



12 August, 2008

**ODHIKAR REPORT
ON 19 MONTHS OF STATE OF EMERGENCY**

*Election under state of emergency is violation of constitutional and human rights
Truth and Accountability Commission should be scrapped
Government failed migrant workers
Not cross-fires but killings
Universal Periodic Review (UPR) report should not be a cover up*

1. Democratic & Human Rights Concern under ‘State of Emergency’:

Odhikar has been monitoring the State of Emergency since its imposition on 11 January 2007. The democratic and human rights concerns Odhikar has been raising since the political, constitutional and human rights crisis started to deepen in Bangladesh, are the following:

1. Extra-constitutional intervention in the political sphere of Bangladesh to remove Khaleda Zia and Sheikh Hasina, two popular leaders of the two major political parties of Bangladesh can not be accepted by human right defenders since it violates the ground rules of democracy, human rights and the sovereignty of the people to decide and elect their own leaders. Their acts of Corruption and that done by their followers or members of the cabinet are urgent and vital issues but should have been undertaken through popular political education, institutional reform, particularly with a strong and non-partisan judiciary and Anti-Corruption Commission. Failure to do so has signalled a wrong message to the people and it is too late for the present unconstitutional regime to revoke and recover.
2. The military-backed government failed to gain moral, political and constitutional legitimacy and through systematic violations of human rights has aggravated the situation to a point that could become a major threat for the stability and the security of the region.
3. Extrajudicial Killing has increased recently and the significant shift that has occurred signalled by the killing of Dr. Tutul, Tapan Malitha and others belonging to revolutionary left political parties and their political line, has raised serious questions about the political intention of the regime and further alienated them from the people and their role in maintaining law and order is already being questioned.
4. Militarisation of the vital institutions that could safeguard the constitutional and human rights of Bangladesh in order to achieve a predetermined political goal, as evidenced in various non-transparent and discriminatory judicial process and anti-corruption drives, have left hardly any moral or political ground for the present regime.
5. The August 4 election took place in this context and seems to be a desperate drive of the regime to organise political support. Instead of creating an enabling political environment for democratic transition and building popular consensus to derive an exit from the present unconstitutional stage without violence, revenge or instability (a major concern of the human rights defenders) such staged acts, irrespective of the quality of the performance of the election, or ignoring the fact that a major political alliances lead by BNP has opposed and refrained from participating, will further divide the country and will alienate the silent majority to a point that will set the ground for long term political and economic instability. Keeping the long term scenario in the context of food, energy, water and livelihood crisis,

such alienation of the people of Bangladesh will go against the common global concerns of human rights defenders as well as the interest of the international community for effective and sustainable good governance.

6. Municipal and City Corporation elections took place before the Parliamentary Election despite protests from the political parties and as a result a major political alliance has been forced to take a position contrary to creating an enabling and democratic environment. This has been expressed in their rejection and non-participation in the 4 August election.
7. As a human rights and political principle, election under Emergency cannot be accepted. To force the people to express or participate in selecting and electing popular representatives and ensuring that mainly those people coming out victorious are those already part of the existing undemocratic and anti-people regime is contrary to human rights norms and practice. Emergency must be lifted immediately.
8. It is important to note that as a tradition and the practice of political parties the candidacy in the local election is not articulated through explicit partisan line or party symbols, but local elections are absolutely political elections and assert the political rights of the citizens. Obviously, political parties always participated. The Election Commission has totally failed to understand this basic reality of the political life of a community and political parties are absolutely right in accusing the Election Commission of 'depoliticising' politics. It simply signifies the resistance from both the people and the political parties against the depoliticising move of the Election Commission. Failure to conduct elections in a 'non-partisan' line seriously questions the authority and credibility of the Election Commission.

Despite our reservation, Odhikar observed the 4 August election closely. It sent Election Observers who covered polling centres in four cities and collected reports from 107 such centres.

Odhikar also analysed other media reports and concluded that as opposed to what the Government, its Advisers and others have claimed, "emergency" failed to provide a fool-proof election, the Election Commission had their fair share of confusion the voters list was not as flawless as propaganda said it would be and the much trumpeted election rules were flouted, casting doubts on claims that elections to four city corporations and nine municipalities were 'free' and 'fair'.

Odhikar observers and media reports revealed a number of incidents of violation of the electoral laws and rules including the use of illicit amounts of money; campaign by the candidates; campaigners, law enforcers and even the election officials inside 400 yards of the polling centres and even in the polling centres; and providing voters with vehicles by the candidates. All these practices are forbidden by election rules.

2. Experience of Election Observers:

Election observers, in a number of centres across the four major cities, were harassed, ousted, and not allowed to inspect beyond a certain period of time. In a number of centres many voters were ill-treated or harassed, were not guided by the polling officers with regard to which booth to vote in, while in a number of centres, officials bore a lacklustre attitude starting the polling centres late, causing unnecessary delay and on one occasion, closing down the polling centre for an hour.

The police and Rapid Action Battalion (RAB) baton-charged the voters in many centres, while in another centre, a RAB member assaulted a university teacher. In Some centres, there were

reports of fake voters, despite the assurance of a photo ID voter list when a number of voters found that their votes had already been cast.

The lengthy process of checking the electoral roll and confusion over the use of national identity cards tested the voters' patience at some places, indicating that the Commission's preparation, in terms of personnel and logistics, was not foolproof. The Chief Election Commissioner's late assurance that the national ID was not required for voting appears to have caused a lot of confusion. In some centres, people who had national IDs did not find their name on the electoral roll. In some centres, people without national IDs were not allowed to enter. It appears the Election Commission never thought about the use of a national ID cards vis-à-vis elections thus undermining claims of the government on the fairness of the election during a state of emergency. Odhikar has consistently maintained that any election must be free, fair and participatory. Explicit failure of the regime to create the so called 'level playing field' for all political parties, lines and shades undermined the democratic and human rights of the people.

3. Neither truth nor justice:

The government, on July 29, formed the Truth and Accountability Commission to let people voluntarily admit to their corruption, deposit ill-gotten wealth to the state exchequer, and get mercy. The idea of establishing such a Commission was first touted by this regime several months ago in response to the decrease in business following the declaration of Emergency in January 2007. Investments, both local and foreign, have dwindled in the past nineteen months, partly due to the fact that the declaration of Emergency signalled to foreign investors that the country was going through an unstable political situation and partly because the fear of coming under the Anti-Corruption Commission's radar acted as a deterrent for potential investors within the country.

The regime formed the so-called Truth and Accountability Commission (TAC), aiming at restoration of business confidence, a concept that was seriously flawed. Although in some parts of the world, variations of a truth commission have been set up, primarily to "reveal the truth", after massive crimes spanning decades, where victims had no way of knowing about missing persons, how their relatives had disappeared or were killed; who gave the orders; how it was carried out, etc. In other words, the idea behind a 'Truth Commission' was to bring out untold facts hidden from victims and societies so that there could be some form of "closure". At the same time, perpetrators had the opportunity to show their remorse and repentance, and in most cases, victims were compensated.

The TAC, however, is a very different creature. It protects perpetrators of economic crimes by undertaking this 'truth telling' process *in camera*, only before the 3 member Commission. The Commission would keep their identities guarded. In effect, victims of corruption and economic crimes would not know how a person used or abused his office or authorities, his means of accumulating money or even, who were accomplice in this crime. So the truth will be buried in the Truth Commission.

Moreover, there are serious questions about equal treatment under law, a constitutional right. It also violates rights under law to be tried by an independent and competent tribunal for crimes committed. A person before TAC and a person before ACC will be treated differently supposedly for the same crime of corruption. Also, by protecting the identity of the person before TAC, the TAC cannot ensure accountability and justice. Since the process is not public, it is not transparent and fails to meet the minimum standard of administration of justice.

Because of TAC's non-transparent nature, Odhikar feels that TAC could be used by the Government to let off those loyal to it or those it needs for the implementation of its perceived political agenda while it prosecutes others through the legal channels.

The very idea of the Commission is discriminatory and runs contrary to the rule of law as those who have already been indicted for corruption in the past nineteen months will not be able to avail its services while those still under investigation for similar offences will. If the regime wishes to give clemency for admission of guilt and payment of money to the government, it should apply the same treatment to all and not discriminate against those who were investigated and indicted first by the Anti-Corruption Commission.

There are other serious legal and constitutional questions about the formation of TAC, whether indeed it followed the very laws on TAC while constituting it and the eligibility of its Chairman, a retired Supreme Court Judge, who, after retirement, cannot hold any office of profit.

Odhikar therefore demands that rule of law should be established by abolishing the Truth and Accountability Commission so that those who allegedly have breached laws could all be treated equally and fairly.

4. Legislative authority of the Caretaker Government:

The High Court Division in its two recent verdicts has put the Caretaker government's legislative authority at unease. The Court observed that a caretaker government cannot promulgate any Ordinance making provisions not directly related to elections. The present regime has so far made 79 Ordinances including many controversial ones and still mulls over the promulgation some new ones.

The High Court Division, on 13 July 2008 first came up with the observation in its verdict on a writ petition challenging the legality of the Muslim Marriage and Divorce Ordinance 2008. The court had also cancelled the Muslim Marriage and Divorce Ordinance, promulgated on 18 February 2008. The same High Court bench on July 24, after hearing a public interest litigation writ petition and a rule issued suo moto by the court asking the government to explain the constitutionality of the Contempt of Courts Ordinance, cancelled the Ordinance with similar observation.

These verdicts have labelled a number of Ordinances so far promulgated, as unconstitutional and without effect, except those related to elections. The High Court has also asked the government to explain the constitutionality of the Anti-Corruption Commission (Amendment) Ordinance; the proclamation of the Emergency, declared on January 11, 2007; two Emergency Powers Orders suspending fundamental rights; Emergency Powers Ordinance and the Emergency Powers Rules; and the Attorney Services Ordinance.

This situation was created because the government over-stretched its reign in office and Odhikar therefore demands that power be handed over to an elected government without further delay.

5. Government failed to protect its nationals:

Remittance is a key source of national income and it is the duty of the government to care for its migrant workers. Migrant workers rights are recognised under international laws but the government failed to discharge its duties in protecting the interests of Bangladeshi migrant

workers in Kuwait. It failed to take up timely measures addressing deprivations and complaints made by the Bangladeshi workers about treatment received at the hands of Kuwaiti employers.

Some workers exercised their rights of association and collective bargaining and protested against mistreatment and inhumane work conditions, which was violently suppressed by Kuwaiti law enforcement agencies causing grievous injuries to some, while others were tortured and beaten up. This was immediately followed by the unceremonious deporting of hundreds of Bangladeshi workers

Odhikar and UBINIG, a policy research and campaign organisation, protested the lack of proper action by the government to help the hundreds of Bangladeshi workers deported from Kuwait. The government showed reluctance to stand for the workers and thereby demonstrated its contempt for the low skilled workers as ‘disposable commodity’.

The government should immediately take up the issue of the Bangladeshi workers being tortured and deported back home with its Kuwaiti counterpart, and demand an explanation.

6. Unending torture:

Reports on serious and credible allegations of torture in custody by the law enforcers continued throughout the last 19 months of the Emergency despite criticisms and opposition from different quarters including political parties, rights groups and professional bodies. The people in general, political activists and leaders in particular, across the country were being tortured, either physically or mentally, by the ‘misrule’ of the military-backed interim government. Torture at the hands of law enforcers goes rampant, as the government is yet to amend section 167 of the Code of Criminal Procedure despite a High Court order issued on April 17, 2003 to reform the law to stop torture in custody in the name of interrogation. Rather, the Emergency Powers Ordinance and the Emergency Powers Rules, enforced in January 2007, contain provisions restricting fundamental rights and human rights making room for the law enforcers to torture suspects.

A number of high-profile corruption suspects, mostly politicians, who were arrested by the army-led joint forces since the declaration of Emergency on January 11, 2007, alleged that they were tortured in custody. Some of them, including former minister Sheikh Fazlul Karim Selim and businessman Giasuddin Al Mamun, told the courts that they were tortured and even threatened with death in ‘crossfire’ by the law enforcers grilling them in custody.

Tarique Rahman, senior joint secretary general of the BNP, was the first to make a formal allegation of torture against law enforcers. Soon afterwards, allegations of harassment and torture were also made by a Dhaka University teacher who had been detained following the campus protests in August 2007. Detained prime minister Khaleda Zia on June 24 said in a special court that torture in custody led to the worsening health conditions of her two detained sons — Tarique Rahman and Arafat Rahman. The BNP has demanded international investigation under the United Nations into the allegations of torture on Tarique and Arafat.

As a latest incident, Harkat-ul-Jihad al-Islami Bangladesh leader Mufti Hannan on August 3, in a Dhaka court, stated inhuman torture on him in the custody in the name of interrogation. Filing a petition to retract his ‘confessional statement’ in the August 21 grade attack case, Hannan told the court that he had been inhumanly tortured to sign a statement that was dictated and written by the law enforcers and not voluntarily given by him. According to him he was given electric shocks on his genital region, tongue, and many other parts of his body. Nails were ripped from

his fingers and pins were pushed into his fingers and so on. Mufti Hannan's case was only one of many incidents of torture in custody.

At least 267 people were killed by the law enforcers including the army-led joint forces between January 11, 2007 and August 10, 2008. It is reported that allegations of torture and violations of human rights continued under the State of Emergency. Suspects were 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 demands the immediate cessation of use of torture in custody, an international crime, and the independent investigation of all complaints of torture and that appropriate measures against perpetrators of torture and those in command are taken. Victims of torture must also be compensated.

7. Not cross-fires but killings:

Defying widespread public outrage and the principles of the rule of law, extrajudicial killings at the hands of law-enforcement agencies continue unabated. The number of repeated deaths by 'crossfire' – the common term for encounter killings – since the Emergency was proclaimed on January 11, 2007, is 208. The total number of reported extrajudicial killings, including death by torture and custodial deaths, stands at a staggering 267 during the period. The greatest burden of culpability in extrajudicial killings continues to fall on the Rapid Action Battalion, police and the joint forces for 'crossfire' deaths which they routinely claim happened when their detainee led them into an ambush in which they were fired upon.

In fact, it would appear that the law enforcers' (including the RAB and joint-forces) impunity now extends to the Home Adviser's office. On January 29 this year, the Home Adviser, MA Matin, reportedly flagged the issue of extrajudicial deaths in a meeting he chaired, instructing the highest officials within the police and the Rapid Action Battalion to ensure that 'such incidents do not take place further'. Those instructions seem to have fallen on deaf ears. In this year, there have reportedly been 92 extrajudicial killings, defying an order by the highest executive authority in the Home Ministry. These figures are a damning indictment of a government that assumed power last year promising to restore 'decency' and 'accountability' to governance.

Odhikar's fact finding investigated a number of incidents of so-called 'crossfire' incidents and revealed that the victims were not killed in encounters, but the killings were pre-planned and politically motivated.

8. Universal Periodic Review Report must state facts:

The Bangladesh Report under the Universal Periodic Review mechanism of the United National Human Rights Council, of which Bangladesh is a member, must reflect the true prevailing status of human rights situations, without distortion or half truths. Next year, the Bangladesh report will be discussed by the Human Rights Council in Geneva.

Odhikar believes that the imposition and continuation of State of Emergency is the single most important incident of human rights violation. Emergency collectively deprives people of fundamental rights and the government that runs under Emergency has no moral authority to report on human rights.

Recommendations:

1. Elections under Emergency are contradictory to the principle of democracy and human rights and alienate people to participate and consequently fail to create an enabling democratic environment. The experience of August 4 election demonstrates a failure to offer a flaw-less and orderly election. Odhikar would like to remind all stakeholders that the concern of the human rights defenders is not merely the formal performance of a managed event, but finding a democratic, popular, non-violent transition from the present unconstitutional state to an enabling environment to resolve political difference through participation, dialogue and positive and as such, the State of Emergency must be lifted forthwith to ensure fairness and legitimacy of the Parliamentary Election.
2. The Truth and Accountability Commission should be scrapped as it negates rule of law.
3. The government should stop promulgating further Ordinances, other than those related to election, in accordance with the High Court Division's verdict.
4. The government must adequately compensate deported migrant works from Kuwait that it failed to protect and take the matter up in earnest with the government of Kuwait and the international community.
5. Odhikar demands that all forms of torture, widely practiced with impunity, must immediately end. Incidents of torture must be investigated and victims compensated.
6. The Universal Periodic Review Report must reflect the appalling human rights violations and denial of rights under the State of Emergency.

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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.