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Bangladesh
Submission to the UN Universal
Periodic Review

Fourth session of the UPR Working Group of the
Human Rights Council
February 2009



Executive summary

In this submission, Amnesty International provides information under sections B, C and D as stipulated in the *General Guidelines for the Preparation of Information under the Universal Periodic Review*:¹

- Under section B, Amnesty International raises concern over the Caretaker Government's use of emergency regulations since January 2007 to bypass safeguards against human rights violations.
- Section C highlights Amnesty International's concerns about arbitrary arrest and detention, unfair trials, and impunity for human rights violations.
- In section D, Amnesty International makes a number of recommendations for action by the government.

¹ Contained in Human Rights Council Decision 6/102, Follow-up to Human Rights Council resolution 5/1, section I adopted 27 September 2007.

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B. Normative and institutional framework of the State

Human rights violations under the state of emergency

Following a highly polarized political environment with widespread violence, serious human rights violations and fears of election-rigging, the President declared a state of emergency on 11 January 2007 and installed the current Caretaker Government with the support of the armed forces. Although the Caretaker Government has declared itself to be committed to long overdue reforms – which have led to the implementation of the 1999 Supreme Court ruling to separate the lower judiciary from the executive in 2007, the launch of a national human rights commission in 2008 and the promise to establish an independent police complaint commission – its growing failure to address a series of human rights violations has marred its reform agenda.

Restrictions under the state of emergency,² including on the right to freedom of expression, do not meet the requirements of Article 4 of the International Covenant on Civil and Political Rights, to which Bangladesh is a party. Article 4 requires the government to immediately notify the UN Secretary-General of its intention to derogate from provisions of the Covenant and reasons for the derogation. To Amnesty International's knowledge, no such action has been taken. In addition, Article 4 allows derogations only to the extent strictly required by the exigencies of the situation. The sweeping restrictions imposed under the state of emergency do not meet this exacting test.

The Caretaker Government's use of emergency regulations since January 2007 to bypass safeguards against human rights violations and to forfeit accountability for disregarding the rule of law and due process has reinforced deeply entrenched patterns of abuse of executive power by previous governments. The authorities' argument that emergency regulations are necessary to carry out institutional reforms to strengthen human rights protection remains unconvincing in the face of the government's continued role in human rights violations.

Under the state of emergency the Caretaker Government has carried out arbitrary arrests and detentions, imposed restrictions on judicial processes and on the rights to freedom of expression, assembly and association, and continued to detain dozens of politicians to bar them from political activity in the run up to the general elections in December 2008. In this way, the Caretaker Government has used the state of emergency to enforce its own political agenda.

The Government must also address a range of other human rights violations, unrelated to the imposition of the state of emergency, including deaths in custody, torture and other ill-treatment, extrajudicial executions, rape

² Following weeks of spiralling political violence, a Caretaker Government backed by the army imposed a state of emergency in January 2007. It postponed parliamentary elections scheduled for 22 January 2007 until late 2008, and severely restricted freedom of expression, association and assembly under the pretext of bringing an end to violent clashes between supporters of the main political parties.

and other forms of gender-based violence, and abuse of power by law enforcement agencies committed with impunity.

C. Promotion and protection of human rights on the ground

Arbitrary arrest and detention

The persistent and widespread use of preventive detention without charge or trial by successive governments has marred Bangladesh's human rights record. The Caretaker Government has continued to use preventive detention laws to deny large numbers of individuals their freedom in violation of the prohibition in international law of arbitrary deprivation of liberty provided for in the Bangladeshi Constitution and international law.

Preventive detention laws include the Special Powers Act (SPA) 1974, Section 54 of the Code of Criminal Procedure, and the Emergency Power Rules (EPR) 2007. These provide for the detention of individuals alleged to have committed acts which are "prejudicial" to the state.³ Offences under these laws are broadly formulated and open to political manipulation by the government to detain its critics and opponents, as well as to abuse by police and other security forces.

The right not to be subjected to arbitrary detention is guaranteed in international law, including in Art. 9 of the ICCPR, to which Bangladesh is a state party, which provides *inter alia* that individuals detained should be charged with a recognizable criminal offence and brought promptly before an independent court or be released. Detainees should have the right to be informed of the reasons for their arrest and to have prompt access to counsel and to a court to challenge the legality of their detention.

Detention under the Special Powers Act, 1974

The Special Powers Act (SPA), 1974, has been used to detain people without charging them with a criminal offence. It 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.

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". It specifies that no orders, under the SPA, "shall be called in question in any Court, and no suit, prosecution or other legal proceeding shall lie against the Government or any person for anything in good faith done or intended to be done under this Act."⁴ Detention under the SPA can only be challenged before the High Court on procedural grounds, for instance inconsistency in filling out forms; however, detainees cannot challenge the grounds for their detention.

Detainees are denied the right to legal representation before the non-judicial Advisory Board which the government is required to convene within 120 days of arrest under the SPA, and which is the only review mechanism available to an SPA detainee. The Advisory Board can recommend withdrawal of an SPA detention order or extend detention indefinitely for successive six-month periods.⁵ 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 criminal charges against them. In a number of cases such criminal charges have not withstood scrutiny in court and have been dropped after a hearing, raising concern that they were filed as a pretext to secure the continued custody of the individual. The exact number of people detained under the SPA is not known and no independent source in Bangladesh is systematically monitoring SPA

³ "Prejudicial acts" in the SPA 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. They are reiterated in the EPR.

⁴ Special Powers Act, 1974, Section 34, 'Bar on jurisdiction of courts'.

⁵ Following an initial one-month detention period.

detentions. The latest figure available from the government, from 2007, quotes the figure of 944 persons detained under the SPA. Amnesty International has repeatedly called for the repeal of the SPA.

Arrest and detention under Section 54 of the Code of Criminal Procedure

The vaguely formulated Section 54 of the Code of Criminal Procedure has been used to arrest people without warrant on suspicion of engaging in criminal activity and to detain them *incommunicado* for up to 24 hours. During the period of *incommunicado* detention, many detainees allege having been subjected to torture and other ill-treatment. According to newspaper estimates, the police have invoked Section 54 and Emergency Power Rules to arrest about half of the hundreds of thousands of people arrested since the imposition of the state of emergency.⁶

Arrest and detention under the Emergency Power Rules, 2007

Amnesty International believes that some of the restrictions imposed through the Emergency Power Rules (EPRs) 2007 exceed what is permissible under international law. The Caretaker Government has extended the scope for arbitrary detention even further under the EPRs to detain individuals for exercising their rights to freedom of assembly and expression, as well as individuals alleged to have committed offences such as corruption, drugs offences and trading on the black market.

Detainees charged under the EPRs are deprived of a number of legal remedies, including the possibility of release on bail. Under international law, it must not be the general rule that persons awaiting trial shall be detained in custody; EPR provision 19D, which bars all people detained under the EPRs from being released on bail, violates this provision.

The exact number of people detained without charge at any one time under preventive detention laws remains unclear. There are reports of hundreds of thousands of people being detained throughout 2007 on various grounds,⁷ and of tens of thousands of political activists detained in late May and early June 2008 for gathering in public believing that the ban on public gatherings had been lifted. The majority of those detained are reported to have been released after relatively short periods, but as of August 2008, some were still being held without charge or trial.

Among those detained during the state of emergency were prisoners of conscience, including Tasneem Khalil, detained in Dhaka in May 2007 for about 24 hours and tortured for having disseminated information about human rights violations; Jahangir Alam Akash, detained in October 2007 for over a month and tortured by agents of the Rapid Action Battalion (RAB) in the north-western city of Rajshahi following his report on television in May that year about the shooting of an unarmed man by RAB agents. He continues to be at risk of re-arrest if the court does not extend his bail. Six Rajshahi University lecturers were detained between August and December 2007 and four Dhaka University lecturers were detained between August 2007 and January 2008 for peacefully protesting the abuse of power by law enforcement agencies at these universities. The cartoonist, Arifur Rahman, was detained between September 2007 and March 2008 following protests by Islamist groups over one of his cartoons that used the name of the prophet Muhammad.

Unfair trials

A state of emergency can never be invoked as grounds for arbitrary deprivation of liberty or to disregard the fundamental principles of fair trial.⁸ Amnesty International believes that several provisions of the emergency regulations have either been framed too broadly or are being implemented in a manner which violates due

⁶ See for instance a New Age report entitled '1, 91,967 arrested, 1,560 illicit firearms seized since Jan 12', published on 21 May 2007.

⁷ The government has confirmed that a total of 479,864 persons were arrested in 2007, but has commented that such high numbers of arrests have been a routine occurrence in Bangladesh for years and are not specific to the Caretaker Government.

⁸ See for instance Human Rights Committee, General comment no. 29: States of emergency (article 4), UN Doc. CCPR/C/21/Rev.1/Add.11, 31 August 2001, para. 11.

process rights of detainees. Of the more than 170 politicians and businesspeople detained under the state of emergency accused of corruption while in office, dozens have been detained for over a year without charge or trial in breach of Articles 9(1) and 14(1)(c) of the ICCPR. They have also been barred from release on bail under the emergency regulations. About 120 of them have challenged their continued detention on procedural grounds, for instance the lapse of specified time for charges to be brought against them under the Emergency Power Rules; however, they have not been released. Many of them have been taken to the gate of the prison and then re-arrested on new charges. In some cases, the courts have directed the authorities not to re-arrest them without due process. Consequently, over a dozen prisoners have been released on bail, but remain at risk of being re-arrested.

Over 50 defendants accused of corruption have been sentenced to various terms of imprisonment by Special Courts where they had restricted access to lawyers and to documentary evidence, for instance their office files, to prepare their defence. While their appeals before the High Court are pending, Amnesty International is concerned that continued trials before Special Courts under such circumstances will be similarly unfair.

Impunity for human rights violations

The Caretaker Government's stated commitment to reform is an opportunity to address long-standing barriers to protection of human rights. However, it has failed to end impunity for human rights violations through comprehensive institutional reform to strengthen the rule of law and protect investigative, prosecutorial and judicial proceedings addressing human rights violations from political interference. Military and police personnel, alleged to be responsible for human rights violations, have not been held to account.

During the state of emergency, a combination of police and military personnel referred to as Joint Forces,⁹ together with the Rapid Action Battalion (RAB),¹⁰ an elite police unit largely made up of military personnel, have been deployed to maintain law and order. Amnesty International and other human rights organizations have documented serious human rights violations attributed to these law enforcement agencies, but to date, no army, navy or RAB personnel have been prosecuted by the state. There are credible reports of the use of unnecessary or excessive force and extrajudicial executions during law enforcement operations, intimidation or arrest of human rights defenders, and torture and other ill-treatment by the RAB.

A pattern of killings, portrayed by the government as "deaths in crossfire", has characterized 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, and the number has risen in subsequent years. According to an NGO source, there were at least 208 "crossfire deaths" between January 2007 and August 2008.¹¹ Amnesty International is concerned that this description is offered by the police and the RAB to avoid responsibility for the death of detainees in their custody.

In July 2008, police announced the death of Dr. Mizanur Rahman Tulul, leader of the outlawed Purbo Banglar Communist Party (Red Flag Faction) in a so-called "crossfire" incident. Dr. Tulul's mother told journalists about his arrest on 26 July and publicly appealed to the authorities for his safety. The next day police announced his death during "crossfire".

⁹ 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 the 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.

¹⁰ 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.

¹¹ Odhikar, 'On 19 months of state of emergency', 12 August 2008.

Incidents of torture or death in the custody of army personnel or the Rapid Action Battalion are not investigated by the police. The government has stated that judicial inquiries are held into all cases of death involving security personnel; in none of these inquiries has the opening of fire by the RAB been found to be unjustified. However, no reports of such inquiries have ever been made public, nor their methodology or the evidence used. Such secrecy has perpetuated impunity for human rights violations and undermined the government's reform agenda.

In response to Amnesty International's queries, senior police officers have said that only cases involving military personnel in murder and rape can be investigated by the police; all other cases involving military personnel are referred to the army who at most carry out a secret investigation with no public outcome. In a rare admission of the military personnel's responsibility for the death in their custody of indigenous Garo leader, Cholesh Richil, in March 2007, government authorities told Amnesty International that disciplinary action was taken against the personnel involved following an investigation. However, the details of the outcome of the investigation have not been made public, and none of the perpetrators have been prosecuted in a civilian court.

D. Recommendations for action by the State under review

Amnesty International calls on the government to:

Arbitrary arrests and unfair trials

- End arbitrary arrests and detentions, repeal or amend all laws allowing such acts, and ensure that all individuals detained are charged with a recognizable criminal offence and brought promptly before a court or released. All people deprived of their liberty should be informed promptly of the reasons for their detention and provided the opportunity to challenge the legality of their detention in court, and should be granted access to a lawyer, their family and to medical assistance;
- End *incommunicado* detention, including under Section 54 of the Code of Criminal Procedure;
- Suspend the use of the 1974 Special Powers Act and take steps towards its repeal;
- Repeal provision 19D of the Emergency Powers Rules, which denies bail to detainees charged under the Emergency Powers Rules. All detainees should have the opportunity to apply for pre-trial release on bail. Bail orders granted by courts should be respected and detainees should be released without undue delay.

Torture, other ill-treatment, and extrajudicial executions

- Immediately end all torture and other ill-treatment, extrajudicial executions and other human rights violations; clarify that no such acts will ever be tolerated, that all such acts will be thoroughly investigated and that suspected prosecutors, including those with chain of command responsibility, will be prosecuted;
- Ensure the right of victims of torture, other ill-treatment, and extrajudicial executions to reparations in accordance with international standards, including restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition.

Impunity

- End impunity for human rights violations by security and armed forces, including by ensuring prompt, impartial and effective investigations into all alleged human rights violations by military personnel and the RAB, and by bringing the perpetrators to justice. Allegations of human rights violations by military personnel against civilians should be investigated by a civilian court; victims of human rights violations must be granted reparations in accordance with international standards;

- Repeal laws granting immunity from prosecution to law enforcement personnel, including Section 13 of the Armed Police Battalion Ordinance.

Appendix: Amnesty International documents for further reference¹²

- Amnesty International, 'Bangladesh: Memorandum to the caretaker government of Bangladesh and the political parties from Amnesty International', AI Index ASA 13/001/2008, 10 January 2008
- Amnesty International, 'Bangladesh: Death in custody and reports of torture', AI Index: ASA 13/005/2007, 10 May 2007
- Amnesty International, 'Bangladesh: Urgent need for legal and other reforms to protect human rights', AI Index: ASA 13/012/2003, 16 May 2003

¹² All of these documents are available on Amnesty International's website: <http://www.amnesty.org/en/region/asia-and-pacific/south-asia/bangladesh>