



Submission by the Asian Legal Resource Centre to the Human Rights Council's Universal Periodic Review concerning human rights in Bangladesh

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1. Bangladesh is party to six major international human rights instruments,¹ but its implementation of the rights enshrined therein remains superficial and the victims of violations of these rights have virtually no access to remedies at the domestic level. For example, the country is party to the ICCPR, but has extra-judicially violated the right to life of hundreds of persons in recent years, with impunity. It has arbitrarily deprived hundreds of thousands of persons of their right to liberty. It is party to the CAT, but torture remains endemic and perpetrators go unpunished.
2. The country began its three-year membership as a founding member of the UN's Human Rights Council (HRC) in June 2006. However, during this period, human rights have been seriously undermined in the country, notably as the result of an unconstitutional and unjustifiably prolonged state of emergency, initially proclaimed on January 11, 2007. Pervasive militarisation of the mechanisms of State and institutions of the rule of law,² coupled with the suspension of a wide range of fundamental rights, has resulted in increased numbers of grave abuses.
3. Bangladesh has been plagued by deep human rights problems since its creation. The authorities have made use of the legislation and institutions that remained as a legacy of colonialism to continue to subjugate, intimidate and repress Bangladesh's citizens. The country has never had an independent judiciary; it has had a disposable prosecution, with many members of the judiciary being replaced each time one of the two main competing political parties comes to power. The justice system, as is the case with the police and other State institutions, are used as weapons by the group in power against the other, with the people of Bangladesh caught in the crossfire.
4. Prior to its election to the HRC, Bangladesh pledged to protect and promote fundamental rights, but has since suspended many of these rights and violated many more.³ It pledged to separate the judiciary from the executive, but it has, in reality, consolidated the executive's control. To promote its election bid, it cited constitutional guarantees, among them equality before the law, protection of life and liberty, and the freedoms of speech, assembly and association, but has since violated all of these rights on a grand scale and has severely undermined the constitution through the unjustifiable state of emergency, accompanied by illegal laws and actions.

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

² Please see further details in Annex Section 1.

³ Please see Bangladesh's pledges at: <http://www.un.org/ga/60/elect/hrc/bangladesh.pdf>

5. **The state of emergency:** The state of emergency, the encroachments of the military into the fabric of the State, and the resultant human rights violations, remain the priority issues at present. They require immediate action by the international community, notably the Human Rights Council, which has been sadly lacking to date.
6. The state of emergency was proclaimed on January 11, 2007, ostensibly due to violence prior to elections scheduled for January 22, 2007. Elections were to take place six months later. Under the Constitution of Bangladesh, an emergency may last for a maximum of 120 days. However, after nearly 20 months, it remains in force and is creating a human rights and constitutional crisis in the country. It is now supposed to last until the end of 2008, with elections expected in December, however, there are concerns that these may again be pushed back. Regardless, any elections held under the emergency will likely not be free and fair. Local elections held on August 4, 2008, provide evidence of this, as many politicians from the past ruling party remain in detention, and there are numerous reports of vote manipulation by the authorities.
7. The emergency has been used by the military to permeate the State and its civil administration. Current and retired officers have been appointed to top public service positions and autonomous institutions. Even sporting bodies have not been spared.⁴ The militarisation of law-enforcement has taken place through new joint forces being established, comprising military intelligence agents alongside the police. The courts suffer from military surveillance and interference. High profile individuals, including former Prime Ministers, ministers and legislators have been detained for months for alleged corruption, often without specific charges against them. Some have been released through executive orders bypassing judicial processes.⁵
8. Under Article 141A (1) of the constitution, a state of emergency can only be imposed under certain conditions by the President, and it requires the counter-signature of the Prime Minister. This signature was not obtained for the current emergency, making it unconstitutional from the outset. Furthermore, an emergency may only last for 120 days, under Section 141A (2) (c) of the constitution. However, due to a loophole requiring action on the part of the parliament (which was dissolved on October 24, 2006), this illegal emergency is still continuing.
9. Human rights violations have resulted primarily as the result of draconian powers provided by the Emergency Powers Ordinance-2007, supplemented by the Emergency Powers Rules-2007, and the Special Powers Act-1974.⁶ On June 11, 2008, the military-controlled government also imposed the Anti-Terror Ordinance-2008, supposedly to combat terrorism, under which further abuses are taking place.⁷
10. The High Court Division of the Supreme Court of Bangladesh on July 13, 2008, ruled that the President of an un-elected government, such as that currently in power, does not have the constitutional power to promulgate ordinances, unless such ordinances regard general elections. The same court also declared all ordinances made by the present military-controlled government to be *ultra vires* and unconstitutional. However, the Appellate Division of the Supreme Court on July 21, 2008, stayed this

⁴ Please see further detailed information in Annex Section 1.

⁵ Please see further in Annex Section 2.

⁶ Please see further in Annex Section 12.

⁷ Please see further in Annex Section 3.

order for one month. The military-government has promulgated at least 79 ordinances, most of which run contrary to the constitution.

11. **Increasing violations under the emergency:** Rather than countering a threat or ensuring stability, the state of emergency has led to greater insecurity and human rights violations. Fundamental rights, including the freedom of association and expression,⁸ have been suspended; a significantly greater number of serious violations are being perpetrated; total impunity is being guaranteed for perpetrators; and avenues for victims seeking remedies have been virtually obliterated. All discussions of human rights that do not first address the state of emergency, the critical undermining of the civilian, democratic systems of the State, and the constitutional crisis in Bangladesh, are meaningless.
12. **Arbitrary arrests and detention:** It is estimated that since January 11, 2007, a staggering 500,000 individuals have been arbitrarily arrested and detained for differing periods. When questioned by the ALRC in the HRC, the representative of Bangladesh could only state that Bangladesh did not have that much space in its prisons. Furthermore, the Inspector General of the Bangladesh Police (IGP), on June 9, 2008, publicly admitted that the police had been arresting an average of 1,667 persons every day. This contradicts the attempt at a denial made by Bangladesh's representative at the Council and raises serious questions about further over-crowding in the country's detention facilities, which was already a serious problem before the mass arrests under the emergency.⁹ In addition, the IGP admitted that the authorities are arresting persons under Rule 16(2) of the Emergency Powers Rules 2007, instead of under Section 54 of the Code of Criminal Procedure, as under the former, suspects cannot be granted bail.¹⁰ Arbitrary detention without bail is therefore being enabled on a large scale by powers granted under the illegal, prolonged emergency.
13. Bangladesh's law-enforcement agencies do not follow due process when arresting and detaining persons. Arrest warrants and information regarding the charge against the person are rarely, if ever, produced at the time of arrest. Persons rarely have access to legal counsel following their arrest. Under Article 33 (2) of the Constitution, arrested persons must be brought before a Magistrate within 24 hours of their arrest. However, at present, individuals are being detained in police stations or military camp for days, weeks or even months, without any official records being kept or having any access to courts.¹¹ This is resulting in endemic torture that in turn frequently leads to killings.
14. **Torture:** The use of ill-treatment and torture by the law-enforcement agencies is endemic in Bangladesh. This is perpetuated by the impunity that accompanies these violations. Torture is a tool of political and governmental repression and an inseparable part of methods of law-enforcement in the country. Torture is used in order to extract money, to force persons to sign false confessions, to repress the poor, and against persons in opposition to those in power, or their allies. All law-enforcement and intelligence agencies operate torture cells, where people are tortured as part of so-called interrogations. Exact numbers of victims are impossible to ascertain, notably as very few organisations risk working on torture in the country.

⁸ Please see further in Annex Section 4.

⁹ Please see further in Annex Section 5.

¹⁰ Please see further in Annex Section 5.

¹¹ Please see further in Annex Section 5.

The ALRC's sister-organisation, the Asian Human Rights Commission (AHRC), has documented numerous cases of torture in the country that illustrate the above.¹²

15. Bangladesh is evidently failing to respect its obligations under the ICCPR and as a State Party to CAT. This is shown both by the prevalence of the practice of torture and the reservation made to Article 14 (2) of CAT upon ratification, which has underlined the authorities' unwillingness to have any avenues available for victims of torture seeking reparation. The system in Bangladesh ensures impunity and bars redress.¹³ There is no law criminalizing torture, and as with other rights violations, the police refuse to conduct investigations, denying victims justice from the outset. There is no witness protection system and the Supreme Court remains financially out of reach for all but the rich. The Human Rights Council is urged to ensure that Bangladesh immediately removes its reservation under CAT, criminalizes torture, and removes all legislation enabling impunity for torture and other grave abuses. This will require new legislation, the enabling of avenues for complaints to be made by victims, the creation of independent investigation units and an independent judiciary.
16. **Extra-judicial killings:** Article 32 of the Constitution of Bangladesh guarantees the right to life and personal liberty. However, under the state of emergency, the grave problem of extra-judicial killings is again on the rise. Reliable reports indicate that over 300 persons have been extra-judicially killed since the state of emergency was imposed. Previously, during so-called Operation Clean Heart, from October 16, 2002 to January 9, 2003, around 55 deaths in custody took place, following mass arrests and numerous allegations of torture. The operation was conducted by the law-enforcement agencies dominated by the armed forces, in a way that is now seen repeated under the emergency. All these deaths were unconvincingly blamed on heart attacks. Impunity for the alleged perpetrators of torture and killings was then granted under the Joint Drive Indemnity Act-2003.
17. The Rapid Action Battalion (RAB), dominated by the military but also comprising the police and border security agency, was created in 2004. It has perpetrated an estimated 500 extra-judicial killings since its creation. It attempts to justify these killings by claiming there were accidental deaths that occurred as the result of the victims being caught in the "crossfire" although the AHRC has documented numerous cases that instead show these deaths result from torture and extra-judicial killing.¹⁴
18. Shockingly, the authorities have shown their support for these killings by awarding the country's Independence Day Award to the RAB on March 23, 2006, for "outstanding performance in maintaining law and order." In 2007, the government awarded 28 RAB officers with "Police Medals." All of these officers have allegedly been involved in grave human rights abuses, including extra-judicial killings. The RAB has continued to act with complete impunity as a result. Inter-agency rivalry has led to the police seeking to compete with the RAB, and they have allegedly perpetrated several hundred arbitrary, extra-judicially killings. They also claim these result from crossfire, encounter, gunfight, in the line of fire, or shootout incidents.

¹² Please see further in Annex Section 6.

¹³ Please see further in Annex Section 7.

¹⁴ Please see further in Annex Section 8.

19. **The media:** The government has forced the closure of at least 160 newspapers, and television news channel CSB News, during the state of emergency.¹⁵ Any criticism of the actions of the government has been stymied in this way.
20. **Human rights defenders:** NGO activists and journalists have been harassed, threatened, and detained by law-enforcement and the military, and faced fabricated charges, in order to discourage any criticism of the arbitrary actions and violations of rights and the constitution by the authorities under the emergency.¹⁶
21. **Executive control of the judiciary:** As previously mentioned, Bangladesh has never had an independent judiciary. The judiciary, from the Supreme Court down, has been weakened through politically-motivated appointments made by successive regimes, in order to ensure that the judiciary acts in the interest of those in power. In its pledges to the HRC in 2006, Bangladesh promised to “separate the judiciary and the executive as soon as is feasible.”¹⁷ Despite the directions of the Appellate Division of the Supreme Court on December 2, 1999,¹⁸ this has still not happened. Since the above pledge was made, the judiciary has instead been placed under greater control by the government, despite promises that it would separate the lower judiciary from the executive on November 1, 2007. The separation has been made on paper but not in reality.
22. On 23 April 2008, the Supreme Court’s Appellate Division surrendered its inherent constitutional power to entertain bail petitions under the emergency laws, overturning the verdict of the High Court Division.¹⁹
23. During the state emergency the government initiated a “fight against corruption,” detaining at least 170 politicians and businessmen under new powers, notably the Emergency Rules-2007. The government is prosecuting them in closed Special Sessions Judges’ Courts, to which public and media access is denied. The armed forces monitor these trials, which do not meet international standards of fair trial.
24. **Recommendations:** The Asian Legal Resource Centre (ALRC) therefore calls on the Working Group of the Universal Periodic Review and the Human Rights Council, to ensure that the Bangladeshi authorities: immediately repeal the state of emergency and all ordinances issued under it; restore all fundamental rights and ensure that human rights defenders and the media are no longer targeted for their work; hold free, fair and inclusive elections; disband the Rapid Action Battalion; separate the judiciary from the executive; criminalize torture; establish independent investigation units and investigate all allegations of torture, extra-judicial killings and other grave abuses; and ensure that the perpetrators are brought to justice and that adequate compensation is provided, without obstruction. The government must also remove its reservation under the Convention Against Torture and ratify its optional protocol.
25. Until the state of emergency is removed, Bangladesh should be banned from United Nations peace-keeping operations, which are serving to bankroll the military, and targeted sanctions, notably a ban on arms sales, should be imposed on the military.

¹⁵ Please see Annex Section 9.

¹⁶ Please see Annex Section 9.

¹⁷ Please see Bangladesh’s pledges at: <http://www.un.org/ga/60/elect/hrc/bangladesh.pdf>

¹⁸ Please see Annex Section 10.

¹⁹ Please see Annex Section 11.