



Human Rights Watch

UPR Submission

Bangladesh

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## **1. Introduction**

For decades, Bangladesh's security forces have been notorious for their frequent use of torture. Over the past few years, they have also been responsible for scores of extrajudicial executions. Successive governments have failed or been unwilling to address these problems, and the police, military and various official paramilitary forces enjoy almost complete impunity. Human Rights Watch has since early 2006 paid particular attention to, and reported on, human rights abuses committed by Bangladesh's security forces, and the culture of impunity under which they operate. ]

## **2. Human Rights Abuses by the Security Forces**

Following the announcement of its candidacy for membership in the Human Rights Council in 2006, Bangladesh voluntarily pledged, among other things, to "intensify its efforts, while framing its national policies and strategies, to uphold the fundamental principles enshrined in the constitution, those of the Universal Declaration of Human Rights, as well as those of the international and regional instruments to which she is a party."

Despite this, Bangladesh has failed to uphold its international obligations to respect the right to life and to provide persons in Bangladesh effective protection from extrajudicial execution, torture, and cruel, inhuman and degrading treatment. Torture is a routine feature in criminal investigations and is also commonly used by law enforcement officials for the purpose of extorting money from individuals taken into custody. It is facilitated by a legal framework that fails to provide reasonable protection against abuse. Most notable is section 54 of the Code of Criminal Procedure, which gives the police virtually unlimited powers to carry out arrests without a warrant. Under the Emergency Power Rules, 2007, in force since the interim government

came to power in January 2007, powers of arrest without adequate judicial oversight have also been given to the military and other security forces that lack basic law enforcement training. These have routinely been abused, further entrenching unlawful state violence and the culture of impunity.

Since the creation in 2004 of the Rapid Action Battalion (RAB), a paramilitary elite crime fighting force made up of members seconded from the military, police and other security forces, the problem of extrajudicial executions has reached dramatic proportions. In the past year, the regular police force appears to have copied the working methods of RAB, killing many alleged criminals in faked "cross-fire killings." When the armed forces have been used to assist in law enforcement duties, soldiers have also been responsible for extrajudicial killings.

Over the past four years, the police and RAB members have been responsible for more than 1,000 killings. While the law enforcement agencies attribute these killings to shootouts with criminal groups, and sometimes to accidents and mob killings, research by Human Rights Watch and domestic human rights groups has shown that a large proportion of these killings are in fact extrajudicial executions carried out after the victim had been taken into custody. Accounts from eyewitnesses and injuries on victims' bodies indicate that executions are often preceded by torture. Senior Bangladeshi officials have admitted to Human Rights Watch that when RAB was established it was government policy to summarily execute alleged criminals taken into custody.

### **3. Impunity**

#### ***De facto impunity***

Bangladesh has almost completely ignored its international obligation to conduct prompt and impartial investigations of human rights violations, and to ensure that those responsible are prosecuted regardless of their ranks and positions.

The current government has taken no serious steps to address abuses by security forces. Despite its pledge in 2006 that a human rights commission would be set up "as soon as possible" if Bangladesh was elected to the Human Rights Council and the promulgation in December 2007 of the National Human Rights Commission Ordinance, no commission has been

established. The ordinance has been criticized by Human Rights Watch and others for, among other things, failing to meet the standards set out in the Paris Principles on national human rights institutions, including by containing insufficient safeguards to guarantee a commission's independence.

There have been very few cases in which human rights violations by the security forces have led to prosecution and punishment. For instance, there are no known cases in which a RAB member has been imprisoned for any of the more than 500 killings for which the force is responsible. RAB has stated to Human Rights Watch that all killings relating to the force are subject to judicial inquiries and that the absence of prosecutions is due to the fact that its officers have not been found responsible for any criminal misconduct. In reality, investigating authorities have rarely, if ever, conducted serious investigations by contacting independent witnesses or members of a victim's family.

The prevailing culture of impunity has a number of deep rooted and interrelated causes. Most important is an absence of political will of successive governments, including the current interim government which claims to be committed to reform, to address the problem. This and previous governments and the country's leading politicians have been unwilling to antagonize the security forces on which they have depended to remain in power or to further their political and economic interests. When victims and their families have tried to obtain justice for abuses, members of these forces have used threats and violence to obstruct such efforts. Intimidation of victims and witnesses is routine. When investigations have been undertaken their purpose appears to have been to distract public outrage or ameliorate international concern rather than to uncover evidence that could serve as the basis for prosecutions.

### ***De jure impunity***

Impunity is also an institutional and legal problem as law enforcement officers and members of the armed forces are shielded from prosecution by an outdated legal framework that is inconsistent with current international legal standards.

## **Article 46 of the Constitution of the Republic of Bangladesh**

Article 46 of Bangladesh's Constitution empowers parliament to indemnify through law any state officer for any act done to maintain or restore order, and to lift any penalty, sentence or punishment imposed. This provision allowed, for instance, the adoption of the Joint Drive Indemnity Act, passed by parliament in February 2003. This act protects from civil suit or prosecution soldiers and law enforcement officials participating in the so-called "Operation Clean Heart," a military-led law and order drive carried out between October 16, 2002 and January 9, 2003, during which at least 40 people were killed.

### **The Code of Criminal Procedure**

Section 197 of the Criminal Procedure Code, 1898, prohibits criminal actions from being initiated against public officials without government approval. In practice the provision serves to discourage the courts from prosecuting members of the security forces. Even when permission is requested, the relevant government department often refuses to grant the necessary approval.

Further protection is given in Section 132 of the Criminal Procedure Code, which states that prior government permission is required for the prosecution of any person assisting in dispersing an assembly that is unlawful or likely to disturb public peace. It is furthermore said that a person who acts in good faith or in accordance with an order given shall never be considered to have committed a crime while involved in dispersing such a crowd. This section is of particular importance because mass demonstrations and general strikes have traditionally been a common means of protest in Bangladesh, and law enforcement officials involved in crowd control have a long history of using excessive force.

### **Military Law**

Bangladesh's military laws have placed members of the armed forces outside the jurisdictional reach of the civilian justice system. The Army Act, 1952, Air Force Act, 1953, and Navy Ordinance, 1961, provide that military personnel who commit a crime while on active duty shall be tried by a military court regardless of the nature of the crime or the circumstances under which it was committed. The military's longstanding failure to successfully prosecute

soldiers for criminal offenses against civilians demonstrates the need for civilian court jurisdiction over military personnel for human rights violations.

### **The Armed Police Battalion Ordinance**

Despite being tasked with civilian law enforcement duties, RAB officials are in effect protected by a system similar to that of the military. Civilian courts have not taken action against RAB officers for violations of human rights. Under section 13 of the Armed Police Battalion Ordinance, 1979 (as amended in 2003), these officers are granted immunity against any suit, prosecution or other legal proceedings for anything done, or intended to be done, in good faith.

In the very few cases that any form of sanction is known to have been handed down against RAB members, this has been done by internal tribunals, so-called special or summary courts headed by senior police or RAB officers. These lack any form of transparency or public accountability. Where punishment has been meted out it has typically been dismissal from RAB service and transfer back to the person's original police, military or other unit.

#### **4. Recommendations**

Human Rights Watch calls on the government of Bangladesh to:

- Ensure that all human rights violations committed by members of the security forces, including the police, Armed Forces, and RAB, are promptly and thoroughly investigated and prosecuted.
- Repeal all legal provisions that shield public officials from prosecution and punishment, including article 46 of the Constitution and sections 197 and 132 of the Code of Criminal Procedure.
- Revise the military laws to ensure the jurisdiction of the civilian criminal justice system over members of the armed forces for violations of human rights.
- Revise the Armed Police Battalion Act to clarify that all human rights violations committed by members of RAB are to be prosecuted by the civilian criminal justice system.
- Amend the National Human Rights Commission Ordinance to ensure that the ordinance meets the standards set out in the Paris Principles for national human rights institutions and best international practice.

- Establish a genuinely independent and sufficiently resourced national human rights commission once the National Human Rights Commission Ordinance has been amended to meet international standards.
- Amend section 54 of the Code of Criminal Procedure and other legal provisions to limit the powers to carry out arrests without warrants.