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Bangladesh Memorandum to the Caretaker Government of Bangladesh and political parties

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Bangladesh

Memorandum to the Caretaker Government of Bangladesh and political parties

1. Overview

For many decades, the rule of law in Bangladesh has been subverted by political interference, weak institutions and disregard for human rights. The powerful and privileged have been able to act with impunity, with no fear of being called to account. Whichever party has been in control of the government, and regardless of the promises made before elections, abuse of power has been the norm. Corruption has been rife and corroding public trust in the institutions of government is serving to undermine the rule of law and respect for human rights. A growing nexus between political violence and organized crime, nurtured by the main political parties, sustained the culture of corruption and impunity. The poorest people have been often the most vulnerable to abuse and the least able to find redress.

Repressive laws, including laws granting special or emergency powers, have been used and abused by various administrations virtually since independence. Human rights have been subsumed to political interests and the judiciary subordinated to political power.

A highly polarized political environment with widespread violence, serious human rights violations and fears of election-rigging led to the declaration of a state of emergency on 11 January 2007 and the installation of the current Caretaker Government with the support of the armed forces. The Caretaker Government made a commitment, which was widely welcomed, to address corruption and political violence, bring about electoral reform and hold free and fair elections by November 2008. A year on, however, there is growing disenchantment with the Caretaker Government, stemming from uncertainty about the political future of the country, particularly about the role of the armed forces in politics, concern about the economy, including the sharp rise in the cost of food and other essential goods, and disappointment about the slow progress of reforms.

Time to renew commitment to human rights

Bangladesh is a party to major international human rights treaties,¹ but has not properly implemented key provisions, whether in the arena of civil and political rights or economic, social and cultural rights. Neither the judiciary nor the government use international human rights standards as a yardstick for domestic performance or a measure of accountability for international obligations. Bangladesh has failed so far to report to the international treaty monitoring bodies and has not acceded to a number of pending requests from UN human rights experts to visit the country.²

Against this background, Amnesty International is calling for renewed commitment and concrete action by the Caretaker Government on human rights issues, so that public trust and confidence can be restored in the reform process and the seeds of good governance can be planted for a future democratically elected government.

Amnesty International is also calling on the military leaders, who played a key role in establishing the caretaker arrangements, to support fully the recommendations in this memorandum to strengthen respect for human rights and the rule of law which are pre-requisites for effective transition to a democratic government.

Amnesty International acknowledges the steps the Caretaker Government has taken to address corruption and bring about electoral reform. The Caretaker Government has publicly committed itself to hold elections by November 2008 and there is strong public consensus on a return to democratic rule within that timeframe. The Election Commission has begun a new process of voter registration. Following an overhaul of the Anti-Corruption Commission, between February and

¹ Bangladesh is party to international human rights treaties including the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child. It has not yet become a state party to treaties including the Optional Protocols to the International Covenant on Civil and Political Rights and to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

² Visits have been requested by the Special Rapporteur on extrajudicial executions, the Special Rapporteur on adequate housing, the Special Rapporteur on the independence of judges and lawyers and the Independent Expert on minorities. The government has agreed to a visit by the Special Rapporteur on freedom of religion, but dates have not been finalized.

October 2007 the Commission named at least 200 people suspected of involvement in corruption.

Amnesty International's experience around the world shows that enduring solutions to corruption and abuse of political power require a strong and sustained commitment to the rule of law and respect for human rights by all state institutions and actors, including those that are seeking to bring about the changes. Transparency and accountability are key to preventing corruption and political abuse. They lie at the core of human rights. Respect for human rights and the rule of law are as important for protecting the integrity of state institutions as they are for safeguarding the individual. The Caretaker Government should therefore ensure that its anti-corruption drive and its electoral and political reform initiatives scrupulously respect human rights and the rule of law, and that all its actions are transparent and accountable. This is a pre-requisite for restoring public confidence in institutional reform as a genuine effort to improve governance and in dispelling fears of political engineering of the democratic process.

Legacy of impunity

Amnesty International strongly believes that no effort to tackle corruption or bring about electoral reform will succeed without a corresponding move to end the culture of impunity which has persisted for decades. Amnesty International and other international and national human rights organizations have documented extensive and serious human rights violations in Bangladesh. These have included extrajudicial killings, torture and other ill-treatment, rape and gender violence by both state officials and by non-state actors with the collusion of the state and with the support of political parties. Successive administrations have done little to bring perpetrators to justice and ensure reparation to victims. On the contrary, human rights defenders, journalists and others who have sought to expose these abuses have themselves been targeted and attacked.

The Caretaker Government's stated commitment to reform creates a window of opportunity for Bangladesh to address long-standing and prevalent barriers to protection of human rights. To maintain its credibility and to build a culture of accountability, the Caretaker Government must address impunity through comprehensive institutional reform which will buttress the rule of law and protect it from political interference. Abusive military and police personnel must no longer be shielded from accountability, including prosecution. Patterns of political patronage and interference with the judicial process that have marked the past decades must be broken.

The government must take steps to reform judicial, law enforcement and human rights institutions and make them effective, transparent and accountable. It must ensure that its actions, whether in terms of reforming institutions or addressing past violations, are based on international human rights standards and treaties to which Bangladesh is a state party.

The failure to seek truth and justice for war crimes, crimes against humanity and other serious violations of human rights and humanitarian law committed in 1971 has encouraged the persistent nature of impunity in Bangladesh. No action has been taken by successive governments to implement the 1973 International Crimes (Tribunals) Act and no official commission was ever established to provide a comprehensive account of the events of 1971, to determine responsibilities and to make recommendations for reparation for the victims.

Amnesty International believes that an independent official commission of inquiry (“a truth commission”) should be established with the mandate to provide a forum to give voice to victims; to clarify as far as possible the facts surrounding past serious human rights abuses and violations of international humanitarian law; to develop the information for possible use as evidence in criminal proceedings against individuals responsible; and to make effective recommendations on providing full reparation to the victims and their relatives. Such a commission of inquiry would be the first step in realizing the right of victims to know, including the right to the truth, the right to justice and the right to full reparation, as enunciated in the UN principles on impunity.³ However, any such commission of inquiry should be complementary to, not a replacement for, ordinary judicial accountability mechanisms to prosecute perpetrators.

Amnesty International calls on the Caretaker Government to initiate this process with the technical assistance and support of the United Nations to ensure that the process of seeking truth, justice and reparations are in line with international human rights standards for war crimes, crimes against humanity and other serious violations of human rights and humanitarian law in 1971.

Engagement with stakeholders

If reform measures are to endure beyond the interim government, then it is essential that all key stakeholders understand and support the changes.

³ UN Doc. E/CN.4/2005/102/Add.1.

Civil society groups have been instrumental in exposing human rights violations and in demanding change. They have spearheaded the call to end impunity and corruption and bring about institutional reforms. Amnesty International calls on the Caretaker Government to set up regular, extensive and substantive consultations with civil society groups, including grass roots organizations, on all proposals for human rights reforms and actions to end impunity. Such consultations will allow policy-makers to access diverse views, experience and expertise and better ensure that the proposed reforms meet the real needs of the people. Most importantly, sustained public engagement and active participation of a wide range of civil society actors will help to provide a channel for communications, transparency and accountability of the Caretaker Government in the absence of a democratic mandate.

Amnesty International is aware that some of the measures it is recommending will require laws to be passed or amended by parliament. From a legal perspective, when there is no parliament, as is currently the case, the President can issue ordinances which have the same weight as Acts of Parliament and are valid until one month after an elected parliament starts functioning.⁴

While Amnesty International appeals to the Caretaker Government to use this channel to move forward with reforms, it also calls on the government to engage with all stakeholders to build sufficient public and political support so that these reforms will be endorsed by a future parliament and implemented by a future democratically elected government.

For the reform agenda to take root, political parties must commit themselves in the run-up to the elections to supporting and undertaking initiatives that enhance protection of and respect for human rights. After elections, they must ensure that parliament entrenches the reforms through legislation where necessary. That is why Amnesty International's recommendations are directed not only at the Caretaker Government but also at the political parties. Unless those who are likely to form the future government and parliament commit themselves to transparency, accountability and the rule of law agree to human rights reforms and embed them when they come to power in law, policy and practice, the

⁴ When Parliament stands dissolved, its legislative powers are transferred to the President. Under Article 93 of the Constitution, the President can issue ordinances which have the same force of law as Acts of Parliament. The active life an ordinance so made is when there is no parliament in session or in place. An ordinance will have to be placed before Parliament at its first session, and unless Parliament approves it, it will lapse after 30 days. Parliament can reject an ordinance or pass it as Act of Parliament with or without amendments.

people of Bangladesh will continue to be denied the effective enjoyment of their human rights

Derogation of human rights during the state of emergency

Amnesty International has noted the growing call for the lifting of the state of emergency. The UN International Covenant on Civil and Political Rights to which Bangladesh is a party, permits a state, subject to strict conditions, to derogate from certain human rights obligations during a declared time of public emergency which threatens the life of the nation.⁵ However, any such derogation must be strictly required by the exigencies of the threat to the nation, must not be inconsistent with other international law obligations and must not be discriminatory. All emergency measures, including limitations on freedom of expression, assembly or association, need to meet this test if they are to be valid under international law.

The International Covenant on Civil and Political Rights also specifies that certain rights are non-derogable,⁶ including the prohibition on torture and cruel, inhuman or degrading treatment, the right to life, the right to recognition as a person before the law, and freedom of thought, conscience and religion.

A state of emergency can never be invoked as grounds for arbitrary deprivation of liberty or the fundamental principles of fair trial. Amnesty International believes that some aspects of the emergency regulations have either been framed too broadly or are being implemented in a manner in which they violate due process rights of detainees, and should be urgently reviewed and amended.

Amnesty International also believes that some of the restrictions imposed through the Emergency Powers Rules (EPRs) do in fact exceed what is permissible under international law in the current situation prevailing in Bangladesh. The Caretaker Government should review and amend the restrictions on rights to freedom of expression, assembly and association. Such restrictions are counter-productive to the aims of the Caretaker Government itself as they undermine the creation of a participatory, consultative climate in the country. Such an environment is essential for the success of the institutional and electoral reform processes.

⁵ However, to Amnesty International's knowledge, the government of Bangladesh has not notified the UN Secretary-General of its intention to derogate from the provisions of the International Covenant on Civil and Political Rights (ICCPR), to which it is a party. Such notification is a required element when seeking derogation.

⁶ Article 4, International Covenant on Civil and Political Rights.

Call for action

On the first anniversary of the declaration of the state of emergency and as the country prepares for democratic elections to be held by November 2008, Amnesty International is calling on the Caretaker Government to take concrete action, - and for political parties to demonstrate their political will - to end impunity, protect human rights and establish the rule of law. It is also calling on the Caretaker Government to consult and engage with the full range of stakeholders, including civil society organizations.

Amnesty International is calling on the Caretaker Government to:

Uphold international human rights obligations. Implement and report on human rights treaties to which Bangladesh is a party, and embed the international principles through reform of existing institutions and creation of new ones, policy guidelines and accountability measures.

Respect the limits placed by international law on derogation of human rights during a state of emergency. Ensure all restrictions on human rights in the context of the state of emergency, including the continued imposition of the state of emergency itself, conform to Bangladesh's international legal obligations as a UN member state and state party to core international human rights treaties.

Initiate **action to end impunity for war crimes and crimes against humanity.** Establish a Commission of Enquiry as a first step to establishing truth, justice and full and effective reparations for victims.

Ensure the independence of the judiciary. Ensure that separation of the judiciary is followed by other measures to build a truly independent and effective judicial system, including through setting up an independent Judicial Services Commission, or similar body to provide oversight of judicial appointments, conditions of service and security of tenure; and ensure sufficient sustainable funding.

Reform the police to ensure a human rights-based approach to law enforcement. Establish an independent oversight and accountability mechanism; ensure a legal and policy framework which embodies respect for human rights, including a statutory code of conduct.

End arbitrary detention and guarantee due process and fair trial rights. Repeal the Special Powers Act 1974; ensure arrests are carried out according to due process of the law; that detainees are charged with a recognizable criminal offence and brought before a court or released; and that detainees arrested under Section 54 of the Criminal Procedure Code have access to lawyers, family and medical attention immediately upon arrest.

End impunity for human rights violations by security and armed forces. When deployed in a law enforcement capacity, all security and armed forces personnel should be brought under the same accountability mechanisms as the civilian police; they must comply with international standards on the use of force applicable to the police; and all allegations of human rights violations, including torture and ill-treatment, should be investigated within the civilian justice system.

Guarantee an independent and fully empowered National Human Rights Commission (NHRC). Set clear benchmarks and timelines for making the NHRC operational; entrench the independence of the NHRC through law, including criteria and process for selection of members, funding and resources; empower the NHRC with the strongest possible mandate to investigate human rights abuses and ensure accountability by all duty holders, including security and armed forces personnel.

Protect freedom of expression. Act to end human rights violations against journalists and human rights defenders; pass the proposed Right to Information Act; establish bodies to regulate the printed and broadcast media that are independent of the executive.

The recommendations above do not address political rights related to democratic elections or reform of the Electoral Commission, however, Amnesty International notes the call from the Commission itself and civil society organizations for institutional reforms and other measures to make the Commission independent of the government, and urges the government to respond positively. Furthermore, acknowledging the strong desire of the people of Bangladesh for democratic elections, Amnesty International believes that the recommendations in this memorandum, by promoting good governance and respect for human rights, will contribute to a positive climate for free and fair elections.

Amnesty International recognizes the enormous economic and social challenges confronting Bangladesh as a developing country and in particular the natural calamities faced by the people of Bangladesh and

the Caretaker Government in the past year. This memorandum does not directly address the issues of human rights related to poverty, environmental degradation or women's empowerment.⁷ However, the recommendations proposed in this memorandum will, if carried out successfully, improve the environment for protecting the rights of the poor and the marginalized and give them better access to justice.

2. Independence of the judiciary

“...everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.”

International Covenant on Civil and Political Rights, Article 14(1).

An accessible independent justice system, which guarantees human rights for all, is the cornerstone of the rule of law. International human rights treaties and other instruments have emphasized the unique role that courts have in safeguarding human rights, and the necessity of ensuring their independence in order to fulfil this role. For example, in 1993, the Vienna Declaration and Program of Action adopted by all states at the World Conference on Human Rights stated that: “The administration of justice, including law enforcement and prosecutorial agencies and, especially, an independent judiciary and legal profession in full conformity with applicable standards contained in international human rights instruments, are essential to the full and non-discriminatory realization of human rights and indispensable to the processes of democracy and sustainable development.”

The realization of human rights demands a competent, independent and impartial judiciary able to take make decisions in accordance with the law, free from restriction or outside interference. To date, however, the judiciary in Bangladesh has not acted as an independent and impartial agent of human rights protection.

The independence of the judiciary has been compromised by political interference in judicial decision-making, the role of the executive in judicial appointments and by the system of executive control over lower courts until recently, undermining the separation of the judiciary from the executive. Furthermore, there are allegations of extensive

⁷ Amnesty International is discussing human rights issues related to poverty eradication and gender violence with civil society leaders and NGOs separately in the context of its on-going global campaign to Stop Violence Against Women and its forthcoming campaign on Human Dignity.

corruption in the ranks of the lower judiciary, and occasional reports of physical threats against them.

The judiciary has been susceptible to the prevailing political polarization, and, taken together with a severely overloaded judicial system, it has proved largely unable to deliver justice to those subjected to human rights abuses. Magistrates in many cases documented by Amnesty International have not exercised their powers effectively to prevent arbitrary detention and have failed to address allegations of torture.⁸

Specific legal and institutional factors which have compromised judicial independence were addressed by a 1999 Supreme Court ruling. This outlined the essential conditions of judicial independence. It named these as: “1. Security of tenure 2. Security of salary and other benefits. 3. Institutional independence from the parliament and the executive.”

The Caretaker Government has taken significant and welcome steps in implementing the Supreme Court’s recommendations on separating the judiciary from the executive. However, Amnesty International is concerned that lack of capacity and funds has prevented the full implementation of the separation and urges the authorities to ensure that adequate resources are made available to ensure that the measures are converted into reality on the ground as soon as possible.

Amnesty International also welcomes the steps taken to establish the Judicial Services Commission. Amnesty International calls on the Caretaker Government to take comprehensive measures to ensure the full independence of the judiciary – and so to lay one of the key foundations for the protection of human rights and the rule of law. Strong institutional mechanisms to prevent political patronage and corruption are needed.

Guaranteeing the independence of the judiciary requires more than the separation of the executive from the judiciary, although this is essential. International and Commonwealth standards lay out a number of benchmarks and institutional and procedural provisions necessary to secure independence of the judiciary.⁹ The Caretaker Government and

⁸ Amnesty International, *Bangladesh: Human Rights Defenders Under Attack* (AI Index: ASA 13/004/2005).

⁹ See United Nations Basic Principles on the Independence of the Judiciary, endorsed by UN General Assembly Resolution A/Res/40/32 of 29 November 1985 and A/Res/40/46 of 13 December 1985; Commonwealth (Latimer House) Principles On the Three Branches of Government; Commonwealth Principles on the Accountability of and the Relationship Between the Three Branches of Government, as agreed by Law Ministers and endorsed by the Commonwealth Heads of Government Meeting, Abuja, Nigeria 2003; Basic Principles on the

political parties should commit to building a system of justice incorporating international best practice. They should also commit themselves to creating an environment in which judges, lawyers and officers of the court can carry out their responsibilities without fear or favour, including physical threats.

Priority attention must be given to increasing access to justice particularly for women, the extreme poor, and the most vulnerable and marginalized groups in Bangladesh. Victims of human rights violations should be able to institute proceedings, on an individual or collective basis, as a party in a civil action. Victims of human rights violations should be assured access to readily available, prompt and effective remedy in the form of criminal, civil and administrative or disciplinary proceedings and should be protected against any intimidation, harassment or reprisal.

Amnesty International's recommendations to the Caretaker Government:

Establish an appropriately resourced independent Judicial Services Commission, (or similar body) supported by a Secretariat with adequate funds and personnel, which can guarantee an independent process for judicial appointments, ensure the implementation of appropriate conditions of judicial service and tenure, and provide independent oversight of the judiciary.¹⁰

Ensure that the judiciary maintains jurisdiction over all matters of a judicial nature and that it retains exclusive authority to decide whether a matter submitted to it falls within its competence as defined by law.

Ensure that judicial appointments are made on merit, on the basis of clearly defined criteria and by a publicly declared process, including competency and impartiality, and with appropriate

Independence of the Judiciary, adopted by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders; Beijing Statement of Principles on the Independence of the Judiciary, adopted at the 6th Conference of Chief Justices of Asia and the Pacific, 20 August, 1995, <http://www.asianlii.org/asia/other/CCJAPRes/1995/1.html>

¹⁰ The selection process for Commission members should ensure that the judiciary has the primary role in the selection process, and that Commission members include individuals with appropriate legal qualifications, taking into account possible conflicts of interest.

provision for abolishing discrimination, including by the progressive removal of gender imbalance.

Ensure that any suspension or removal of judges is only for reasons of incapacity or behaviour that renders them unfit to discharge their duties. Any removal, suspension or disciplinary measure should be undertaken only pursuant to an independent and impartial investigation of the reasons for such action and following a fair hearing and a judgement based on established standards of judicial conduct.

Ensure that the Judicial Services Commission has the power to recommend the appointment of judges by putting forward candidates based on high competence, integrity, independence and impartiality. The proposals from the Commission should be rejected only exceptionally, and the executive or parliament should not be allowed to appoint a candidate not recommended by the Commission.

Create fixed arrangements for conditions of judicial service, including security of tenure, which must be guaranteed, and protection of all levels of remuneration. A judge's tenure should never be altered to the judge's disadvantage during his or her term of office. Sufficient sustainable funding is needed to enable the judiciary to perform its functions to the highest standards. Salaries and benefits should be set by the independent Judicial Services Commission.

Swiftly appoint new judicial magistrates to criminal courts around the country and abolish posts combining judicial responsibilities and administrative responsibilities which are not inherent to the functions of appropriate judicial oversight.

Create training programmes for judges, magistrates and judicial personnel including international human rights law and particularly issues related to non-discrimination and women's human rights.

Ensure that judges are made fully aware of the international human rights obligations assumed by Bangladesh, as well as relevant international law and standards, with a view towards taking full account of and promoting such law and standards in their decisions and judgements.

Take further action to depoliticize the public prosecution department, with a view to ensuring that prosecutors scrupulously adhere to the United Nations Guidelines on the Role of Prosecutors.¹¹

Improve access to justice, in particular for women and the most poor and marginalized, identifying relevant measures through consultation with representatives from these constituencies.

Amnesty International calls on political parties to prioritize the issue of judicial reform in their own political manifestos, and to commit to securing and ensuring the full independence of the judiciary.

3. Police reform

“...every law enforcement agency should be representative of, and responsive and accountable to the community as a whole.”

UN Code of Conduct for Law Enforcement Officials

The state has a legal obligation to protect the right to life and physical security of all its citizens. Legitimate, effective policing upholds the rule of law, and creates a secure environment, free from fear and the threat of violence, where human rights can be enjoyed by all, without discrimination. International standards establish that law enforcement agencies should be representative of, and responsive and accountable to, the community as a whole.¹²

Amnesty International has for many years expressed concern over violations of human rights committed by law enforcement agents in Bangladesh. Amnesty International has received detailed allegations of torture and other ill-treatment in police custody, with victims including both political detainees and criminal suspects. Some people have died as a result of torture in police custody. In addition to reports of extra-judicial executions, Amnesty International has also documented the use of excessive force by police, attacks on political rallies and peaceful demonstrations and severe beatings of participants. For example, live ammunition, rubber bullets and tear gas were used in policing operations against protestors over electricity shortages in the northern town of Kansat in April 2006 in which at least 16 people were killed.

¹¹ Adopted by the Eighth United Nations Congress on the Prevention of Crime and Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990. http://www.unhchr.ch/html/menu3/b/h_comp45.htm

¹² UN Code of Conduct for Law Enforcement Officials, adopted by UN General Assembly resolution 34/169 of 17 December 1979, preamble.

Impunity for such abuses has prevailed. Those subject to torture and other ill-treatment have largely been denied justice and redress, and those responsible have not been held to account. Torture and other ill-treatment are facilitated by laws allowing incommunicado and arbitrary detention discussed below, where due process and judicial oversight are denied.

Public mistrust in the police is pervasive. Yet effective policing requires the support of local communities. Such support will only come when the public has confidence that police forces will perform in a professional and effective manner and with respect for human rights. Policing in Bangladesh has been tarnished by corruption and political interference. The police have been widely used as agents of the party in power, rather than as officers of the law, accountable to the rule of law.

Bribery, corruption and political influence have led the police frequently to side with the powerful and the affluent, leaving those who are most vulnerable – the poor, women and minorities – as the least protected.¹³

The lack of effective accountability and oversight mechanisms is a key barrier to effective policing. Internal complaints mechanisms are perceived as ineffective and there is no external independent accountability or oversight mechanism. The police force is inadequately trained and equipped, and subject to corruption. It lacks transparency and does not provide accessible information on key issues such as its legal framework and complaints mechanisms. In this context, Amnesty International notes the preparation of the draft Police Ordinance of 2007 which includes provision for a police complaints commission.

Commitment to police reform must be unequivocal. Accountable, human rights-based policing must become the common goal of the Caretaker Government and political parties. Reform of the legal and policy framework is needed to provide a Police Act and Code of Conduct in keeping with an ethos of human rights-based policing in service to the community.

A comprehensive agenda of reform, fully incorporating international standards and principles, is an urgent priority for current and subsequent administrations. This should be developed in full consultation with civil society as a key stakeholder. Tolerance for human rights abuses must end, and perpetrators be brought to justice.

Amnesty International's recommendations to the Caretaker Government:

¹³ "Reform Imperatives for the Police", Muhammad Nurul Huda, *Daily Star*, 2004.

Ensure a legal and policy framework which embodies an ethos of service to the community, transparency, and respect for human rights, including a statutory code of conduct; ensure that the legal and policy framework integrates international standards on use of force and firearms, prohibition and prevention of torture and other ill-treatment, and oversight of arrest and detention.

Review the use of live ammunition and rubber bullets to ensure that police and other law enforcement agencies are properly trained and that such equipment and rules of engagement comply with international norms and standards.

Ensure that the police force has sufficient operational independence from the executive to carry out its duties, for which it should be fully accountable; the chain of command should be clear so that it is always possible to determine which superior is ultimately responsible for the acts or omissions of police personnel.

Ensure that all police receive training in the implementation of international human rights standards: theory should be linked to practical training.

Ensure that pay, recruitment and conditions of service are appropriate to a professional police service; respect for human rights should be an essential element in performance appraisal and decisions on promotion.

- Establish an independent, fully empowered external oversight and accountability mechanism to investigate complaints against the police, particularly those of a serious nature. Any proposed police complaints commission must integrate international best practice. It must be independent of the government, police and political influence, accessible to the public, and report publicly on its activities.
- Ensure that the establishment of a fully empowered external oversight and accountability mechanism is complemented by the creation of an internal system within the police service to build an effective system and culture of accountability and professionalism. Internal police procedures to examine complaints made by members of the public against police officers should be well-publicized, accessible to the public and inspire public confidence. They should ensure prompt and rigorous investigation of complaints and a fair disciplinary process for police who are the subject of complaints.

Police reform is a long-term commitment and Amnesty International calls on political parties, following democratic elections, to prioritize and support measures that will ensure an effective law enforcement machinery in Bangladesh, including through the measures recommended above.

4. Arbitrary detention, arrests without warrant and fair trial

The persistent and widespread use of preventive detention without charge or trial by successive governments has marred Bangladesh's human rights record. Large numbers of individuals have been denied the safeguards against arbitrary deprivation of liberty enshrined in the Bangladeshi Constitution and international law.

The Special Powers Act (SPA) 1974 has been used to detain people who have not been charged with a criminal offence. The SPA provides for the detention of individuals who might commit "prejudicial acts" against the state and gives sweeping powers to the executive to detain people arbitrarily without having to justify its action before a court of law.¹⁴

The SPA has been used by various administrations as a tool for detaining critics and political opponents. Its provisions are wide open to political manipulation. The SPA provides no guidance on the burden of proof necessary for the government to conclude that an individual is likely to commit a prejudicial act, and detention under the SPA can only be challenged before the courts on procedural grounds. Detainees are denied the right to legal representation before a non-judicial Advisory Board which can indefinitely extend detention for successive six-month periods.¹⁵

Amnesty International has repeatedly called for the repeal of the SPA. Under international law, the right not to be subjected to arbitrary detention is applicable at all times. Individuals detained should be charged with a recognizable criminal offence and brought promptly before an independent court or released. Detainees have the right to be informed of their rights and the reasons for their arrest, and to have prompt access to counsel and access to a court to challenge the legality of their detention.

¹⁴ "Prejudicial acts" include undermining the sovereignty or security of Bangladesh, creating or exciting feelings of enmity and hatred between different communities and interfering with the maintenance of law and order.

¹⁵ Following an initial one-month detention period.

In addition, over many years Amnesty International has expressed concern about abuse of Section 54 of the Criminal Procedure Code, which allows for arrest without warrant and for criminal suspects to be held incommunicado for up to 24 hours. During this period of incommunicado detention, many detainees have been subjected to torture and other ill-treatment. Amnesty International calls for an end to incommunicado detention, by ensuring that all detainees are allowed prompt access to lawyers, including during questioning, and to family members and medical assistance.

The Caretaker Government has failed to take action to end the practice of preventive detention which compromises justice and the rule of law. On the contrary, it has detained individuals without charge under the SPA, including prominent politicians and businessmen accused of corruption-related offences, party political activists individuals alleged to have been involved in bomb blasts (including members of Islamist groups) and Arifur Rahman, a cartoonist (see Section 7, Protection of journalists and human rights defenders, below).

The SPA now applies to offences set out in the Emergency Powers Rules (EPRs), 2007, which give far-reaching powers to law enforcement agencies. As a result, individuals suspected of exercising rights of assembly and expression proscribed by the Rules may be arrested without a warrant and held in preventive detention, as well as people who have committed or are deemed likely to commit offences such as corruption, drugs offences and trading on the black market.

The exact number of people detained without charge at any one time under the SPA and the EPRs remains unclear. Media reports, based on official announcements of arrests, indicate that hundreds of thousands of people have been held under preventive detention laws. The majority are presumed to have been released after relatively short periods, but some are held for weeks or months.

Detainees who successfully challenge their detention under the SPA before the High Court (on procedural grounds) are often not released, as the authorities subsequently bring a succession of criminal charges against them. In a number of cases these criminal charges have not stood scrutiny in court and have been dropped after a hearing, raising fears that they were filed as a pretext to secure the continued custody of the individual. Such concerns have been heightened by cases in which the authorities have refused to release suspects initially arrested under the SPA who have been granted bail by a court after being charged with a criminal offence, on the grounds that they are detained under the SPA.

Detainees charged under the EPRs are automatically deprived of a number of legal remedies, including the possibility of release on bail. While the possibility of bail for individuals not detained under the EPR has been reinstated, some confusion persists as to which offences are available.

Under international standards, there is a presumption of release before trial for detainees. The UN Human Rights Committee has affirmed that a state is required under article 9 (3) of the International Covenant on Civil and Political Rights to provide for pre-trial release on bail, except in situations where the likelihood exists that the accused would abscond or destroy evidence, influence witnesses or flee from the jurisdiction of the state party. Decisions on pre-trial release must be made in each individual case, not through a sweeping provision that uniformly denies bail to all detainees. EPR provision 19D does not conform to these guidelines.

In addition, trials of people charged under the EPRs are expedited. While all individuals charged with a criminal offence have the right to be tried within a reasonable time, Amnesty International fears that Rule 19A of the EPR, which requires trials to be completed within 45 days, may compromise key components of the right to a fair trial, namely the rights to a defence and to adequate time and facilities to prepare a defence. This is particularly true for people charged with serious or complex crimes.

Rule 18 of the EPR allows the government to transfer trials to the Speedy Trials Tribunal at any stage, which risks undermining the separation of powers, and the right to a fair and public trial before an independent, impartial and competent court. It is the judiciary itself, not the executive, which must make the decision as to whether a trial should be transferred to another jurisdiction or venue.

The right to a fair trial has been recognized by the UN Human Rights Committee to be a key element of human rights protection and a procedural means to safeguard the rule of law. While the goal of combating economic crime and abuse of political power is important, it will ultimately not be served by proceedings which compromise due process and the rule of law.

Amnesty International considers that ending the injustice of arbitrary detention and respecting fair trial rights for all in Bangladesh is essential if a culture of transparency and respect for human rights is to be established. As the UN Human Rights Committee has made clear, a

state of emergency may never be invoked as grounds for arbitrary deprivation of liberty or the fundamental principles of fair trial.¹⁶

Amnesty International's recommendations to the Caretaker Government:

End arbitrary detention. Individuals detained on suspicion of having committed or being about to commit a crime should be charged with a recognizable criminal offence and brought promptly before a court or released.

Repeal Emergency Powers Rules provision 19D, which automatically denies bail to detainees charged under the Emergency Powers Rules. Afford all detainees the opportunity to apply for pre-trial release on bail.

End all incommunicado detention, including under Section 54 of the Criminal Procedure Code. Ensure that all people deprived of their liberty are informed without delay of the reasons for their detention and of their rights, are provided the opportunity to challenge the legality of their detention before a court, are granted access to a lawyer, including during questioning, and have access to their family and to a medical examination and necessary treatment.

Ensure that all individuals charged with a criminal offence are tried within a reasonable time before an independent, impartial and competent tribunal established by law. The right of the accused to a defence and to adequate time and facilities to prepare a defence must be respected and protected. The norm should be that such trials are held in public; any exceptions must be consistent with international human rights law.

Suspend the use of the 1974 Special Powers Act, and take steps towards its repeal by the future parliament.

5. Security forces and human rights

The use of military and security personnel in law enforcement operations has become established practice in Bangladesh. There have been numerous reports of human rights violations committed by the Joint

¹⁶ General Comment No. 29 on States of Emergency (article 4), UN Doc. C/CCPR/C/21/Rev1/add.1, para 11.

Forces,¹⁷ a combination of police and military forces, and particularly by the Rapid Action Battalion (RAB), an elite police unit largely made up of seconded military personnel.¹⁸ It is a matter of particular concern to Amnesty International that to date, no members of the security forces, including army, navy personnel or RAB, have been prosecuted through the courts, despite mounting evidence of their involvement in human rights violations, including extrajudicial killings, torture and other ill-treatment.

Military and paramilitary personnel have been used to maintain security in the region of the Chittagong Hill Tracts for many years. This region has been subject to violence and insecurity for a long time. There have been allegations of arbitrary detention, torture and unlawful killings by law enforcement personnel and groups close to the army within the Bengali settlers' community. Insurgent groups are also alleged to have committed human rights abuses against the settlers.

Despite announcements of the opening of criminal investigations against some security personnel in certain instances, to date no report has ever been published, nor any prosecution instituted in a court of law, perpetuating a climate of impunity.

A recent example of impunity is the case of Rang Lai Mro, a prominent community leader in the Chittagong Hill Tracts and a member of the Bandarban Hill Council. He was arrested on 23 February 2007 and reportedly taken to the Army Cantonment where he was allegedly tortured by army personnel. He was admitted to the Chittagong Medical College hospital for treatment of his injuries. He was charged with possession of arms and sentenced to 10 years' imprisonment. After his conviction, in October, he was reportedly taken to the police station and beaten again, once more requiring hospital treatment for his injuries. The government has taken no action to investigate the allegations of torture. Rang Lai Mro was allegedly targeted because he protested against the eviction of hundreds of families of the Mro indigenous community from

¹⁷ Following previous practice, under the 2007 EPR a combination of military, paramilitary and police forces are empowered to carry out joint law enforcement activities. Commonly referred to as Joint Forces, these include the police force, the armoured police battalion (riot police), the Rapid Action Battalion (a paramilitary style police unit made up of police and soldiers), Battalion Ansar (village security force), Bangladesh Rifles (border security) Coast Guard Force, members of the National Security and Intelligence and Directorate General of Forces Intelligence and the Bangladesh armed force.

¹⁸ The RAB, though composed largely of seconded soldiers and mostly commanded at the regional level by military officers, is headed by the Inspector General of Police and reports to the Home Ministry.

their land to make way for an army training centre in a remote part of the Bandarban Hill District in December 2006.

Personnel from the armed forces have been called in to assist the civil administration during the state of emergency throughout Bangladesh. However, Emergency Powers Rules 2007 provide no guidelines on the conduct and scrutiny of the law enforcement activities by the armed forces in support of the civilian authorities. Each component part of the Joint Forces is reported to retain their own operational procedures, command and control systems and internal investigation and disciplinary mechanisms. As increasingly the armed forces appear to be stepping in to carry out activities in support or in default of the civilian administration, such as investigation of corruption or food distribution, the lack of a clear accountability chain to the civilian authorities and between the civilian and military is worrying.

Recent reported abuses by armed forces personnel include the deaths in naval custody of Khabirul Islam Dulal, ward commissioner of Char Fashion Municipality, Bhola district, who was arrested by naval personnel on 20 February 2007 and died later that day, allegedly as a result of beatings and near-drowning.

Cholesh Richil, an outspoken leader of the Garo indigenous community, died in custody on 18 March 2007. He had reportedly been tortured by Joint Forces unit, composed of military and police personnel. After Cholesh Richil's body was handed over to the Garo community church on 19 March, his family observed multiple bruises, nails missing from his fingers and toes, and cuts and scratches consistent with blade wounds. His testicles had reportedly been removed. In May 2007, the government appointed a one-member judicial commission to investigate his death, but no report has been made public, nor is there any information in the public domain of any action to protect Joint Forces personnel. (Such commissions have often been formed in the past after incidents of human rights abuses have sparked public outrage, but their terms of reference and their findings have not been made public.)

Jahangir Alam Akash, a journalist and human rights activist, was arrested on 24 October 2007 and claims to have been tortured severely by RAB officials in Rajshahi. He had produced a television report broadcast on 3 May 2007 alleging that RAB agents had shot a man offering no resistance in his home in front of his family. Jahangir Alam Akash has been charged with extortion, a charge widely believed to be false and politically motivated, and is currently on bail. He has left Rajshahi for fear of being arrested and tortured again.

A pattern of killings, portrayed by the government as deaths in crossfire, has marked the operations of the RAB since it was established in 2004. According to newspaper reports, at least 147 people died in such incidents in 2004 alone, and the figure rose in succeeding years. According to one NGO, based on media reports, there were 123 “crossfire” deaths during 2007. In meetings with the Amnesty International delegation, security sources acknowledged continued extrajudicial killings by RAB and Joint Forces units but claimed there had been a significant fall in the number of extrajudicial killings under the Caretaker Government.

Under the Armed Police Battalion Ordinance (as amended) that empowers the RAB, the RAB enjoys wide immunity from prosecution. Section 13 contains a broad indemnity provision which states that there can be “no suit, prosecution or other legal proceeding...against RAB members...for anything done in good faith under this Ordinance”. Such a provision is to be found in other legislation in Bangladesh also, but Amnesty International believes that it institutionalizes impunity and flies in the face of accountability.

Military institutions are constituted for the purpose of national defence and military training relates to the conduct of hostilities. The training and practices of military personnel are not designed to equip them for law enforcement duties. Therefore, when military personnel are used to carry out law enforcement functions, the risks of human rights violations increase.

When military personnel accused of human rights crimes are investigated within the military system, the danger that they will not be held accountable is amplified, leaving civilian victims without an effective remedy. Therefore, according to international standards, military justice systems should be limited to prosecuting military offences and should not be competent to prosecute military personnel where the victims of rights violations are civilians.¹⁹ Amnesty International recommends that the civilian authorities should be given clear responsibility for investigating and prosecuting such offences, including those perpetrated by soldiers in Joint Force operations with police, in the civilian courts, so that there is no ambiguity or confusion over jurisdiction and competence.²⁰

¹⁹ See, for example, UN Set of principles for the promotion and protection of human rights through action to combat impunity, UN Doc E/CN.4/2005/57/Add 1, principle 29; UN Working Group on Arbitrary Detention, UN Doc. E/CN.4/1998/63, 18 December 1998, para. 80; UN Draft Principles Governing the Administration of Justice Through Military Tribunals, UN Doc. ECN.4/2006/58, Principles 8 and 9, paras, 29-35.

When military personnel are carrying out law enforcement activities they must comply with international law enforcement standards, in particular the UN Code of Conduct for Law Enforcement Officials and Basic Principles on the Use of Force by Law Enforcement Officials. When deployed in a law enforcement capacity, the military must conform with the standards on the use of force applicable to the police. Any law enforcement duties carried out by the military should also be of a temporary nature and for the shortest time possible.

Amnesty International considers that the use of the military in policing operations is not a sustainable, long-term solution to law enforcement problems. The answer lies in creating a reformed and effective police force fully accountable to the rule of law under civilian jurisdiction. In addition, it is a clear breach of international law and standards to grant sweeping immunity to RAB and other law enforcement personnel for investigation and prosecution for human rights violations. Any use of military personnel for law enforcement should be strictly circumscribed as a temporary measure of limited scope and duration until such time as the police can be fully deployed.

Amnesty International's recommendations to the Caretaker Government:

Clarify and publicize the lines of responsibility and rules of engagement of the Joint Forces, and their individual component units.

Repeal laws granting immunity from prosecution to law enforcement personnel, including Section 13 of the Armed Police Battalion Ordinance, so that the RAB and other law enforcement personnel do not enjoy immunity from prosecution for human rights violations which carry criminal responsibility.

Ensure that when military personnel are deployed in a law enforcement capacity, they conform to the standards on the use of force applicable to the police, in particular the UN Code of Conduct for Law Enforcement Officials and the UN Basic Principles on the Use of Force by Law Enforcement Officials.

Ensure that military personnel deployed in a law enforcement capacity are brought under the same accountability mechanisms as police.

²⁰ At present, apart from the crimes of murder and rape, all other grave violations of human rights, including torture and ill treatment by military personnel are handled under military justice systems.

Ensure that all allegations of human rights violations by military personnel committed against civilians are investigated by a civilian body (see section 6, National Human Rights Commission) and, if there is reason to believe that a human rights crime, including torture and ill treatment, has been committed by military personnel, that prosecution is undertaken within the civilian justice system.

Ensure prompt, impartial and effective investigations into alleged human rights violations by military personnel and the RAB, with a view to bringing the perpetrators to justice.

Prohibit the acquisition and use of equipment that can be used by security and law enforcement personnel to inflict torture and other ill-treatment.

The cooperation and collaboration of the military leadership will be essential for the full implementation of the above recommendations. Amnesty International calls upon the military leadership to ensure full respect for human rights in all their activities. If allegations of human rights violations by military, police or other security personnel go unaddressed, public confidence is damaged. The Bangladesh army, in particular, is an important actor in international peace-keeping operations and there is a risk that its image abroad could be tarnished. It is in the army's own interest to allow independent investigations into allegations of human rights crimes by its personnel.

The practice of using armed forces in law enforcement and granting them immunity from prosecution was instituted under a democratically elected civilian government. Amnesty International urges all political parties to commit themselves publicly to stop the use of the military for policing purposes in future, and to ensure through parliamentary legislative action that no one will enjoy impunity for human rights violations, but that all allegations will be investigated and any prosecution will follow full due process in accordance with international human rights standards.

6. National Human Rights Commission

Amnesty International welcomes the Caretaker Government's announcement that it has initiated the creation of a National Human Rights Commission (NHRC). It is understood that a bill establishing an NHRC is progressing. This is a positive response by the Caretaker Government to sustained requests from the human rights community to

set up an NHRC in Bangladesh. The establishment of an effective body, in line with international standards and best practice, will demonstrate genuine commitment to the protection and realization of human rights in Bangladesh.

Amnesty International urges the Caretaker Government to ensure that the NHRC is set up in accordance with the Paris Principles.²¹ These require the NHRC to have its independence guaranteed by statute or constitution; autonomy from government; pluralism, including in membership; a broad mandate based on universal human rights standards; adequate powers of investigation; and adequate resources. An effective NHRC requires sufficient and qualified members and personnel, representative of civil society and selected in a manner which reinforces independence.

Broad and sustained consultation with relevant stakeholders including civil society, human rights defenders, lawyers, journalists and academics must inform the establishment of the proposed NHRC.

The mandate and powers of the NHRC must guarantee its effectiveness in securing accountability and ending impunity for human rights violations. It must have the power to monitor compliance with international and domestic human rights obligations. It must be empowered to investigate all instances and categories of human rights violations, past and present, and to address all state bodies and public actors, including the armed forces and security forces, without fear or restriction. Its mandate must not be curtailed to exclude investigation of abuses by armed forces. The NHRC must have powers to investigate individual cases and patterns of alleged human rights abuse at the request of any person or organization, and on its own initiative. It must be vested with the powers to compel and obtain evidence.

It should have the mandate not only to investigate individual complaints, but to institute public inquiries where situations of systematic or gross violations arise or where there is a broad public interest issue at stake.

The NHRC will be judged according to its ability to improve the human rights situation, and provide remedies in individual cases. It must have sufficient powers to guarantee action is taken to bring perpetrators to justice and to ensure that full reparation is provided to victims. The recommendations of the NHRC to the government should be mandatory,

²¹ Principles relating to the Status of National Institutions (The Paris Principles). Adopted by General Assembly resolution 48/134 of 20 December 1993. www.ohchr.org/english/law/parisprinciples.htm.

and the NHRC should have the power to seek legal enforcement in the courts against the government where the government has acted illegally. It should also have the power to refer a case for prosecution.

The NHRC can play an important role in identifying legal, policy and institutional measures necessary to improve the human rights situation and address the root causes of failures to fulfill human rights obligations. The NHRC should be empowered by statute to recommend legislative measures to ensure compliance with international human rights standards.

A strong NHRC could contribute to addressing longstanding human rights issues in Bangladesh, such as human rights violations against minority communities, including Hindus, Ahmadis and indigenous people in the Chittagong Hill Tracts. It could indicate ways to end discrimination against women and other disadvantaged groups and promote their access to justice, protection and redress.

Given the context of extreme poverty and lack of basic services for many people in Bangladesh, the remit of the NHRC must also cover economic, social and cultural rights, and in particular the ways of ensuring the legal enforcement of such rights.

Although the NHRC will be an important mechanism for strengthening human rights protection, it is not a substitute for safeguards provided by comprehensive and effective legal structures enforced by an independent, impartial, adequately resourced and accessible judiciary. The state, as the primary duty holder, is bound by international human rights obligations and must ultimately ensure that they are fully respected, protected and fulfilled.

Amnesty International's recommendations to the Caretaker Government:

Collaborate with all relevant stakeholders, including civil society, in designing an independent and fully empowered NHRC which is a model of best practice for the region and beyond.

Incorporate international standards and best practice guidelines including the Paris Principles and Amnesty International and International Human Rights Policy Council guidelines and recommendations. Seek expert advice from the UN Office of the High Commissioner for Human Rights' National Human Rights Institutions Unit.

Set clear benchmarks and timelines for making the NHRC operational.

Entrench the institutional and operational independence of the NHRC with appropriate statutory provision, including arrangements for selection of members, funding and resources.

Give the NHRC the strongest possible mandate to investigate human rights abuses, to address all duty holders and to ensure appropriate action to secure accountability.

The proposal for an NHRC has lain dormant for a number of years because of the failure of successive democratically elected governments to make it a reality, despite promises to the contrary. The political parties should now give their wholehearted support to the creation of a strong, independent and effective NHRC.

7. Protection of journalists and human rights defenders

Freedom of expression is a fundamental human right that must be respected and is essential if democracy in Bangladesh is to be resilient and enduring. Effective institutions which protect the interests of the people of Bangladesh can thrive only in a culture of freedom of opinion, dissent and debate. Corruption and abuse of power can only be confronted in a climate where people are free to express themselves without fear.

Bangladesh has active and diverse print, electronic and online media, and a culture where some degree of criticism of the authorities has been possible. However, Amnesty International notes with concern the limitations imposed on the right to freedom of expression. These include both long-term patterns of abuse, and restrictions specific to the current state of emergency.

Bangladeshi journalists have played a key role in exposing human rights violations. They are often the first point of contact when human rights violations occur, particularly in more remote rural areas. However, Amnesty International has documented frequent attacks, intimidation and harassment faced by journalists under previous governments.²² Journalists have been assaulted with impunity by the police when covering demonstrations and by armed gangs affiliated to various political parties. Some have been arrested and accused of a range of

²² See: Amnesty International, *Bangladesh: Harassment of news editors must stop* (AI Index: ASA 13/015/2003); and Amnesty International, *Bangladesh: Human rights defenders under attack* (AI Index: ASA 13/004/2005).

offences including sedition. Journalists in custody have been tortured or ill-treated. In 2005 Amnesty International published a report documenting the curtailment of freedom of expression and abuses against human rights defenders by both state and non-state actors.²³

Another means of silencing criticism of the authorities is through the misuse of criminal libel laws to punish the outspoken and encourage self-censorship in the media. Numerous media representatives have faced criminal charges of libel or defamation. Amnesty International believes that there should be no restriction on the right to freedom of expression beyond that envisaged by international human rights law.²⁴ Amnesty International calls for the repeal of criminal laws punishing libel or defamation, and for such laws not to be used.

Widespread concern has been articulated over the effect of the state of emergency on freedom of expression. This reflects both the legal framework created by the Emergency Powers Ordinance and Emergency Powers Rules, and what has been termed a culture of fear which is compromising the freedom of the media.

The Emergency Rules place very broad restrictions on the right to freedom of expression and although they have not been strictly enforced, they remain, in the words of one newspaper editor, as axe hanging over the head of the media, creating a chilling effect of self-censorship. Under the Emergency Powers Ordinance, restrictions may be placed on both print and electronic media if they contain "any provocative anti-government news, editorial, sub-editorial, article, feature, caricature, cartoon, talk-show, or discussion programme, or any news or information regarding any prejudicial or provocative activities, or about any meeting-assembly, procession, blockade, demonstration, speech, statement or any information or news".²⁵ Article 4 of the UN International Covenant on Civil and Political Rights, to which Bangladesh is a party, requires the government to notify the UN Secretary-General of its proclamation of the state of emergency and of its intention to derogate from article 19 of the International Covenant on Civil and Political Rights, which guarantees freedom of expression. To Amnesty International's knowledge, no such action has been taken. In addition, a lawful derogation would require that each measure be strictly necessary to address a specific threat to the life

²³ Amnesty International, *Bangladesh: Human rights defenders under attack* (AI Index: ASA 13/004/2005).

²⁴ See Article 19, *The Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, 1996.

²⁵ Emergency Powers Ordinance 5 (1), (2), (3).

of the nation. The sweeping restrictions contemplated by this ordinance do not meet this exacting test.

Arifur Rahman, a cartoonist with *Aalpin*, a weekly supplement in newspaper *Prothom Alo*, was arrested on 17 September over a cartoon that was a play on the name of the prophet Mohammed, following agitation and threats by Islamic groups against him, his editor and his newspaper. Two days later he was charged under Section 295A of the Penal Code with "hurting religious sentiments". While he was being held in connection with this specific criminal case, a 30-day SPA detention order was issued by the government on the same grounds. According to his lawyer, Arifur Rahman had no knowledge of this detention order until after 12 October 2007 when he was visited by his lawyer and a member of his family, although the grounds for detention were supposed to have been served on 6 October. The detention order has since reportedly been extended for another three months. Amnesty International considers Arifur Rahman to be a prisoner of conscience and is calling for his immediate and unconditional release.

Incidents of torture and brutality against journalists have taken place under the state of emergency. Tasneem Khalil, a journalist and human rights activist, was detained on 11 May 2007 and allegedly tortured because he had reported on human rights violations and had contacted international human rights organizations.²⁶ According to Human Rights Watch:

"Mr. Khalil was taken from his home in front of his wife and child, blindfolded and driven to an interrogation center, where he was tortured and questioned about his work as a journalist, writings on his blog, as well as his employment with Human Rights Watch and CNN. Many of Mr. Khalil's possessions, including computers, phones and passport, were confiscated when his home was ransacked."²⁷

The violent targeting of representatives of the media, as in the cases of Tasneem Khalil and Jahangir Alam Akash (see Section 5 above), creates a culture of fear and self-censorship.

One newspaper editor recently explained how his ability to report has been restricted:

²⁶ See, Amnesty International, [Bangladesh: Fear of torture/Possible prisoner of conscience: Tasneem Khalil, \(AI Index: ASA 13/006/2007\)](#), 11 May 2007.

²⁷ See, Human Rights Watch, [Bangladesh: Protecting Rights as Vital as Ending Corruption](#), 1 August 2007.

"I am allowed to describe in a report the situation of an Awami League or a BNP leader, but I am not allowed to report in any details what they actually say, partly because the authorities tell us they do not like it, partly because we are afraid of being arrested".²⁸

The internet is an increasingly important and widely accessed source of information and discussion on issues crucial to the future of Bangladesh. Amnesty International is concerned by attempts by the authorities to circumscribe freedom of expression on the internet. Authorities have asked internet service providers (ISPs) to provide details, including passwords, of all users and websites visited. The government is apparently proposing to establish an internet gateway service which would provide for all data and information to be stored in a centralized database fully accessible to the government.

The limitations imposed on the right to freedom of assembly have created a climate within which people gathering peacefully to protest against human rights violations and other issues are at risk of arrest, trial and imprisonment under broadly worded EPR provisions which are not in keeping with international standards on derogation. The arrest and prosecution of the Rajshahi and Dhaka University lecturers are illustrative of the manner in which the regulations are open to abuse in cases involving the right to peaceful protest. Amnesty International considered the Rajshahi teachers to have been prisoners of conscience who should never have been charged or convicted, and urges the government not to oppose any future appeal if the four seek to have their convictions quashed by the courts. Amnesty International also considers the four Dhaka University lecturers, currently under trial for breaching the EPR, to be prisoners of conscience who should be immediately and unconditionally released.

Amnesty International fears that the failure of the Caretaker Government to guarantee freedom of expression, association and assembly, thereby hampering press freedom and civil society engagement, may be counter-productive. The Caretaker Government's reforms may be undermined by a reduction in the space for debate and dissent. A period of transition and reform must be informed by a diversity of views. Democratic institutions cannot develop in a climate of self-censorship.

The government must consider carefully the extent of current restrictions on peaceful public assembly and expression of political views and take steps to loosen the restraints so that full and free debate can

²⁸ Private conversation with a Bangladeshi news editor.

inform the process of change that needs to occur in the lead up to the elections.

Amnesty International calls on the Caretaker Government to take the necessary measures to protect the right to freedom of expression in Bangladesh. The Caretaker Government must ensure that journalists and human rights defenders can carry out their legitimate work free of harassment, intimidation or abuse. It must lay the foundations for appropriate independent regulation of the media to ensure that the right to freedom of expression is protected in the long term.

Amnesty International's recommendations to the Caretaker Government:

Publicly condemn any abuses against journalists and human rights defenders.

Initiate prompt, impartial, independent and effective investigations into all abuses against journalists and human rights defenders (including the cases of Tasneem Khalil, Jahangir Alam Akash and Arifur Rahman) and bring the perpetrators to justice, and provide reparation to the victims.

Provide adequate protection for journalists and human rights defenders in Bangladesh.

Inform all lawenforcement personnel of their obligation to respect and protect human rights and to end acts of harassment and intimidation which compromise freedom of the media.

Implement the principles in the UN Declaration on Human Rights Defenders (1999).

Lift or substantially modify restrictions on freedom of expression, association and assembly imposed under emergency regulations to bring them into conformity with international standards, including Bangladesh's obligations under article 19 of the International Covenant on Civil and Political Rights and article 4 on derogation of human rights in a state of emergency.

Ensure respect for the rights to freedoms of expression, association and assembly; restrictions on such rights must be prescribed by law, necessary and proportionate to a lawful aim.

Reform the Penal Code so that no one can be imprisoned under criminal libel or defamation laws for peacefully expressing non-violent opinions.

Ensure that the government cannot intercept or obtain data, including that available on the internet, without a judicial warrant.

Establish a body independent of the government to regulate the media involving, but not limited to, media professionals.

Attacks on human rights defenders and the media by state and non-state actors have been condoned, tolerated and even instigated by political parties in the past. Amnesty International calls upon them review their past policies and practices, to ensure discipline among their party cadre to end human rights abuses, and to publicly commit themselves to concrete measures, listed above, to uphold freedom of expression, assembly and association in accordance with international standards.

8. Freedom of Information

Amnesty International welcomes the commitment made by the Caretaker Government to pass legislation on the right to information. A draft Right to Information Law is understood to have been sent to law and information ministries.²⁹

Amnesty International understands that the draft law incorporates input from civil society organizations, after a process of consultation in four divisions including a conference in Dhaka facilitated by the Manusher Jonno Foundation. Civil society organizations have expressed the need for continuing work to ensure the draft meets international standards.

The right to information is key to the effective exercise of other human rights, including the right to an adequate standard of living, to participate in public life and to make informed decisions about matters crucial to people's welfare. In Bangladesh, where extreme poverty and lack of access to basic services are widespread, the right to information is potentially of great significance to some of the most vulnerable and marginalized groups. It could help them to articulate demands and compel service providers to provide information related to their livelihoods and liberty.

The benefits of the proposed law will only be forthcoming if it is in line with international standards, is well-established by appropriate mechanisms and resources, and if people are made aware of it. Amnesty International therefore urges the Caretaker Government to make the draft law widely available for consultation, and calls on political parties to

²⁹ Bdnews24.com 5/12/07 Right to Information Act a National Priority.

make a public commitment to take forward the right to information agenda if elected.

Amnesty International's recommendations to the Caretaker Government:

Move ahead with right to information legislation and ensure the draft law conforms to international standards by seeking review by an appropriate expert body.

Maintain dialogue over the draft law with interested parties including civil society and political parties.

Distribute the law widely for consultation including to rural civil society groups who can solicit opinions on its practical application by people with few resources, and use appropriate media channels to publicize the law.

Ensure that the legislation imposes a duty on public bodies to publish key categories of information and to actively promote open government.

Amnesty International calls on all political parties to support the adoption of legislation on freedom on information and ensure its effective implementation in the future.