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HUMAN RIGHTS SITUATIONS THAT REQUIRE THE COUNCIL'S ATTENTION

**Written statement* submitted by the Asian Legal Resource Centre (ALRC),
a non-governmental organization in general consultative status**

The Secretary-General has received the following written statement which is
circulated in accordance with Economic and Social Council resolution 1996/31.

[25 August 2008]

* This written statement is issued, unedited, in the language(s) received from the
submitting non-governmental organization(s).

BANGLADESH: Prolonged State of Emergency threatening the judiciary and human rights defenders' ability to work.

Under a 20-month-long State of Emergency, which began on January 11, 2007, Bangladesh has been plunged into a period in which human rights have been severely undermined and serious violations have increased significantly. These include widespread and massive arbitrary arrests and detentions, estimated at numbering over 500,000, as well as rampant ill-treatment and torture, and a significant increase in extra-judicial killings. Furthermore, the military-controlled government has been promulgating arbitrary laws that have lead directly to further abuses of human rights and further obstruction of all avenues available to victims seeking remedies. The authorities have been institutionalising extra-constitutional practices that undermine the institutions of the rule of law, causing damage to the fabric of the State that will remain for years. Despite the scale of this crisis, the international community has been silent thus far.

Mass arbitrary arrests and detentions

Astounding numbers of persons have been arrested since the State of Emergency began. The unconvincing response of the government to these allegations has been to deny that they have space to detain this number of persons. Bangladesh already has a well-documented track record of serious over-crowding in its prisons. Persons are arrested en-masse in order to intimidate, and, in general, are not detained for long periods.

An example of the scale of the problem is the four-week crackdown that started on May 28, 2008, resulting in the arbitrary arrest and detention of more than 50,000 Bangladeshis. During this, the Inspector General of Police (IGP) admitted to the media, on June 9, 2008, that the police have to use the emergency laws, as these do not permit bail, therefore avoiding courts releasing suspects. The ALRC notes that courts typically release suspects when there is no evidence against them. The IGP also admitted that an average of 1,667 persons have been being arrested in the country each day since the beginning of the emergency. The detention of so many individuals, even for relatively short periods, is leading to severe overcrowding in the country's prisons. Reports indicate that most persons arrested are subjected to some form of ill-treatment, including beatings, and that torture is also being used on a significant number of detainees, during which the police extract money or confessions.

Extra-judicial killings on the rise

Reliable reports indicate that over 300 persons have been extra-judicially killed since the State of Emergency was imposed. The authorities justify these as encounter, crossfire, shoot-out, gun-fight, or "in the line of fire" killings. However, many such deaths documented by the ALRC result from torture in custody. Other examples include the case of two alleged underground political activists, Mr. Abdur Rashid Malitha, alias Tapan Malitha, (aged 48) and Ms. Nasima Akhtar Rikta (aged 18), that the Rapid Action Battalion woke up and then shot in their beds on 18 June. There have been no effective investigations or criminal prosecutions concerning any of these killings to date.

Unconstitutional counter-terrorism ordinance leading to abuses

On June 11, 2008, the military-controlled government imposed Anti-Terror Ordinance-2008, supposedly to combat terrorism. Section 6 of the ordinance, includes provisions for rigorous imprisonment of a minimum of three years to a maximum 20 years life-term, as well as the death penalty, for various crimes including: killings; serious attacks; abductions or kidnapping; causing damage to property; and possession of explosives, listed dangerous chemicals or firearms, with the “intention to harm the unity, harmony, security or sovereignty of Bangladesh and create panic among its people or any segment of the population.”

Persons can be charged under Section 7 with providing financial or other forms of support for loosely-defined "terrorist activities" on the basis of mere "reasonable suspicion." Section 39 asserts that the crimes under this ordinance are non-bailable. Section 54 of the Code of Criminal Procedure-1898 and Section 86 of the Dhaka Metropolitan Police Ordinance-1976, already allow the police to arrest any person on suspicion. These powers have previously been abused to arrest people *en masse*. Under the new ordinance, the penalties and sentences for the various crimes are higher, however.

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

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

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

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

Despite the Special Power Act-1974, the Emergency Power Ordinance-2007 and the Emergency Power Rules-2007, which already give the government wide powers to arbitrarily arrest and detain people, the government has armed itself further with the Anti

Terror Ordinance-2008 to increase its crackdown, with further abuses expected to be perpetrated. For this reason, the international community, which has thus far remained eerily mute, must immediately begin to act to pressure Bangladesh's government – a member of the Human Rights Council - to lift the emergency and repeal all such ordinances.

The government has also begun having select persons released, using executive orders from the Ministry of Home Affairs, completely bypassing and further undermining the courts and judiciary. The courts, in which charges have been laid against these persons, did not grant bail. These include prominent persons, such as former Prime Minister Sheikh Hasina and Khaleda Zia's son Arafat Rahman Koko.

The subordinate magistrates and sessions courts are being used as tool by the government to arrest and detain targeted persons, and release whomever the government wishes. All courts, including the Supreme Court, are under regular supervision by the intelligence agencies and personnel of the armed forces, who dictate what prosecutors and attorneys must do to comply with the military-government's wishes. If, despite this, the High Court grants bail to targeted persons, the law-enforcement agencies arrest and detain such persons again, literally in front of the main gate of the prison, upon their release, and charge them with "breaching emergency laws".

The High Court Division of the Supreme Court of Bangladesh on July 13, 2008, ruled that the President of an un-elected government, such as that currently in power, does not have the constitutional power to promulgate ordinances, unless such ordinances regard the general election concerning which the government was brought to power to organise. The same court also declared all ordinances made by the present military-controlled government to be *ultra vires* and unconstitutional. However, the Appellate Division of the Supreme Court on July 21, 2008, stayed this order for one month. The government has promulgated at least 79 ordinances, most of which run contrary to Bangladesh's Constitution.

Truth and Accountability Commissions

Truth and Accountability Commissions were set up on July 30, 2008, for five months, under the Voluntary Disclosure Ordinance 2008, to give amnesty to corruption suspects. Suspects are supposed to disclose information to the Commission about any corruption they have committed and declare the amount of assets and money earned through illegal means. These assets are then handed over to the State and the Commission issues a certificate which acts as an exemption from any future criminal prosecution or punishment for these acts. Such persons are barred from contesting elections and holding public or corporate offices for five years. However, the whole process is confidential, apparently to preserve the persons' social dignity.

The lack of transparency of this system is a serious concern, notably as the authorities have detained a number of politicians and businessmen during the State of Emergency on charges of corruption, many of whom have been convicted for a minimum of three years by special tribunals, in secretive trials that do not meet international standards of fair trial. The Constitution of Bangladesh clearly asserts in Article 27 that every citizen has right to enjoy

equality before the law, but the military-controlled government manipulates the system with laws *ultra vires* to the country's constitution.

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

Increased insecurity for human rights defenders

Human rights defenders and professionals, including from the media, are regularly being monitored, threatened and intimidated by the personnel of the country's armed forces and various intelligence agencies. Numerous human rights organisations that have been critical of the government and are seeking redress for victims have been visited by the intelligence agencies' officers, who check their project proposals, activities and funding sources. Dozens of human rights defenders are facing fabricated criminal charges, which have been lodged either by the law-enforcement agencies or by their allies.¹ Many of them have been detained and tortured.²

While there are a large number of NGOs operating in Bangladesh, providing services that the State is failing to provide itself, the great majority of them are reduced to working on non-threatening issues, as working on serious rights violations such as torture, extra-judicial killings and the like results in severe repercussions.

The Asian Legal Resource Centre remains deeply disappointed by the Human Rights Council's lack of action concerning the serious human rights crisis that has been unfolding in Bangladesh since early 2007. The Council must show that it does not operate with selectivity and double-standards, and take all necessary actions to ensure that Bangladesh halts the ongoing wave of gross violations of human rights, including arbitrary arrests and detention, the fabrication of charges, ill-treatment, torture and extra-judicial killings. In order to do this, the unjustifiable and counter-productive State of Emergency must immediately be lifted and all ordinances promulgated under it must be repealed, as they are in violation of the Constitution and are at the root of many rights abuses. Bangladesh's membership in the Human Rights Council continues to be an embarrassment to the world's apex human rights body.

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¹ For example, please see urgent appeal at <http://www.ahrchk.net/ua/mainfile.php/2008/2713/>.

² Please see here for examples: <http://www.ahrchk.net/ua/mainfile.php/2008/2713/>;
<http://www.ahrchk.net/ua/mainfile.php/2007/2369/>;
<http://www.ahrchk.net/ua/mainfile.php/2007/2262/>;
<http://www.ahrchk.net/ua/mainfile.php/2007/2247/>;
<http://www.ahrchk.net/ua/mainfile.php/2007/2223/>.