

12 May, 2008



## **Report on 16 Months of Emergency**

### **FUNDAMENTAL RIGHTS ENSHRINED IN THE CONSTITUTION MUST BE RESTORED PARLIAMENTARY ELECTION SHOULD INCLUDE MAINSTREAM POLITICAL PARTIES 207 EXTRAJUDICIAL KILLINGS**

Odhikar monitors status of human rights situations according to the standard set by Constitution of Bangladesh as well as in various international instruments. For the last 16 months, since the State of Emergency proclaimed on January 11, 2007, Odhikar paid special attention to Emergency as such an extraordinary measure in itself constitute major challenge to human rights. Odhikar believes, emergency powers of the state are contradictory to human rights and focuses on monitoring application and impact of this transitional state. Odhikar also keeps track of the government actions in restoring democratic rights of the citizens in their entirety.

#### **Development Partners should act true to Democratic Principles**

Odhikar recognizes positive roles of development partners of Bangladesh. Their unanimous positions against military's taking over are commendable and helpful for country's democratization process. Also, their repeated insistence to stay on course to the so called 'roadmap' and to hold general election by 2008 has been encouraging. It is also expected that the development partners recognize that quality of an election is very important in the process of building democratic institutions.

Some recent public remarks of a few European Heads of Mission in Dhaka reported in press and not denied, raises apprehension in the minds of the people that election and handing over power to civilian government have become the primary concern of some of the development partners. Odhikar is particularly in pain to see that EU press briefing on the eve of the Europe Day, 08 May 2008, has created an impression that the development partners could remain satisfied in an election here despite nonparticipation of the mainstream political parties. We strongly believe that European Union being most important development partner and a global model of regional cooperation and development based on fundamental values of democracy and human rights, cannot afford to stay away from core democratic principle of a participatory election. For an election to be credible it must be participatory as well as free and fair. If one or more major party doesn't participate, then the outcome could not be wholly representative and beyond question. This was precisely the position EU took in early last year precipitating imposition of emergency.

Odhikar calls upon all development partners of Bangladesh to work for a participatory election in Bangladesh so that a truly representative parliament could emerge for functioning parliamentary governance.

#### **Supremacy of the Constitution**

Odhikar is alarmed by number of recent rulings of the Appellate Division of the Supreme Court with serious implications for individual rights and principles of legality. Under the principle of legality, all laws to be clear, ascertainable and non-retrospective. It requires resolving issues by applying legal rules declared beforehand and not altering legal situation retrospectively. It's the basis of rule of law. In criminal law, it imposes general prohibition on criminal sanctions committed earlier but brought under new legislations and increased sanctions with retrospective effects.

In a ruling on 8 May, the Supreme Court Appellate Division overturned an earlier High Court Division order declaring illegal decision to the bring case under the Emergency Power Rules for offences committed before imposition of the State of Emergency. It was a clear case of principle of legality under which a new legal regime could not deal with acts or omissions happened prior to new law but that is precisely what Appellate Division allowed.

On April 23, the same Appellate Division in a decision curtailed the authority of the High Court Division to hear bail petitions in cases under the Emergency Powers Rules and thereby denying the High Court Division to grant bail. The Emergency Rules bars the accused from seeking bail in any court or tribunal once implicated, which contradict rights granted under the Constitution and law. It further takes away rights of the High Court Division so long exercised by this Court, and more importantly, places the Emergency Provisions above the Constitution.

Such rulings, giving *carte blanche* to military backed government is invitation to abuse power and authority, to accuse a person under Emergency provisions without court's authority to provisional release. This will further raise suspicion in the public mind about independence of highest judiciary and justice system as a whole.

Odhikar believes that supremacy of the Constitution should be restored immediately and the apex court should uphold constitutional rights of the people.

### **Nagging doubts about the General Election**

Despite repeated pronouncement, there are lingering doubts about holding of general election pursuant to so called roadmap and its largely because of activities and statements of the Election Commission. The Election Commission has already missed number of its self set targets. It intends to hold local government elections before the parliamentary election. Although the Constitution mandates that local government be elected in accordance with law and Odhikar believes in strong local government as foundation of democratic governance but holding of such elections risk derailing the parliamentary election that the Constitution obliges to hold within specified time after dissolution of parliament.

Moreover, all major political parties have demanded holding of general election first before the City Corporations and other local bodies. Also, some actions of the Election Commission of inviting a faction of BNP has tarnished its image and even raised question about its neutrality.

### **Obstructing justice and due process**

Odhikar is concerned about serious accusations appeared against intelligence agencies allegedly interfering in judicial process. A senior lawyer on defending the former Prime Minister Sheikh Hasina, Barrister Shafique Ahmed on April 21 in the court complained to the judge of the Special Judge's Court<sup>1</sup>, that different intelligence agencies had called some lawyers and inquired about several issues, including why the hearing of the cases was taking so long. Shafique Ahmed told the court such interference is not desirable when rule of law exists.

Such allegations raise serious concern about instilling fear; negate fundamental right to protection of law, to be defended by a lawyer of one's choice to be judged by an independent court without fear and due process of law. Odhikar demands that the government should reign on intelligence agencies, stop such intimidations, investigate such allegations and take punitive actions against those involved to restore legitimacy to justice process.

### **Anti-Terrorism Ordinance**

The military backed government has been working hard to promulgate an Ordinance to deal with newly defined acts of terrorism. 'The draft of the ordinance is being scrutinized now, and will be proclaimed as soon as possible,' the chief adviser's press secretary told reporters after the council of advisers' weekly meeting on April 27. The government has defined an 'act of terrorism' in a broader spectrum, including any act that poses a threat to the sovereignty, unity, integrity or security of Bangladesh or creates panic among the general masses or obstructs official activities, according to press reports.

Odhikar is very concerned about promulgation of such a law by the military backed government in absence of any discussion in Parliament and even without making public the draft ordinance. Historically, Anti-Terrorism laws in Bangladesh have always been used more to violate rights than against terrorists or terrorism. Odhikar always opposes laws of such nature for its antihuman rights nature.

## Scarcity of food

A child faints and an adult dies of heatstroke standing in queue for open market sales reported on the same day reflects serious situation of scarcity of food. Many believe that near famine situation prevailing now risking millions to go unfed or underfed. The government must extend rationing and OMS, rationalize laws relating to hoarding and proactively ensure right to food.

## Controlling Media

Government's attempt to interfere in media continues. In a regional meeting, an editor of leading English daily complained about continuous interference in circulating news, purportedly coming from security forces. Such interventions interfere in rights of freedom expression and information. In absence of Parliament, media is not only the source of information but guarantors of rights of the people.

## Extra judicial killings

Extrajudicial killings continued throughout the 16 months of Emergency. Between 12 January 2007 and 11 May 2008, 207 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 extra judicially killed 32 persons.

### Reported Extra Judicial Killings

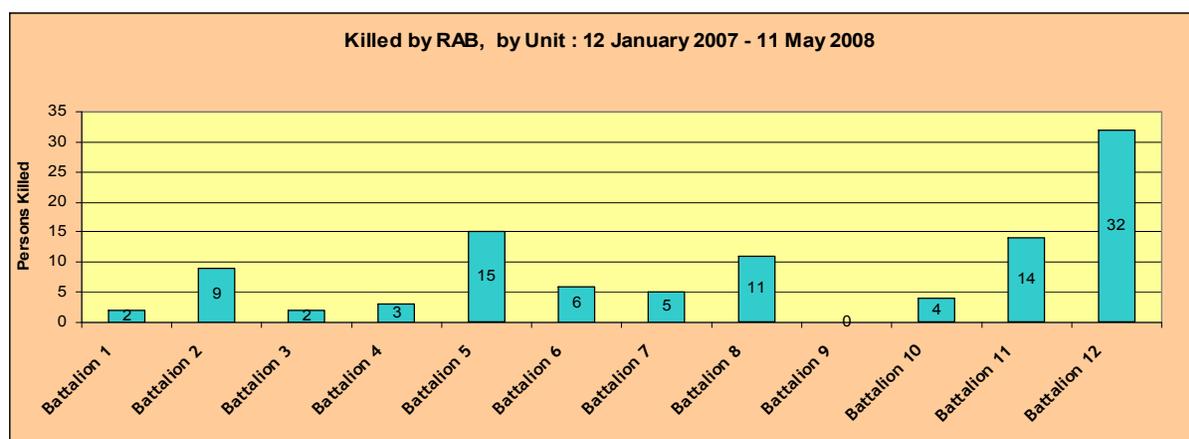
12 January 2007 - 11 May 2008

Law Enforcement Agency	No. of Persons Reported Killed
Rapid Action Battalion	103
Police	74
RAB and Police Joint Operation	04
Joint Forces	07
Army	07
Navy	03
Jail Police	01
Coast Guard	03
Forest Guard	01
Bangladesh Rifles ( BDR)	02
Department of Narcotics Control	02
<b>Total</b>	<b>207</b>

### Circumstances of the Deaths

12 January - 11 May 2008

Circumstance Reported	Number of Deaths
"Crossfire"/encounter/gunfight/shootout	149
Tortured to death	34
Shot dead in circumstances other than "crossfire"/encounter/gunfight/shootout	13
Other circumstances	11
<b>Total</b>	<b>207</b>



## Workers rights:

During the 16 months of State of Emergency, freedom of association, in particular, rights of the workers in jute mill and garments factory were ignored and often received brutal response from the government. For demanding full payment of the wages and rights under labor laws, many of these workers have been arrested for violating the State of Emergency. A number of cases were filed against jute mill and garments factory workers for violating the State of Emergency. Odhikar demands that right to association should be respected at all circumstances and rights of workers are preserved.

## Recommendations

- There is no justifiable reason to continue the State of Emergency and as such, it should be lifted immediately;
- The Appellate Division of the Supreme Court should take effective steps to reverse the Judgment on restraining of granting bail and restore supremacy of the Constitution. Odhikar calls upon the national and international human rights community to support the lawyers and human rights defenders in their movement to restoring constitutional rights.
- The Election Commission should win back confidence of the people that it is working independently and impartially to hold free, fair, participatory and credible election.
- The Government should immediately make public a draft version of the Anti-Terrorism Ordinance for close scrutiny and comments.
- To extend food rations for the disadvantaged section of the population at a subsidised rate and take other measures to address the current state of food crisis.
- To follow due process of law in the trial of corruption suspects.
- 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.
- Extrajudicial killings, torture and indiscriminate arrests should cease to continue and hold independent judicial inquiries into extrajudicial killings and prosecute all those suspected of involvement.

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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.