 days. However, after nearly two years, it remains in force and is creating a human rights and constitutional crisis in the country. It is now supposed to last until the end of 2008, with elections expected on December 29, 2008, however, there were concerns at the time of writing that these may again be pushed back. Regardless, any elections held under the emergency will likely not be free and fair. Local elections held on August 4, 2008, provide evidence of this, as many politicians from the past ruling party remain in detention, and there are numerous reports of vote manipulation by the authorities.

The political parties have demanded the complete withdrawal of the state of emergency as of December 11, 2008, as according to the election schedule, the candidates and parties can officially start election campaigning on December 12. The government has said that it would lift the emergency prior to the election without specifying a date.

Under Article 141A (1) of the constitution, a state of emergency can only be imposed under certain conditions by the President, and it requires the counter-signature of the Prime Minister. This signature was not obtained for the current emergency, making it unconstitutional from the outset. Furthermore, an emergency may only last for 120 days, under Section 141A (2) (c) of the constitution. However, due to a loophole requiring action on the part of the parliament (which was dissolved on October 24, 2006), this illegal emergency is still continuing.

Human rights violations have resulted primarily as the result of draconian powers provided by the Emergency Powers Ordinance-2007, supplemented by the Emergency Powers Rules-2007, and the Special Powers Act-1974. On June 11, 2008, the military-controlled government also imposed the Anti-Terror Ordinance-2008, supposedly to combat terrorism, under which further abuses are taking place.



The High Court Division of the Supreme Court of Bangladesh on July 13, 2008, ruled that the President of an un-elected government, such as that currently in power, does not have the constitutional power to promulgate ordinances, unless such ordinances regard general elections. The same court also declared all ordinances made by the present military-controlled government to be *ultra vires* and unconstitutional. However, the Appellate Division of the Supreme Court on July 21, 2008, stayed this order for one month. The military-government has promulgated at least 96 ordinances, most of which run contrary to the constitution.

During the state emergency all State-actors that are perpetrators of human rights abuses are given impunity under Section 6 of the Emergency Powers Ordinance-2007, which reads:

[6. Indemnity- (1) *no action, done by a person in good faith, according to this ordinance or any rule under this ordinance or any provision under such rule, may be challenged in civil or criminal court.*
(2) *no action, done in good faith by the government, according to this ordinance or any rule under this ordinance or any provision under such rule, and any resultant damage due to the action, may be challenged in civil or criminal court.]*

The AHRC has been informed that the military-controlled government of Bangladesh has been negotiating with the political parties prior to the general election, to ensure that any future elected government validates through the parliament the actions taken by the pro-military regime under the state of emergency. Bargaining with the major political groups vying for election has also reportedly centred on seeing who will ensure complete impunity to them following the elections. In the past, successive governments of Bangladesh have provided impunity to the perpetrators of human rights abuses by enacting laws in parliament. The reports of the current military regime's pressure upon politicians raises serious concerns that impunity for current abuses will be secured regardless of the results of the planned elections.

THE MILITARISATION OF BANGLADESH'S CIVILIAN INSTITUTIONS

The emergency has been used by the military to permeate the State and its civil administration. This encroachment will likely have a significantly detrimental effect on democracy, security and human rights in the country for years to come. Current and retired officers have been appointed to top public service positions and autonomous institutions. Even sporting bodies have not been spared, as will be seen below. The militarisation of law-enforcement has taken place through new joint forces being established, comprising military intelligence agents alongside the police. The courts suffer from military surveillance and interference. High profile individuals, including former Prime Ministers, ministers and legislators have been detained for months for alleged corruption, often without specific charges against them. Some have been released through executive orders, bypassing judicial processes. For example:

Example 7 – three cases

Mr. Abdul Jalil, the General Secretary of the Bangladesh Awami League was arrested on 28 May 2007 in the afternoon from his office and was released on parole on 2 March 2008. Jalil was reportedly released on parole for 30 days but the authorities imposed a number of conditions on him if he goes abroad for treatment. He has to communicate the Bangladesh mission every three days after his arrival in a country for treatment and must not be involved in political



activities or business there.

Mrs. Sheikh Hasina, former Prime Minister and President of the Bangladesh Awami League, was arrested on 16 July 2007, early in the morning from her house in Dhaka and detained in the official residence of the Chief Whip of the Parliament declaring it a “sub jail”. She was released on June 11, 2008, on parole lasting eight weeks.

Mr. Arafat Rahman Koko, the younger son of former Prime Minister Khaleda Zia, was arrested along with his mother on 3 September 2007. The government released him on 17 July 2008 on parole. Local press reports claim that “The government has ordered the temporary release from prison purely on humanitarian considerations,” said Home Affairs Adviser M. A. Matin after the military-backed regime decided to give the son limited reprieve from detention.

These releases resulted not from court decisions but rather from political negotiations. If courts release persons that the military government does not want released, they are usually re-arrested, often under fabricated charges.

All the national-level policy decisions are made, changed and influenced by the armed forces’ top officials. As previously mentioned, the National Coordinating Committee, which oversees corruption cases, holds supreme authority over all administrative bodies, and is riddled with members of the military. The body makes recommendations to the Anti Corruption Commission concerning who will and will not be charged for corruption.

Despite public statements underlining Article 7 (1) of the Constitution that declares the people as the source of all power of the State, politicians and civil servants, including judges, are clearly subservient to the military in Bangladesh. For many, the armed forces are beyond the judicial process, notably politicians for whom support of the army is a prerequisite for gaining power. The emergency has provided the military with powers to do as they please and there are no components of the State that are able to hold them accountable for their actions. In the run-up to elections in 2008, in particular, politicians and others seeking public office within the branches of State, have been positioning themselves in order to show their loyalty not to the country, its people or the rule of law, but to the military.

Prior to the proclamation of the state of emergency, the armed forces were only deployed to aid the civil administration in dealing with political violence between rival groups. After the emergency was declared, the "State of Emergency Ordinance-2007" was promulgated and supplemented by the "Emergency Power Rules-2007" with effect from the date of imposing the emergency. Under these new instruments, the armed forces were redefined as a "law and order maintaining force" equivalent to the police. These laws have empowered soldiers to arrest whomever they wish, without a warrant from a competent court. The emergency laws also ensure blanket impunity to the armed forces for all of their actions. According to the government, around 60,000 soldiers have been deployed around the country, in all headquarters of the country’s 64 districts, since the beginning of the emergency.

The deployed military frequently intervene in areas in which they have no competency and should have no power, including in the activities of the media and NGOs, leading to fear and demoralization amongst these sectors’ professionals. As a consequence of regular interventions by the armed forces in their work, they cannot contribute to society and in their respective fields.



Initially, the government deployed the armed forces down to the Upazillas (sub-district unit) level. This adds to the long-standing militarisation of three districts in the Chittagong Hill Tracts. Civilian government has been severely undermined as a result, with one Deputy Commissioner, who did not wish to be identified, commenting that, "People should no longer have patience and resist the audacity of these uncivilized Majors."

The national deployment of the military was in place until November 4, 2008, prior to a Presidential order to withdraw the military, which came as part of the government's negotiation with political parties in the run-up to elections and international pressure, notably a in a joint motion for resolution on the situation in Bangladesh in the EU parliament in Brussels on July 9. However, at the time of writing, military re-deployment was expected on December 20, 2008, prior to the general election, which was scheduled to be held on December 29, 2008. Concerns that this date may again be moved remain. Regardless, the prospect for free and fair elections is evidently not possible under the state of emergency and under such circumstances political turmoil and resultant repression of protest activities, notably by the army, are a serious risk.

In addition, the Rapid Action Battalion paramilitary force known for being responsible for hundreds of extra-judicial killings in recent years, has also been reinforced by officers from the armed forces and deployed extensively at the district and Upazilla levels. In this way, the police, who are supposed to be responsible for maintaining law and order in the country, are being supported and supplanted by the armed forces and paramilitary forces that should not be engaged in policing, under the state of emergency. This has unavoidably resulted in a large number of human rights violations.

For example, concerning the massive arbitrary arrests that have taken place since the beginning of the emergency, common people only have access the police stations when enquiring about the whereabouts of arrested and detained persons. They rarely receive responses. When the armed forces and RAB arrest, detain and torture people, the police remain out of the picture and the police stations do not record information concerning such cases.

Given the climate of military supremacy and consequent fear, lawyers rarely agree to assist victims by drafting and lodging complaints with Magistrate Courts, which is the only other resort for people seeking redress following a denial of assistance by the police. According to reports, armed forces officers frequently make phone calls to magistrates and judges regarding pending cases, to influence them in favour of the military's interests. Magistrates fear for their security and that of their relatives, and as a result only disclose such threats off the record. The situation of prosecutors is even worse than that of the judges and magistrates. Members of the intelligence agencies and, in special cases, officers of the armed forces, have been placed in the offices of prosecutors and attorneys, and direct them to lead proceedings in line with these agencies' wishes.

Under the emergency, a so-called Task Force comprising military officers have also been placed in the country's courtrooms and relevant offices of the courts before, during and after trials, in order to monitor and direct the cases to suit their interests. There can hardly be a more blatant indicator of a lack of an independent judiciary than this. The provisions in the emergency ordinances and the control of the judiciary combine to ensure complete impunity for the military and those that serve its interests.

While civil servants find it difficult to enter into political roles, military officers of a similar rank are near-systematically included in the mainstream political parties following retirement. A retired general would typically be included in the cabinet of the ruling party or in the policy making forum when the party is out of power.



The military-controlled interim caretaker government has gone further and increased the placement of members of the armed forces in the civil administration. For example, the Ministry of Home Affairs is headed by Major General (Retired) M A Matin. Major General (retired) Ghulam Quader, former director general of National Security Intelligence, has been made adviser to the Ministry of Communications. Brigadier General (retired) M A Malek is the Special Assistant to the Chief Adviser for Ministries of Social Welfare and Telecommunications.

The founding Director General of the Rapid Action Battalion and former head of the Bangladesh Police, Mr. Anwarul Iqbal, who is allegedly responsible for hundreds of extra-judicial killings, has taken the position of adviser to the Ministry of Local Government, Rural Development and Cooperatives. Major General (retired), ASM Matiur Rahman, who previously occupied the Ministry of Health, was later asked to resign from his position for poor performance, although this should be seen as an exception, especially for someone from the military. The previous Army Chief, Lt. Gen. (Retired) Hassan Mashud Chowdhury, is the chairperson of the Anti Corruption Commission, while Colonel Mr. Hanif Iqbal occupies the position of Director General (Administration).

Brigadier General (Retired) Muhammad Sakhawat Hussain is in a key constitutional position as Commissioner of the Election Commission. The Bangladesh Army has therefore been given official responsibility to prepare the voter list for the whole country. The armed forces therefore know who is voting where under which constituency. If they want to intimidate any group or community to vote for someone or not to vote, they can do so easily. During the election, members of the military will be authorised to arrest any person they suspect of “anti-election activities” without a warrant of arrest issued by a court.

The army assigned its Principal Staff Officer (PSO) of the Armed Forces Division, Lieutenant General Masud Uddin Chowdhury, to the Ministry of Foreign Affairs where he had been serving as the Chief Coordinator of the National Coordination Committee and deciding on corruption cases. Following this, he has been appointed as High Commissioner of Bangladesh in Australia. On June 2, 2008, Lieutenant General Abu Tayeb Mohammad Zahirul Alams was assigned to the Ministry of Foreign Affairs and was to be appointed as an ambassador. However, before this could take place, he was also assigned to the position of Force Commander in the UN Peacekeeping Mission in Liberia, and returned to the service of the armed forces on October 7, 2008. Brigadier General Fazlul Bari was made Defence Attaché in the Bangladesh Embassy in Washington DC of the United States of America in October 2008.

Major General (retired) Manzurul Alam chairs the Bangladesh Telecommunication Regulatory Commission (BTRC), while Colonel Md. Saiful Islam has taken the position of BTRC Director General and Lieutenant Colonel Shahidul Alam is the Director of the BTRC’s Spectrum Management Department. Lieutenant Colonel Shahidul Alam has been appointed as the Project Director of a World Bank-funded project under the BTRC, while Major Rakibul Hassan is a Deputy Director of the BTRC’s Systems & Services Department.

Bangladesh Navy Captain A.K.M Shafiqullah has been appointed as Director General of the Department of Shipping, while Commodore A K M Alauddin occupies the position of the department’s Chief Engineer and Ship Supervisor.

Navy Captain Yeaheya Sayeed is a Director of Chittagong Dry Dock Limited, an enterprise of the Bangladesh Steel & Engineering Corporation and also a Member of the Chittagong Port Authority. Captain SY Kamal is a Member (operations) and Captain Ramjan Ali is Deputy Conservator of the Chittagong Port Authority. Captain Zahir Mahmood is Deputy Conservator of the Port of Chalna Authority in Khulna.



Brigadier General Md. Rafiqul Islam is the Director (signals) of the Bangladesh Telecommunications Company Limited. Colonel Mr. Farukh Ashfaq has been serving as the Chief Engineer of the Dhaka City Corporation. Major Gen (retired) Manzur Rashid Chowdhury has been made a member of the newly formed Truth and Accountability Commission.

An alarming indicator of how deep this military encroachment has become can be seen in the sporting authorities. The current Army Chief, General Moeen U Ahmed, has taken the positions of Chairman of the National Sports Council and President of the Bangladesh Olympic Association. The Chief of the Air Force, Vice-Marshal Ziaur Rahman Khan, heads the Bangladesh Hockey Federation, while Naval Chief Admiral Sarwar Jahan Nizam heads the Swimming Federation. Major General Ahsab Uddin, the General Officer Commanding of the 9th Infantry Division, is the President of the National Shooting Federation. The Army Chief of General Staff, Major General Seena Ibn Jamali, is the President of the Bangladesh Cricket Board, with Lieutenant Colonel (Retired) Md. Abdul Latif Khan as Vice President. Lieutenant Commodore A K Sirker is General Secretary of the Basketball Federation. Colonel (retired) M A Latif was made Vice President of the Squash Federation, while Major General Mr. Sadik Hassan Rumi was "elected" uncontested as President of the Archery Federation.

These are but a few examples recorded by the Asian Human Rights Commission (AHRC) of the many such military appointments that have been made under the aegis of the military-backed government and its unconstitutional state of emergency. Information about these appointments is being suppressed as much as possible by the authorities to avoid international criticism.

INCREASING VIOLATIONS UNDER THE EMERGENCY

Rather than countering a threat or ensuring stability, the state of emergency has led to greater insecurity and human rights violations. Fundamental rights, including the freedom of association and expression, have been suspended; a significantly greater number of serious violations are being perpetrated; total impunity is being guaranteed for perpetrators; and avenues for victims seeking remedies have been virtually obliterated. All discussions of human rights that do not first address the state of emergency, the critical undermining of the civilian, democratic systems of the State, and the constitutional crisis in Bangladesh, are meaningless.

The government has forced the closure of at least 160 newspapers, and television news channel CSB News, during the state of emergency. Any criticism of the actions of the government has been stymied in this way.

NGO activists and journalists have been harassed, threatened, and detained by law-enforcement and the military, and faced fabricated charges, in order to discourage any criticism of the arbitrary actions and violations of rights and the constitution by the authorities under the emergency.

ARBITRARY ARRESTS AND DETENTION

It is estimated that since January 11, 2007, a staggering 500,000 individuals are estimated to have been arbitrarily arrested and detained for differing periods. When questioned during the official proceedings of the Human Rights Council by a member of the AHRC's sister-organisation, the Asian Legal Resource Centre (ALRC), the representative of Bangladesh could only state that Bangladesh did not have enough space in its prisons to accommodate this many persons. Furthermore, the Inspector General of the Bangladesh Police



(IGP), on June 9, 2008, publicly admitted that the police had been arresting an average of 1,667 persons every day. This contradicts the attempt at a denial made by Bangladesh's representative at the Council and raises serious questions about further over-crowding in the country's detention facilities, which was already a serious problem before the mass arrests under the emergency. In addition, the IGP admitted that the authorities are arresting persons under Rule 16(2) of the Emergency Powers Rules 2007, instead of under Section 54 of the Code of Criminal Procedure, as under the former, suspects cannot be granted bail. Arbitrary detention without bail is therefore being enabled on a large scale by powers granted under the illegal, prolonged emergency.

Bangladesh's law-enforcement agencies do not follow due process when arresting and detaining persons. Arrest warrants and information regarding the charge against the person are rarely, if ever, produced at the time of arrest. Persons rarely have access to legal counsel following their arrest. Under Article 33 (2) of the Constitution, arrested persons must be brought before a Magistrate within 24 hours of their arrest. However, at present, individuals are being detained in police stations or military camp for days, weeks or even months, without any official records being kept or having any access to courts. This is resulting in endemic torture that in turn frequently leads to killings.

A High Court Division comprising Justice Nozrul Islam Chowdhury and S. M. Emdadul Hoque, on April 22, 2007, declared that the High Court Division of the Supreme Court had the constitutional power to grant bail to the persons implicated and detained under the Emergency Power Rules-2007. The Court declared it following a writ petition filed by Mr. Moyezuddin Shikdar, a businessman of Khulna, who was arrested by the armed forces and detained in prison.

The Appellate Division abdicated the Supreme Court's own power to entertain the bail petitions under the emergency rules. On 23 May 2008, the full bench of the Appellate Division, presided over by Chief Justice Mr. Mohammad Ruhul Amin, of the Supreme Court overturned the verdict of the High Court Division declaring that the highest court of the country had no jurisdiction to entertain bail petitions when the petition was charged under the Emergency Power Rules-2007. This verdict created controversy amongst the legal professionals and the human rights defenders of Bangladesh. The Supreme Court Bar Association and its senior members protested against the verdict and urged the Appellate Division to review its verdict. As a mark of protest the SCBA decided not to arrange any farewell ceremony for the outgoing Chief Justice Mr. Mohammad Ruhul Amin, who retired at the end of May.

TORTURE

The use of ill-treatment and torture by the law-enforcement agencies is endemic in Bangladesh. This is perpetuated by the impunity that accompanies these violations. Torture is a tool of political and governmental repression and an inseparable part of methods of law-enforcement in the country. Torture is used in order to extract money, to force persons to sign false confessions, to repress the poor, and against persons in opposition to those in power, or their allies. All law-enforcement and intelligence agencies operate torture cells, where people are tortured as part of so-called interrogations. Exact numbers of victims are impossible to ascertain, notably as very few organisations risk working on torture in the country. The AHRC has documented numerous cases of torture in the country that illustrate the above.

Bangladesh is evidently failing to respect its obligations under the ICCPR and as a State Party to CAT. This is shown both by the prevalence of the practice of torture and the reservation made to Article 14 (2) of CAT upon ratification, which has underlined the authorities' unwillingness to have any avenues available for



victims of torture seeking reparation. The system in Bangladesh ensures impunity and bars redress. There is no law criminalizing torture, and as with other rights violations, the police refuse to conduct investigations, denying victims justice from the outset. There is no witness protection system and the Supreme Court remains financially out of reach for all but the rich. The Human Rights Council is urged to ensure that Bangladesh immediately removes its reservation under CAT, criminalizes torture, and removes all legislation enabling impunity for torture and other grave abuses. This will require new legislation, the enabling of avenues for complaints to be made by victims, the creation of independent investigation units and an independent judiciary.

The AHRC has recorded numerous cases of torture, either by the armed forces, the police, paramilitary forces, or a combination of these actors, since the beginning of the state of emergency.

Methods typically include: beating a person that has first been hung from the ceiling or a tree; electrocution; pouring hot and cold water into the mouth and nostrils (in the summer or winter seasons respectively); inserting nails or needles under the fingernails or toenails or other sensitive parts of the body. Persons are also typically subjected to humiliating and abusive treatment during arrest.

The authorities justify their use of torture through various arguments. The officers of the Bangladesh Police claim that because there is only one policeman for every one thousand and two hundred citizens, torture is acceptable. They argue that the police force is very poorly financed and has inadequate logistical capabilities and is therefore required to work tirelessly. Under such circumstances, they claim that the police's performance cannot be faulted, justifying torture. The officers of the Rapid Action Battalion (RAB) and the armed forces argue with human rights defenders that law-enforcement and maintenance of peace and security in the society requires the use of torture.

The country's politicians, legislators and civil servants repeat the position of the law-enforcement agencies and security forces concerning torture. The claim has also been made by them during discussions with civil society that torture is a useful tool for maintaining law and order in the context of Bangladesh. Defending the arguments of the police, they have even added that as criminals are well-equipped and innovative, the only option for the police is to use torture.

When, during discussions, the need to follow due process of law, notably concerning the police's duty to inform persons being arrested about the reason for the arrest and to show them a warrant of arrest as per Section 80 of the Code of Criminal Procedure, the politicians commented that "*It is too ambitious in Bangladesh to expect the police to follow the due process of law*". This is symptomatic of beliefs held more widely in the ruling elite.

Additionally, there are instances of the perpetrators of torture being promoted within the system in Bangladesh. The use of torture does not engender any prosecutions against or punishment of those who perpetrate it. Torture is not a crime in national legislation in Bangladesh. Any person serving in the law-enforcement forces are not prevented, and therefore are tacitly encouraged, to use torture by default as part of their professional responsibilities.

One of most infamous instances of patronization of torture by the country's policymakers is the enactment of the Joint Drive Indemnity Act-2003 by the parliament after a military crackdown in the country, which resulted in the death of around 58 persons in custody, and the illegal arrest and detention of around 11,000 persons in a period of 86 days. During the state of emergency, impunity has been handed to the "law and order maintaining forces" and the government for their actions under Section 6 of the Emergency Power



Ordinance- 2007. The perpetrators of torture and other forms of human rights abuses are supported by their superior officers within their respective departments.

Example 8

As an example, take the case of Mr. Farukh Hossain, a businessman of Rajshahi city, was attempting to seduce a woman that lived in Rajshahi with her mother and a six-year-old daughter, whose husband was stationed in another city for his work. The woman refused the proposals and warned him off. Mr. Farukh reportedly then hired Assistant Sub Inspector (ASI) Mr. Abdul Hamid of the Boalia Model Police Station of Rajshahi Metropolitan Police (RMP) to rape the woman. On October 7, 2008 at around 3:34pm, the police officer came to the woman's house along with Farukh. Farukh confined the woman's mother and child in a room and ASI Hamid raped the woman in another room of the house. A relative of the victim took her to the One-Stop Crisis Centre (OCC) of the Rajshahi Medical College Hospital (RMCH) on the same evening for treatment and to initiate legal action. The staff of the OCC, which comprises a medical doctor, police officer and lawyer for combined support to female victims of violence, and the Forensic Medicine Department of the RMCH examined her.

Based on the findings of the medical examination, a complaint of rape was forwarded to the Boalia police, which recorded the complaint one day later. During the period, ASI Abdul Hamid had fled. The Boalia police has apparently intentionally delayed the recording of the case for more than 26 hours. After recording the case, the RMP authority temporarily suspended ASI Abdul Hamid. Mr. Abdus Sattar, a Sub Inspector (SI) of the Boalia police station and a colleague of the alleged perpetrator, was assigned as the Investigation Officer (IO) of the case. After going into hiding, ASI Hamid started threatening the victim. The senior police officers of the RMP allegedly directed the medical doctors of the OCC and the Forensic Medicine Department of the RMCH, who were involved in the examination of the rape case, to manipulate the medical examination report in order to save the police officer. Following continuous threats from the police the woman moved from her rented house, where the incident of rape took place.

The police did not want the victim to meet the media and human rights defenders after the rape. They instructed the officials of the OCC to keep her at the OCC until 18 October.

There is a specific provision in the Constitution of Bangladesh prohibiting torture and degrading treatment and punishment. Unfortunately, the laws that are in effect only provide remedy to victims in relation to physical abuses or assaults rather than as torture, which is a different category of crime and violation of the person, with a range of different additional physical and psychological effects and stigma. The practice of using torture leaves thousands of victims with temporary or permanent disability and in some cases results in death, yet there is no specific legislation criminalising torture as a punishable crime. This is one of the key barriers preventing victims from seeking appropriate redress, guaranteeing impunity and ensuring the continuation of the prevalence of this grave practice.

At the international level, the country's representatives have learnt to make utterances that hide this fact. Bangladesh announced its voluntary pledges prior to the election of the UN Human Rights Council in 2006. In the voluntary pledges it promised that "If elected to the Human Rights Council, Bangladesh would: I.



Extend its fullest cooperation to the Council in its work of the promotion and protection of all human rights and fundamental freedoms for all without distinction of any kind and in a fair and equal manner. . . IX. Strengthen its efforts to meet its obligations under the treaty bodies to which she is a party. X. Contemplate adhering to the remaining international and regional human rights instruments . . . XIV. Continue to work towards further strengthening and consolidating the institutional structures that promote good governance, democracy, human rights and rule of law. . . XVI. Establish the National Human Rights Commission as soon as possible. XVII. Separate the judiciary and the executive as soon as feasible."

The country has not begun to fulfill many of its key pledges in reality. As a party to the International Covenant on Civil and Political Rights (ICCPR) Bangladesh has the obligation under Article 2 of the Covenant to recognize the rights of the citizens and provide effective remedies to persons whose rights are violated. The remedy should be determined by competent judicial, administrative or legislative authorities. As a party to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the country has responsibility to protect its citizens from custodial torture and ill-treatment.

Example 9 - Five cases

Case No. 1

Mr. Altaf Hossain is a rickshaw-puller from Nalta village under Tala upazilla in Satkhira district. On 5 February 2008, Altaf went to Kopilmuni Bazar, transporting goods and passengers. At around 10 a.m., Altaf was pulling his rickshaw through the main road of the rural commercial hub. Due to traffic congestion and Altaf was late in giving way to an army vehicle. Soldiers got out of their car and proceeded to beat Altaf indiscriminately with a stick. He sustained serious injuries to his neck, back, hands and legs. Bystanders assisted Altaf to a local hospital, where he received treatment for months but has failed to recover from the injuries. To pay for the treatment, Altaf sold his rickshawn and he and his wife have borrowed Taka 40,000.00 from a rural micro-credit association with 20% interest.

Case No. 2.

On 5 February 2008, in the morning, Mr. Kamrul Islam, a 38-years-old man from Masiara village of Tala upazilla in Satkhira district, went to the Kopilmuni Bazar to buy groceries for his family. He was caught up in the incident detailed in Case No. 1 above and was also beaten despite being an innocent bystander, as a result of which he lost consciousness. He was taken to Kopilmuni hospital where he stayed for around a week to receive treatment for the injuries he sustained, notably to his spine.

Case No. 3.

On January 19, 2008, at around 10 a.m., an army team led by Major Mizan came to the Rahmania Offset Press at Paikgachha upazilla town in Khulna district. Major Mizan looked for the owner of the press. Md. Bayezid Hossain, a 32-year-old press staff-member, who was operating a machine inside, came out and told the army officer that his boss was out of the office at that time. The Major asked Bayezid to remove the signboard of the press. Bayezid told the officer that as an employee it was not possible for him to remove the signboard without the permission from his



employer. He assured Major Mizan that he would inform his boss first and the owner's consent would enable him to remove the signboard. As soon as Bayezid said this, Major Mizan and his colleague Warrant Officer Tajul Islam and several other soldiers started beating Bayezid with sticks and fists. Bystanders removed the signboard. Before leaving, Major Mizan told Bayezid to go to the Army Camp along with his boss. Locals then took Bayezid to the Paikgachha Upazilla Health Complex for treatment. Bayezid received serious injuries to his right hand, which had still not healed at the end of 2008.

Case No. 4.

On 15 February 2008, at about 8 a.m., army personnel visited two farmers Mr. Depak Nath (48) and Mr. Deleep Nath (45), who are brothers, in Kashimnagar village in the Paikgachha upazilla in Khulna district. The soldiers abruptly started beating Depak and Deleep in front of their wives and children, and then arrested them and took them to the Army Camp at Shovna in the Dumuria upazilla. The soldiers detained the two brothers for the night and tortured them. They were beaten with sticks and boots in several occasions. On the following day, the army officers handed them over to the Dumuria police. The police falsely implicated Depak and Deleep in a pending robbery case, resulting in them being detained in Khulna prison for 6 months, where they received no medical treatment. The Dumuria police had forced the brothers to pay Taka 25,000.00 as a bribe to have them removed from the investigation report. Despite receiving the money, the police submitted a Charge Sheet (an investigation report bringing charges) to the Court, accusing the two brothers in the alleged robbery. Their family mortgaged 3 parcels of land to collect money for their release. In August 2008, they managed to get bail from Court.

Case No.5.

Day labourer Mr. Bazlu Gazi, a 34-year-old resident of Kalidashpur village in the Paikgachha upazilla, Khulna district, was working as a labourer at a fish wholesaler owned by Mr. Kaisar in Chandkhali Bazar. A Joint Force team comprising the army and the police went to that Bazar and beat people arbitrarily for unknown reasons on February 13, 2008. The army men beat Bazlu with sticks and kicked him, causing him to sustain serious injuries to the knees and lower legs. The Joint Force then handed Bazlu over to the Paikgachha police, who forced him to give them money on threat of false implication in a criminal case. Bazlu paid 5,000.00 Taka to the police, who produced him before court under Section 54 of the Code of Criminal Procedure-1898. Later, the police extracted further money from him for submitting a Final Report (discharging him from any kind of offence) to the court. After 16 days of detention Bazlu was bailed out from prison.

FABRICATION OF CHARGES

The state of emergency opened a new window of opportunity for the police to fabricate charges against arrested persons in order to forcibly extract money from them, both due to the vast numbers of persons being arrested and the increased climate of impunity prevailing during this period.



Example 10

For example, Mr. Abdul Matin Shikdar, a businessman, lodged a complaint with the Kanaighat Police Station of Sylhet district regarding an assault on his mother, Mrs. Fatema Begum. Sub Inspector (SI) Mr. Hillul Roy was assigned as Investigating Officer (IO) to the case (No. 8, dated 9 June 2008).

As no investigation had been conducted a month after he made the complaint, Matin went back to the police station to check the on status of the investigation. Following his enquiry, Assistant Superintendent of Police (ASP) of the Kanaighat Circle Mr. Farid Uddin, in the presence of the IO asked for a bribe of Taka 50,000.00 (USD 744). The police officer promised that the payment of the bribe would ensure a positive investigative report in bringing charges against the people who assaulted Matin's mother. When Matin refuse to pay the money and urged the officers to visit the scene in person to learn the facts from eyewitnesses, the officers started using abusive language against him.

On July 24, the ASP accompanied by the IO visited the scene of the incident where they obtained statements from those who reportedly committed the assault. When they met the witnesses, they also used abusive language against them and intimidated them. They said that charges would be brought against them for being false-witnesses in the case. They then scolded Matin, rebuking him for filing a 'false case'.

After the intimidation Matin became afraid of further police harassment and a false investigation report by the police regarding the case of assault of his mother. On 28 July, he submitted a written petition to the Deputy Inspector General (DIG) of Police of the Sylhet Range regarding the bribery claim, police intimidation and biased investigation. He also requested the DIG to change the IO. On July 31, the IO secretly submitted his investigation report to the Court saying that Matin had brought a false charge.

During the same period, Matin had been involved in leading a protest by local people against the 'Palli Biddut Unnayan Samity' (Rural Electricity Development Association) demanding that their electricity be connected, as the villagers had already paid all the required fees; however, the authority connected a different area using these resources. Following the protest the officials of the local electricity office got annoyed with its leaders. The police took this opportunity to abuse their power. Two complaints (No. 14 and 16 respectively) were recorded with the Kanaighat Police Station against Matin and others on September 23 and 24.

In the morning on September 28, in collaboration with officials of the electricity office, police officers in plain clothes arrested Matin on charges of assaulting the staff of the electricity office and stealing electric transformers from the locality. When produced before the Chief Judicial Magistrate, Mr. M H Mahbubur Rahman Bhuyan, on the same day the Magistrate ordered him to be remanded for two days. After Matin's detention in the Sylhet Central Jail, ASP Farid went to his prison cell and threatened to kill him saying, "You have complained against me to the DIG. Now you will bear the consequences. Whatever you want to eat and drink as your last wish, do it before you go to police remand; there will be nothing left for you after the remand. We will take care of your final departure."

On October 15, the police took Matin in remand from the prison for two days in police custody. During the remand the Officer-in-Charge (OC) of the Kanaighat Police Station Mr. Iqbal Hossain



and the IO SI Shyamol allegedly extorted bribes of Taka 20,000.00 from Matin's relatives for him not to be tortured in custody. Matin was bailed out from the prison in the two cases on October 16 and 19 and was released from prison in the evening of October 20.

EXTRA-JUDICIAL KILLINGS

The number of extrajudicial killings has been increasing in Bangladesh during the state of emergency. In the 23 month-long the state of emergency around 315 persons have been killed extra-judicially, out of which the deaths of more than 250 persons were blamed on "crossfire" incidents by the law-enforcement agencies, such as the Rapid Action Battalion, the police and the armed forces.

Article 32 of the Constitution of Bangladesh guarantees the right to life and personal liberty. However, under the state of emergency, the grave problem of extra-judicial killings is again on the rise. Reliable reports indicate that over 300 persons have been extra-judicially killed since the state of emergency was imposed. Previously, during so-called Operation Clean Heart, from October 16, 2002 to January 9, 2003, around 58 deaths in custody took place, following mass arrests and numerous allegations of torture. The operation was conducted by the law-enforcement agencies dominated by the armed forces, in a way that is now seen repeated under the emergency. All these deaths were unconvincingly blamed on heart attacks. Impunity for the alleged perpetrators of torture and killings was then granted under the Joint Drive Indemnity Act-2003.

The Rapid Action Battalion (RAB), which is dominated by the military but also comprising the police and border security agency, was created in 2004. It has perpetrated an estimated 500 extra-judicial killings since its creation. It attempts to justify these killings by claiming there were accidental deaths that occurred as the result of the victims being caught in the "crossfire" although the AHRC has documented numerous cases that instead show these deaths result from torture and extra-judicial killing.

Shockingly, the authorities have shown their support for these killings by awarding the country's Independence Day Award to the RAB on March 23, 2006, for "outstanding performance in maintaining law and order." In 2007, the government awarded 28 RAB officers with "Police Medals." All of these officers have allegedly been involved in grave human rights abuses, including extra-judicial killings. The RAB has continued to act with complete impunity as a result. Inter-agency rivalry has led to the police seeking to compete with the RAB, and they have allegedly perpetrated several hundred arbitrary, extra-judicially killings. They also claim these result from crossfire, encounter, gunfight, in the line of fire, or shootout incidents.

The problems arising from this hierarchical structure are well illustrated in the following case. During the state of emergency the police, RAB and the armed forces have been deployed across the country, ostensibly to "aid the civil administration" with maintaining the law and order. In this hierarchy, the military is the dominant force, the RAB is next and enjoys privileges over the regular police force, the latter of which is supposed to be responsible for the law and order officially.



Example 11

On 1 December 2007 at 8:15pm, Mr. Md. Shafik Ullah Monayem was talking with a friend Mr. Muzibur Rahman in front of Amdia House at the Kaunya Main Road in Barisal city when he was approached by two plain clothed persons who arrived on a motorbike. They walked towards Monayem and asked whether his name was Monayem before identifying themselves as coming from the Rapid Action Battalion (RAB) and insisted he accompany them. He resisted, saying that he was on bail for all of the cases he had against him up until that day.

During this conversation two of Monayem's friends, namely Mr. Mamun and Mr. Monir, had approached the scene where Monayem was seen arguing with two persons. Three more plain clothed persons, allies or colleagues of the two so-called RAB persons, then blocked Mamun and Monir from proceeding further. Monayem was forced to sit in the middle of the bike, and was taken toward the western part of the city (where the office of the RAB-8 was situated).

Monayem's friends and members of the family went to the office of the RAB-8 where two on-duty sentries did not allow them to enter the gate and denied knowledge of any such incident. Then they went to the Criminal Investigation Department (CID) Office and the Kotowali Model Police Station of Barisal to learn about Monayem's whereabouts. The on-duty police officers asked the relatives to wait, saying they could confirm it only after their patrol teams had returned to the office. At around midnight, the police officer said that as the RAB was involved in the arrest, the police had nothing to do with the case.

On 2 December 2007, Mainul, brother of Monayem, along with relatives and friends went to the Kotowali Police Station to record a General Diary (GD) in connection with the arrest of Monayem by the plain clothed members of RAB, and his subsequent disappearance. Sub Inspector Mr. Moazzem, referring to the accusation against RAB, refused to record the GD saying that the police had nothing to do with allegations against members of RAB. He also suggested Mainul lodge a 'regular case' regarding the incident.

Mainul went to Mr. Yunus Talukdar, a senior lawyer of the Barisal District Bar Association, who was of the opinion that lodging a case against any member of the RAB may lead to further deterioration of Monayem's condition while in their custody; the RAB may kill the man secretly. He suggested pursuing the officials, requesting security and information of the victim. Following the reluctance of Mr. Yunus to file a complaint against members of the RAB regarding Monayem's disappearance, Mainul went to another senior lawyer. Mr. Enayet Peer Khan, who is a political leader, also discouraged Mainul from lodging a complaint for similar reasons.

Mainul and his relatives continued visiting senior officials of the district, including the Police Commissioner of the Barisal Metropolitan Police (BMP), the local office of the Directorate General of Forces Intelligence (DGFI) and Deputy Director of RAB-8, requesting their urgent intervention into the matter. The family also submitted written applications to the all relevant offices of the city with the same request.

On 14 February 2008, Mainul prepared a draft of General Dairy removing the word "RAB" and finally it was recorded with the Kotowalit Model Police Station (GD Number 821). In the GD, Mainul alleged that his brother Monayem had disappeared since 8:15pm on 1 December 2007, after he was picked up by a group of plain clothed officers of an intelligence agency; from the Kaunya Main Raod's Amdia House, in the presence of Mr. Muzibur Rahman, an inhabitant of the



same area. Sub Inspector Mr. Ershad Ali was assigned as the Investigating Officer for the GD. However, no investigation was conducted and no updated information was available about Monayem.

Monayem's brother Mr. Mainul told the Asian Human Rights Commission (AHRC) that following continuous denial, refusal and reluctance by the local law-enforcing agencies about Monayem's whereabouts, his 96-year-old father Mr. Mohammad Harun-ur-Rashid, Monayem's wife Mrs. Fatema Beagum and Mainul himself wrote a series of letters to the top officials of the government, and chiefs of the army, RAB and the police.

An Assistant Commissioner (AC) of Police of the Barisal Metropolitan Police, Mr. A K M Makfarul Islam, in a one page enquiry report, which was revealed on 17 April 2008, claims that there had been a dispute with a Commissioner of the local Ward of the Barisal City Corporation, Mr. A K M Mortuza Abedin. The AC Makfarul suspected that Mr. Mortuza might have influenced the RAB members or used his private force to pick up Monayem, as Monayem is seen as a rival for the following city corporation election. However, the police officers did not mention the whereabouts of Monayem or any information about his current condition in the report.

Major A K M Mamunur Rashid Mamun of RAB-8 delayed the process of locating Monayem following the complaint of his disappearance after an arrest by a group of RAB officers. Major Mamun warned the relatives of Monayem not to contact him any more on this issue of disappearance.

On 21 October 2008, Mainul made an appointment with the Inspector General of the Bangladesh Police Mr. Nur Mohammad in his office at the Police Headquarters. The police chief received his written complaint and orally assured Mainul that the police would take action on this regard. However, until the time of writing of this report in December 2008, the family had not received any updated information about the whereabouts of Monayem. No action whatsoever was being taken concerning his disappearance.

VIOLATIONS RESULTING FROM THE COUNTER-TERRORISM ORDINANCE

Further to the already significant list of arbitrary powers granted to the authorities in 2007 under ordinances issued by the authorities under the state of emergency, on June 11, 2008, the military-controlled government imposed Anti-Terror Ordinance-2008, supposedly to combat terrorism. Section 6 of the ordinance, includes provisions for rigorous imprisonment of a minimum of three years to a maximum 20 years life-term, as well as the death penalty, for various crimes including: killings; serious attacks; abductions or kidnapping; causing damage to property; and possession of explosives, listed dangerous chemicals or firearms, with the "intention to harm the unity, harmony, security or sovereignty of Bangladesh and create panic among its people or any segment of the population."

Persons can be charged under Section 7 with providing financial or other forms of support for loosely-defined "terrorist activities" on the basis of mere "reasonable suspicion." Section 39 asserts that the crimes under this ordinance are non-bailable. Section 54 of the Code of Criminal Procedure-1898 and Section 86 of the Dhaka Metropolitan Police Ordinance-1976, already allow the police to arrest any person on suspicion.



These powers have previously been abused to arrest people en masse. Under the new ordinance, the penalties and sentences for the various crimes are higher, however.

The police can hold persons in remand for interrogation for ten consecutive days, which can be extended for a further five days by magistrates, under Section 26. Magistrates typically follow the instructions of the government and other influential groups. Furthermore, multiple fabricated charges produced sequentially are used to ensure lengthier remand periods.

As with corruption charges that are being tried in special, military-government-appointed tribunals, charges under the Anti-Terror Ordinance are tried by Anti-Terror Special Tribunals. There are serious concerns about such tribunals' ability to deliver fair trials, as they are held in camera, without the presence of the public even the accused persons' relatives.

Under Section 32, a magistrate or judge cannot grant bail "unless satisfied with reasonable grounds that the accused person might not be convicted." This suggests that the judge must pre-judge the case before it has been heard in full, which evidently goes against the fundamental principles of justice as accepted in international norms and standards.

According to Section 41, the government may transfer, on "reasonable grounds," any case relating to crimes under this ordinance, from any sessions court or tribunal to any special tribunal, or from any special tribunal to any sessions court, at any stage prior to the completion of depositions. This power allows the government to interfere in any case it wishes and completely erodes any notion of the independence of the judiciary. In a criminal proceeding, the government is a party to the dispute. If such a party is given statutory power to transfer cases at a whim, it is likely that it will exploit this power, resulting in delays and/or travesties of justice. This is being seen in Bangladesh under the State of Emergency.

Despite the Special Power Act-1974, the Emergency Power Ordinance-2007 and the Emergency Power Rules-2007, which already give the government wide powers to arbitrarily arrest and detain people, the government has armed itself further with the Anti Terror Ordinance-2008 to increase its crackdown, with further abuses expected to be perpetrated. For this reason, the international community, which has thus far remained eerily mute, must immediately begin to act to pressure Bangladesh's government - a member of the Human Rights Council - to lift the emergency and repeal all such ordinances.

ARBITRARINESS AND IMPUNITY PROVIDED BY THE UNCONSTITUTIONAL TRUTH AND ACCOUNTABILITY COMMISSION

During the state emergency the government initiated a "fight against corruption," detaining at least 170 politicians and businessmen under new powers, notably the Emergency Rules-2007. The government is prosecuting them in closed Special Sessions Judges' Courts, to which public and media access is denied.

The government formed the Truth and Accountability Commission on July 30, 2008, headed by former High Court Judge Mr. Habibur Rahman Khan as its Chairman, retired Comptroller General Mr. Asif Ali and retired Major General of the Bangladesh Army Mr. Manzur Rashid Chowdhury as members. Suspects are supposed to disclose information to the Commission about any corruption they have committed and declare the amount of assets and money earned through illegal means. These assets are then handed over to the State



and the Commission issues a certificate which acts as an exemption from any future criminal prosecution or punishment for these acts. Such persons are barred from contesting elections and holding public or corporate offices for five years. However, the whole process is confidential, apparently to preserve the persons' social dignity.

The lack of transparency of this system is a serious concern, notably as the authorities have detained a number of politicians and businessmen during the State of Emergency on charges of corruption, many of whom have been convicted for a minimum of three years by special tribunals, in secretive trials, which are monitored by the military and do not meet international standards of fair trial. The Constitution of Bangladesh clearly asserts in Article 27 that every citizen has right to enjoy equality before the law, but the military-controlled government manipulates the system with laws ultra vires to the country's constitution.

These Commissions are designed in order to ensure impunity for current government officials and those connected to them for past corruption, ensuring they cannot be held responsible for any of their actions, while opponents of the regime continue to be pursued for similar offences.

On 13 November, 2008, a High Court Division Bench comprising Justice Mir Hashmat Ali and Shamim Hasnain passed a verdict declaring the Truth and Accountability Commission under the Voluntary Disclosure Ordinance-2008 "unconstitutional and void in its entirety". After hearing a writ petition filed by local rights groups the Court declared this verdict. The Court did not give any legitimacy to the activities done by the quasi-judicial body.

However, on 16 November, Justice M A Matin, Appellate Division Chamber Judge, stayed the High Court's verdict for one month after hearing a provisional petition filed by the government.

Prior to the High Court's verdict the Truth and Accountability Commission had received 389 applications for leniency regarding crimes of corruption – 192 applications were forwarded by the Anti Corruption Commission, 167 by the National Coordination Committee, 20 applied directly and 10 were forwarded by courts.

Human rights defenders and relevant professional groups are concerned about the fate of the decisions to come from the Appellate Division on this case. There are debates going on regarding the public resources spent on the Truth and Accountability Commission, if it is finally declared illegal by the Appellate Division.

Recommendations:

1. The state of emergency, which has been causing serious damage to country's human rights situation as a result of suspension of fundamental rights and excessive use of the emergency instruments against the ordinary citizens, should be lifted immediately. The fundamental rights of the people should be restored without delay.
2. The process of democratisation should be launched through a credible, fair and transparent general election by ensuring people's right to choose their leadership without fear and intimidation in an environment of protection for all individuals beyond ethnic discrimination.



3. Militarisation in the civil institutions and the intervention by the armed forces directly or through its intelligence agencies in the rule of law institutions must be stopped. All military officers should be removed from the civilian offices they have been occupying in the country's various institutions.
4. The arbitrary abuse of power by law-enforcement agencies through illegal arrest, arbitrary detention, fabricating charges, intimidation and extortion from ordinary citizens, as well as the use of torture and ill-treatment in custody in the name of maintaining law and order in Bangladesh must be stopped immediately. A transparent and accountable monitoring system should be launched in order to stop any kind of manipulation by the law-enforcement agencies, with a mandatory provision for prosecuting the alleged perpetrators of the abuses.
5. Torture should be criminalised in domestic legislation in compliance with the Convention Against Torture (CAT,) to which Bangladesh is a party.
6. The practice of all forms of extrajudicial executions must be stopped. The agencies and the individual personnel who are responsible for extrajudicial executions should be prosecuted in public, transparent trials before civilian courts.
7. Reforms to the criminal justice system should be launched. Existing laws such as Sections 54 of the Code of Criminal Procedure, the clauses enabling preventive detention under the Special Power Act-1974 and all other laws that are enabling rights abuses should be repealed immediately.
8. Criminal investigations should be conducted by a separate department, not the same police as are being accused of perpetrating violations.
9. An independent and capable prosecution system should be established to assist courts to dispense justice. A competent judiciary – from the bottom to the top – should be established by: recruiting magistrates and judges through an independent Judicial Service Commission beyond any intervention by the politicians and bureaucrats; training judges and magistrates with adequate ethical and practical knowledge about the necessity of effective judicial remedy; providing the required logistics; and ensuring accountability within the institutions.
10. Make the newly formed National Human Rights Commission an effective body by providing it with the authority to prosecute alleged perpetrators of human rights abuses.
11. There should be a clearly proven commitment to establishing the rule of law and human rights, by legislating laws in compliance with the provisions of the international human rights instruments including the International Covenant on Civil and Political Rights (ICCPR), Conventional against Torture and Other Cruel, Inhuman and Degrading Punishment and Treatment (CAT) and all other international instruments to which Bangladesh is party. The political parties must make clear commitments in public to provide human rights policies in line with international human rights norms and standards in their election manifestos prior to the general election.
12. Civil society, relevant professional bodies and human rights groups in Bangladesh should consider focussing on the necessity for reforms to the country's criminal justice system as well as initiatives to prepare separate bills on the following issues: i) the criminalisation of torture and ill-treatment, ii) removing corruption and delays in the criminal justice system, iii) making criminal investigation, prosecution and the judiciary competent and accountable, iv) launching a witness protection mechanism that can effectively provide protection to those that require it, v) repealing existing laws that are contradictory to the international human rights instruments.