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CIVIL AND POLITICAL RIGHTS

Written statement\* submitted by Asian Indigenous and Tribal Peoples Network (AITPN),  
a non-governmental organization in special consultative status

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

[3 February 2003]

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

## Operation Clean Heart: Bangladesh's Dirty War

In the early hours of 17 October 2002, the Bangladesh army fanned out across the country, rounding up alleged criminals and confining them in various army cantonments. Some 500 persons were picked up on the first day, among them, leaders and activists of political parties.

The Bangladesh Government took this unprecedented decision following pressure from the business community and international donors to crack down on crime. The army was joined by personnel of the Bangladesh navy, the paramilitary Bangladesh Rifles and the police. More than 11,000 persons were arrested in the course of the crackdown, of which only about 2,400 were listed as alleged criminals.

The drive, named Operation Clean Heart, was marked by a near-total disregard for human rights and the due process of law. The government refused to reveal information about the list of suspects reportedly provided to the security forces – about the government agency that had supposedly prepared the list, the criteria used to select the names on the list, and whether the suspects were classified on the basis of the gravity of offences. It also offered no explanation for the reasons for ordering the army out of its barracks and into the streets to deal with what is essentially a task for a civilian security force. No gazette notification was made available to the media, and questions were not entertained during press briefings.

The first announcement in relation to Operation Clean Heart came some 16 hours after the beginning of the operation. Law and Justice Minister Moudud Ahmed said the army had been called in under section 129 and 130 of the Bangladesh Criminal Procedure Code (CrPC) to “help” the civil authorities combat rising crime. The army, he said, “has not been given the power of magistracy, and they are not arresting anyone.” It was simply “helping” the police arrest criminals, he added. Media reports however indicate that army personnel acted in an arbitrary manner, and often took upon themselves the task of handing out punishments without trial.

Army personnel reportedly beat up an 85-year-old woman, Shahatunnesa, and her daughter-in-law, after they demanded to know the reasons for the army's raid on their house. Ms. Shahatunnesa was allegedly kicked and punched when she tried to intervene in a scuffle between the troops and her daughter-in-law. Both were later blindfolded and taken to an army camp where they were beaten again. They were released three hours later. The 85-year-old was admitted to hospital in a critical condition. Army personnel denied the report.

Of greater concern however is the fact that approximately 44 people reportedly died during the drive, either in custody or immediately afterwards. The government has confirmed only 12 deaths and says all the victims died in hospital of heart attacks after being handed over to police. However, relatives of the victims claimed that the deaths were caused by torture in custody. The families of many victims reported inordinate delays in the handing over of the bodies by the authorities. The bodies also reportedly bore marks of torture.

Twenty-eight-year old Afzal Hossain of Savar died in army custody on 21 October 2002. The autopsy was conducted the next day after which policemen escorted the

body to his village home. The body was buried in police presence and an 'Unnatural Death' case, stating that he died of heart attack, was filed with the Savar Police Station. His body reportedly bore injury marks. A court had earlier set Afzal free on bail in a murder case.

Saifuzzaman, 35, of Gaibandha's Sadallapur Upazila was arrested on the night of 21 October. He died the following night in army custody. His autopsy was held in Gaibandha Adhunik Hospital on 23 October. Civil Surgeon Abdul Kuddus said he died of heart attack. His body was buried in the presence of army and police officials. The police alleged that Saifuzzaman was involved in a counterfeit currency racket. However, no case had been registered against him.

The Bangladesh Government's claim of there being a legal basis for Operation Clean Heart, which ended on 9 January 2003, is shaky. Prime Minister Khaleda Zia said the army had been deployed "within the framework of the Constitution and the laws of the land." However, a closer look at the sections cited by the government reveals otherwise.

Sections 129 and 130 of the CrPC do not allow the government to deploy the army to pick up suspects from their homes, regardless of whether they are identified criminals or not. Both sections relate to dispersal of unlawful assemblies, and moreover require army personnel to "use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons."

If an unlawful assembly cannot be dispersed by the use of a civil force, under section 129, "the Magistrate of the highest rank who is present or the Police Commissioner in a Metropolitan area may cause it to be dispersed by military force."

Section 130 reads: "When a Magistrate, or the Police Commissioner, determines to disperse any such assembly by military force, he may require any commissioned or non-commissioned officer in command of any soldiers in the Bangladesh Army to disperse such assembly by military force, and to arrest and confine such persons forming part of it as the Magistrate or the Police Commissioner may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law."

Section 131 however states that an army officer can act alone only "when no Magistrate can be communicated with." If it becomes "practicable" for an army officer "to communicate with a Magistrate, he shall do so, and shall thenceforward obey the instructions of the Magistrate as to whether he shall or shall not continue such action." The government thus had no legal authority to order the army to pick up persons from their homes and confine them.

According to press reports, however, the army worked alone for the first two days. On the third day, police constables were seen accompanying army personnel, possibly "to justify the renaming of the military operation as a joint drive of the army, paramilitary Bangladesh Rifles and the police."

On 20 October 2002, the Prime Minister admitted that “some innocent people might have been held during the joint drive. But they will eventually be freed.” However, according to Article 33(1) of the Bangladesh Constitution, no person may be arrested without being informed of the grounds for the arrest. Furthermore such a person shall have the right to consult and be defended by a legal practitioner. Article 33(2) requires every detainee to be produced before a magistrate within 24 hours of his or her arrest. Operation Clean Heart however saw hundreds of people being denied these rights.

Finally, Article 31 of the Bangladesh Constitution guarantees every citizen the “inalienable right” to ‘the protection of law’ and allows “no action” by any authority that may be “detrimental to the life, liberty, body, reputation or property of any person.”

On 9 January 2003 – the day Operation Clean Heart was wound up – the Government of Bangladesh promulgated an ordinance indemnifying the armed forces and the assisting police forces from any actions consequential upon the actions under Operation Clean Heart, including deaths and search and seizure of property. The ordinance precludes any move to seek justice in courts for human rights violations during the countrywide clampdown on crime. It was placed before Parliament on 27 January 2003 and is due to be discussed during the ongoing session.

The move to indemnify the security forces points to a clear intention on the part of the government to avoid any investigation of reports of deaths and torture in custody. The Bangladesh Government’s recourse to extrajudicial measures to tackle crime runs counter to its claims of being a democracy; such measures are characteristic of repressive regimes or police States. Moreover, in the absence of planned institutional reform, such an operation is unlikely to have a lasting effect on the law and order situation. Rising crime itself is partly the result of the failure of institutions such as the police and the judiciary. The hasty, short-sighted mop-up operation may also have swept up the last remaining traces of the rule of law in Bangladesh.

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