

12 March 2008



**Odhikar Report**  
**14 months of emergency in Bangladesh**

## **Due process of Law must be followed**

Odhikar continued monitoring human rights situations including infringement of rights during the State of Emergency proclaimed on January 11, 2007. The report below summarizes status of human rights during the 14 months of the State of Emergency.

### **1. Due Process of Law**

Due process of law is a very important element in the human rights check-list. In this regard, Odhikar monitored the status of those who have been detained during the state of emergency, including politicians, under the Emergency Power Rules, 2007 and the “selective” applications of laws. Out of the reported 240 persons charged, 217 are involved in politics. Such treatment as a “group” violates non-discriminatory principles of rule of law. Furthermore, many leading lawyers have claimed that the “investigation” process leading to trials of these alleged corrupt individuals, for example, “arrest first and investigation later” contravene fundamental norms of criminal justice and also, many procedures of Anti-Corruption laws. Denials of provisional release on bails are serious violation of due process as well as trials in “not so open” Special Tribunals. The criminal justice process has to seek truth and that is what courts are there for, but such Tribunals, operating under “deadlines” imposed by Emergency Rules, risk causing miscarriages of justice. Special Tribunals are issuing widely variant sentences for similar crimes and also stiff punishments for otherwise lighter offences.

Only 21 people have so far been acquitted of charges while at least a reported 240 people, 217 of whom are involved in politics, have been convicted in 61 cases in connection with the ongoing drive of the military-backed government, against high-profile corruption and serious crimes during the 14 months of the ongoing State of Emergency. Moreover, the principal accused in all 61 cases have been convicted, meaning that the few who have been acquitted till now were all co-accused charged with abetting the principal accused. In most instances, those acquitted are family members of the principal accused.

The High Court on February 6, upholding the universal principle of jurisprudence, declared that the trial of an offence committed before the promulgation of the Emergency Powers Ordinance and Emergency Powers Rules 2007, cannot be held under the emergency rules and that the constitution and existing laws do not permit holding trial of an offence under a law taking retrospective effect. The court declared illegal the military-backed interim government’s action in placing the trial in the Tk 2.99 crore extortion case against former prime minister and Awami League president Sheikh Hasina under the Emergency Powers Rules 2007. The Appellate Division of the Supreme Court, however, on February 26, 2008 allowed the government to appeal against the High Court verdict and stayed the verdict until disposal of the appeal. Although the Appellate Division halted the trial of Sheikh Hasina in the extortion case under the Emergency Powers Rules 2007, its order paved the way for the government to go ahead with the cases, which involve pre-emergency offences, under the Emergency Powers Rules.

While Odhikar wants the perpetrators of corruption and the abusers of power to be tried, it urges the government to try them following the due process of law so that no question or suspicion can remain with regard to their propriety.

## **2. The Status of Judges**

The president's inviting some judges of the higher judiciary to tea and the latter's declining the invitation as has been reported in the media recently, raised questions among the people, if only because of the unusual nature of the occurrence. It was reported that the present regime has initiated a process of cleansing the highest judiciary by removing some of the judges, allegedly on suspicion of corruption or due to incompetence, by inviting them to tea at Bangabhaban. The matter complicated further when a senior most judge of the High Court Division, after receiving the letter of invitation, reportedly tendered his resignation, ostensibly on grounds of ill health; and another judge sought a few days' preparatory time prior to resignation. It was further learnt that following this the Chief Justice and the Registrar called on the President.

It is of supreme importance in a democracy or an aspiring democracy that the Judiciary should be competent, independent and free from corruption. Even in an autocracy it has been seen at times that an independent and capable judiciary comes in defence of people's rights when these are violated and thus catalyses the movement towards democratisation. Unfortunately the successive governments of the past sought to politicise the institution by pursuing a partisan policy of recruitment and promotion. If the removal of a few questionable judges is deemed necessary, there is a legitimate way of doing so by following the provisions of the Constitution. Complaints may be lodged with the Supreme Judicial Council for action against such judges. Intimidating tactics by the government is an unconstitutional step and likely to compromise whatever remains of the dignity of the judiciary. Odhikar deplores involvement of the office of the President in this irregular affair, and urges the government to stop its unconstitutional exercise of the coercive power of the state.

## **3. The Election Commission**

The Election Commission is reportedly mulling holding polls to the local governments, including City Corporations and Upazila Parishads before general elections to the ninth Jatiya Sangsad. Such position of the Election Commission questions its credibility and neutrality, as almost all the major political parties categorically demanded holding national elections first, as this is also a Constitutional requirement. Odhikar believes that the EC should effectively consult with stakeholders before taking major decisions, such as election schedules.

The Election Commission undermined its neutrality on November 5, 2007 by inviting pro-government BNP faction secretary general Hafuzuddin Ahmed for its dialogue scheduled for November 22, 2007 on electoral reforms. Furthermore, the invocation of the infamous 'doctrine of necessity' by the Chief Election Commissioner as the basis on which the Saifur Rahman-led BNP faction was invited for dialogue, exposes the extent to

which the Commission is collaborating with the military-backed interim government in political engineering and the restructuring of the polity. The doctrine of necessity would only apply if the Commission were left with no other apparent option but to send its letter of invitation to Hafizuddin Ahmed, 'acting' Secretary General of the Saifur-led faction. However, such a stark scenario was not even close to being the case, as it was reported that Khandaker Delwar Hossain had been legally appointed as the party's secretary general by Khaleda Zia through the powers vested in her as chairperson by the BNP constitution.

#### **4. Emergency Powers Rules and Torture**

The Emergency Powers Ordinance 2007 and the Emergency Powers Rules 2007 contain provisions restricting fundamental rights. It is reported that allegations of torture and violations of human rights continued under the State of Emergency. Suspects were allegedly picked up by the law enforcement agencies; detained, and tortured while they were in custody or during remand in order to extract evidence to use against them or others.

Odhikar asks the military-backed government once again to look into the matter of harassment and torture of those in custody, which not only breaches every human rights instrument but also directly violates the Constitution, and to immediately cease such activities if the allegations are found to be true.

#### **5. Extra judicial killings**

Extrajudicial killings continued throughout the 14 months of Emergency. Between 12 January 2007 and 11 March 2008, 189 people have reportedly been extra-judicially killed by Bangladeshi law enforcement agencies. Odhikar has kept close track of RAB activities and it found that RAB 12 (working in the area of Kushtia, Pabna, Bogra, Sirajganj, Sherpur, Jamalpur, Tangail) had reportedly committed 29 crossfires/encounters/gunfights/shootouts.

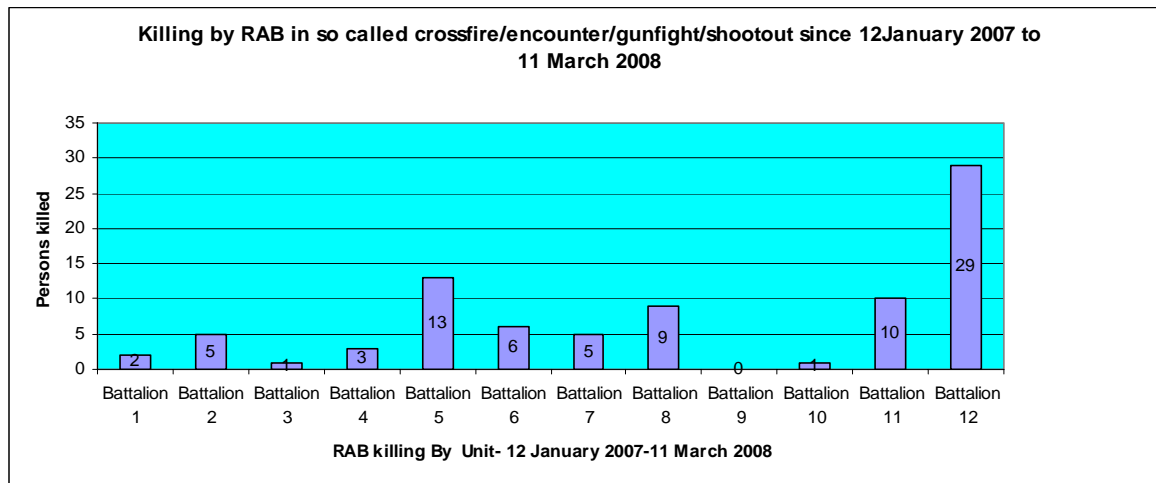
**Reported extra judicial killing  
(12 January 2007- 11 March 2008)**

<b>Law Enforcement Agency</b>	<b>No. of Persons Reported Killed</b>
Rapid Action Battalion	93
Police	67
RAB and Police Joint Operation	04
Joint Forces	07
Army	07
Navy	03
Jail Police	01
Coast Guard	2
Forest Guard	1
Bangladesh Rifles	02
Department of Narcotics Control	02
<b>Total</b>	<b>189</b>

**Circumstances of the Deaths (12 January – 11 March 2008):**

<b>Circumstance Reported</b>	<b>Number of Deaths</b>
“crossfire”/encounter/gunfight/shootout <sup>1</sup>	135
tortured to death	30
shot dead in circumstances other than “crossfire”/encounter/gunfight/shootout	13
other circumstances	11
<b>Total</b>	<b>189</b>

<sup>1</sup> Reports in the press have increasingly used more than one of the terms “crossfire”, “encounter”, “gunfight” and “shootout” in one article to describe the same incident. It is, therefore, no longer possible for Odhikar to determine which of these descriptions best describes an incident of extra-judicial killing. Odhikar has, therefore, grouped these incidents together.



## 6. Violation of human rights in prisons

The state of human rights in the country was once again highlighted in a newspaper report on the conditions inside prisons. The inmates in the overcrowded prisons, besides being subjected to privations of all kinds, are not even receiving proper medical treatment. The report mentions that most of the prisoners who are sick or have sustained injuries while in detention are denied basic health services and thus are vulnerable to chronic diseases. There are also allegations that many of the prisoners held on political grounds have been routinely tortured. These torture victims are especially vulnerable to permanent diseases and impairment of limbs and organs. Even if the prison authorities intend to provide medical care, they cannot do much because of the dearth of doctors and facilities. In Dhaka Central Jail, the biggest jail in the country, there are only four doctors for some 10,000 inmates. To deny medical treatment to people who are in detention is a gross violation of human rights.

Medical facilities in jails are scarce simply because they are overstretched. Owing to random arrests on political ground and detention for long periods without trial, all the jails of the country are overcrowded and basic facilities are very negligible. Accused persons, under-trial prisoners and convicts all suffer alike. The 69 jails of the country contain approximately 90,000 inmates, allegedly thrice the combined capacity of these jails. Consequently, an acute shortage of manpower is felt, especially concerning healthcare. Against the requirement of 77 assistant surgeons for the jails countrywide, only 19 are posted. For the Dhaka Central Jail, the authorised manpower was 783 for 2,682 inmates; today, inmates number around 10,000 and the staff strength is 772.

## 7. Arrest, detention and trial

At least 929 people, mostly politicians, were arrested under the Special Powers Act 1974 and were sent to jail under preventive detention between 11 January 2007 and 10 January 2008. Odhikar urges the government to publish a detail list of the people arrested and sent to jail under preventive detention during the Emergency.

Most of the detained politicians, including former Prime Ministers Sheikh Hasina and Begum Khaleda Zia, are facing a number of cases. People campaigning for their welfare have voiced their concerns regarding transparency of inquiries and legal procedures and urge the government to ensuring their human rights while trying them.

## **8. Illegal Detention**

During this period, the freedom fighter Gazi Golam Dastagir, businessman Quamrul Huda and many others were abducted and illegally detained for an indefinite period.

### **Odhikar's Recommendations to the Government:**

- Lift the State of Emergency immediately;
- Follow due process of law in trial of corruption suspects.
- Arrange proper medical treatment of detainees.
- Release all political prisoners; if there are cases against any person, trials should be conducted respecting human rights and ensuring due process of the law, in an open and transparent manner to ensure justice
- Extra-judicial killings, torture and indiscriminate arrests should cease to continue.
- Hold independent judicial inquiries into extra-judicial killings and prosecute all those suspected of involvement.
- Election Commission should work independently and impartially to hold proper elections.

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Notes:

1. Odhikar seeks to uphold the civil, political, economic, social and cultural rights of the people.
2. Odhikar documents and records violations of human rights and receives information from its network of human rights defenders and monitors media reports in twelve national daily newspapers.
3. Odhikar conducts detailed fact-finding investigations into some of the most significant violations.
4. Odhikar is consistent in its human rights reporting and is committed to remain so.