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State of Emergency in Bangladesh: Reviewing the Situation after 18 Months

UNJUSTIFIED EMERGENCY &
CONTINUATION PRECIPITATING CRISIS
CONSTITUTION BADLY DAMAGED
'NO' TO NATIONAL SECURITY COUNCIL
ALL ELECTIONS MUST BE PARTICIPATORY & CREDIBLE
REPEAL THE ANTI TERRORISM ORDINANCE

Continuing emergency illegal under the Constitution and International law:

1. The Caretaker Government was constituted under the provisions of the Constitution (Thirteenth Amendment) Act, proclaimed State of Emergency on 11 January 2007 purportedly under Article 141 A of the Constitution¹, in the absence of the Parliament and obviously without satisfying constitutional requirement 'for its validity the prior counter signature of the Prime Minister' (see Article 141 A(2)). To justify such an extreme move, the President in his Act of Proclamation said that since security and economic life of the country was threatened by internal disturbances, he had to impose Emergency, although substantive evidence was lacking. The irony is that the state of the economy has declined since the proclamation of Emergency and life of the people of Bangladesh has been hard hit due to gross mismanagement, insensitivity to the poor and the disadvantage and overall breakdown of social and economic institutions. The President also suspended number of fundamental rights.
2. Odhikar has, since then, expressed concern against such an extra-constitutional move anticipating serious constitutional, political, economic crisis that may justifiably question the responsibility of those who uncritically supported such move, remaining singularly focused on 'corruption'. As a human rights organisation, Odhikar could not accept any justification to limit or curtail fundamental rights, particularly in a

¹ 141A.1 of the Constitution of the Peoples Republic of Bangladesh: 'If the president is satisfied that a grave emergency exists in which the security or economic life of Bangladesh, or any part thereof, is threatened by war or external aggression or internal disturbance, he may issue a Proclamation of Emergency.

political, legal and cultural scenario where extrajudicial killing, death in custody, torture without impunity, etc. are becoming the norm.

3. International legal provisions under the International Covenant on Civil and Political Rights, 1966 (ICCPR) state that in time of “public emergency” which threatens the “life of the nation” and its “existence,” limited measures could be taken. But the Covenant has set a test and high threshold in Article 4.1. in that measures taken must be “to the extent strictly required by the exigencies of the situation” and cannot be “inconsistent with other obligations under international law.” Emergency proclaimed in Bangladesh by a non-representative government who were supposed to simply conduct a free and fair election, have also failed to meet international obligations. The Covenant made it clear that there would be no derogation from obligations to protect right to life and none shall be arbitrarily deprived of his right (Article 6); no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 7); no heavier penalty be imposed than the one applicable at the time when the criminal offence was committed and non retroactivity of criminal offences (Article 15); and no restriction of right to freedom of thought and conscience (Article 18) etc. Since imposing Emergency, the government has, with impunity, violated these limits of emergency provisions under international law by permitting and condoning extrajudicial killings, practicing torture, imposing heavier penalties, amongst other activities.
4. After a year and half of the Proclamation of Emergency, there is no evidence of public emergency to ‘threaten the life of the nation or its existence’, required under international law or any ‘internal disturbances endangering the security of Bangladesh and its economic life’ - the two key excuses used to impose Emergency.
5. Since there are no such threats, either on security or economic fronts, the grounds of invoking Article 141 A of the Constitution no longer exists. Proclaiming or continue Emergency rule in the absence of any serious threat endangering nation’s life, violate the Constitution and the ICCPR, that Bangladesh has acceded to and is a State Party since December 2000.

6. Odhikar therefore demands that state of emergency is lifted immediately. Its continuation is unconstitutional, illegal and contravenes obligations under international laws.

The damaged Constitution:

7. The Constitution has been abused badly in the last 18 months. The current Caretaker Government has taken advantage of the perceived ambiguity of the Constitution in Article 58B on length of Caretaker administration. It has also flouted precedents set twice by two previous Caretaker governments, of holding parliamentary elections within 90 days. The Constitution provides that there shall be a Non-Party Caretaker Government during the period from the date on which the Chief Adviser of such government enters upon office after Parliament is dissolved or stands dissolved by reason of expiration of its term till the date on which a new Prime Minister enters into office after the constitution of Parliament. The present Caretaker Government has yet to hold parliamentary elections, even after a year and half - a job done in three months by its predecessors.
8. Odhikar believes that by not following earlier precedents and holding general elections within three months, the present Caretaker Government has set a very bad precedent about the tenure of such governments. The question now is what would be length of next Caretaker Government, if any? Who would be held accountable for damaging the Constitution?

'No' to a National Security Council:

9. In last 18 months, reports appeared and key individuals made statements supporting the formation of a National Security Council (NSC) with military and other security services Chiefs having omnipotent presence. A National Security Council, if established, would not only institutionalise the military's role in governance and dwarf the development of democracy, but constitute a positive threat to human rights and freedom of the people. The role of the military is already overwhelming now, formalising it through a National Security Council could give military pretext to get involved in internal security matters including law and order issues and risks de-professionalising and politicising the military with unforeseeable consequences.

Participatory democracy in danger:

10. Most of major political parties have opposed holding local bodies' elections under the Emergency and before holding the Parliamentary Election. The government is poised to hold election to some local bodies in August 2008. BNP and its four-party alliance that held most seats in last Parliament have so far refrained from joined the election fray, fearing the credibility of the elections.
11. It is not enough that elections at all levels be free and fair. In order to create conditions to resolve political crisis and ensuring a process of political stability, elections at all levels must be participatory and credible as well. Particular efforts must be undertaken to engage all the major political parties. The military-backed government must create an enabling environment for all political parties to participate and to achieve this objective must lift the State of Emergency as a gesture of political good will to facilitate holding credible polls.

Election Commission's missing deadlines:

12. The Election Commission missed its deadline of completion of at least three tasks, as laid out in the electoral roadmap. The Commission missed its June 2008 deadline for the registration of political parties, for delay in finalising reforms of the electoral law and is now extending the time up to the announcement of the election schedule, which is likely in October. In keeping with the electoral roadmap, all electoral reforms, including finalisation of the conditions for registration of political parties, were to be completed by February 27. There is still no sign of finalising the electoral reforms or setting the conditions for registration. According to the roadmap, field-level task of voters' registration was to be completed by June 30, but the Commission missed the deadline. Although the Commission undertook the task of delimiting the parliamentary constituencies amid protests from all the major political parties, it missed the June deadline for completing the delimitation through gazette notification.
13. While missing deadlines, the Commission on June 20 arbitrarily announced the schedule for the elections to four City Corporations and nine municipalities, setting August 4, 2008 as the polling day despite opposition of all the major political parties, who have categorically demanded holding national elections first, as this is also a

Constitutional requirement. The Commission is also out to hold the upazilla polls before the national elections ignoring the opposition of all the major political parties.

14. Many people consider such activities of the Commission as merely complicity in the military-controlled government's perceived political agenda. Incumbents, though they do not have any constitutional mandate to conduct local polls, are questionable and that too under Emergency, creating suspicion that the move is only to install people of their choice in public offices. Public perception is that the government wants to hand-pick people for a new party, who will elect them and thus prolong their stay in power.
15. The public perception has further been given food for thought by Chief Adviser Fakhruddin Ahmed, who was quoted by the state-run Bangladesh Sangbad Sangstha as stating in a meeting on the 'National Dialogue for Transition to Democracy' in Chittagong on June 28, that upazilla elections would precede the parliamentary polls 'as per the desire of the people'. Like well-meaning leaders across the political divide, Odhikar would also like to question the basis of such a claim, as the major political parties, considered to represent the people, categorically demanded Parliamentary Elections first.
16. Odhikar has no doubt that stronger and effective local government is a prime prerequisite for the democratisation of the state and society. It is also aware that the previous elected governments largely defaulted on their constitutional obligation of holding local body polls. However, there is no reason to regard this regime's insistence on holding local government elections as an expression of its commitment to democracy and every reason to suspect that it may be part of a greater design to create a grassroots political platform from which to launch a 'king's party'. Extra-political governments in this part of the world have shown a tendency, from the time of General Ayub Khan's martial law regime in the Pakistan days, to hold local polls before general elections. The incumbents, in tandem with the EC, have overtly and covertly attempted to redraw the political landscape by creating a division within the political forces. Moreover, as reported in Amader Samoy, a Bangla national daily on July 5, the incumbents mull over forming an electoral collage with the local government representatives for electing a President, who will also be empowered, through amendment to the Constitution, in the name of balance of power.

17. Odhikar strongly observes that the Election Commission's seeming complicity in the military-controlled interim government's perceived political agenda is not only eroding its credibility among the people but would also make its primary responsibility of holding participatory and credible general elections impossible. It has increasingly appeared as if the Commission has been directly aiding the regime with its perceived political agenda, becoming directly involved in the controversies surrounding the local body polls.
18. If the Commission wants to hold participatory and acceptable general elections, it will have to work to dispel such perceptions about it by distancing itself from the government's perceived political agenda and by focusing all its energies on holding parliamentary elections at the earliest date possible.

Repeal the anti-terror ordinance 2008

19. Odhikar is extremely concerned about the implications of the Anti Terrorism Ordinance, almost sneakily promulgated by the military-controlled extra-constitutional regime. While Odhikar understands the need for a strong economic, social and cultural policy to deal with acts of terrorism it opposes reducing such a profound task merely into a matter of criminality and law and military means of confrontation. Such laws often end in being repressive and counterproductive instruments to suppress political discontents and dissents and used to add credibility to 'Islamophobia' and various forms of anti-democratic sentiments where freedom of speech and conscience is blatantly denied. Such an Ordinance violates fundamental freedoms and basic fair trial rights. Adoption of such a draconian law may lead to severe abuse of power by the state authorities. Such an important law ought to be decided on and legislated by a representative parliament following a full and exhaustive debate within parliament and in society at large and must be grounded in the context of socio-economic, cultural and political reality of Bangladesh as well as in the region and the world. Enactment of such a law by an unelected regime, which kept its provisions secret until its adoption, thereby preventing any public discourse or consultation on the matter, raises serious questions about the intentions of the present regime.

20. The law defines terrorism much too broadly, contrary to United Nations recommendations. Acts that cause 'damage to any property of any person' may be deemed terrorist acts under the new law, even though acts of terrorism are usually limited to acts committed with the intention of causing death or serious bodily injury, not property crimes. The fear is that this law may be used as a political weapon by the military-controlled regime to tackle its political adversaries.
21. Under the law, a person can also be held criminally liable of financing terrorism if there is 'reasonable suspicion' that he is involved in a financial transaction where the money may be used for terrorist activities. However, 'reasonable suspicion' cannot be the burden of proof in any criminal action for it violates the basic criminal law requirement of proving guilt 'beyond a reasonable doubt'. Similarly, the government can ban an organisation based on 'reasonable allegations' of involvement in terrorist activities. Also, the new law criminalises speech in support of a banned organisation without needing to show that the speech directly incited a criminal or terrorist act.
22. Odhikar is extremely concerned that this new law may become a potent political weapon at the hands of those at the helm of government, instead of being a real deterrent to terrorist activities, as it has been historically seen that such sweeping laws have been abused by successive governments of the past with limited or no effective application in combating crime. Odhikar, therefore, urges the current regime to immediately repeal this new law so that an elected parliament can legislate on the matter after an inclusive consultation process that takes into account its every aspect.

Workers' Rights

23. According to newspapers reports published on July 7, 2008, the government has decided to lift the ban on trade union activities, albeit partially and 18 months into the Emergency. The key to sustainable growth and wholesome evolution of industries lies in good industrial relations whereby labourers and factory management are able to maintain a mutually beneficial relationship through constant dialogue and interaction. With Bangladesh apparently poised to leap into the next level of transition through further industrialisation, good industrial relations must remain among the top concerns of industrialists as well as the government. The incumbent,

however, will only allow trade unions to hold elections as the tenure of many trade union office bearers has already expired. These workers' associations will not be allowed to conduct other activities, which only mean that trade unions would be rendered dysfunctional and ineffective save the fact that they will have elections.

24. In sharp contrast, similar associations, including those of teachers, industrialists, businessmen or lawyers, are allowed to conduct their regular activities besides holding elections. These associations hold public discussions, lobby with the government, put forward their demands and carry on with the activities necessary for the welfare of their members. Unfortunately the workers have not been effectively able to press for their demands of higher wages because trade union activities remain suspended. In limiting the scope of trade union activities, the incumbents are, in effect, prohibiting activities that strive to ensure the welfare of certain groups of professionals, most of whom happen to be labourers and workers. Moreover, the clear indication that full-fledged trade unionism would not be allowed may also be construed as the present government's double standards and bias in favour of the upper-class citizens.

25. In this day and age of global competition, local industries cannot afford to do away with a proven and potent tool to increase their efficiency and at the same time abide by core labour standards, since collective bargaining is among the core requirements of international buyers and has become a requirement. Instead of keeping trade unionism at bay, the incumbents should shed their perceived bias against the working classes and encourage responsible trade unionism across all the sectors to ensure a sustainable and healthy growth of the economy in general and industries in particular.

Extrajudicial Killings

26. Defying widespread public outrage and sacrosanct principles of the rule of law, extrajudicial killings at the hands of law-enforcement agencies continue unabated. The number of deaths by 'crossfire'-the common term for encounter killings-since the emergency was proclaimed on January 11, 2007 is 187. The total number of extrajudicial killings, including death by torture and custodial deaths, stands at a staggering 246 during the period. The greatest burden of culpability in extrajudicial killings continues to fall on the Rapid Action Battalion, police and the army-led joint

forces for 'crossfire' deaths which they routinely claims happened when their detainee led them into an ambush in which they were fired upon.

27. In fact, it would appear that apart from the law enforcers', including the RAB and joint-forces, impunity now extends to the office of the Home Adviser. On January 29 this year, the Home Adviser, Mr. MA Matin, reportedly flagged the issue of extrajudicial deaths in a meeting he chaired, instructing the highest officials within the police and the battalion to ensure that 'such incidents do not take place further'. Those instructions seem to have fallen on deaf ears.

Stop Torture

28. Politicians, experts, rights activists and professionals, at a roundtable discussion marking the International Day in Support of Victims of Torture on June 26, organised by Odhikar, expressed concern that the people in general across the country were being tortured, either physically or mentally, by the 'misrule' of the military-controlled 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, opening the door wide for the law enforcers to torture suspects.
29. The High Court Division of the Supreme Court of Bangladesh, on April 17, 2003 ordered the government to amend the law relating to interrogation of people remanded in custody. The Court also directed the authorities to make glass-partitioned rooms in jails for interrogation of the arrestees. Until such rooms are made, the arrestees will be interrogated at the jail gate, in the presence of their relatives and lawyers, the court said. No such glass-room has yet been constructed and no relatives or lawyers of any arrestee are allowed to be present during interrogation. There are only a few recent incidents of interrogating detainees at jail gates- when the Court ordered the investigation officers of those cases to do so.

30. A number of high-profile corruption suspects, mostly politicians, who were arrested by the army-led joint forces since 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 Court that they were tortured and even threatened with death in 'crossfire' by the law enforcers grilling them in custody.
31. 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 former Prime Minister Khaleda Zia, on June 24 said in a Special Court that torture in custody led to the worsening of the 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.
32. 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.

Recommendations:

- Lift the State of Emergency immediately in order to restore the fundamental and democratic rights of the people of Bangladesh.
- Stop the formation of a National Security Council.
- Hold Parliamentary Elections before local elections, as per the Constitution and ensure that the elections be free, fair and participatory.
- Trade Union activities must be restored in order to bring about a healthy rapport between workers and factory management. The blatant disregard for workers rights have deprived them long enough from better pay and working conditions.
- Repeal the Anti-Terrorism Ordinance. There are genuine fears that its implementation will be counter productive - and there is historical evidence of this as well.

- Due process of law must be respected and followed in the trial of corruption suspects. Remember: ‘a person is innocent until it is proven otherwise’ and the proof must be brought out through legal and judicial processes.
- Extrajudicial killings, torture and indiscriminate arrests should cease to continue. Hold independent judicial inquiries into extrajudicial killings and prosecute all those suspected of involvement.
- Torture in remand must cease immediately and statements made by witnesses claiming to have been tortured must not be accepted by the court. Measures must immediately be taken to install the changes ordered by the High Court Division regarding Section 167 of the Code of Criminal Procedure.

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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.