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HUMAN RIGHTS SITUATIONS THAT REQUIRE THE COUNCIL'S ATTENTION

**Written statement* submitted by the Asian Legal Resource Centre (ALRC),
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.

[30 August 2007]

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

Bangladesh's State of Emergency is unjustifiable and ensuring abuses of human rights

On 11 January 2007 the President of Bangladesh proclaimed a State of Emergency following an upsurge in violence between rival political groups. Unfortunately, the State of Emergency has been prolonged for more than seven months even though this violence has subsided.

The State of Emergency has been accompanied by the Emergency Powers Ordinance-2007, which has supplemented the Emergency Powers Rules-2007. Provisions contained within these laws run contrary to a range of international human rights norms and standards. For example, section 5(1) of the Emergency Powers Ordinance-2007 declares that *"No question should be raised before any court regarding the orders passed on the basis of this ordinance or by the authority of this ordinance"*. On the other hand, section 5(2) declares, *"If it is deemed that any order has been passed or signed by any authority according to the power delegated under this ordinance that order, passed or signed by that authority, shall be deemed admissible under the definition in the Evidence Act-1872 (Act X of 1872) in the courts."*

This section has been repeatedly abused by law-enforcement agents in the country, notably to carry out arbitrary arrests of people without the need for any justification. The law effectively legalizes arbitrary arrests and detention. Any person arrested in Bangladesh runs the risk of being subjected to torture, so this law has in reality facilitated the process of torture of persons by the police, the armed forces, and paramilitary forces such as the notorious Rapid Action Battalion (RAB) and the Bangladesh Rifles (BDR) border security force. Coercion, including torture, is used to make arrested persons sign blank documents, which the authorities then complete in order to suit any needs they may have, including exonerating themselves from wrongdoing, justifying their actions or falsely incriminating the persons in question. Statements are also being forcibly extracted and then recorded using audio-visual equipment from victims for the same reasons. This 'evidence' is then used against persons in court, and under the provisions of the emergency, cannot be challenged.

In section 2 (a) of the Emergency Powers Rules-2007, the country's "law and order maintaining force" has been defined as including the Bangladesh Police, the Armed Police Battalion, the Rapid Action Battalion, Ansar (a village defence paramilitary group), Battalion Ansar (an armed village defence paramilitary group), the Bangladesh Rifles, the Coast Guard forces, the National Security Intelligence service, the Defence Intelligence service and the Armed Forces. Under Section 16 (2) of the Emergency Powers Rules-2007, any member of the 'law and order maintaining force' is authorized to arrest any person on suspicion without a warrant.

The State of Emergency has suspended many fundamental rights, including the freedoms of expression and assembly. Section 3 of the Emergency Powers Rules-2007 absolutely forbids any kind of association, procession, demonstration or rally in the country without special permission from the authorities. Under Section 3(4) of the above, any person found guilty of holding any meeting or demonstration faces two to five years rigorous imprisonment. Additionally, Section 5 completely prohibits the

publishing of any criticism of the activities of the government that is deemed to be 'provocative' by the authorities, in news bulletins, video footage, talk shows, features, articles, editorials or cartoons. A large number of grass-roots-level newspapers have reportedly been ordered to close indefinitely. Two private television channels, ETV and CSB News have been accused of broadcasting 'provocative' video footage and reports concerning recent riots in the country, and on August 23, 2007, the Press Information Department ordered them not to publish any more such programmes. This has just been supplemented by an order to close down the CSB News TV channel. The officers of the armed forces monitor the television news bulletins and newspapers and threatening and intimidate editors by phone or in person. Television channels have stopped broadcasting many of their issue-based discussions and talk show programmes and newspapers are also engaged in heavy self-censorship. The media now only publish items that the government will like.

Section 20 of the Emergency Powers Rules-2007 authorizes the 'law and order maintaining forces' to use force in order to execute any order issued according to the Rules. Section 21 authorizes the government to detain any person under the Special Powers Act-1974. The ability to use force at will has increased the vulnerability of any persons that oppose the government, be they demonstrators, journalists or human rights defenders, for example. On August 23, 2007, some 12 journalists were arrested in one incident while covering the clashes between the military and Dhaka University students and other protestors. It is believed that several other journalists have also been arrested in separate incidents.

The human rights defenders are becoming increasingly vulnerable in Bangladesh. Numerous human rights defenders have been threatened and intimidated, arbitrarily arrested and detained for months at a time, tortured and/or implicated in fabricated cases. As a result, most human rights organizations have but a halt to most controversial work, such as fact-finding missions to ensure the documentation of cases of human rights abuses. This could give rise to a situation where human rights abuses are increasing, but fewer reports are surfacing, which could send the erroneous signal to the outside world that the human rights situation is improving, while in reality it is getting worse.

According to the information collected by local human rights groups, more than 200,000 people have been arbitrarily arrested and detained in the country during the State of Emergency, with a high proportion of them having been subjected to ill-treatment or torture, which remains endemic in the country. Victims of torture never receive any reparation or justice.

The country's prisons are overcrowded to the point that the government recently released several hundred detainees who were either convicted of lesser crimes, such as theft, or had been detained for lengthy periods during their trials. In order to accommodate the high-profile prisoners such as former ministers, law-makers and businessmen who have been arrested in recent months under the interim military-backed government's anti-corruption drive, the authorities have begun using public and private houses, which they are declaring as being 'sub jails'.

Custodial deaths resulting from torture at the hands of the law-enforcing and security forces continue to occur, with over 60 reportedly thought to have occurred in the last seven months alone. The authorities claim that they all result from heart attacks or the victim having jumped from roof-tops or tall trees (the victims apparently have access to roofs and trees during searches for evidence of their alleged crimes, according to the authorities). This practice is reminiscent of the notorious Operation Clean Heart in late 2002, in which an estimated 58 persons died in suspicious circumstances in detention following mass arrests. There is no mechanism to punish the perpetrators of torture, as the practice has not yet been criminalized by the authorities, even though Bangladesh is a State Party to the UN Convention against Torture (CAT). It must be recalled that Bangladesh made a reservation on article 14(1) of the Convention, which asserts the State's obligation to provide medical treatment and compensation to the victims of torture, which greatly undermines the value of Bangladesh's ratification of this important instrument and is indicative of the country's real intent with regard to the respect of human rights, regardless of the rhetoric used by the country's representatives at the Human Rights Council.

Extra-judicial killings have been on the increase during the state of emergency, adding further to an already serious situation. Such killings are covered up and justified as being encounter or accidental crossfire killings, and go unpunished. According to local human rights groups, 126 persons have become the victims of extra-judicial killings by members of the law-enforcement and security forces in the first seven months of the state of emergency.

Not a single case of victims of such gross human rights abuses as torture, death resulting from torture or extra-judicial killing can even be pursued in courts at present. Section 6 of the Emergency Powers Ordinance ensures prior impunity to any perpetrators of such acts. Section 6(1) declares that *"Any order relating to any authority delegated by or under, this Ordinance shall not be challenged before any court."* Furthermore, according to Section 6(2), *"Unless any provision under this Ordinance stipulates otherwise, no civil or criminal case, or any other legal proceedings shall be lodged against the government for any harm incurred as a result of any action, or any action done in good faith under, by the authority of this Ordinance."* Impunity has been legislated in the past in Bangladesh. For example, the government passed the Joint Drive Indemnity Act-2003 following the disastrous Operation Clean Heart, ensuring impunity for the perpetrators of torture and killings committed under this operation.

Furthermore, Bangladesh has no National Human Rights Commission, although the government has formed a committee comprising bureaucrats to draft a concept paper concerning the establishment of such a Commission, but five months have passed without any news of progress by this committee. The government of Bangladesh has been promising its citizens and the international community that it will establish a National Human Rights Commission in the country for some 17 years now, without any actual progress.

The Asian Legal Resource Council (ALRC) urges the Council to call on the Bangladeshi authorities to withdraw the State of Emergency from the country immediately. The Council must insist the country to reinstate the fundamental rights of

its citizens, as 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 to victims of arbitrary arrests and detention, and all reports of torture and extra-judicial killings must be fully investigated and punishment and reparation must be 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 recommends that an independent and effective national human rights institution be established in Bangladesh, 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 replacing 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 becoming a serious embarrassment to the Human Rights Council, as it is flouting every acceptable norm and standard while occupying a position on the Council. The question is, does the Council have the ability to take any credible action against its members or will membership on the Council equate with immunity for even very grave rights violators?
