



The State of Human Rights in Bangladesh 2009

Human Rights hopes and disappointments in post-emergency and post election Bangladesh

I. Introduction

After two years suffering under a prolonged state of emergency, which lasted from January 11, 2007 to December 18, 2008, there was hope that the grave and widespread human rights violations that had plagued the country prior to and during the emergency would abate. Bangladesh began 2009 with hope for the "change" that had been trumpeted as an election slogan by the eventual winners of the general election held on December 29, 2008. The slogan emulated that used by now-President Obama in the United States during elections there.

In this report, the AHRC will present its experience of cases and situations it encountered in 2009. This does not claim to be an exhaustive review of the situation of human rights in the country, but will give an opportunity to evaluate whether the early hopes for change and improvements concerning the protection and enjoyment of human rights have been fulfilled.

The Bangladesh Awami League led alliance, formed a government on January 6, 2009, following a landslide election victory, in which it secured 262 seats out of a total of 300 in Parliament. In its election manifest, it had pledged to end corruption and extrajudicial killings and to bring to justice the perpetrators of extrajudicial killings. The AHRC has highlighted the serious problem of extra-judicial killings, typically attributable to the country's paramilitary Rapid Action Battalion and police forces. Hundreds have been killed with impunity by State-agents over recent years. The alliance also promised to establish human rights and rule of law in the manifesto, which it called its "Charter for Change."



In this manifesto, it was critical of the corruption that took place during the previous government led by the Bangladesh Nationalist Party (BNP). These two parties have dominated Bangladesh's political system for years. Typically, in the recent past, the party that finds itself in opposition has championed human rights and decried the abuses by the ruling party. The party in power grossly misuses its powers to harass and even kill members of the opposition, as well as to engage in all manner of corruption. The military is without doubt the most powerful force in Bangladesh, and successive governments have to come to arrangements with the military that allows all to profit. Human rights and justice are sacrificed as a result, notably where it concerns abuses by the military or the ruling party and its associates. When an opposition party comes to power, it quickly abandons its pro-human rights rhetoric and becomes the abuser. We shall see whether this pattern has been continued under the new government in 2009.

In its manifest, the Awami League-led alliance however praised the military-backed emergency government for its alleged successes without being in any way critical of the gross abuses of human rights that were committed during the emergency. These include mass arrests and arbitrary detentions, torture, extra-judicial killings, the suspension of fundamental rights, as well as efforts to undermine the independence of the judiciary, to name a new. This double standard presaged the continuation of the bitter rivalry with the BNP along with subservience to the military, representing the status quo, not change.

Among the five main pledges in the "Charter for Change," the second concerned **"Effective Action against Corruption,"** promising that: *"Multi-pronged measures to fight corruption will be put into place. Powerful people will have to submit wealth statements annually. Strict measures will be taken to eliminate bribery, extortion, rent-seeking and corruption. Strong measures will be taken against those having unearned and black money, against loan defaulters, tender manipulators, and users of muscle power in every stage of state and society. State or private monopoly will be broken up. Discretionary power of officials will be curtailed. To establish peoples' right, citizens' charter will be introduced in every department. Opportunities for corruption will be eliminated or minimized through widespread computerization."*¹

In reality, by the end of 2009, no policy had been drawn up to eliminate bribery and other forms of corruption in the country. Instead, the leaders and activists of the Awami League and its associate organizations, including its student and youth wings, have reportedly been involved in widespread "tender manipulating" and associated

¹ http://www.albd.org/autoalbd/index.php?option=com_content&task=view&id=367&Itemid=1



acts of violence. This manipulation involves the grabbing of contractual businesses for constructions and supply works using muscle power and political influences. However, the neither the law-enforcement agencies of the government nor the political parties themselves have taken any lawful action against the alleged offenders.

The fifth pledge was of particular importance as it concerned the "**Establishment of Good Governance.**" It declared that: "*Genuine independence and impartiality of the judiciary will be ensured. . . Extrajudicial killings will be stopped. The judgment of the Bangabandhu murder case will be made effective and the retrial of jail killings will be held. Trial of real criminals responsible for the grenade attack of the 21st August, 2004 through proper investigation will be arranged. Rule of law will be established, The Human Rights Commission will be strengthened and made effective, and an Ombudsman will be appointed. Human rights will be strictly enforced. . . Wealth statement and source of income of the Prime Minister, members of cabinet, Parliament members and of their family members will be made public every year. Except for some specific subjects related to the security of the state, Parliament members will be allowed to express differing opinions. . . Security and rights of religious and ethnic minorities will be ensured. Courtesy and tolerance will be inculcated in the political culture of the country. . . In order to provide security to every citizen of the country, police and other law and order enforcing agencies will be kept above political influence. These forces will be modernized to meet the demands of the time. Necessary steps will be taken to increase their remuneration and other welfare facilities including accommodation. . .*"

Surprisingly, according to Article 70 of the Constitution of Bangladesh, parliamentarians are not allowed to express views different to those of their parties. If they do so, they lose their membership in the parliament.

Concerning steps to increase the remuneration of law-enforcement agencies, following a bloody mutiny within the Bangladesh Rifles, the government increased rationing provided to the lower-ranked members and non-cadre (commissioned) officers of the Bangladesh Police in March, 2009.

The Bangladesh Army formed a special commission headed by a two-star General to review the military's salary and benefit structures. The commission submitted a report to the government in May 2009, proposing increases to salaries, before the national fiscal budget, was announced in parliament in the first ten days of June, which was approved by the government.



Declaring a plan to bring Bangladesh into the digital age, that it hoped would be attractive to young voters who represent over 30% of the electorate, the government made over 60 such pledges. These created public hope for a new era concerning the ways in which the political parties exercise their power, in how justice functions, in how corruption could be combated and in how equal opportunities for citizens could be brought about.

The Judiciary of the country has been ignored in the governmental fiscal budget planning before June as well as in announcing a new pay scale for the public servants in October. The country's National Human Rights Commission (NHRC) has also not been provided with adequate resources and manpower. The current government followed the path of the emergency government by ensuring this newly created institution remains under-strength and therefore unable to work to its full potential.

Many recommendations and demands have been made by human rights groups, including the Asian Human Rights Commission, notably calls for the government to:

1. Repeal all the ordinances promulgated by the military-controlled government during the state of emergency that contradict international human rights norms and standards, particularly those relating to illegal arrest and arbitrary detention including restriction of bail;
2. Remove all barriers that prevent the independent functioning of the judiciary, in particular by removing the executive control over the judiciary by the state;
3. Strengthen the Judicial Service Commission by ensuring its independency and transparency;
4. Take measures to establish an effective and independent prosecution department, particularly with fixity of tenure. The recently promulgated Public Attorney Service Ordinance, 2008 (Ordinance No. 55 of 2008) must not be ratified by the new parliament;
5. Immediate measures must be taken to ensure the accountability of law enforcement officers, particularly the police, in order to stop arbitrary arrests and detentions as well as torture for the purpose of making money;
6. Disband paramilitary forces, notably the Rapid Action Battalion, which has an appalling record concerning extrajudicial killings;



7. Withdraw draconian laws, such as the Special Power Act, 1974, the Joint Drive Indemnity Act, 2003 and the Armed Police Battalions (Amendment) Act, 2003;
8. Repeal Article 46 of the Constitution, which has continuously been a source of abuses by the Executive;
9. Abolish extra-constitutional bodies, in particular the Truth and Accountability Commission, in compliance with the orders of the Supreme Court of Bangladesh;
10. Establish an effective mechanism to eradicate corruption from public institutions;
11. Strengthen the National Human Rights Commission by expanding its jurisdiction to ensure enforceability of the Commission's rulings;
12. Criminalise the practice of torture, in compliance with Bangladesh's international treaty obligations resulting from its the ratification of the Convention against Torture.

In the sections of the report below, the AHRC will present examples of developments and failures by the government to live up to its pledges and implement the recommendations that have been made to it.

II. Military pull-out begins from the Chittagong Hill Tracts after three decades of deployment and abuses

In a positive move, on July, 29 2009, the military Inter Service Public Relations (ISPR) announced in a media release that the Government of Bangladesh had decided to withdraw 35 temporary camps, three infantry battalions and an army brigade that were deployed in the Chittagong Hill Tracts (CHT), in the south-eastern part of the country.

On August 7, a temporary camp housing some 40 Bangladesh Army soldiers was reportedly closed in Joysenpara under the Mohalchhari upazilla (sub district) of Khagrachhari district. This is a small but welcome beginning to partial military pullouts. However, there have been at least five brigades of the armed forces deployed in the CHT for decades to combat the so-called ethnic and political conflicts that deteriorated in the mid 1970s, so this remains only a small beginning to the withdrawal. Brigades may range from between 1,000 and 10,000 soldiers in this context.



A guerilla group named *Shanti Bahini*, was formed in order to fulfil the demands of the major ethnic groups in the CHT region. They later turned into the political party known as *Jana Shanghati Samity (JSS)* after the CHT Peace Treaty signed on 2 December in 1997. Around 30 Army Camps out of 500 were withdrawn at the beginning of process, immediately after the peace accord in 1997.

The ethnic groups have accused the armed forces of perpetrating atrocities against civilians in the area, mostly targeting the ethnic population. They have demanded the withdrawal of all forces. Allegations of torture, extrajudicial killings, rape and other gross human rights abuses at the hands of the armed forces had been commonplace since their deployment. For more than three decades the government brought in a large number of non-local and non-ethnic people in order to create a so-called balance of population in the area. There were serious allegations made against the authorities, including the armed forces, concerning the forced appropriation of lands from ethnic minorities during the settlement of other ethnic groups. .

The withdrawal of the military is one of the major demands of the ethnic communities and was recognized by the government as one of the key conditions in the CHT Peace Treaty. The authorities have correctly assessed that, in the long run, the military presence in the CHT area did not bring about the needed changes. Almost 12 years after the signing of the peace treaty, the government has now decided to partially remove the military camps from the area. The ethnic groups and human rights organizations welcomed the decision to pull the military from the area.

However, the problems affecting the CHT are not merely an ethnic or a security problem and cannot be completely solved by either military action or a decrease in the presence of the armed forces. A people-friendly solution for the problems must be found. The government of Bangladesh should form an independent commission. It should probe and investigate thoroughly the issues involving conflict among the various ethnic groups and ensure the resolution of land disputes as well as taking action concerning allegations of violations by the military. The commission should include in their area of investigation the terms and rights enshrined in the constitution of Bangladesh and the country's international obligations, particularly the International Covenant on Civil and Political Rights (ICCPR), the International Covenant on the Economic, Social and Cultural Rights (ICESCR) and the Convention Against Torture (CAT) to which Bangladesh is a party.



III. Bangladesh's Universal Periodic Review at the UN Human Rights Council

On February 3, 2009, Bangladesh's human rights record was scrutinised as part of the United Nations Human Rights Council's Universal Periodic Review (UPR) mechanism, which conducts reviews of all UN member States in a four-year cycle. The delegation sent to the UN was headed by Foreign Minister Dr. Dipu Moni, in her first abroad after being appointed to the Cabinet. Referring to the electoral pledges of her party, the Foreign Minister declared that the Government of Bangladesh will have "zero tolerance" for extra-judicial killings. She also announced before the international community that all the perpetrators of extra-judicial killings would be brought to justice immediately.

Ironically, Mr. Samsel Islam Robin was killed by the police just hours after Foreign Minister Dipu Moni claimed a policy of zero tolerance for such killings. As of the end of 2009, no complaint had even been registered and no credible inquiry had taken place regarding this killing, making a mockery of the Foreign Minister's promises.

In June, the Human Rights Council adopted the UPR Outcome Report on Bangladesh² and the government accepted a number of recommendations made by the international community. Concerning recommendations 10, 20 and 26, Bangladesh has promised to halt such practices and address the culture of impunity by bringing those responsible to justice.

The recommendations in question are as follows:

Recommendation number 10: Develop a national human rights programme to give a new impetus to its commitment and determination to tackle national problems, such as a culture of impunity, arbitrary and extrajudicial executions and a practice of torture and degrading treatment (recommended by Mexico).

Recommendation number 20: Address the problems of extrajudicial killings and torture by security forces and improve prison situations (recommended by the Netherlands).

² http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/BD/A_HRC_11_18_BGD_E.pdf



Recommendation number 26: Take steps to address the culture of impunity for human rights violations by law enforcement agencies (recommended by Australia); Adopt further measures to fight impunity for human rights violations, including by law enforcement officials (recommended by the Czech Republic/EU); Fight impunity and hold all officers and persons acting on their behalf accountable for acts of torture and harassment of civilians (recommended by Germany).

AHRC's sister organization ALRC intervened at the time of adoption of the UPR outcome on Bangladesh during the 10th Session of the UN Human Rights Council.³

However, no functioning complaint mechanisms even existed at the time of the adoption of the report regarding the practices of extra-judicial killings, torture and other forms of human rights abuses. The government failed to respond to the ALRC's intervention, which called on the government to produce evidence of even a single case in the period of this review in which a State-agent had been held responsible for torture or extra-judicial killings. The government was also urged to repeal the "Joint Drive Indemnity Act-2003" and Article 46 of the Constitution, which continue to provide blanket impunity to State agents involved in grave violations.

Furthermore, the AHRC regrets that Bangladesh did not accept recommendation number 19 concerning a moratorium on the death penalty.

Concerning recommendations 11 and 25⁴ concerning the independence of the judiciary, Bangladesh claimed that the judiciary was separated from the executive. However, in reality, the government amended its Code of Criminal Procedure-1898 in April 2009,⁵ allowing "Executive Magistrates" to take control of any trial the executive authorities deem fit, which completely obstructs judicial independence in practice.

³ For further details, please see:

<http://www.ahrchk.net/statements/mainfile.php/2009statements/2092/>

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http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/BD/A_HRC_11_18_BGD_Add_1_E.pdf

⁵ <http://www.ahrchk.net/statements/mainfile.php/2009statements/2054/>



Also of concern is the fact that Bangladesh has failed to accept the UPR's recommendation 12, calling for a standing invitation to be issued to all Special Procedures. As a member of the Human Rights Council, Bangladesh should respect human rights to the highest possible standard and ensure full cooperation with the Council's expert mandates, but is failing to do so and instead is using its membership in the body to protect its reputation, and not human rights. Despite numerous pending requests for visits by the Council's Special Procedures and claims by the government that it is cooperating, there have been few visits and none in the last five years. Bangladesh was urged in recommendation no. 12 (see below) to ensure the visits of the Special Rapporteurs on extra-judicial executions, the independence of judges and lawyers, and the freedom of expression as a priority, and extend invitations to all other mandates, including that concerning torture.

Recommendation number 12: Issue and implement a standing invitation to all special procedures (Czech Republic/EU); Extend a standing invitation to human rights mechanisms to visit the country and to support national efforts in these areas (Mexico); Positively consider the visit requested by the special rapporteur on summary executions (Brazil).

The ALRC also made similar recommendations to the Human Rights Council in a statement.⁶

IV. Lawmakers turn into lawbreakers

Following the formation of the government, the Jatiya Sangsad (National Parliament of Bangladesh) began its first session on January 25, 2009, after a gap of about 27 months, resulting from political turmoil and the state of emergency. The resumption of the Parliament's work led to hope and expectations from professionals and citizens regarding a new direction in governance. However, incidents involving some members of Parliament have cast doubt over such hopes.

Mr. Golam Reza was elected a Member of Parliament from the constituency of south-western Satkhira, some 400 kilometers from Dhaka. Golam Reza, whose party is part of

⁶ http://www.alrc.net/doc/mainfile.php/alrc_st2009/554/



the ruling coalition led by the Bangladesh Awami League, was driving to the capital on the evening of January 24 to attend the inaugural session of the parliament.

Upon arriving at the ferry pier at Daulatdia, on the western banks of the Padma river, Golam Reza did not want to join the queue of vehicles on the ferry. He tried to jump the queue and in doing so caused a minor collision with a Dhaka-bound bus, breaking one of his jeep's windowpane.

Golam Reza got out of his jeep, rushed inside the bus and beat the bus driver, Alal Sheikh, with a shotgun. It is not known whether the gun was licensed or not. Passengers on the bus and other staff protested against Golam's Reza action, which led to a minor protest by people in the vicinity, who pelted Golam Reza with stones.

Local police reportedly rescued Golam Reza and arranged for his safe exit. The bus driver was taken to a local hospital for medical treatment. Although the officer-in-charge of the Goalando police station, Rajbari district, registered a case against Golam Reza, which was published by the local media, no action has been taken against him.

On January 22, several incidents occurred across Bangladesh in which ruling party lawmakers allegedly rigged votes in the Upzilla Parishad (sub-district council elections). For example, Abdur Rahman Bodi, the Bangladesh Awami League MP in Cox's Bazaar district, assaulted at least three officers at a polling centre for not allowing him to rig votes in the area. Bodi is still enjoying impunity for his actions.

There have been many other instances of physical assaults by lawmakers of various political parties in Bangladesh in the past. However, there are no examples where the government has taken stern action against such persons. Politicians apparently believe they prove their worth by beating people and public servants. Ironically, these lawmakers represent their constituency and its people in Parliament.

After these incidents questions about the quality of representatives elected to the Parliament and other local governing bodies arose. Political parties should ensure that their members anti-social behaviour of this type and illegal actions, if they are to have any credibility.



For example, slogans of various political parties are indicators of their intent. Many political processions in Bangladesh start with slogans such as “Jalo, jalo, agun jalo” - which literally translates as “light the fire,” but also incited followers to burn those that oppose them. It is too ambitious to expect such politicians to follow the rule of law. Top leaders of the country’s political parties should understand this reality. Those who lead political parties and alliances must be questioned about the concept of the rule of law and the difference in its application between normal citizens and politicians and other officials who disregard the law.

When Prime Minister Sheikh Hasina chose Bodi Abdur Rahman as her party’s representative in the parliamentary election, she associated herself with him politically. His actions therefore tarnish her. The fact that no legal action has been taken against him therefore tarnishes the government. By turning a blind eye to the bad deeds of its own leaders, the government has lost the moral ground to control similar abuses of power by civil bureaucrats and other law-enforcement agents in the country, such as the police, who frequently break laws, abuse their power and indulge in corrupt practices that affect ordinary citizens.

The traditional practice of ignoring lawless actions by public representatives such as Golam Reza transmits the message to ordinary citizens that some are above the law thus undermining the rule of law in Bangladesh.

It is time to rethink the culture of politics in the country. Politicians of the ongoing “Jalo, jalo culture” can only destroy the infrastructure of the country. This cannot contribute to the much-needed advancement development of the country in terms of social cohesions, respect for human rights and economic stability and advancement.

The failure to take legal action against offenders regardless of their political positions and portfolios will only cause the overall situation in the country to continue to deteriorate, especially concerning of human rights, as impunity breeds abuse.

In the first session of the Parliament of Bangladesh, its members spoke out against the former military-controlled emergency government. The parliamentarians demanded the prosecution of members of the military forces responsible for arresting and detaining high-ranking politicians, and subjecting them to ill-treatment and torture in custody.



Abdul Jalil, general secretary of the Awami League during the emergency, has demanded a parliamentary probe into such detentions. He was detained and has cried while describing the torture he underwent in a detention centre operated by the armed forces. He said around eight armed men had come to his office, blindfolded him and taken him away in a waiting car. They identified themselves as members of the Joint Forces, which comprises and is dominated by the army. Jalil was detained and tortured for five consecutive days. He was later paroled to allow him to seek treatment abroad, and after returning to Bangladesh, managed to get bail from the Supreme Court.

Another Member of Parliament, Mahiuddin Khan Alamgir, also described his arrest and torture in a number of articles, interviews and talk shows. He has declared his intention to sue the chairman of the Anti-Corruption Commission, Lt. Gen. Hassan Mashhud Chowdhury, and other members of the armed forces for torturing and treating him inhumanely in detention. He joined the discussion in the parliamentary session.

A former member of Parliament claimed that he was blindfolded when army officers arrested him and held him incommunicado in a soundproof cell, which he assumed to be at the army garrison where dozens of specialized torture cells have been maintained for years. Medical teams first performed a thorough check-up of detained persons, he said. After they were examined and their medical histories recorded, death certificates were prepared in advance, with physicians' signatures and comments, to elude suspicions of torture.

The torture lasted for days, and victims were moved from one cell to another depending on the choice of the perpetrators and their methods. Threats to circulate false stories of private bank accounts and wealth accumulated through corrupt means were used to intimidate and blackmail the detainees. Most victims were forced to pay huge sums of money, based on their financial wealth, to escape torture.

Bangladeshi media have also claimed – quoting a ruling-party parliamentarian who was a victim of torture and other witnesses – that some of those charged with corruption were tried in a Special Anti-Corruption Tribunal controlled by officers of the Bangladesh Army. The officers and the Anti-Corruption Commission reportedly conducted rehearsals of false depositions by arranging false witnesses to provide testimony in the corruption cases.



These so-called witnesses said they were intimidated and forced to testify before the court. There are allegations of the systematic use of torture on those witnesses who were reluctant to testify. In addition, they said, the military officers dictated the judgments in many cases.

Barrister Moudud Ahmed – who was Minister of Law during the former Bangladesh Nationalist Party (BNP)-led government, who lost his seat in Parliament in the general election but was later elected as member in a by-election, has also tried to convince people through the media that he was a victim of torture and degrading treatment while in the custody of the armed forces. Moudud also announced that he is writing a book on his life in prison.

However, Moudud's claims concerning custodial brutality are considered more aimed at personal or political gain than being truthful, according to the human rights defenders in Bangladesh. In fact, Moudud was Minister of Law when the government validated the actions of the armed forces during Operation Clean Heart, an 86-day crackdown on political dissenters in late 2002, which resulted in 58 deaths in the custody of the armed forces. The government claimed all these deaths were the result of "heart attacks." More than 10,000 ordinary citizens were illegally arrested, arbitrarily detained and tortured under fabricated charges by the military-dominated law-enforcement agencies. Moudud, as the Minister for Law, Justice and Parliamentary Affairs, issued an ordinance in January 2003 that ensured blanket impunity to the perpetrators, which was then enacted by Parliament. Moudud and his government ignored the people's fundamental rights, especially the right to life and liberty.

Talking about human rights, as Jalil, Alamgir and Moudud did, was a rare event in the country. Their stories support the claims made by human rights defenders that the armed forces and law-enforcement agencies operate torture cells. In fact, the real picture of brutality by the armed forces and the police is much more severe than the stories of these three politicians can encapsulate. Ordinary citizens have long suffered at the hands of the military, notably during the state of emergency, and the police during previous regimes.

However, other messages emanating from politicians have continued to attempt to bury the abuses of the past. The incumbent law minister, Barrister Shafique Ahmed, has argued publicly that whatever happened during the emergency government was part of a "doctrine of necessity" thereby justifying the actions of the military-controlled emergency government and promoting impunity. Speaking of the armed forces, he



told the media on February 5, 2009 that "You cannot say all their actions or activities were within the bounds of the Constitution ...Whatever they did, they did responding to the necessity of the time. So we are not giving legal cover to all their actions, we're not validating all their ordinances."⁷

The Law Minister's comments attempt to justify illegal arrests, detentions, torture and killings as being a necessity at the time. However, the armed forces' actions violated the Constitution and therefore cannot be justified. The so-called "doctrine of necessity" is merely an excuse to once again grant impunity to the perpetrators of human rights violations, by the present government, allegedly at the demand of the armed forces. Despite several allegations of grave human rights abuses made in Parliament by lawmakers, as well as on television and in national newspapers that require credible investigation and prosecution, the government of Prime Minister Sheikh Hasina remains silent on this issue. The government's silence further damages the country's already impaired rule of law by fostering impunity.

When elected government took over power, there were demands and hopes that an independent and capable commission would be formed to probe abuses by the armed forces. But the government's silence and inaction in this regard has led to frustration and underlines the continuing supremacy of the military in Bangladesh's political system. This supremacy is in evidence in the National Human Rights Commission Act-2009, which placed the armed forces beyond the purview of the rights body. The commission's authority is restricted so that it cannot investigate allegations of human rights abuses committed by the armed forces. In other words, the government has put the armed forces beyond the reach of the law.

The Constitution of Bangladesh states that no one has the authority to grant immunity from prosecution for punishable crimes. Article 31 of the Constitution clearly declares: "To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law."

⁷ <http://www.newagebd.com/2009/feb/06/front.html#4>



The country's highest offices, including the Presidency, are bound by the Constitution and there is a legal framework that protects the supremacy of the law. Actions by the government to place perpetrators of torture are therefore unconstitutional.

Civil society have demanded that measures be taking to ensure that the armed forces cannot take over and abuse power again, as has been the case in the recent past. The current government has the mandate following its election victory and an absolute majority in Parliament that would allow it to criminalize torture and repeal Article 46 of the Constitution, which allows Parliament to grant impunity to state officers for any action, however brutal, if such action was taken in order to "restore order" – a concept that is vague and evidently open to abuse.

The demand for justice by several senior members of Parliament, should be acted upon as a starting point, as the authorities in Bangladesh have yet to begin any process of investigating the crimes committed by State-actors during the emergency government.

V. Mutiny in the Bangladesh Rifles followed by disappearances and killings

Early in 2009, a mutiny within the security forces shed light on underlying tensions and brutality within the establishment, as well as the perennial problem of impunity. A violent 33-hour mutiny took place within the Bangladesh Rifles (BDR) headquarters on February 25 and 26, which saw more than 70 persons killed.

A mutiny occurred on February 25 and 26 at Pilkhana, the headquarters of the Bangladesh Rifles, widely known as the BDR, the country's border protection force. The paramilitary force is comprised of non-commissioned officers and soldiers, led by commissioned officers of the Bangladesh Army who are deputed to the BDR for a particular period of time, according to the rule and decisions of the Ministry of Home Affairs, although, the Armed Forces are officially under the Ministry of Defence. The incident took place the day after a visit by Prime Minister Sheikh Hasina to the BDR headquarters to inaugurate "BDR Week."



During the mutiny, a group of non-commissioned masked soldiers were seen in live televised reports accusing the deputed army officers in the paramilitary of involvement in corruption, depriving the soldiers of their rightful facilities and opportunities, and ignoring their problems over the years or failing to raise the soldiers' demands to the higher authorities, including the head of the government and concerned ministries. There were allegations of unlawful punishment of soldiers and their being compelled to do personal favours not in their job-description by the army officers. The mutiny spread to other barracks across the country. No casualties occurred other than in the BDR headquarters as a result, and local administrations were able to take control of the barracks' armouries, disarming the soldiers.

The violence in the BDR headquarters resulted in the deaths of 74 persons, according to the authorities. The deceased reportedly included 58 Bangladesh Army commissioned officers, including the Director General, Major General Shakil Ahmed, and other officers from the ranks of captain to brigadier general. The 16 other victims were civilians and included a child who was a street hawker as well as bystanders, construction workers, the wife of the BDR Director General, and a retired army officer and his wife who were housed at the official apartment of the Director General. As well as the killings, there were also reports of rapes of women and children, mostly the females in the commissioned army officers' families, and ransacking and looting valuables, including money, from the houses of the officers.

The rebel soldiers demanded a "general amnesty" to be provided to the mutineers by the government and urged the head of the government to facilitate a dialogue. The Prime Minister's office, instead of using force, sent a team led by a State Minister, who brought a team of 14 mutineers, led by Deputy Assistant Director (DAD) of the BDR, Mr. Touhid Hossain, to hold negotiations with the Prime Minister at her official residence. Later, the responsibility of negotiating with the mutineers was delegated to the Home Affairs Minister, Ms. Sahara Khatun, until the government was able to establish control over the mutiny-affected locations.

Following the mutineers' surrender, it is reported that members of the army, the Rapid Action Battalion and the police, killed a large number of the mutineers – perhaps as many as 78 - in revenge. As a result of the denial by the authorities that such killings took place and the absolute denial of access of civil society organizations, rights groups and media professionals to the BDR headquarters, the exact number of such killings is not known, although hundreds of soldiers are still missing. The authorities claim that the missing soldiers have become fugitives in order to escape trials for their crimes, but the AHRC is not convinced of this being the case in reality. The families have



allegedly been barred from speaking out on the same issue and face threats of reprisals should they attempt to do so.

After the mutiny, several cases lodged with the Lalbagh police station, which later transferred the cases to the New Market police station. The cases have been investigated by the Criminal Investigation Department (CID), headed by Assistant Superintendent of Police Abdul Kahhar Akand. The investigation report is expected to be submitted to the Chief Metropolitan Judicial Magistrate's Court of Dhaka on December 23, after it missed a couple of previous deadlines in recent months. The CID officers have reportedly recorded statements of 6250 people, including 125 members of the families of the army officers, who were residents of the BDR Headquarters, and 430 civilians from surrounding neighbourhoods. Around 2132 persons, including 27 civilians, were remanded in custody. Around 492 soldiers initially gave confessional statements concerning involvement in the mutiny to the Magistrate, although an estimated 84 soldiers had retracted their confessions by November, claiming that they had been forced by the police to confess to crimes that they did not commit. It is understood that the authorities used severe torture on these soldiers in order to extract confessions, as well as threats to extra-judicially kill their family members.

The Government formed two more probe committees to investigate the carnage at the BDR headquarters. Retired government official Asaduzzaman Khan headed one of official probe commissions that comprised 12 members, and released a report on May 27, 2009, after also having missed a number of deadlines. The Army also formed separate probe body named the Court of Enquiry, comprising 20 officials of the armed forces. Besides, the Government sought help from the Federal Bureau of Investigation of the United States, the United Kingdom's Scotland Yard and the United Nations. Separate teams of FBI and Scotland Yard visited the crime scenes as part of their respective investigations to aid the government of Bangladesh to provide the requested supports. It is interesting to note that Bangladesh was able to carry out investigations and mobilise resources when the situation concerned the killing of members of the military, but has taken no credible steps to investigate the many hundreds of killings that have allegedly been perpetrated by State-agents over recent years, as detailed in the section on extra-judicial killings further on in this report.

The incident raised numerous questions, debates and allegations against the public institutions, agencies and groups, as well as suspicion concerning the role of neighbouring nations. The intelligence agencies – including the Directorate General of the Forces Intelligence (DGFI), National Security Intelligence (NSI), Rifles Security Unit, Army Intelligence, Special Branch and Detective Branch of Police and



Intelligence Wing of the Rapid Action Battalion – were widely condemned for failing to inform the authorities regarding the possibility of the mutiny. The Asaduzzaman Commission reportedly asserts that the mutiny was pre-planned, although it fails to specifically identify the mastermind(s) and behind the incident other than some of the border guards that took part in the carnage.

In its report, the Asaduzzaman Commission states that *"[T]he mentality of not accepting authority of the army had been dormant among the BDR members for long. They had been demanding appointment of their own officers under a system as the BCS (Bangladesh Civil Service) cadre, increase of border allowance, 100 per cent ration allowance, sending them to the UN Mission, restructuring of their salary structure in a similar model as that of the army. Besides, the Daal-bhat programme, punishment of sepoys, lack of transparency in running BDR shops, luxurious lifestyle of officials, corruption in running the schools etc gave rise to questions and discontent among the BDR men."*

The same report claims that *"[T]he real causes and motive behind the barbaric incident could not be established beyond doubt. The committee feels that further investigation is required to unearth the real cause behind the incident. The negative attitude among the general BDR members towards the army officers, and their discontent over unfulfilled demands may be identified as the primary cause of the mutiny. Analysis of these demands gives the impression that such small demands cannot be the main cause of such a heinous incident. These points have been used to influence the general BDR soldiers. The main conspirators may have used these causes to instigate this incident, they themselves working from behind curtains to destabilise the nation."*

The report went on to criticize the media for playing a "negative role" by broadcasting the mutiny live on satellite television channels, accusing the media of "encouraging the mutineers" and that TV talk-shows "created sentiments against the government and the army among the people."

Interestingly, the report stated that *"[F]rom the first day of the BDR mutiny, mutineers and their family members kept fleeing the Pilkhana premises in different ways. Immediately after the mutiny began at Darbar Hall, many of the BDR members (including officers) had fled Pilkhana. Most of those who participated in the rebellion fled from Pilkhana during the nights of February 25 and 26 (except for around 200 BDR members). The mutineers mainly scaled the boundary walls on the west side and used gate numbers 5 and 2 for their flight. Many abandoned their uniforms, boot etc that*



were found on the bank of a pond near the boundary wall near Bay Tannery." However, the report did not include what role the law-enforcement agencies played and why they failed to stop fleeing mutineers.

It also made claims of the existence of "conspirators" by claiming that "[T]hose who do not believe in the independence and sovereignty of the country, those who do not believe in democracy, those who do not want to see Bangladesh as a stable, democratic and developing country, those who do not want Bangladesh to be secure and have a strong armed forces, made an attempt to reach their vile goals by putting the BDR and the army on a collision course through the BDR mutiny." However, the report did not specifically identify the so called "conspirators".

It also claimed that the "motive of the mutiny was to destroy the chain of command and render the BDR ineffective, discouraging army officers to work in BDR on deputation in future by brutally killing army officers, putting Bangladesh Army and the BDR on a collision course, destabilizing the newly elected government, destroying internal security and stability of Bangladesh, tarnishing the image of the country abroad, and hampering the participation of Bangladesh in UN peacekeeping missions."

In its long-term recommendations the report suggested that the authorities should "update existing laws and rules to ensure proper work environment and facilities in the army, paramilitary and law enforcing agencies; Re-fixing the service tenure of all members of BDR personnel in line with those of the army; Bringing a balance in the benefits, salaries and allowances of the army, paramilitary and law enforcing agency personnel; and avoid the involvement of members of the army, paramilitary and law enforcing agencies in programmes such as Operation Daal-Bhat, and instead engaging them in professional duties as far as possible. "

Regarding the trial of the accused in cases concerning the mutiny, the army has reportedly been pressurizing the government to allow them to conduct the trials of the mutineers under Army Act-1952. However, the BDR, which was created as paramilitary force under a separate law, is operated under independent command outside of the army's jurisdiction, under the Bangladesh Rifles Order 1972. Following debates on the issue the country's President, Md. Zillur Rahman, sent the issue to the Supreme Court for reference. The court, after taking "amicus curie" opinions from jurists, asserted that the trial cannot be conducted under Army Act-1952, as the force was never under the command of the army according to the law.



Later, the authorities decided to hold two types of trials concerning the mutineers – in Speedy Tribunals under the penal laws in open courts concerning charges of murder, rape and robbery, and in BDR Tribunals in six separate Special Courts under the BDR law in the BDR's six Sector headquarters concerning charges of rebellion or mutiny. The incumbent Director General of the BDR, Major General Mainul Islam, has been made Chairman of all of the BDR Special Courts, which also comprise two further army officers, who are deputed from the Bangladesh Army's respective administrative jurisdictions.

The BDR authorities started trials in the Special Court in Rangamati Sector for the Chittagong and Hill Tracts region on November 24, 2009, even though the formal investigation of the cases remained unfinished at the time the Law Minister announced the trials on October 30. The trials by the BDR Special Courts comprise officers of the Bangladesh Army, which lost officers at the hands of the soldiers of the mutineers, and there are serious concerns about the likelihood of vindictive outcomes and unfair trials being produced as a result. Around 3,500 soldiers and 80 civilians are facing trial in cases lodged regarding the mutiny. According to Section 10A (3) of the Bangladesh Rifles Order-1972, any person accused of an offence has the right to conduct his own defence or to have the assistance of any officer of the force or of any legal practitioner of his own choice. It is feared that the defence will be biased in favour of the military in many cases and that the prospect for fair trials is unlikely.

Following the tragic and bloody mutiny on February 25 and 26, the government initially announced that it would provide one million takas (US\$14,620) as compensation to each of the families of the army officers that were killed. However, the authorities completely ignored the civilians that died for over a week. It was only after the media reported this fact that the authorities announced that they would give 200,000 takas (US\$2,924) to the families of the civilian victims. Such double-standards again reinforce the notion that civilians are considered as being less valuable than the members of the armed forces to the government.

Following the mutiny, the armed forces and the Rapid Action Battalion paramilitary force (which is a composite force with officers seconded from the armed forces), as well as the police took control of the whole mutiny-affected area in order to rescue persons who were in hiding or being detained, to conduct investigations, to re-establish order within the BDR and its headquarters as well as to search for missing officials. The members of the BDR who left the headquarters during and after the mutiny were ordered to re-join their respective units. In order to arrest missing BDR members, the armed forces and the RAB launched a crackdown named "Operation



Rebel Hunt.” A large number of soldiers were detained after returning to the barracks and considered suspected mutineers, although the reasons for suspecting soldiers of involvement have been publicly clarified by the authorities. Around 45 of the detained soldiers died in custody, giving rise to serious concerns about the treatment those detained were receiving. Torture remains endemic in Bangladesh even in regular petty criminal cases, and the likelihood of it being used in such emotionally-charged cases was evidently very high.

Relatives of the detained had been reporting the use of torture since the arrest of BDR soldiers began, and each of the 45 deaths was recorded as being an "Unnatural Death" by the relevant authorities at local police stations. The deaths of persons in the custody of Bangladeshi law-enforcement agencies are a well-documented phenomenon. What made these deaths remarkable was that they were occurring in spite of a promise from the Prime Minister that the suspected mutineers would be kept safe and would receive a fair trial. The families of the detained persons were barred from expressing their views regarding the circumstances of their detained or dead relatives.

VI. The role of the army in Bangladesh in committing violations of human rights

As has been noted above, the military is an extremely powerful institution in Bangladesh and often operates above the law, to the detriment of the country's citizens. The afore-mentioned mutiny in the BDR came at the end of a long period of political instability in the country in which the military had filled many vacuums in the civilian administration and institutions of the rule of law, notably during the state of emergency. The AHRC has in previous annual reports highlighted the dangerous entrenchment of the military in the country's civilian institutions and the detrimental effect that this was expected to have over the long term in the country. As a result of its position of power, the military plays the role of arbiter in Bangladeshi politics.

Under the state of emergency and in previous years, a large number of extrajudicial killings took place. An estimated 184 took place in 2007 and 149 in 2008 during the state of emergency, for example. It is estimated that an astounding 500,000 persons were arbitrarily arrested for political reasons, and the law of the country and fundamental rights were suspended during the emergency. The administration of justice was effectively brought to a standstill during this period and corruption reached new heights. The average citizen is subjected to corruption at all levels from



admissions to hospitals, schools and on the occasions of arrest or detention of any family members. In addition, wealthier businessmen were subjected to various forms of harassments in order to extract large sums of money from them by State-agents during the emergency. In some cases, businessmen and industrialists have been kidnapped by members of the Armed Forces and ransoms have been demanded. Such people were allegedly detained on fabricated corruption charges, intimidated and tortured in custody until ransoms were paid.

The public image of the armed forces has been very mixed throughout the last few decades. Whenever there are floods, cyclones or other devastating natural disasters, the government calls on the army to conduct relief work and engage in disaster management. During such times soldiers and officers are perceived as being diligent and brave, helping to restore calm and hope. The people have applauded the army's humanitarian efforts for decades, because they have helped the common man.

However, many Bangladeshis have also experienced the brutal side of the army. Bangladeshis have witnessed crackdowns on political opponents, social activists and human rights defenders and read of their arbitrary arrests and detention, torture and extra-judicial killings during previous military dictatorships and civilian governments alike, which have been perpetrated with impunity throughout the country's history.

For example, on Oct. 16, 2002, the government of Prime Minister Khaleda Zia deployed the army across the country in an operation called "Operation Clean Heart," which continued until Jan. 9, 2003, in order to crack down on criminals and illegal arms. During the 86-day crackdown, around 11,200 people were arrested and detained, according to the authorities. The police listed 2,500 people as criminals and about 300 as suspects. Around 2,000 different types of arms and 29,700 rounds of ammunition were recovered. Of particular concern, other than the often arbitrary nature of arrests and the treatment of those detained, were the over 50 deaths in detention of persons being held by the Armed Forces. Their deaths were officially recorded as resulting from "heart attacks." In reality, an additional 8,000 people were arrested and detained, and the majority of those detained are thought to have been subjected to torture.

The members of the Armed Forces that have perpetrated grave human rights violations under "Operation Clean Heart" and similar crackdowns, have been provided with impunity by civilian governments. For example, the then-government passed the Joint Drive Indemnity Act-2003 in parliament in 2003, which provides blanket impunity to all State-actors for any actions they commit while performing actions on



behalf of the State. This is still in effect and the government is urged to bring a bill to repeal this Act without delay.

VII. Political intervention perverting the course of justice

As has been the case in the past when a new government takes office, the current government has recruited new sets of Public Prosecutors and Government Pleaders across the country and enlisted politically-chosen lawyers to occupy positions in the Office of the Attorney General in order to defend the government's interests before the Supreme Court. The entirety of the body of public prosecutors across the country have been replaced by a new group of lawyers that have political association with the ruling party. The AHRC has previously termed this Bangladesh's disposable prosecution. It ensures that the judicial process serves the interest of the government as much as possible and perverts the course of justice.

The Government decided on February 17, 2009, to withdraw "politically motivated" criminal cases against their members or allies, that had been pending before the courts of the country. The country's Law, Justice and Parliamentary Affairs Minister Barrister Shafique Ahmed said that the government wished to unburden the courts of politically-motivated cases that were lodged during the previous governments - led by the Bangladesh Nationalist Party (BNP) and the military-controlled emergency regime. The government formed committees in central and districts levels to receive applications from the aggrieved persons regarding politically-motivated cases. On March 4, 2009, the authorities initially stipulated 45 days to receive applications after a gazette notification is made and another 45 days for scrutinizing the withdrawal-applications by the committees. However, they changed the deadlines afterwards.

By the end of November 2009 the authorities had decided to withdraw 1,348 criminal cases that were filed under the anti corruption laws, penal code and code of criminal procedure. A committee was formed and headed by the State Minister for Law, Justice and Parliamentary Affairs, Mr. Quamrul Islam, who is by profession a lawyer as well as a politician. On the first meeting of the Committee, 12 corruption cases against the incumbent Prime Minister Sheikh Hasina, and several other cases against the senior leaders of the ruling political party, their allies and relatives were dropped.



However, most of the criminal cases lodged against opposition party members and senior leaders were not dropped. Among such cases, the AHRC has noted that two cases against journalist and human rights defender Jahangir Alam Akash's were not withdrawn, even though it is widely known that members of the RAB involved two individuals to fabricate cases against him for his writings against the members of RAB-5 (the RAB's 5th Battalion that is based in Rajshahi).⁸

Under such biased conditions, combating corruption effectively is evidently not possible, as the politicised judicial process leads to impunity for those connected to the ruling party and may also target opposition figures with false cases. In addition to the withdrawal of a large number of cases, the government has also arranged for presidential pardons to be given to convicted persons with political affiliations to the ruling party, some of which were fugitives.

The withdrawal of "politically-motivated cases" is not a new practice in Bangladesh. The BNP led government constituted similar committees after the party was voted to the power in 2001. The then government reportedly withdrew around 5,888 cases to release around 73,541 persons with political affiliations with the BNP and its allies. The names of party supporters who were accused in around 945 criminal cases were also withdrawn. All those cases were lodged during the previous regime of the Awami League between June 1996 and July 2001.

The withdrawal of such large numbers of cases on the basis that they were fabricated charges for political reasons is a clear admission on the part of the government of Bangladesh that its criminal investigation divisions and prosecution divisions are fundamentally flawed. Since every government engages in the dismissal of such cases as they come to power it is a clear indication that both political parties are aware of the defective nature of the investigations and prosecution branches of their country.

As the new government has declared that it wants to uphold rule of law, one of the primary tasks should be to address the problems of its criminal investigation and prosecution branches. To admit that the functioning of these branches is

⁸ AHRC-UAU-063-2008 : <http://www.ahrchk.net/ua/mainfile.php/2008/3058/>;
AHRC-UAU-003-2008 : <http://www.ahrchk.net/ua/mainfile.php/2008/2713/>;
UP-155-2007: <http://www.ahrchk.net/ua/mainfile.php/2007/2668/>;
UP-142-2007: <http://www.ahrchk.net/ua/mainfile.php/2007/2637/>;
UP-101-2007: <http://www.ahrchk.net/ua/mainfile.php/2007/2504/>;
UA-149-2007: <http://www.ahrchk.net/ua/mainfile.php/2007/2371/>.



fundamentally flawed and to do nothing about this issue would be a clear abdication of responsibility. All previous governments have failed to take appropriate action and it is now the opportunity of the Bangladesh Awami League to deal with this entrenched negligence and take appropriate steps to improve the system.

Given the magnitude of the problem and its national importance the government must immediately begin a period of national consultations in order to allow the public to air its views on this problem. Civil society organisations and the human rights community in particular could take an active role in this process.

If the present government proves capable of dealing with this issue it will not be necessary in future for a new government to release a large numbers of accused persons through executive action.

VIII. The ongoing problem of politically-selected attorneys and prosecutors

Bangladesh is reputed for its disposable prosecution system where the whole set of attorneys and prosecutors leave their offices as soon as a new government takes over the power. That tradition remained unchanged and was enhanced with politically chosen recruitments in the prosecutorial service.

The Attorney General of Bangladesh, Mr Salahuddin Ahmed, resigned from his position on January 12, 2009. While submitting resignation he was quoted as saying his resignation was "...in line with the tradition that the attorney general resigns after a new government takes over". Ahmed was appointed as an additional attorney general and promoted to attorney general by the recent military-controlled interim government, during the state of emergency.

His resignation from office was one of the many examples of the politicisation of the attorney service in Bangladesh. Mr Mahbubey Alam, a pro-Awami League lawyer who served as an additional attorney general during the past Awami League regime, was replaced to the position.



Moreover, the *Awami Ainjibi Parishad*, an association of lawyers attached to the current ruling political party, and the leaders of the Bangladesh Awami League, became empowered to select the names of lawyers across the country for appointment as prosecutors.

The stability of attorney and prosecutor positions needs to be taken into serious consideration for the sake of public faith in the country's system of justice, currently at a low. Take the case of the bomb blast that took place at a cultural function of *Udichi* at the Munshi Meherullah Maidan in the southwestern city of Jessore on March 7, 1999; at least 10 persons were killed and several others left with permanent physical disabilities. On June 28, 2006, the judge acquitted all 23 persons accused, observing that "the state and the witnesses failed to prove the charges against the accused beyond doubt".

This whole incident makes one wonder why the system fails so consistently in Bangladesh; what should be done to address these ongoing failures and improve the basic functioning of legal institutions?

In a given situation, the same old use of politically affiliated attorneys and prosecutors will not only question the competence of law officers and the credibility of the prosecutorial service in Bangladesh, but also multiply the problems of the country's people.

Meanwhile the government and concerned members of civil society should begin an open discourse on what the seekers of justice really need. For the sake of understanding and progress, the authorities should initiate debates on whether the country should keep the 'hire and fire' system for attorneys and prosecutors, or whether the prosecutorial service should be under an independent and permanent institution, with competent, committed and experienced professionals who can act without fear or favour. The nation should clarify whether they need law officers as an institution to propel the justice delivery system, or as another political wing of the ruling political alliance.

Political favouritism leads to immunity from prosecution: Mr. Shahdab Akbor Chowdhury, the son of Ms. Sajeda Chowdhury, a senior leader of the ruling Bangladesh Awami League and the Deputy Leader of the Parliament, was convicted in four corruption cases during the emergency government. Shahdab remained a fugitive



during the whole period of the trials, including the appeals concerning the four cases. The Special Tribunal against Corruption sentenced him to a total of 18 years of rigorous imprisonments in the four separate cases. The Courts also fined him around 15 million takas and issued a warrant of arrest against him.

Mr. Shahdab applied to the President of Bangladesh seeking mercy through the Ministry of Home Affairs. Following positive comments from the Ministry of Law, Justice and Parliamentary Affairs the application was forwarded to the Office of the President, who granted mercy. It is known to everyone that the Shadab's mother Sajeda Chowdhury has had a long-standing political relationship with the incumbent President of Bangladesh, Md. Zillur Rahman.

The President of Bangladesh is constitutionally immune and empowered to grant mercy, according to Article 49, which reads: "*The President shall have power to grant pardons, reprieves and respites and to remit, suspend or commute any sentence passed by any court, tribunal or other authority. Prerogative of mercy.*" But the President is not authorized to do anything without the advice of the Prime Minister. According to Article 48(3) of the Constitution, which reads: "*In the exercise of all his functions, save only that of appointing the Prime Minister pursuant to clause (3) of article 56 and the Chief Justice pursuant to clause (1) of article 95, the President shall act in accordance with the advice of the Prime Minister; Provided that the question whether any, and if so what, advice has been tendered by the Prime Minister to the President shall not be enquired into in any court.*"

Prominent jurists of Bangladesh have explained that the presidential mercy is legally acceptable only when the convicts go through the legal proceedings. Despite this, the Ministry of Home Affairs reiterated its support for the mercy provided to Shahdab after the country's media criticized the decision.

One law to protect one family: The government of Bangladesh adopted an unprecedented law in the country's history in July 2009, when it granted lifetime security protection to family members of the country's founding president Sheikh Mujibur Rahman, which includes his daughter Sheikh Hasina, the current Prime Minister.

Abul Kalam Azad, the Prime Minister's press secretary told the media that the Cabinet had approved in principle the proposed "Father of the Nation's Family Members'



Security Act-2009" in its weekly meeting on July 6, 2009. The Act was declared effective from the same date as the Cabinet's approval, even though the parliament had yet to pass it. The Home Minister, Sahara Khatun, tabled it on October 5, as the Father of the Nation Family Members Security Bill 2009, and the parliament passed it on October 13, 2009.

A similar law entitled "Father of the Nation's Family Security Act 2001," was passed by Sheikh Hasina's previous government, 23 days before it completed its previous tenure, but this was scrapped by the following government led by the Bangladesh Nationalist Party.

The 2001 Act had handed over the official house of the country's Prime Minister to Hasina for a symbolic 1-taka (about 1 US cent) and another house to her sister Rehana at the Dhanmondi residential area in the capital, Dhaka, as well as a range of perks and privileges at the expense of the State.

The new Act has similar provisions to allot well-protected safe houses and other facilities, but the government has cited security as the main reason behind drafting it. According to Azad, after the brutal assassination of Rahman and his family members in 1975, which Hasina and her sister Rehana escaped as they were in West Germany at the time, a group has been conspiring to kill other surviving family members, especially Hasina. Azad said the grenade attack on Hasina in 2004 was proof that plotters were attempting to kill her.

However, according to an official in the Law Ministry of Bangladesh, on conditions of anonymity, the definition of "family members" was not defined in the Act at the time it was adopted and put in force but would be advised later. It is thought that "family members" means the families of Hasina and Rehana. Will the children of Hasina and Rehana, who hold foreign residencies and some whom are married to foreign nationals be eligible for State security cover when living abroad? If so, will a contingent of Bangladesh's Special Security Forces permanently stay abroad to protect them? How much expenditure will be incurred? Why should Bangladesh, a nation where 44 million people still live below the poverty line, spend huge sums of money and resources on one family?

The adoption of such a law raises further questions still: Should there be a special law to protect only one family in a country, based on their political position? Why should



other families in a population of 150 million be less protected? Does Article 27 of Bangladesh's Constitution, which enshrines people's fundamental rights to equal treatment, allow for such an Act? It is evident that the threat to the life of many of the country's citizens, notably from State-agents themselves, would require the protection of the law, but that this is ineffective at present. The AHRC recalls that officials of the Bangladesh Army killed Bangladesh's founding president Sheikh Muzibur Rahman on 15 August 1975 at his private home in Dhaka along with all the members of his family except two daughters – Sheikh Hasina and Sheikh Rehana. Later, the same force assassinated one of the country's military dictators, Lt. Gen. Ziaur Rahman, who founded the Bangladesh Nationalist Party (BNP) and was assassinated on May 30, 1981, at Chittagong Circuit House. Also, a large number of ordinary citizens die a brutal death at the hands of the same security forces and law-enforcement agencies every year.

Furthermore, while politicians of the ruling Awami League and its allies claim Rahman as the "Father of the Nation," their opponents disagree. So, if Rahman is not officially accepted as the Father of the Nation, will the Act survive?

Last but not the least, if the government claims that the Act was effective from the date when the Cabinet approved it, then what role does Parliament play? How can a proposed Bill, which was not an ordinance and had not completed the legislative process be termed an Act and come into effect? The whole process of making the law has been qualified as being nothing short of insane by members of civil society groups and legal experts.

Under the current government, the prospect for the establishment of the rule of law and the enjoyment of human rights as promised during the election already appears to have been dashed. Gross abuses of human rights, including torture and extra-judicial killings by law-enforcement agencies continue unabated. During a few weeks after the government assumed office various forms of post-election violence occurred, with members of the new ruling party profiting from their new-found power to launch attacks on their political opponents, while the authorities for the most part watched on. 12 Persons were reportedly killed and 998 were injured, according to Odhikar, a human rights organization, although these statistics are only thought to represent the tip of the iceberg as they do not include data from across the whole country.⁹ Access to justice and remedies for victims of abuse remains virtually impossible. No registration of a case of torture by the police as a First Information Report (FIR) is

⁹ <http://www.odhikar.org/documents/February09.pdf>



known to have occurred in 2009, except concerning a case that took place in 2006 in which a pregnant woman, Ms. Shahin Sultana Santa, was tortured by police in public. A court has only asked the police to record the case after three and a half years.

IX. Summary of the ALRC's research on politics – Corruption Nexus in Bangladesh: An Empirical Study on Impacts on Judicial Governance

The Asian Legal Resource Centre (ALRC), the sister organization of the Asian Human Rights Commission (AHRC), was preparing to issue a study entitled "Politics – Corruption Nexus in Bangladesh: An Empirical Study on Impacts on Judicial Governance" at the time of writing of this report. The research report will detail aspects of the system of corruption and abuses of political power and systemic failures to control them. It exposes the lack of mechanisms to hold the rule of law institutions accountable for their actions in compliance with existing laws, let alone human rights norms and standards. In addition, the AHRC has documented an account of the numerous bribes that took place in a typical case during its course through the country's lower and higher judiciaries (please see the tables in the section below for details).

The political-corruption nexus, a summary of findings: Over the past thirty-eight years, since the creation of the Bangladeshi nation, its judiciary has been under executive domination. The only notable positive change in this period has been the separation of the magistracy from the executive organ of the State. This occurred in response to a Supreme Court verdict during the recent military-controlled government.

Bangladesh's judiciary is divided into two main components: the higher judiciary comprising the Supreme Court of Bangladesh; and the lower judiciary or subordinate judiciary, comprising the Court of Sessions, the Civil Courts and other Special Courts. The Supreme Court is made up of the Appellate and High Court Divisions. The Supreme Court plays a supervisory role with respect to the control and administration of the subordinate courts and a guardianship role in respect of the protection of the Constitution and fundamental human rights. After the recent separation, now only Judicial Officers control the Magistracy by way of the cognizance and trial of criminal offences. There are different types of criminal and civil cases. Most of the civil cases are related to land disputes and ownership problems. One of the types of punishments that still prevails concerning criminal cases is the death penalty.



Different forms of corruption can be found at most stages of criminal investigations. The police play a key role in corruption in investigative and trial cases. It is difficult to lodge a complaint in a criminal case in a police station. It is also difficult to file a complaint case before the cognizance magistrate courts. Political leaders and other actors with vested interests try to influence the filing or lodging of criminal cases. False cases are often instigated by rival groups. The police often refuse to record cases on political grounds. They tend to distort the circumstantial and physical evidence portion of the First Instance Report (F.I.R.)

Strong persuasion is required to have immediate police action launched after a case is lodged. Bribes for court staff are an inevitable expectation for services rendered at all stages from the filing to the disposal of a criminal case. The Officer-In-Charge of a police station plays a vital role in the investigation and its supervision. Investigative Officers (I.O.) have been found reluctant to arrest the offenders in cognizable cases if not persuaded to do so. The I.O. seldom visits places where crimes have been committed and often threaten to falsely implicate persons unless they are paid off. Witness statements are generally not properly recorded. Vital incriminating and evidentiary elements are purposely omitted. The power of arrest without a warrant is grossly abused by the police. Police remand has become a profitable business, while torture is reported as being endemic during remand. The police are reluctant to conduct identification parades. Allegations abound concerning the manipulation/falsification of laboratory reports, post-mortem reports and other medical information.

Accused persons under arrest are not consistently presented before the nearest magistrate within twenty-four hours. The most corrupt area of judicial matters involves bail, where the majority of stakeholders are either directly or indirectly involved. Strict legal formalities in recording confessions are not properly followed by the magistrates. The police delay submitting reports as long as possible in order to maximise the potential of receiving bribes to speed up the process. In most of the cases the police do not convey the result of their investigations to the persons concerned. Seized articles in the custody of the police are not safe. Supervisory police authorities are not performing their duties professionally. Sensational and political cases are wilfully misdirected during investigation. The government interferes in the process and frequently withdraws criminal cases without giving the court any scope to adjudicate them.



The conduct of arrests by the police has become a lucrative business. Ignoring repeated court orders, the police hold on to unexecuted warrants, thus providing accused persons time to procure money for bribes. Notifications of absconded, accused persons are hidden by publishing them in little-known newspapers. Public prosecutors are appointed on the basis of political affiliation, irrespective of experience and integrity.

The filing of civil cases is complicated and troublesome. The serving of notices and their return is the preliminary impediment in the settling of civil cases. The Najarat (Revenue) section plays a vital role in the serving of notices/summonses to defendants. Even after a proper serving, defendants are found reluctant to appear before the Court. Matters are worse when the government is the defendant. Courts wait unreasonably long periods of time for parties to file their written statements. Parties try to obtain an order of injunction from the courts with a view to frustrating the end result of the case or to drag out the proceedings.

Lawyers are failing to implement the provisions of the law relating to alternative dispute resolution. While examining witnesses or making arguments before the courts, the Government Pleaders are unprepared and indifferent regarding the disputed facts and the law. Judgments are often not written even after the pronouncement of results in open court. This frustrates the appeals process.

Sheristadars (Civil Judiciary office secretary) and staff of Money Loan Courts try to control the auction sale of mortgaged property. The chairmen of the village courts are incompetent to handle legal formalities and are biased in their attitudes. False and fabricated cases are filed in the Nari-O-Shishu Nirjatan Daman Tribunals utilizing loopholes in the Act.

Judges are provided with inadequate salary structures, limited scope for work outside their positions and restrictions on higher education and training abroad. The government is not willing to give them complete jurisdictional support and instead tries to control them in many ways. Judges have unreasonable workloads while at the same time are most vulnerable to attacks by foes and even terrorists. For example, two judges were killed in bomb attacks in Jhalokahti district, a southern town, in November 2005, reportedly by Islamic militants.



Bangladesh's Police cannot function independently and are being guided by the whims of government. The numbers of members of the police force are very low as compared with the population size. Investigative costs are fixed which affects the quality of investigations. A separate investigative agency needs to be introduced to carry out timely and fruitful investigations.

X. A detailed example of corruption in action

F M Abdur Razzak, 42, is the editor of a fortnightly newspaper, Gonomichhil, and is general secretary of the Human Rights Development Centre. On November 3, 2008 officers from Paikgachha Police Station arrested Abdur Razzak with another human rights defender, Shankar Kumar Dhali, 40. They were both severely assaulted at the time of arrest and during detention. They were falsely accused of having abducted a 13-year-old girl. Please find below a table concerning the bribes that Mr. Razzak was forced to pay to be released on bail. The total of 159,660 Bangladeshi Taka is equivalent to around US\$ 2,300. Similarly, Mr. Shankar was force to pay a total of 51,650 (equivalent to around US\$ 750). Tables concerning the bribes that both men had to pay, as well as tables that show the results of research performed by the ALRC into typical forms of corruption that are encountered at the various levels in the judiciary, were presented in a special edition of publication Article 2 concerning the use of police powers for profit in March 2009.¹⁰

Table I. Money that Razzak and his family paid to get him released on bail from fabricated charges

Date	Occasion	Reason	Payer	Recipients	Amount
21 Oct 2008	Petition case of abduction registered with Senior Judicial Magistrate's Court	Providing information about the petition case	Razzak	Court Clerk & office staff	110
28 Oct 2008	Decision of Hamida Khatun, Kahaled's Mother, to lodge affidavit on abduction	Expenditure on affidavit & its registration	Razzak & Shankar	Hamida Khatun & court staff	1200
From date	Complaint of	Searching for	Razzak &	Various social	1600

¹⁰ Asian Legal Resource Centre, Article 2, Vol. 08 - No. 01 March 2009 -- Special Edition: Use of Police Powers for Profit, pages 6-18, <http://www.article2.org/pdf/vo8no1.pdf>



petition was registered to date of arrest	abduction	Khaleda Khatun	Shankar	contacts	
3 Nov 2008	Arrest & detention at Paikgachha Police Station	Providing food from home to Razzak & Shankar	Razzak's relatives	Police sentries	850
3 Nov 2008	Arrest & Detention	Not to torture in custody & not to fabricate more cases	Razzak's relatives	Officer-in-Charge Ali Hashem Khan	50,000
3 Nov 2008	Arrest & Detention	Not to torture in custody & not to fabricate more cases	Razzak's relatives	Investigating Officer Sub Inspector Mahbubur Rahman	25,000
3 Nov 2008	Arrest & Detention	To cooperate & provide papers when necessary	Razzak's relatives	Prosecution police at court, government record officer, court sub inspector & court clerks	1500
4-8 Nov 2008	Detention under police remand	Providing food from home & meeting with relatives	Razzak's relatives	Police sentries	5000
5 Nov 2008	Inquiry into case by Additional Superintendent of Police, Khulna	Sharing information regarding inquiry	Razzak's relatives	Inhabitants of the area who observed the inquiry	1400
8 Nov 2008	Expiration of police remand	Getting involved with the procedure of the case & providing papers	Razzak's relatives	Court sub inspector, government record officer, court police, lawyer, lawyer's staff	2000
8 Nov 2008	Production before the court after expiration of police remand	Arranging departure to prison instead of returning to Paikgachha police custody	Razzak's relatives	Police officers of the Paikgachha Senior Judicial Magistrate's Court	2000
8 Nov 2008	Court order detaining the two persons in prison	Half of rental cost for car, round trip between Paikgachha Court & the Khulna District Jail	Razzak's relatives	Police assigned to hand detainees over to prison authority	1000
9 Nov 2008	Submission of petition for bail to the Paikgachha Court	Fees, tips & unavoidable bribes	Razzak's relatives	Lawyer, lawyer's staff, bench clerks	6000
10 Nov 2008	Searching Khaleda Khatun	To bring Khaleda Khatun back from	Razzak's relatives	Relatives of Khaleda Khatun	10,000



		unknown place so the detainees could be released			
12 Nov 2008	Hearing on bail petition	Fees, tips & unavoidable bribes	Razzak's relatives	Lawyer, lawyer's staff, bench clerks	500
12 Nov 2008	Rescuing of Khaleda Khatun from Mongla Port by relatives of detainees	Rental of car, food, refreshment, telephone for persons involved	Razzak's relatives	Around nine persons including relatives of Khaleda Khatun	5200
12 Nov 2008	Rescuing of Khaleda Khatun	Developing & processing film, photocopying, sending news to newspapers	Razzak's relatives	Local journalists who took photographs of Khaleda Khatun to publish in papers	1500
12 Nov 2008	Rescuing of Khaleda Khatun	For assigning an officer to record statement of Khaleda Khatun after rescuing from Lal Mia's restaurant, under section 161, Code of Criminal Procedure	Razzak's relatives	Babul Akther, Officer-in-Charge of the Mongla Police Station	5000
12 Nov 2008	Rescuing of Khaleda Khatun	Recording statement of Khaleda Khatun	Razzak's relatives	Sub Inspector Nazrul Isalm of the Mongla Police Station	3000
12 Nov 2008	Receiving Khaleda Khatun under Paikgachha police custody from the Mongla police	Rental of car for round trip from Paikgachha to Mongla, food & refreshment	Razzak's relatives	Sub Inspector Mahbubur Rahman, Paikgachha Police Station	5000
13 Nov 2008	Medical examination of Khaleda Khatun	Rental of car for round trip from Paikgachha to Mongla, food & refreshment	Razzak's relatives	Sub Inspector Mahbubur Rahman	8000
13 Nov 2008	Statement of Khaleda Khatun before magistrate	Providing a copy of Khaleda's statement to magistrate	Razzak's relatives	Government Record Officer Assistant Sub Inspector Mr. Sultan	1200
17 Nov 2008	Submission of another petition for bail to magistrate's court	Fees, tips, unavoidable bribes	Razzak's relatives	Lawyer, lawyer's staff, bench clerks	500
17 Nov 2008	Police investigation	Submitting investigation report to court	Razzak's relatives	Sub Inspector Mahbubur Rahman	10,000
18 Nov 2008	Seeking bail at the sessions judge's court on rejection	Providing certified copy of magistrate's orders regarding	Razzak's relatives	Government Record Officer Assistant Sub	2000



	of bail petition by magistrate	the case		Inspector Mr. Sultan, staff of Paikgachha Senior Judicial Magistrate's Court	
19 Nov 2008	Submission of bail petition to the sessions judge's court	Fees, tips, unavoidable bribes	Razzak's relatives	Lawyers, lawyers' staff, bench clerks of the Sessions Judge's Court of Khulna	500
20 Nov 2008	Sessions judge's order to produce case documents from the magistrate's court	Producing papers on time with sessions judge's order & obtaining agreement to do so from staff	Razzak's relatives	Bench clerks of the Session Judge's Court & Government Record Officer Assistant Sub Inspector Mr. Sultan, staff of the Paikgachha Senior Judicial Magistrate's Court	1200
25 Nov 2008	Follow up on session judge's order	Passing case documents to sessions judge's court	Razzak's relatives	Government Record Officer Assistant Sub Inspector Mr. Sultan, police staff of Paikgachha Senior Judicial Magistrate's Court	600
27 Nov 2008	Hearing on bail petition at sessions court	Fees, tips, unavoidable bribes	Razzak's relatives	Lawyers, lawyers' staff, bench clerks of Sessions Judge's Court of Khulna	7000
27 Nov 2008	Ad-interim bail grant by sessions judge	Sending the court's order to the Khulna District Jail	Razzak's relatives	Court staff	500
27 Nov 2008	Release from jail on bail	Transportation home (40 per cent of cost)	Razzak's relatives	Car driver	800
8-27 Nov 2008	Meetings in prison	Food, transportation, telephone & bribes to prison guards	Razzak's relatives	Relatives, friends, staff of Khulna District Jail	3200
15 Dec 2008	Appearing before the magistrate's court	Fees, tips, general expenditure & bribes	Razzak	Lawyers, lawyers' staff & bench clerks	500
12 Jan 2009	Appearing before the sessions judge's court for permanent bail	Fees, tips, general expenditure & bribes	Razzak	Lawyers, lawyers' staff & bench clerks	1200
TOTAL					159,660



XI. Ongoing extra-judicial killings and impunity

The State stands accused of having perpetrated over a thousand extra-judicial killings in the last four years and many more before. On Feb. 11, Prime Minister Sheikh Hasina told the parliament that: "Criminals must be brought to justice according to the law, so there should be no extra-judicial killing in any circumstance. Legal action will be taken against those guilty of such killings."

Article 32 of the Constitution of Bangladesh protects the people's right to life and liberty, as fundamental rights. The provision reads: "*No person shall be deprived of life or personal liberty save in accordance with law.*"

Despite this right being enshrined in the country's supreme law, it is being violated on a scale that requires the attention of the government and the international community, notably the Human Rights Council, which has to date failed to address the situation of rights in Bangladesh in any credible way.

In cases of violations, there are provisions for the lodging of complaints with the police under Section 154 of the Code of Criminal Procedure-1898, which states that:

"Every information relating to the commission of a cognizable offence if given orally to an officer in charge of a police-station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the Government may prescribe in this behalf."

However, when the police themselves, or other branches of law-enforcement, are the alleged perpetrators of abuses, such avenues for complaints are fully obstructed. This is the case in particular with the gravest abuses, notably extra-judicial killings.

Typically, regarding extra-judicial killings, the police at the first hurriedly register a complaint of unnatural death. Such complaints are registered under Section 174 of the Code of Criminal Procedure-1898 as an "accidental or suicidal death" instead of a



"homicidal death." The same provision also empowers an "Executive Magistrate" to inquire into the incident. In all cases, the law-enforcement agents and the magistrates conspire to disguise the extra-judicial killings, notably by branding them as "crossfire" or "encounter" killings.

In the rare case where complainants attempt to lodge complaints of extra-judicial killing by State-actors, the police not only refuse to record the complaint but also intimidate the complainants and even other members of their families. Furthermore, the authorities typically then engage in smear campaigns against the victims, labelling them as being suspects or accused persons in criminal cases, including fabricating charges and/or cases against such persons. Such fabrication is commonplace in Bangladesh, and includes serious crimes like robbery, murder and the possession of illegal weapons.

Extra-judicial killings notably by the police and Rapid Action Battalion, and have resulted in derisory investigations and impunity. Between when the current government took power at the beginning of 2009 and November 30, 2009, 120 new cases of extra-judicial killings had been recorded by the AHRC in cooperation with Odhikar, a local human rights organization of Bangladesh.

Contrary to the indications in Hasina's speech that extra-judicial killings would not be tolerated, the country's Minister for Home Affairs, Sahara Khatun, a lawyer by profession, told the media on May 16, 2009, "Incidents of extra-judicial killing occur only when members of the law enforcing agencies come under attack. The law-enforcers should have the right to save their lives when they come under attack." On 17 November, the Home Minister stated that "no 'crossfire' killing [has] occurred since her party has assumed office."

If the home minister, who is responsible for controlling law-enforcement agencies, endorses their lawless actions instead of reining them in under the laws of the land, things are clearly out of control. Reportedly, after the home minister's comment, extra-judicial killings increased rapidly.

In January 9 killings by State-agents were recorded, while in February the number reduced to 2 and there were none in March. In April, 4 persons were killed in "crossfire" incidents. However, following the Minister's intervention, such killings



increased in the following months. In May there were 16; 7 in June; 5 in July; 19 in August; 35 in September; and 22 in October, 2009.

The Home Minister's claim on November 17 that "no 'crossfire' killing [has] occurred since her party has assumed office" came two and a half months after the chief of the Rapid Action Battalion (RAB) admitted that his force conducts "crossfire" killings in the country. The Director General of the RAB, Mr. Hassan Mahmud Khandker admitted in a press briefing on September 3, 2009 that 577 persons were killed in "crossfire" in 472 incidents until August 2009, since the inception of the RAB on 26 March 2004. On September 4, 2009, most of the national dailies of Bangladesh published the news. There is a serious inconsistency of messages emanating from the government, which should denounce all such killings and act in concert to eliminate this practice and ensure justice and accountability.

On October 3, shipping minister Shahjahan Khan, while speaking in discussion organized by the BBC in Dhaka, suggested that Bangladeshis should understand that "There are incidents of trials that are not possible under the laws of the land. The government will need to continue with extra-judicial killings, commonly called crossfire, until terrorist activities and extortion are uprooted. Nobody is interested in filing cases against the criminals who carry out one terrorist act after another. Under the circumstances, what other option is left for the government?"

Seeking justice concerning extra-judicial killings remains unthinkable because the police threaten complainants with extra-judicial killings themselves, under the justification of "crossfire" incidents, whenever a relative of a victim goes to the police station to register a complaint. The message is clear to anyone that dares to complain about extra-judicial killings by the authorities in Bangladesh: complain and be killed. This leads to the perpetrators of such grave human rights abuses being able to operate and re-offend in the knowledge that their crimes will be accompanied by total impunity. This situation gives rise to a climate of severe fear in the country, including for journalists, lawyers, doctors and human rights defenders that encounter such cases, as speaking out concerning these killings also results in reprisals.

For example, Mr. Jahangir Alam Akash, a journalist and human rights defender in the northern city of Rajshahi, publicised a number of televised reports highlighting the details of "crossfire" killings along with the inconsistencies of such claims by the Rapid Action Battalion in recent years. On October 23, 2007, officers of the Rapid Action Battalion led by Major Rashidul Hassan Rashed, illegally arrested him from his home.



Mr. Akash was arbitrarily detained and tortured in a Rapid Action Battalion camp in Rajshahi. He was implicated in three fabricated charges of extortion under the Emergency Power Rules-2007, and detained in the Rajshahi Central Jail, despite a High Court Bench having granted him bail in the case. Mr. Akash, after having been released on bail, has to regularly appear before the Magistrate's Court, Sessions Court and the High Court Division to seek extensions to his bail grants and continues to receive regular threats from members of the law-enforcement agencies and their allies. He lost his employment and was being financially crippled by legal costs. Ironically, Major Rashidul Hassan Rashed has been serving in the UN Peacekeeping Mission in the Ivory Coast since July 2008. Such an opportunity is treated as a prize in the Bangladeshi armed forces. As mentioned in the section above concerning political interference in the course of justice, two cases against Mr. Akash were not dropped by the current government despite serious concerns as to their validity."¹¹

Given such experiences, it is not surprising to find that persons have no faith in the justice system in Bangladesh. The authorities, however, claim that the lack of complaints means that there are no problems of illegal actions by the members of the law-enforcement agencies. Such "logic" is also used by the country's representatives at the Human rights Council to deflect any criticism that may surface there.

The systematic protection of members of the authorities by the State has meant that not a single case of extra-judicial killing has yet been investigated by any competent authority, and therefore no prosecutions or punishments of the alleged perpetrators have taken place. Despite what the Constitution of Bangladesh states, in reality the authorities can and do get away with murder and function as if above the law. The AHRC recalls that Article 31 of the Constitution, reads:

"To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law."

¹¹ AHRC-UAU-063-2008: <http://www.ahrchk.net/ua/mainfile.php/2008/3058/>;
AHRC-UAU-003-2008 : <http://www.ahrchk.net/ua/mainfile.php/2008/2713/>;
UP-155-2007: <http://www.ahrchk.net/ua/mainfile.php/2007/2668/>;
UP-142-2007: <http://www.ahrchk.net/ua/mainfile.php/2007/2637/>;
UP-101-2007: <http://www.ahrchk.net/ua/mainfile.php/2007/2504/>;
UA-149-2007: <http://www.ahrchk.net/ua/mainfile.php/2007/2371/>.



However, the agencies that are responsible for such perpetrating over a thousand extra-judicial killings in the last four years and many more before, have been rewarded in various ways, notably the Rapid Action Battalion, which has received praise and awards, including the country's Independence Day Award 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.

Such extra-judicial killings by the law-enforcement agencies have continued to take place after the current government took office on January 6, 2009, and can therefore not claim innocence concerning this grave problem. The current government must ensure that all such killings cease and that truly impartial and effective investigations are launched into these cases to ensure that the perpetrators are brought to justice and that victims' families receive adequate reparation.

This will require a functioning and effective, independent judiciary at all levels, which remains highly elusive at present. The Supreme Court of Bangladesh, as the guardian and interpreter of the Constitution, must act to address this situation. The Supreme Court's High Court Division has inherent power to deal with issue of fundamental rights, according to Section 561A of the Code of Criminal Procedure-1898, which reads:

"Nothing in this Code shall be deemed to limit or affect the inherent power of the High Court Division to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

Moreover, Article 102 (1) of the Constitution of Bangladesh authorises the High Court Division to issue certain orders and directions:

"The High Court Division on the application of any person aggrieved, may give such directions or orders to any person or authority, including any person performing any function in connection with the affairs of the Republic, as may be appropriate for the enforcement of any the fundamental rights conferred by Part III of this Constitution."



There are three writ petitions pending before the High Court Division of the Supreme Court of Bangladesh where the Division Benches of the High Court issued rule against the government. The first ever Writ Petition was filed on 25 May 2006. The Court – a Division Bench comprising Justice Md. Awalad Ali and Justice Zinat Ara – asked the legality of "crossfire" in its rule against the government. However, no further hearing has so far taken place on this writ petition.

On 6 August 2006, another rule was issued by a High Court Division Bench comprising Justice Seyed Mohammad Dastgir Hossain and Justice Mammun Rahman following a hearing of a writ petition filed by a local rights organization filed the writ petition.

On 29 June 2009, three human rights organizations together filed another writ petition with the High Court Division. A Division Bench of Justice Syed Mahmud Hossain and Justice Kamrul Islam issued a rule against the relevant departments of the government.

Despite having *suo motto* powers, the Supreme Court of Bangladesh, has repeatedly failed to take legal initiatives to stop the practice of extra-judicial killings. Finally, a Division Bench of the High Court Division, Supreme Court of Bangladesh passed a *suo moto* ruling on November 17, 2009, against the government and the Rapid Action Battalion, calling on them to explain within 48 hours that why the shooting and deaths of persons in custody should not be declared illegal. As of early December 2009, no developments had been recorded by the AHRC concerning this, however.

A Division Bench comprising Justice AFM Abdur Rahman and Justice Md. Emdadul Haque Azad passed the *suo moto* rule after reading newspaper articles regarding the deaths of two siblings – Mr. Lutfur Khalashi and Khairul Khalashi – who were killed while in custody of the RAB-8 in Madaripur district. The Court asked the Secretary of the Ministry of Home Affairs, Director General of the RAB, Commander of the RAB-8 and a Major of RAB, who arrested the siblings in person, to respond. This is the first ever *suo moto* rule from any court of Bangladesh regarding extra-judicial killings.

In the case in question, on November 14, Major Wahiduzzaman led a RAB team from Jatrapur area under Narayanganj district to arrest Mr. Lutfur Khalashi and Mr. Khairul Khalashi. On the same day, the siblings' family members held a press conference at the Madaripur press club to express their fear of extra-judicial executions of the two. The family urged the authorities to save the two persons from "crossfire", which is the officially adopted way of killing suspects while in detention of the RAB and the police.



On the same day, the RAB-8 claimed that Lutfur Khalashi and Khairul Khalashi were killed in an "exchange of gunfire" in Madaripur while a group of ultra-leftists opened fire at the paramilitary force's patrol team early that morning. The RAB personnel arrested the two persons from Narayanganj, adjacent to Dhaka city, and killed them in Madaripur, around 150 kilometres away, after around two days of being in custody of the paramilitary force.

The High Court's long-awaited *suo moto* rule questioning the legality of deaths in the name of crossfire, will hopefully help the nation to establish a system that puts a halt to extra-judicial killings and brings the perpetrators to justice. The government should have accepted the High Court's rule as a window of opportunity to solve the prevailing practice of extra-judicial killings under the various pretexts that are used to justify such killings, including "crossfire", "encounter", "exchange of fire", "gun shots", "gun battle", and "shootouts" or "in the line of fire" incidents, all of which are synonymous with illegal executions.

It is evident that such killings are one of the many big problems concerning human rights and the rule of law in the country. Successive governments in Bangladesh have been ensuring impunity for the alleged perpetrators of extra-judicial killings.

In its first ever official report to the President, submitted on December 6, 2008, the National Human Rights Commission of Bangladesh recommended that an Independent Probe Commission should investigate allegations of extrajudicial killings in the country. However, the authorities have not yet made any comment or taken any initiative to respond to the NHRC's recommendation.

Case Study 1:¹²

Mr. Kamruzzaman, who is in the public service, alleged that his son Rakibuzzaman Rakib had been imprisoned for 10 years for possessing an explosive substance. The police allegedly implicated him in four more cases while he was already in detention. However, the court granted him bail five years ago. Hearing rumours that the Rapid Action Battalion might kill Rakib as soon as he was released from prison, Kamruzzaman decided not to allow his son to appear in public, fearing his death.

¹²

http://www.upiasia.com/Human_Rights/2009/05/19/still_no_rule_of_law_in_bangladesh/4422/



On 10 May 2009, Rakib's father made arrangements to send the court's bail order to the prison authorities. However, the jail authorities did not release Rakib on that date. Hoping that his son would be released the following day, Kamruzzaman waited outside the Dhaka Central Jail's gate the next morning. At around 9:30 p.m. Kamruzzaman saw two white minibuses arrive at the prison. Seven plainclothes policemen with walky-talky radios and firearms stepped out of the vehicles. Three went inside the prison at around 10:45 p.m.

About an hour later, Kamruzzaman saw the jailor Bazlur Rashid and a deputy jailor coming out with the three men who had entered the prison earlier. They were carrying Rakib and holding his hands and legs. At the gate, when Rakib saw his father he cried for help. The men put Rakib in a car and left the place. The armed men prevented Kamruzzaman from getting close to his son. Later, Kamruzzaman chased them in vain and returned home fearing for his son's life.

That day Kamruzzaman and Rakib's wife Nira visited several police stations, including the offices of the Rapid Action Battalion, to find their son. Every law-enforcement officer they met denied any connection to the incident or any knowledge of Rakib's whereabouts. When Nira wanted to lodge a complaint with the duty officer of the Lalbagh police station, under whose jurisdiction the Dhaka Central Jail is situated, she was denied the right to lodge the complaint. Rather, the police asked her, "Who knows the whereabouts of your husband and who took him where?"

The next morning Rakib's dead body was found on a Dhaka street, with bullet wounds. Forensic medical experts found a bullet in his body, presumably from a small firearm, while conducting an autopsy.

The father of the deceased told the media and rights groups that all relevant offices of the law-enforcement agencies had denied involvement in his son's murder. No investigation or arrests have taken place in this case.



Case Study 2:¹³

Mr. Nirapad Boiragi, a 58-years-old tailor, was a freedom-fighter during the liberation war in 1971. He used to work as a dressmaker in a shop owned by Mr. Peter at Chalna Bazar under the Dakope police station in Khulna district. On 7 October, 2009, the local police called in Nirapad to the police station. He was allegedly tortured by the police while in detention. Nirapad's family members and relatives were denied access to the police to see him. After one night's detention the district police authority took him to the office of the Superintendent of Police (SP) in Khulna city. The family was unable to locate Nirapad's position as the police did not disclose his whereabouts and also did not allow the relatives or any lawyer to meet him. On 9 October early in the morning, Nirapad's relatives were informed that Nirapad was killed in "crossfire" with the Dumuria police under the same district.

The Officer-in-Charge (OC) of the Dumuria police station Mr. Md. Fauzul Kabir claimed that Nirapad Boiragi was a "member of an ultra leftist underground party named New Biplobi (Rebel) Communist Party". Nirapad and around 15 to 20 of his associates were holding a meeting on the bank of the river Bhodra near brickfield. After arrival of the police, who learned about the meeting from their secret source, the operatives fired at the police, who also encountered with gun shots. Nirapad received bullet injury in the incident and succumbed his wounds when he was taken to the Dumuria Hospital.

Nirapad's wife Ms. Kalpana Boiragi told the Asian Human Rights Commission that she along with her son Amit Boiragi went to the Dumuria hospital and saw her husband's dead body left on the floor on thick layer of blood. The body had signs of bullet wounds in chest, throat, lower abdomen and back. The police did not allow any of Nirapad's relatives to touch his dead body or see it more closely. The police prepared the Inquest Report of the dead body and arranged post mortem at the Khulna Medical College Hospital. At around 9PM on October 9, the police brought the dead body to Nirapad's house but did not allow any person to see or touch the body. At 10PM the police took the body to the local funeral yard for cremation. In presence of the Upazilla Nirbahi Officer (administrative head of a sub-district) Mr. Sakhawat Hossain and OC of the Dumuria police Mr. Md. Fauzul Kabir and a large number of police Nirapad's body was cremated by the police, not by the family. The authorities paid "state honour" to Nirapad by saluting him at the time of cremation of his body, however, without any bugle, which is a traditional way of paying tribute to the freedom-fighters in Bangladesh.

¹³ <http://www.ahrchk.net/ua/mainfile.php/2009/3330/>



Nirapad's family claims that Nirapad, as a freedom-fighter, had the spirit of the liberation war throughout his life. He was always an outspoken person in the locality. His firm character earned enemies from his neighbourhoods. Kalpana Boiragi alleged that previously the police arrested Nirapad arbitrarily three times and detained in the custody. On each of those occasions the police fabricated pending cases against her husband, who later proven innocent after investigation and got acquittal of those cases. In one of the recent cases the police brought charge against Nirapad in a fabricated case for failing to pay bribes to the investigation officer. But, the Court granted him bail in that case.

The family alleges that some of the neighbours, who wanted to grab Nirapad's one bigha (0.33 acre) land and a bamboo-fenced house that he possessed from his ancestors, conspired with the police to kill him. Terming the "state honouring" during the cremation of Nirapad's dead body "extremely ridiculous" Nirapad's wife said, *"As a freedom-fighter Nirapad's achievement was his extrajudicial death at the hands of the law-enforcing agencies of the same state for which he fought for four decades ago. The Bangladeshi police have succeeded to put an end to a person's life forever what the Pakistani soldiers were unable to do even during the war. Justice is an unthinkable matter in this country"*.

Nirapad's son Amit Boiragi told the Asian Human Rights Commission that their family used to survive on his father's income from the tailoring job. Amit alleged that the local police and administration have been intimidating their family and insisting to keep silence on the issue of his father's assassination "in the drama of gun fire".

In Bangladesh freedom-fighters are respected by the people and the State for their past contributions and sacrifices. Every government for the last four decades has announced special programmes to honour these persons as national heroes.



XII. The urgent need for the criminalisation of torture

Ill-treatment and torture are endemic in Bangladesh. There is no clear law that criminalizes the practice. Police officers or members of other law enforcement agencies can torture citizens without fear of sanctions, even if they torture people to death. The Penal Code-1860, is very weak in this respect.

Moreover, people are so frightened that they normally don't lodge complaints against members of law enforcement agencies concerning cases of torture. Should they register such a complaint, it is predictable that either the complainant or members of his or her family may be falsely implicated in a criminal case.

Torture is not defined as a crime in any of the existing laws of Bangladesh. The police, who continue to operate under colonial-era laws and practices, use torture as the easiest tool to extort money and confessional statements from suspected criminal or individuals that they choose to target. They also use torture to fabricate evidence as they wish. The police not only routinely deny victims of torture access to complaint mechanisms but they also fabricate criminal cases against the victims and their relatives, as well as any witnesses, in order to stigmatise the persons socially and perpetuate the climate of impunity.

For example, if an allegation is lodged against a police officer, who killed an accused person illegally, the case will be investigated by a police officer (Section 156 and 157 of the Code of Criminal Procedure-1898). In most cases police officers do not make negative reports against other police officers.

Furthermore, the existing laws in the outdated Penal Code (1860) as well as the Code of Criminal Procedure (1898) have significant loopholes that deny the victims their right to justice regarding cases of torture.

Additionally, criminal complaints are initially dealt with at the Magistrate's Court where the prosecution is handled by the police. This helps the alleged perpetrators instead of providing victims with avenues to seek effective remedies. The public prosecutors, who are politically chosen by successive governments and who appear on



behalf of the State in certain cases, prefer to maintain a good relationship with the police and therefore also do not pursue the police.

Magistrates and judges lack adequate knowledge about the consequences of torture, which creates innumerable physical and psycho-social problems, followed by unavoidable financial expenditures to the victims of torture. Judges do not comprehend the systemic problems for victims in proving a case of custodial torture against the police who control the complaints procedure, the investigation and the prosecution.

The leaders of the ruling political parties in Bangladesh treat members of the law-enforcement agencies as their hired henchmen. Many senior politicians make statements minimising the serious nature of torture or justifying the practice.¹⁴ These politicians wrongly argue that torture is useful in fighting crime. They overlook the reality that the police abuse their legal powers as result of the absence of any functioning system of accountability. Such statements are major obstacles to the eradication of torture in Bangladesh.

There are certain Sections in the Penal Code-1860, in Chapter- IX, Section 161 to 171, regarding offences by or relating to public servants such as:

Public servant receiving gratification other than legal remuneration in respect of an official act (Sec-161)

Public servant disobeying the law with the intent to cause injury (Sec-166)

OR

Public servant filing a corrupt report in a judicial proceeding contrary to the law (Sect-219)

OR

Commitment for trial or confinement by a person in authority who knows that he is acting contrary to the law, (Sect- 220) as incorporated in Chapter-XI of the Penal Code regarding false evidence and offences against public justice.

These are punishable offences. But such a case initiated against a police officer or a public servant can hardly be found. People do not feel free to take action against a police officer or the Armed Forces because they are afraid of being falsely accused as

¹⁴ <http://www.ahrchk.net/statements/mainfile.php/2009statements/2253/>



mentioned above. Secondly, these types of cases are generally investigated by police officers and all garnered information is required to be given to the Police Station as provided in Chapter-XIV, Part-V of the Code of Criminal Procedure. Every recognizable offence is investigated by police officers. If the case is directly filed before a Magistrate, the same information is sent to the police for investigation. In such circumstances it is difficult to bring the wrong doers to justice. These are crimes committed by police officers/ armed forces in discharge of their official duties.

Mechanism of trial and punishment: Decisions taken by the Armed Forces Tribunals and the disciplinary actions by authorities in the Armed Forces are immune from challenge in Writ Jurisdiction, except within the narrow compass of want of jurisdiction, according to the Dhaka Law Report (DLR) 34 (Appellate Division), Page 125.

The Armed Police Battalion Ordinance 1979 has given birth to (i) Armed Police Battalions and (ii) Rapid Action Battalions (RAB). Under Section 6-A of the Ordinance the RAB is empowered to investigate any offence under the direction of the government under the Code of Criminal Procedure-1898 or any other law. The Investigating Officer shall exercise all such powers and perform all such functions and duties as may be exercised or performed by a police officer under the Code of Criminal Procedure-1898; but if they do anything wrong or illegal they will be tried by their own Tribunal, not by an ordinary court.

Legal Impediments: There are certain legal impediments that are designed to prevent cruel and inhumane acts, although these are proving ineffectual at present. The Code of Criminal Procedure of 1898 has given wide-ranging powers to police officers effecting arrests or investigating cases. Section 46 to Section 67 as incorporated in Chapter-VI, set out the procedures for conducting arrests.

Section 46-

Making arrests: (1) “In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action”.

Resisting arrest: (2) “If such person forcibly resists the endeavor to arrest him, or attempts to evade the arrest such police officer or other persons may use all means necessary to effect the arrest.



(3) Nothing in this Section gives a right to cause the death of a person who is not accused of an offence punishable with death or with transportation for life”.

It is clear from sub Section (1) of Section 46 that police officers in arresting a person will not touch the body unless by word or action the police officer informs him that he is arrested or he is in custody. So there is no scope for applying force in arresting a person unless the person required to be arrested applies any force or resists in evading the arrest.

But in Sub-Section (2) of Section 46 the Police Officer may use all means necessary if the person resists or attempts to evade arrest. The police officer may shoot towards the evading person and kill him if he is an accused of an offence punishable with death. This has enabled the police and RAB to cause the death of a person while arresting him by justifying the death as necessary due to the person resisting arrest, however true this may in fact be. To stop extra-judicial killing an important step would be the amendment of sub-Section (2) of Section 46 to prevent further abuses.

The police have an important social responsibility to ensure that innocent persons are not charged with irresponsible or false allegations. In the Dhaka Law Report (DLR) (High Court Division) page 363, Mr. Justice Hamidul Haque and Mr. Justice Salma Masud Chowdhury have made certain recommendations regarding arrest, confessions and police remand. But these recommendations have not been implemented.

The pen of the investigating officer is a mighty weapon, as was experienced in the British colonial period. It can compel an innocent person to stand in the dock to face trial; likewise it can set a veteran criminal free.

In sections 54, 156, 157, 164, 167 and other accompanying sections of the Code of Criminal Procedure-1898, the police have unfettered jurisdiction, resulting in their being able to act as if they are above the law. The time has come to urgently address these problems by amending relevant Sections and enacting the necessary laws. If this is done, there would be ways for members of the law enforcement agencies to be held accountable, while at present this is not possible in reality.



However, the current government does not appear to have the will to take the required action and should therefore be condemned for its failure to take the steps necessary to begin to eliminate abuses during and following arrest, that are the cause of many grave human rights violations in the country, including torture and extra-judicial killings. Incumbent governments have typically been reticent to tackle the law enforcement agencies, and while those in opposition denounce violations for political gain, they become silent on the matter when taking power.

Case Study 3:¹⁵

Police tortured in public Ms. Shahin Sultana Santa, a pregnant woman awaited her son in front of school, on 12 March 2006, at the Dhanmondi area in Dhaka. Deputy Commissioners of the Dhaka Metropolitan Police (DMP) at the time, Mr. Kohinoor Mian and Md. Mazharul Haque, led the torture along with their subordinate police officers on the street when a procession of the then opposition political party, Bangladesh Awami League, which is currently the ruling party in 2009, was passing through the area. The police suspected Santa of being one of the demonstrators. The acts of torture were published in print media as well as in the electronic media, as well as through televised reports on the satellite television channels.

Santa received severe injuries to her thighs, lower abdomen, back, waist, hip and other areas of her body. She suffered two fractures due to the police brutality, one in her right elbow and the other in the small finger on her right hand. She also had to abort her unborn baby as a result of the torture. Santa went to lodge a charge against the alleged perpetrators at the Mohammadpur police station, who refused to record the case. She then filed her case (CR Case number 312/06) with the Chief Metropolitan Magistrate's Court in Dhaka on March 14, 2006, against her alleged perpetrators. On 19 March, 2006, she filed another case (Number: 23/06) under sections 10/30 of the Women and Child Repression Prevention (Special Provision) (Amended) Act - 2003.

On 22 March 2006, the police fabricated two cases against Santa involving two individuals and lodged complaints with the Chief Metropolitan Magistrate's Court of Dhaka for extortion and theft. The Magistrate ordered the police to record and investigate the two cases that were lodged as counter cases to harass Santa and her husband, a lawyer by profession, who had been pleading her case.

¹⁵ [AHRC-UAU-035-2009](#), [UA-105-2006](#), [UP-058-2006](#), [UP-062-2006](#), [UP-083-2006](#), [UP-096-2006](#), [UP-101-2006](#), [UP-112-2006](#), [UP-114-2006](#), [UP-181-2006](#), [UP-207-2006](#), [UP-026-2007](#) and [UP-040-2007](#)



In the first case, following an order by the Chief Metropolitan Magistrate's Court, which was made on 14 April 2006, the Inspector General of Police (IGP) initiated an investigation into the original incident of police brutality against Santa. The Additional Special Superintendent of Police of the Criminal Investigation Department, Mr. Kawsar Ahmed Haidari, sought the help of Santa in recording witness statements, who were in hiding to escape further police brutality and harassment. Santa had arranged to have the witnesses meet with Mr. Kawsar at her residence on April 10, 2006. On that day, however, instead of recording the statements of the two witnesses, Mr. Kawsar proceeded to charge them with involvement with a banned Islamic militant political party, Jama'tul Mujahidin of Bangladesh. The policeman charged the witnesses with having met with Sheikh Abdur Rahman, who is the top leader of the banned militant group and who had been arrested in that period by the Rapid Action Battalion.

For three and a half years the case has remained pending before the Metropolitan Sessions Court of Dhaka for hearing of the Revision Petition since 2006, following Santa's lawyer having challenged the CID investigation report.

Mrs. Santa lodged two cases against the police officers – one under the Penal Code of 1860 for torture, lodged on 14 March, 2006, and the second under the Women and Children Repression Prevention (Amendment 2003) Act-2000, lodged on 19 March, 2006, concerning violence against her as a woman. The violence against women case was investigated by a Magistrate and the Penal law case was investigated by a police officer from the Criminal Investigation Department.

The Judge of the Fourth Special Tribunal for Prevention of Women and Children Repression Ms. Kaniz Akhter Nasrina Khanam dropped Santa second case, after Magistrate Shafique Anwar conducted a shoddy investigation as part of a judicial probe, which ended up leading the tribunal to rule that “sexual harassment and molestation was not proved.” The court failed to address the issue of torture, which had been proven in the same investigation report.

The report made by the judicial probe commission contains additional information, which was not provided by the witnesses, and important information that was provided was omitted. For instance, witness Mr. Omar Faruk Keru, reportedly told the judicial probe commission that while he was passing the scene he saw a group of police



beating a woman on the street before taking her into a police van. Others, he said, also witnessed this scene. Santa said that Mr. Omar made this statement during her presence. The judicial probe commission added that while passing through the place Omar 'saw around 5000 people gathered there'. Santa asserted that Omar did not say about "5000 people" in his statement. On the other hand, Omar told the judicial probe commission that the Deputy Commissioner (DC) of the Dhaka Metropolitan Police (DMP), Mr. Kahinoor Mian, was being aggressive and was directing his colleagues to beat the lady (Santa), but that information was absent in the report of the judicial probe commission.

Santa also noted changes to the buildings and area where the attack against her took place. Santa alleges that she learned that DC Mr. Kohinoor Mian allegedly paid the owners of the shops and buildings to alter the appearance of the area with a view to change the circumstantial evidence of the place of the incident. She also alleges that the police are continuing to harass the witnesses in her case as of December 2009.

Meanwhile, Mr. Belal Hossain, a medical doctor from the Dhaka Medical College Hospital, who treated Santa at the time of abortion after the incident of torture and subsequently issued a medical certificate in this regard, has since been seriously intimidated by the police officers. The doctor went to Santa's home and requested that they return the medical certificate that was submitted to the Court.

One of her witnesses, Mr. Zakir Hossain, was arrested and detained when he went to give testimony to the office of the Magistrate for the judicial probe, and another witness was allegedly killed by the police and made to look like an electrical accident during electric connection repair works in Barisal district. False witnesses were arranged by the police to provide testimony in the separate criminal cases against Santa.

The lawyers in Santa's cases, including her husband, were repeatedly threatened by unidentified persons, who were believed to be close to the alleged perpetrators of Santa's torture.

The first case, which has remained pending before the court due to objections by Santa's lawyer that the case is based on a falsified police investigation report, has now been registered with the Dhanmondi police station after the Chief Metropolitan



Judicial Magistrate of Dhaka on 24 September 2009 ordered the case be registered as a First Information Report (FIR) and issued a warrant of arrest against the police officers.

The Home Ministry, in October 2009, suspended Mr. Mazharul Haque, who was promoted to an Additional Deputy Inspector General of Police after he had tortured Santa, and Mr. Kohinoor Mian, who had been working as a senior Superintendent of Police. The government reportedly deployed additional members of the police at the entry points of the Supreme Court of Bangladesh, assuming that both of the senior police officers would go to file writ petitions with the High Court Division to seek anticipatory bail regarding the case of torture against them. But the police authorities have failed to arrest the accused police officers, who remain in hiding.

The Inspector General of Police of the Bangladesh Police told the media that the two officers – Mazharul Haque and Kohinoor Mian – became fugitives to escape arrest. It is hard to believe that the police authorities do not know the whereabouts of their own officers. As of the date of writing of this report in early December 2009, the police had arrested none of the alleged perpetrators of Santa's torture case.

A senior politician, who is also a Member of Parliament from a north-eastern constituency and holds the portfolio of Chairman of a Parliamentary Standing Committee, argued with a Staff of Asian Human Rights Commission in a meeting that Bangladesh should continue custodial torture. "See, Bangladesh is a third world democracy. If we do not use torture, then how can we combat our political opponents? Even if we want to control Islamic militancy, we need to use torture. Otherwise, how do you manage these problems?" the parliamentarian asked. His arguments are similar to those of the police, who always claim that torture is necessary to control crime.

Case Study 4:

Sub-inspector Abul Hossain began his first day on the job at the Narsingdi Sadar Model Police Station with an arrest and the brutal torture of Shakil Sarkar, a sixth grade student believed to be around 12 years old. On October 2 at about 8 a.m. Shakil had gone to meet his classmate Tanvir, who reportedly had been missing since the previous night.

Hossain took Shakil from Tanvir's house to the police station, although there was no complaint against him. The police officer detained him and then interrogated him about the whereabouts of Tanvir. As Shakil was not aware of Tanvir's whereabouts,



Hossain allegedly tied Shakil's legs and hands with rope and hit him with a hammer on his body joints and the soles of his feet.

Shakil's mother, Rozy Begum, heard what was going on and went to rescue her son, but police officers beat her too. At about 7:30 p.m., Tanvir's relatives found him at his maternal grandfather's home in Nelaxa, which falls under the Raipura police station of the Narsingdi district.

Around midnight police released Shakil from custody, but not before warning him and his mother of dire consequences if they disclosed the torture episode to anybody. Due to injuries sustained during police torture, Shakil had to be admitted to the Narsingdi Sadar Hospital for treatment.

When the media asked Mohammad Ali, the police superintendent of the Narsingdi district, about the torture incident and the abduction of Shakil by the police, he simply said, "Sorry for what has happened. If there is any written complaint lodged with the police on the issue, the police will inquire into the matter and will take action, if anybody is found guilty."

However, the Additional Superintendent of Police of the same district, Bijoy Basak, a subordinate to Ali, denied the torture allegation altogether.

The police officers do not want to realize that saying "sorry" for torturing someone does not cure the pain suffered by the victim. Neither does denying that torture took place. With regard to the claim that torture is vital for solving crimes, it is evident from this case that it only perpetuates violence and injustice and does not reduce it. Shakil was not a criminal, a political opponent or an Islamic militant. But his case is not an isolated incident. Hundreds of people have suffered torture at the hands of the police, and some cases have resulted in the death of the victim in custody.

Every case of torture has the same ending: the victim alleges police torture in custody; the police deny it and sometimes apologize as Ali did when questioned by the media. The police refuse to lodge any complaint regarding the torture incident. There is no complaint, no inquiry and no punishment for the perpetrators.



This can only happen in a country where senior parliamentarians argue in favour of using torture. The politicians' arguments are based on miscomprehension and a feudal mindset and their expectations of receiving undeserved political benefits. Such arguments contain no rational reasoning.

Instead of arguing for torture by saying Bangladesh is a so-called third world democracy, Bangladesh's policymakers should check the abuse of power by police who extort money from ordinary people. Without torture and corruption, Bangladesh would have far greater hopes of developing.

The nation must check how many cases the police in each of the country's 631 police stations fabricate every day. They must find out whether the police are efficient in investigating cases and whether they follow the due process of law.

There should be investigations about the number of reports that are politically motivated and manipulated by the police as well as politicians. It is necessary to find out how many criminal offenders get direct and indirect support from the police and go free by paying bribes, and how many innocent individuals are falsely implicated in crimes committed by criminals that enjoy police protection. Parliamentarians should also inquire how much people trust institutions like the police and the judiciary and formulate steps to earn the people's trust in these institutions.

Politicians should also look into sincere and serious efforts to address problems relating to law and order in establishments whose functional systems are weak. There must also be transparency in the allocation of government budgets to law institutions and the law enforcement agencies.

The current government was elected in a landslide due to the evident desire of the Bangladesh's citizens to enjoy the rule of law and human rights, but have turned their backs on their electorate and do not at present deserve the mandate they have been awarded.

New Bill tabled to punish the torturers and providing justice to victims: On September 10, 2009, the Torture and Custodial Death (*Prohibition*) Bill, 2009, was tabled in parliament. The bill attempts to bring Bangladeshi law in conformity with



international law. The bill has come to the parliament by way of a private member's bill proposed by Saber Hossain Chowdhury, one of the members for Dhaka city.

This bill has created the possibility of making torture a crime that is punishable as a serious offence. It will also make custodial deaths punishable with life imprisonment.

The Asian Human Rights Commission worked in close collaboration with the Private Member in the drafting of this law. This draft has incorporated the most developed conceptions of law on this matter and deals with some of the more difficult problems of investigations and prosecutions on torture in the Bangladeshi context.

In the past there had been various objections to treating torture and custodial deaths as serious crimes in Bangladesh. Some have argued that such notions do not apply to developing nations. The development of democracy and rule of law requires that primitive methods of dealing with criminal investigations should be replaced. Experience has clearly demonstrated that allowing the use of torture leads to the abuse of the powers. The police and military often use these powers for unjust enrichment and also to suppress fundamental freedoms, such as those concerning expression and association as well as the course of justice.

The development of a proper criminal investigation system depends on the possibility of proper inquiries being conducted into crimes without the use of brutal methods such as torture and cruel and inhuman treatment, that do not yield reliable results, as those being tortured will agree to anything or say anything that is required to halt the torture.

The presentation of this bill before parliament has provided an opportunity for an enlightened discussion on all matters relating to justice in Bangladesh.

All law makers of Bangladesh were urged to take an active part in the passing of this law as soon as possible. On October 5 1998, the government of Bangladesh, under the leadership of Sheikh Hasina, ratified the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT). Ratification of this international treaty automatically imposes the obligation to ensure that domestic legislation is in conformity with international law on the matter. Eleven years has now



passed since the ratification of CAT, however, Bangladesh has still not yet criminalised torture and is therefore not in compliance with the Convention Against Torture.

Moreover, apart from Bangladesh's international obligation as a party to CAT, the state has a mandatory constitutional obligation to protect the people from torture since the Constitution was adopted by the Parliament after independence. The Constitution of Bangladesh enshrines the citizens' right to be protected from torture as a fundamental right in Article 35 (5).

The government of Bangladesh also has constitutional obligations to ensure the eradication of torture. The country's parliament has an opportunity to take an important step fulfil the government's pledge by beginning to tackle torture in an effective way by enacting the Torture and Custodial Death (Prohibition) Bill (2009).

Torture of journalist also a threat to the freedom of expression: Freedom of expression and opinion remains vulnerable in Bangladesh. Journalists have been beaten by private gangs operated by law-makers and politicians of the ruling political party. There have been fabricated criminal cases lodged by ruling party political activists against a number of journalists. For example, in Mymensing, Patuakhali, Chuadanga, Jessore, Chittagong and Dhaka, journalists have faced fabricated charges for writing concerning abuse of political power. Charges frequently involve extortion or bribery, although in certain cases false charges of violence against women, including rape or molestation, have also been used in such cases.

There are even instances of torture of journalists at the hands of paramilitary forces in the capital, where the Home Minister either has little ability control over these forces or is working in complicity with them.

Examples of attacks on the press are plentiful. On 13 April, journalists were beaten by allies of a Member of Parliament at Gaforgaon in Mymensingh district. The incident happened after the legislator reacted to a media report and warned the journalists by saying "I am the MP . . . nothing can be written against me in the next five years. . ."

A journalist and editor of an English speaking national daily, Mr. Nurul Kabir's private car was chased by unidentified gunmen on a motorbike in Dhaka on 5 March, 2009.



He was able to escape without injury. Mr. Kabir has been critical of illegitimate and extra-constitutional practices by the country's various governments, especially the emergency government. He also challenged the government's decisions before the Supreme Court during the military-controlled regimes. However, the government has remained silent and has taken no action to investigate such incidents or to pursue the alleged perpetrators of attacks against members of the press.

Case Study 5:¹⁶

On 22 October 2009 Mr. F. M. Masum, a journalist of an English language national daily newspaper in Bangladesh, was tortured by members of the Rapid Action Battalion (RAB), at his residence as well as in custody of the battalion, in Dhaka.

A team of the RAB-10 raided the house at 167 South Jatrabari where journalist Masum lives as a tenant. The RAB claimed that the landlord was peddling drugs. The paramilitary force members knocked down the door of Masum's flat. Despite Masum stating that he was a journalist, they beat him severely. Bystanders witnessed this beating. As a result Masum sustained serious wounds, into which the RAB personnel literally rubbed salt.

They then took Masum to the headquarters of the RAB-10, where he was detained for around 10 and a half hours and was again subjected to torture, notably severe beatings with sticks and metal rods. He has stated that: "At the RAB office, they tortured me inhumanly saying: 'We are taking our anger at Nurul Kabir [New Age editor] out on you". Only after the intervention of Home Minister Ms. Sahara Khatun and several high officials of the government into this case was Masum released, at 10:30 p.m. Before he was released, his colleagues were forced to sign an undertaking that he had been handed over to them "in good health"¹⁷ despite the fact he had injuries all over the body including swollen feet when he was released. His colleagues, however, refused to sign an undertaking stating that Masum had been involved in trading in drugs for a long time. Masum also said that RAB personnel had forced him to participate in orchestrated video recordings of them seizing drugs from his abode. However, soon after Masum's detention, different RAB officers came up with different stories as reason for his detention. Some officers claimed Masum was found in possession of Pethedine, some said with Phensidyl (codeine) syrup while others said they found him with prostitutes.

¹⁶ <http://www.ahrchk.net/ua/mainfile.php/2009/3303/>

¹⁷ <http://www.newagebd.com/2009/oct/23/img13.html>



Masum has written reports on extra-judicial killings, notably 'crossfire' or 'encounter' killings, committed by the RAB as well as illicit trading of drugs by police and security officers. Ironically, he has also written several reports on the torture of journalists in the country.

XIII. Violations of women's rights remain endemic

Violence against women is a one of the common forms of human rights abuses in Bangladesh. Women and girls face manifold problems within the domestic setting as well as in their communities. Molestation, abductions followed by rape and forced marriages are widespread. Deaths of wives due to the failure of their families in making dowry payments to the husbands and their in-laws are also numerous.

In many of the incidents regarding violence against women, the perpetrators go unpunished due to the flawed criminal justice system and leniency stemming from the male-dominated social and cultural fabric of the country, as well as due to rampant corruption and abuse of police power at the stage of the complaint making and investigation of the crimes.

Case Study 6:

After having his marriage proposal refused a number of times, Mr. Ayub Mollah (20) reportedly took to teasing and harassing Ms. Reshma (18), whose parents work out of the country. After she complained to the man's family he threatened her with an acid attack which, on 7 May, he carried out. Reshma had already moved away to her maternal uncle's village to escape the threat, but on a trip back to pick up some belongings she reports that Ayub entered the house, sexually propositioned her and, when she said no, threw acid at her face. Neighbours intervened after hearing her cries, and Ayub fled the scene. The acid had burned her face, ear and left shoulder and Reshma was admitted to the Khulna Medical College Hospital (KMCH).

The One-Stop Crisis Centre (OCC) at the KMCH drafted a complaint, which they sent to the Koyra police on the 13 May, to be used in a First Information Report (FIR). Police did not record the complaint due to bribes from the alleged perpetrators. A month of pressure from civilians meant that an FIR was lodged on 12 June (FIR No. 10/09) under



Section 5 (B) of the Acid Crime Prevention Act-2002, though officers illegally changed the date of Reshma's original complaint, which she had signed and dated.

Eyewitnesses then report that the Investigating Officer (IO), Sub Inspector (SI) Mr. Md. Abdul Hashem, went to the area of the crime-scene and accepted refreshment from Ayub, along with various other members of the ruling political party, the Bangladesh Awami League. He then visited Reshma's house to insist that she withdraw her case. He reportedly told her that she had no chance of winning the case because she was too poor, and her attacker's supporters too powerful. The SI then suggested that she settle for a cash payment and consider marrying Ayub, for her own safety.

Ayub and his political associates then started to harass Reshma, threatening her life, and other witnesses have also allegedly been warned not to testify. At just 18, Reshma is extremely vulnerable, and is losing her will to fight the case in court. She recently told local human rights defenders: 'I don't trust the police now; I can't be hopeful about the fate of my case because of the role of the IO. The witnesses of my case are also very afraid. Will it be possible to get justice from the court if the police conduct investigations in this way?'



Signs of the acid attacks are evident on Reshma's face and shoulder. The One-Stop Crisis Centre at Khulna Medical College and Chemical Examiners of Dhaka identified the results of acid attack during examinations, but the police investigator's report does not include anything concerning these.

Reshma lodged a General Diary (No. 209) with the Koyra police on 5 July seeking physical and legal protection from the police but has been given none. The Chemical Examiner, Mr. Bimalendu Bhoumik, of the Government of Bangladesh, in his report asserted that "sulfuric acid was found after examining the cloths" that were seized by the police as material evidence and sent to the Chemical Examiner for investigating the case – of Reshma. However, SI Hashem produced a Final Report (No. 58, dated 14 August), to the Court discharging Ayub despite the evidence against him. In his report the police officer argued "sulfuric acid was not harmful for person and the case was fabricated by complainant for the purpose of harassing the alleged accused as a result of personal grudge. The police



officer also recommended to initiate counter legal proceedings against the complainant and her associates for fabricating charge against “innocent person”.

Case Study 7:

Ms. Rupa Mandal, a twelve year old from a single parent family in Paikgachha town, was first abducted by a young Muslim man after the family rejected his marriage proposal. She was kidnapped by a group of Muslim men led by Mr. Zohor Ali Morol on four occasions on 22 July, 27 July, 19 August and 22 August 2009. Each time the police ignored registering a case while on two occasions Rupa’s mother Mrs. Suhukkuli Mandal went to the Paikgachha police to file complaint. In one occasion she got recommendation from the local Member of Parliament for registering the case.

On 22 August, on the fourth occasion, Zohor and his associates took Rupa from her home. Rupa's mother and sister, Ms. Krishna Mandal, were beaten by the kidnappers, and the girl was taken away. Despite previous failure to act, Mrs Shukkuli again sought help from the Paikgachha police, and was directed to a Sub Inspector (SI) Delwar Hossain (the second officer, who had previously handled the case). Mrs. Shukkuli's, managed to find SI Delwar at the Paikgachha bus terminal and by bending submissively to embrace his legs, asked for his help. She reports that the Police Officer then kicked her and said: "Do you expect the police to guard your daughter all around the world? Go away and find her yourself". He allegedly told her not to disturb him again. Later, she went straight to the Jewel Fish Product office after that to continue her search. She found SI Delwar there with his motorbike, directing the abduction of her daughter with Zohar in a boat from the adjacent river port. She shouted for help but no one came.

Mrs Shukkuli were able to force the lodging of a First Information Report only after filing a Petition Case (No. 211/09, under Sections 7/30 of the Women and Children Repression Prevention (Amendment) Act-2003) with the Special Tribunal for Women and Children Repression Prevention of Khulna, which sent an official order to the Paikgacha OC to record the petition as an FIR. The court has ordered that the case be given to the Criminal Investigation Department (CID) for investigation, that a draft map of the crime scene be prepared, alams (material evidence) be seized, and the abducted girl be located and rescued. The Special Tribunal has asked the police submit their report on 21 October 2009.

After the court's order the police (including SI Delwar Hossain) and others attached to the Jewel Fish Product have been threatening Shukkuli Mandal, her family and the



witnesses in the case, insisting that they either withdraw or negotiate the case through arbitration so that the alleged perpetrators walk free. On 10 September 2009, the Khulna district police authority transferred SI Delwar Hossain, rather than subject him to investigating him for criminal offences. Mrs. Shukkuli said that she has struggled to find the money for court and transport fees – about Taka 3000 – to file the complaint with the Special Tribunal.

After interventions from human rights groups Rupa Mandal was rescued by the police and produced before the Court, which ordered to hand over Rupa to a shelter home operated by an NGO in Bagerhat district following medical examination to check whether she was raped and to determine her age.

XIV. The lack of independence of the judiciary – a major obstacle to the realisation of rights

Bangladesh's government has made public announcements that the judiciary would be separated from the executive and will function independently, including to the international community in pledges made as part of the country's re-election bid for membership in the UN Human Rights Council. However, the same government also amended the Code of Criminal Procedure in 2009 to allow "executive magistrates" to arbitrarily take over trials of any cases they deem fit, greatly undermining any notion of independence of the judiciary, in particular concerning cases of human rights violations allegedly committed by the State.

Moreover, by enacting the Mobile Court Act-2009 the government has attributed judicial powers to executive magistrates, bypassing judicial officers. Under the new law, the executive officers are empowered to punish offenders with imprisonment of up to two years along with monetary penalties during an instant trial without any proper investigation or representation by a lawyer, if the alleged accused confesses to a crime under the laws included in the Mobile Court Act-2009, such as using a fake driving licence and around 80 other such offences. The mobile courts work in the presence of the police and paramilitary forces that intimidate the alleged accused into confess to crimes. The provisions of the Mobile Court Act-2009 are contradictory to the protection of rights enshrined in the country's constitution as well as provisions of the Evidence Act-1872, notably Sections 24 to 30, and any notion of justice.



On November 15, 2009, a Division Bench of the High Court Division of the Supreme Court of Bangladesh asked the government to explain in three weeks why the amendments of the Code of Criminal Procedure-1898, which were made on April 8, 2009, giving executive magistrates judicial power to deal with cases relating to possession of immovable property, should not be declared illegal. The Court issued the rule to the President's Secretariat, Prime Minister's Office, Cabinet Division, Parliament and the Ministry of Law, Justice and Parliamentary Affairs, following a writ petition filed by a human rights organisation.

Senior government officials have also interfered in judicial affairs. Two judges - Mr. Abdul Gafur, the District and Sessions Judge of Dhaka district, and Mr. Md. Shahjahan Shaju, Judge of the Women and Children Repression Prevention Tribunal of Gazipur district - were forced into retirement on 30 July. They were issued with an instant order to meet with the Law Minister and lead a demonstration of judges to the meeting. The sacked two judges were the President and Secretary General of the Bangladesh Judicial Service Association respectively, a professional organisation of judicial officers who are recruited under the Judicial Cadre of the Bangladesh Civil Service. According to Article 116 of the Constitution of Bangladesh, "*The control (including the power of posting, promotion and grant of leave) and discipline of persons employed in the judicial service and magistrates exercising judicial functions shall vest in the 67[President] 68[and shall be exercised by him in consultation with the Supreme Court].*" It was established that the government's order of forced retirement was a clear violation of the constitutional provision, as no discussion took place between the government and the Supreme Court of Bangladesh.

Serious criticism by human rights and civil society organizations was aired and published in the media. The two judges declared that they wanted to challenge the government's decision before the Supreme Court. Fearing a potential loss in the case, Prime Minister Sheikh Hasina held a meeting with the two judges and reversed the government's order two days later. The Parliamentary Standing Committee of the Ministry of Law, Justice and Parliamentary Affairs inquired into the matter and found that the Adviser to the Prime Minister, Mr. Hossain Toufiq Imam, and the Secretary of the Ministry of Law, Justice and Parliamentary Affairs, Kazi Habibul Awal, were directly responsible for the unlawful decision of forced retirement. On September 13, Kazi Habibul Awal admitted before the Parliamentary Standing Committee that his Ministry had violated the constitution, but no legal action had been initiated as of December 2009, the time of writing of this report.



XV. Conclusion

The incumbent government of Bangladesh made a public commitment to improve the fields of governance, human rights and rule of law of the country during its tenure in office. In reality, after the first year, there have been no credible or effective initiatives taken to address the gross violations of human rights, particularly concerning the right to life and liberty, as per Article 32, and the right to be protected from torture, as per Article 35(5) of the Constitution of Bangladesh. As a State party to a number of key international legal instruments – including International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and other forms of inhuman and degrading punishment and treatment (CAT), Bangladesh has obligations to protect the fundamental human rights enshrined therein. The Foreign Minister's pledge of "zero tolerance for extrajudicial killings" to the UN Human Rights Council during the country's Universal Periodic Review has been broken. A number of ministers, including the Home Minister and Shipping Minister, have even indicated their support for the use of extra-judicial killings such as the so-called crossfire or encounter killings, which have continued to be perpetrated throughout the year with impunity.

Following the Supreme Court's *suo moto* intervention and the NHRC's recommendation for the formation of an independent probe commission to investigate the extra-judicial killings, the government should have taken action without failure or delay, but this was sadly lacking as of December 2009.

The criminal justice system of Bangladesh is incapable of holding a fair trial and providing justice to the country's citizens. In order to establish the rule of law, the country immediately requires equal access to be provided to citizens to effective complaint mechanisms without any fear or manipulation. Criminal investigations should be efficient, impartial and independent from the regular police. The prosecution needs to be independent and permanent instead of the current practice of politicised recruitments followed by dismissals depending on which political party is in power. Judges occupying the judiciary's various branches need to exhibit competence and judicial skills and be supported with adequate resources. The deeply-entrenched system of corruption in the policing system must be rooted out as a priority. It is extremely damaging to the maintenance of law and order and requires significant reforms to be carried out.



The importance of ensuring freedom of expression by allowing the media to express their opinions without any intimidation or threats of attacks, including the threat of being subjected to the fabrication of cases against them is a key component in the protection of human rights.

The AHRC calls on the government to take the following specific actions in order to improve the protection and enjoyment of human rights:

1. Criminalise torture as a punishable crime by enacting the "Torture and Custodial Death (Prohibition) Bill-2009", which was tabled in parliament on 10 September 2009, allowing victims of torture to have access to a complaints mechanism and the possibility of reparation;
2. Repeal or amend, as appropriate, the provisions contained in laws that allow for abuses and ensure impunity, such as the Article 46 of the Constitution of Bangladesh; Sections 46, 54, 132, 151, 156, 157, 161, 167, 190, 197 and 247 of the Code of Criminal Procedure-1898; the Joint Drive Indemnity Act-2003, the Mobile Court Act-2009 and the Special Powers Act-1974;
3. Ensure that all incidents of extra-judicial killings, including its many synonyms such as crossfire incidents and the like, are investigated by an independent probe commission headed by and comprising judges of the Supreme Court, in order to expose these violations and ensure that the perpetrators of these actions are held to account and that justice is provided to the families of the victims of these most grave human rights abuses;
4. Adopt a well resources and functioning Witness Protection Mechanism, in compliance with international human rights norms and standards;
5. Issue a standing invitation to all UN Human Rights Council's Special Procedures mandate holders, and ensure that the Special Rapporteurs on torture; extra-judicial and summary executions; and the independence of judges and lawyers are able to conduct country visits to Bangladesh as a priority and without delay or impediment.