



General Assembly

Distr.
GENERAL

A/HRC/7/NGO/35
22 February 2008

ENGLISH ONLY

HUMAN RIGHTS COUNCIL
Seventh session
Agenda item 4

**HUMAN RIGHTS SITUATIONS THAT REQUIRE THE COUNCIL'S
ATTENTION**

**Written statement* submitted by Asian Legal Resource Centre,
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.

[20 February 2008]

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

BANGLADESH: The prolonged State of Emergency is resulting in widespread violations of human rights

A State of Emergency, which was proclaimed by the President of Bangladesh on January 11, 2007, has been prolonged for more than 13 months without any justification. The State of Emergency is at the source of a range of human rights violations. Over 250,000 have been arbitrarily arrested and many such detainees have been tortured during this time.

The military-backed interim government of Bangladesh has made amendments to the Emergency Powers Rules-2007, adding clauses, including in Rule 18A(1), which now states that, regardless of whatever provisions exist in other laws or in the rules in question, the government or the Anti-Corruption Commission may withdraw any cases from any Sessions Court, Magistrate Court, Special Judge's Court or Tribunal in any part of the country to a Special Judge's Court appointed under Criminal Law Amendment Act-1958 for trial, if deemed necessary for public interest. Furthermore, Rule 18A (2) adds that the subsequent trial of any case that has been transferred under sub-section (1) shall be conducted under the Emergency Powers Rules and the Criminal Law Amendment Act-1958. Rule 18B (2) states that and Special Judge will have the authority to try any cases concerning all crimes under the Rules and during the State of Emergency, and that Special Judges' Courts will have territorial jurisdiction over all of Bangladesh.

Rule 10(2), which states that all crimes committed under this law shall be cognizable, non-compoundable and non-bailable, is a particularly worrying addition, as is Section 6 (1) of the Emergency Powers Ordinance-2007, which provides blanket impunity for all actions to State actors.

In making these amendments to the Emergency Powers Rules-2007, the military-backed interim government has effectively bypassed the regular courts and ensured that Special Judges' Courts, under the control of specially appointed judges, are able to take over any and all cases of alleged corruption. This has guaranteed that the people that are being targeted by the government can be convicted under the arbitrary sections of the Emergency Powers Rules during the State of Emergency. Special Judges' Courts have now even been established in dormitories located in the national parliament in order to try politicians that the government wants to expel from the political arena. Charges of corruption while they were in government are being brought against such persons. Many of the politicians who have been collaborating with the present government are not being subjected to arbitrary arrest, detention and corruption charges.

Access to these Special Judges' Courts is restricted for common citizens by the government. The detained politicians and business persons, including two former Prime Ministers, several former cabinet ministers and members of parliament, allege that the government has been denying them access to lawyers and conducting in camera trials in these special courts, which violate their right to a fair trial. Former Prime Minister Sheikh Hasina, for example, who has cases lodged against her by the government, has been denied access to lawyers while in detention.

Rule 21A(1) states that the government is entitled to introduce any kind of administrative measures to assist inquiries, investigations, trials and any other actions it undertakes concerning crimes under these Rules. This *carte blanche* has enabled the authorities to

carry out widespread and arbitrary actions against the country's citizens, notably arbitrary arrest and detentions. These have been carried out in conjunction with Rule 16(2), which allows the law and order enforcement forces – the police, armed forces, paramilitary security forces and intelligence services – to arrest any person without a warrant and then implicate them using fabricated charges while they are in detention.

This clause is used systematically now by law-enforcers and the administration to harass people. Whenever and wherever in the country a complaint is registered with the police, they now add Rule 16(2) by default to the complaint, meaning that the alleged accused has breached the Emergency Powers Rules-2007. It is impossible to argue that all things that happen in Bangladesh are related to the State of emergency and this is being used simply to create greater fear for the accused and to give the authorities unjustifiable powers over these persons.

Under these Rules persons are subject to summary investigations and trials. They are tried and sentenced within 45 days of the beginning of trial, unless “unavoidable circumstances” require an extension of a further 30 days. The court must apply to the Supreme Court to request such an extension. Normally in Bangladesh investigations by the police and the prosecution and subsequent trials, on the contrary, take around five to ten years or more to conclude due to inefficiency, corruption and political interference. That these same institutions are now able to conduct rapid proceedings in order to fulfil the directives of the Emergency Powers Ordinance-2007 and the Emergency Powers Rules-2007 seems difficult to believe, unless these are being carried out in a summary manner. Such investigations and prosecutions cannot be credible. Along with political opponents to the government, the marginalized and poor sections of the society are bearing the brunt of the violations under the current state of emergency.

All the afore-mentioned clauses of the Emergency Powers Rules-2007 are absolutely contradictory to the provisions of the country's Constitution, especially the provisions that enshrine fundamental rights. The ALRC has documented numerous cases of arbitrary arrest, often carried out on a scale that is difficult to imagine in many other countries. Such arrests are frequently followed by arbitrary detention, ill-treatment, torture and the fabrication of charges against those arrested. Persons who are wealthy enough to afford the expensive help of lawyers in the Supreme Court are able to achieve some temporary remedies, but the vast majority of the hundreds that have been arrested, detained and tortured, have no avenues to seek remedies from the State at this time and the print and electronic media are under direct and indirect censorship under the State of Emergency.

Under Rule 19D, persons accused of committing any crime under the Rules and who are under investigation or trial cannot appeal to any court or tribunal in order to get bail during the State of Emergency, regardless of other laws, such as section 497 and 498 of the Code of Criminal Procedure. Furthermore, Rule 19E prohibits people's right to get redress from any court until the verdict of the trial on the case is declared. It is worth noting that courts in Bangladesh are in general incapable of ensuring fair trials, and are a source of fear rather than succour for the country's citizens.

Since the proclamation of the State of Emergency on January 11, 2007 over 150 detention orders have been declared illegal by the High Court Division of the Supreme Court of Bangladesh. The members of this body are nearly all either top politicians or business

people, with only a few members being professionals. Given that there have been around 250,000 people arbitrarily arrested during the last 13 months, the fact that there have been only just over 150 habeas corpus challenges in the Supreme Court indicates how out of reach such actions are for the majority of persons. The Appellate Division of the Supreme Court stayed 27 orders that the High Court Division had declared 'illegal' on 27 March 2007. As of the second week of February 2008, 113 writ petitions relating to detention orders imposed by the Ministry of Home Affairs remained pending before the Appellate Division of the Supreme Court.

One of the victims of arbitrary detention, namely Mr. Abdul Qayum Khan, who was an elected commissioner of the Dhaka City Corporation and who was detained in prison from January 12, 2007 to January 10, 2008, when he was granted bail by a High Court Bench and released, was re-arrested by the police at the gate of the prison as he was being released. He was placed in preventive detention on January 24, 2008 for another month. On February 8, 2008, he died in the custody of the Dhaka Central Jail, allegedly as the result of a lack of medical treatment for the serious illness he had suffered during his prolonged detention in the unhygienic conditions of the prison.

The Appellate Division, which is the highest branch of the courts of the country, has not even been able to deal with the pending petitions before it concerning the arbitrary detention of persons, let alone the allegations of torture and bringing those responsible to justice. The ongoing arbitrary detention for indefinite periods without any justification must be halted and this can only be done effectively by the immediate lifting of the State of Emergency.

The Asian Legal Resource Centre (ALRC) urges the Human Rights Council to urge the Bangladeshi authorities to immediately lift the State of Emergency and reinstate the fundamental rights enshrined in the Constitution of Bangladesh, as well as the international human rights instruments to which the country is party. Arbitrarily arrested citizens should be immediately released, adequate compensation must be provided, and all reports of torture and extra-judicial killings must be fully investigated with punishment and reparation being provided in compliance with international human rights laws and standards. All laws that run contrary to the enjoyment of rights, such as the Emergency Powers Ordinance-2007, the Emergency Powers Rules-2007 and the Special Powers Act-1974 must be repealed without delay.

The ALRC also reiterates that an independent and effective national human rights institution should be established, which would be mandated with receiving complaints, conducting investigations and providing redress to victims of human rights abuses. This system should supplement the criminal justice system rather than replace it, and legislation criminalising torture should be promulgated without delay to strengthen this system. As a member of the Human Rights Council, Bangladesh is urged to issue standing invitations to all the Special Procedures' mandates, especially mandates dealing with arbitrary arrests and detention, with torture and with extra-judicial killings. The ALRC also urges the Office of the Secretary General of the United Nations and the Human Rights Council to take all measures necessary to ensure the increased monitoring of the situation in the country, as they are so far failing to address a deepening crisis. Bangladesh is clearly flouting every acceptable norm and standard while occupying a position on the Council. The ALRC has previously highlighted the issues above and other related matters to the Council, but it is

failing to take any interest or any credible action concerning this country. It is hoped that this will start to change.

***About the ALRC:** The Asian Legal Resource Centre is an independent regional non-governmental organisation holding general consultative status with the Economic and Social Council of the United Nations. It is the sister organisation of the Asian Human Rights Commission. The Hong Kong-based group seeks to strengthen and encourage positive action on legal and human rights issues at the local and national levels throughout Asia.*
