



Odhikar Report

240 Days of State of Emergency

The Government must respect the due process of law

Methodology

The information in this report (and accompanying Press Release) was gathered by documenting and recording media reports in eleven daily newspapers and from information from Odhikar's nationwide network of human rights defenders.

240 Days of State of Emergency

8th September marks 240 days since the President proclaimed a State of Emergency on 11th January 2007. Since Odhikar's previous State of Emergency report marking 210 days, Bangladesh has faced considerable challenges. The way the Government responds to those challenges allows Odhikar to assess how well the Government is adhering to its human rights obligations under national and international law.

This report outlines Odhikar's concerns in three key areas:

- The extent to which the Government's response to protests has been consistent with its human rights obligations,
- Arrests and charges relating to accusations of corruption,
- Extra-judicial killings.

The common concern which relates to each of these issues is: *respect for the due process of law*.

The Government's Response to Protests

Protests during the State of Emergency fall into three broad categories:

Farmers demanding improved fertilizer distribution,
Jute-mill workers demanding payment of wages, and,
The nationwide protests begun by students on 20th August.

There are four elements of the Government's response to these protests which have raised significant cause for concern from a human rights perspective.

These are:

1. Filing cases against numerous unnamed persons,
2. The arrest of academics accused of instigating the student protests,
3. Media censorship, and,
4. The absence of a commitment to make public the findings of the Habibur Rahman Khan Commission.

1. Filing charges against numerous unnamed persons

Contempt for the due process of law is demonstrated by the authority's actions filing charge-sheets against at least 89,400 unnamed persons with criminal offences under the Emergency Powers Rules during the State of Emergency.

It has been reported that charge-sheets have been filed against 2000 unnamed jute mill workers in Kalishpur, 5000 unnamed fertilizer demonstrators in Nachole, 400 unnamed fertilizer protesters in Tebunia village in Pabna and 82,000 unnamed protesters following the August nationwide under the Emergency Powers Rules during the State of Emergency.

Filing cases against numerous unidentified individuals amounts to a gross abuse of the legal process; such actions, which are at odds with international norms, directly subvert the due process of law and the Government should take action to ensure that the practice ends immediately.

In addition, the disproportionate use of force, as reported by the media, employed by the law enforcement agencies to quell the protests is a significant cause for concern.

2. Arrest of Academics

The manner of arrest and continued detention of Professor Anwar Hossain, Professor Harun-or-Rashid, Professor Saidur Rahman Khan, Professor Abdus Sobhan and Moloy Kumar Bhowmik raises concerns that the due process of law is not being followed.

Arresting the academics without a warrant, holding them *incommunicado* for nearly 40 hours at an unknown location before being brought before a court - violating Article 33, Sub-articles (1) and (2) of the Constitution that mandates that “No person... shall [be] denied the right to consult and be defended by a legal practitioner of his choice” and further mandates production of the arrestee “before the nearest magistrate within a period of twenty-four hours”; and detaining them in a facility called the Joint Interrogation Cell, causes concern that their rights under national and international law are not being respected by the authorities, ignoring the due process of law.

Media reports of claims that the detainees have been physically and psychologically tortured including the use of sleep deprivation as an interrogation tactic by the law enforcement agencies raises concerns about violations of the civil rights of these academics.

Odhikar calls for scrupulous adherence to internationally recognised legal procedures in dealing with people in detention, including interim release, and calls for the immediate release of these men so as to allow the legal process to operate without such coercion or manipulation.

3. Media Censorship:

Odhikar is concerned about the impact of the Emergency Powers Rules on freedom of expression and, in particular, on media freedom. According to press reports, in August, the Government specifically asked Ekushey Television (ETV) and Focus Multimedia Company Limited (CSB News) to refrain from broadcasting any provocative news, documentaries, talk-shows and discussions critical of the government. According to press reports, in separate orders, the Government held that it can ban or attach conditions on broadcasting provocative news, documentaries, talk-shows and discussions critical of the government under powers given to it by Article 5 of the Emergency Powers Rules 2007.

These restrictions were imposed following broadcasting of reports on disturbances in Dhaka University and other places in August. A number of journalists were assaulted, beaten up and injured by the security forces at the time of the curfew.

While the Government's advice on self-censorship and direct restrictions on the media is in place, one organisation, CSB News, has been temporarily shut down for allegedly filing forged documents to obtain frequency allocation.

Following the threat of legal action against media outlets which broadcast news items critical of government actions by the administration, Odhikar drew the Government's attention to the fact that such actions may contravene their obligations to allow freedom of expression and ensure the free flow of information. By taking legal action which stops one such media outlet, CSB News, from broadcasting, albeit, for allegedly filing forged documents, the Government's actions could raise suspicions that its commitment to the due process of law is not absolute.

Odhikar calls upon the Government to allow the media to operate freely. It must not be tempted to silence its critics with selective application of administrative

procedures. In order to demonstrate its commitment to the due process of law, the Government should facilitate the swift conclusion of any administrative work that is required to allow CSB News to continue broadcasting unhindered.

As a first step the Government should rescind their orders prohibiting political discussions on television, including talk-shows. The Government should not deny viewers access to different sources of information.

4. The absence of a commitment to make public the findings of the Habibur Rahman Khan Commission

Odhikar has made public its support for Justice Habibur Rahman Khan's call for the findings of his judicial inquiry to be made public. In an environment full of legitimate concerns about this administration's commitment to the due process of law, the Government should pledge to the people that it will publish Justice Habibur Rahman Khan's findings in full.

Furthermore, as Odhikar has previously said, the Government must allow the Habibur Rahman Khan Commission to report before it speculates publicly about the identity of groups and individuals involved in the violence that occurred during the protests.

Arrests and charges relating to accusation of corruption

Odhikar welcomes legal measures to bring an end to corruption in Bangladesh, however, in pursuing its stated aim of tackling corruption the Government must ensure that its guiding principle is not expediency but respect for the due process of law. No matter the identity of a suspect, or the forum in which they are tried, the standards and procedures followed must remain consistent with legal norms, legislative direction and constitutional mandate.

The Special Tribunals set up to try "VIP" corruption suspects should not be a closed forum. Rather, the Tribunals should be open to interested observers,

including the media, in order that they may determine whether the procedures being followed are fair, impartial, meet Bangladesh's obligations under national and international law, in particular, that they guarantee the accused rights under Article 10 of the Universal Declaration of Human Rights, to which Bangladesh is a signatory; that is to say that the Special Tribunals must follow the due process of law.

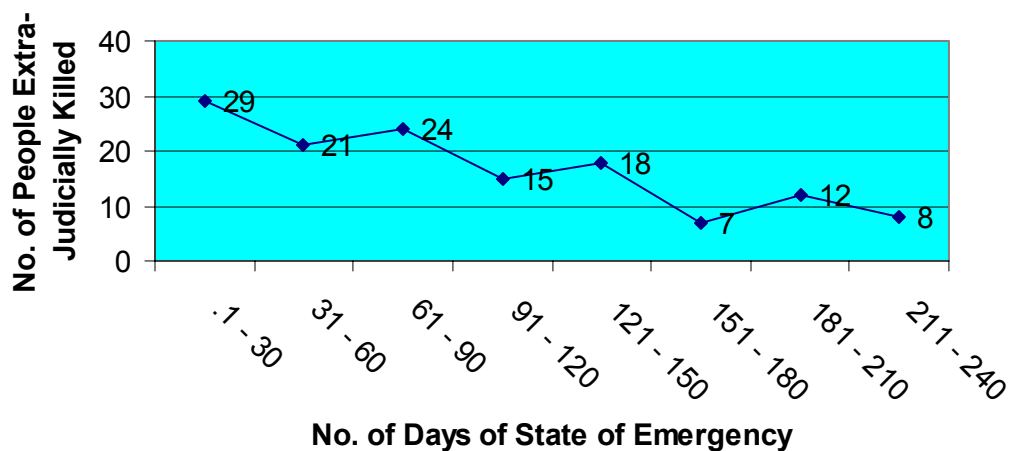
Extra-judicial killings

There is perhaps no better demonstration of a government's commitment to the due process of law than its respect for the right to life.

During the State of Emergency, 134 people have been extra-judicially killed by Bangladeshi law enforcement agencies.

Odhikar has monitored extra-judicial killings in 30 day periods since the start of the State of Emergency.

No. of Extra-Judicial Killings during the State of Emergency



Breakdown of Extra-judicial Killings by Agency

Of the 134 people killed by law enforcement personnel, it was reported that the Rapid Action Battalion (RAB) killed 74 people, the police killed 38 people, RAB &

police acting together killed 3 people, the “Joint Forces” killed 7 people, the Army killed 7 people, the Navy killed 3 people, the Jail Police killed 1 person and the Department of Narcotics Control killed 1 person.

Circumstances of the Deaths

Of the 134 people extra-judicially killed, it was reported that 88 people were killed in so-called “crossfire”, 24 people were tortured to death, 11 people were shot dead in circumstances other than so-called “crossfire” and there were 11 deaths in other circumstances – the details of which are given below.

According to press reports:

RAB killed 70 people in so-called “crossfire”. They tortured 2 men to death and 2 other men who had been arrested by RAB later died in hospital.

The police killed 14 people in so-called “crossfire”. They tortured 9 people to death. The police kicked 1 elderly man causing him to fall, hit his head and die. The police shot dead 11 people in circumstances other than so-called “crossfire”. 1 person died in police custody and 2 men who had been arrested by the police later died in hospital.

RAB and the police acting together killed 3 people in so-called “crossfire”.

The Army tortured 5 people to death. 1 person died while reportedly trying to escape from an Army van. 1 man who had been arrested by the Army later died in hospital.

The Navy tortured 3 people to death.

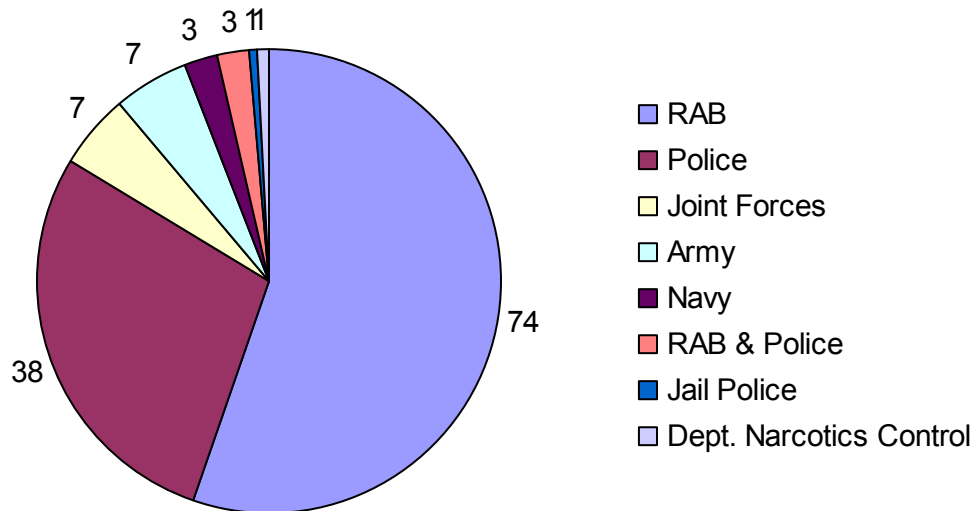
The “Joint Forces” killed 1 person in so-called “crossfire”. They tortured 3 people to death. 1 person who had been arrested by the “Joint Forces” later died in hospital. 1 person in “Joint Forces” custody reportedly jumped off a six-storey

building and died. 1 person who was arrested by the “Joint Forces” died in a police station.

The Department of Narcotics Control tortured 1 man to death.

The Jail Police tortured 1 man to death.

No. of Extra-Judicial Killings During the State of Emergency by Agency



Political Allegiance of the Victims

Of the 134 people extra-judicially killed, 8 people were members of the Bangladesh Nationalist Party (BNP), 4 were members of the Awami League, 1 was a member of Jatiyo Shomajtantrik Dol (JSD) and 1 was a member of the United Peoples Democratic Front (UPDF). And 8 were members of the Purbo Banglar Communist Party, 7 were members of the Purbo Banglar Communist Party (Jonojuddho), 7 were members of the Purbo Banglar Communist Party (Red Flag), 3 were members of the Biplobi Communist Party, 1 was a member of the New Biplobi Communist Party, 2 were members of New Biplobi Communist Party (Mrinal Group), 5 were members of Gono Mukti Fouz, 3 were members of

Sromojibi Mukti Andolon, 4 were members of the Shorbohara Party, and 2 were members of Gonobahini.

Other Characteristics of the Victims

Of the 134 people extra-judicially killed, 3 people were from Gangchil Bahini, 1 was from Masim Bahini, 1 was from Haji Bahini, 1 was from Salam Bahini, 1 person was from Matin Bahini, 1 was from Panna Bahini.

Two people were alleged arms smugglers, 3 people were alleged arms dealers, 1 was an alleged gunrunner, 3 were alleged muggers, 1 was an alleged gambler, 2 people were alleged drug peddlers, 1 was an under trial prisoner, 1 person was reported as an 'extremist', 1 was an alleged extortionist, 12 were alleged dacoits and 25 people were alleged to be criminals but where there was no information available to Odhikar about the nature of their alleged crimes.

3 people extra-judicially killed were farmers, 1 was a businessman, 1 was a police informer, 1 was a bus driver, 1 was a detained bus driver, 1 was an ethnic minority leader, 1 person was a female garments worker, 1 was a housewife, 1 was a freedom fighter, 1 was an adolescent tea boy, 1 was an elderly man, 1 was assumed as a jute mill worker, 1 was a rickshaw puller, 1 was a fruit vendor 1 was a young man and 1 was a person whose profession was unknown.

Comment on Extra-judicial Killings

Extra-judicial killing and torture are gross human rights violations which show a complete disregard for the due process of law. RAB is responsible for more extra-judicial killings (55.2%) than all other law enforcement agencies combined.

According to reports, the law enforcement agencies are continuing to explain deaths as occurring in "crossfire". Over 64.9% of deaths at the hands of law enforcement agencies during the State of Emergency have been explained in this way – showing a disregard for the law.

Odhikar reminds the Caretaker Government and, in particular, the Advisors of their responsibilities under national and international law and calls upon the Caretaker Government to set-up an independent judicial inquiry into any incident of death as a result of torture or extra-judicial killing. If any evidence of wrong doing is uncovered the authorities should prosecute those responsible.

Conclusion

Odhikar's concerns in three key areas – the Government's response to protests, the arrest of academics and continued extra-judicial killings – have a common theme: the seeming disregard of the Government for the due process of law.

In order to ensure that respect for the due process of law is upheld, Bangladesh requires the restoration of democracy. In order for that to happen there should be an early lifting of the ban on political activities and, because a State of Emergency is an exceptional measure, it should be withdrawn at the first opportunity.

Odhikar's Recommendations:

To the Caretaker Government

In order to comply with national and international obligations and the demands of the people as demonstrated during recent protests the Government must ensure that all its actions comply with, and show respect for, the due process of law.

Therefore Odhikar recommends that the Government:

1. Release the detained academics to allow the legal process to work unfettered
2. Allow the media to operate without interference
3. Stop the practice of filing cases against numerous unnamed persons

4. Make a public commitment to publish Justice Habibur Rahman Khan's findings in full
5. Follow the due process of law in every suspected corruption case
6. Open the Special Tribunals to interested observers, including the media
7. End extra-judicial killings and establish an independent judicial inquiry into those killings that have occurred, the findings of which should be made public
8. Lift the ban on indoor politics
9. End the State of Emergency
10. Work towards the early restoration of democracy

To the law enforcement agencies

Extra-judicial killing is murder. Law enforcement agency personnel must stop extra-judicially killing people and must respect the due process of law.