BANGLADESH
Urgent need for legal and other reforms to protect human rights

1. INTRODUCTION

For decades, successive governments in Bangladesh have failed to curb serious human rights violations arising from the use of legislation and widespread practices in the law-enforcement and justice system which violate international human rights standards

These violations include torture, deaths in custody; arbitrary detention of government opponents and others; excessive use of force leading at times to extrajudicial executions; the death penalty; sporadic attacks against members of minority groups; and acts of violence against women. Over years, Amnesty International has reported on all these human rights violations.

In this report, Amnesty International is highlighting in particular its concerns with regard to two specific laws that facilitate endemic human rights violations in Bangladesh: the Special Powers Act (SPA) which allows arbitrary detention for long periods of time without charge, and Section 54 of the Code of Criminal Procedure (Section 54) which facilitates torture in police or army custody.

Amnesty International recommends that the Government of Bangladesh repeals the Special Powers Act. It is further urging the government to review the Code of Criminal Procedure in order to establish clear and enforceable safeguards against abuse of Section 54 resulting in torture; to ensure that law enforcement agencies understand that torture is a criminal act; and to bring perpetrators of torture to justice.

Amnesty International also believes that the government should urgently address factors which contribute to human rights violations, such as impunity and corrupt practices in law enforcement, and establish an independent, impartial and competent body, such as a national human rights commission, to investigate human rights violations. Amnesty International would welcome the creation of such a body with appropriate power to investigate, and forward their information to the prosecutors so that they undertake prosecution of offenders. Such a body should, in collaboration with the Bangladesh Law Commission, review all laws that allow for impunity.

The implementation of these recommendations would be a decisive and welcome step towards the fulfilment of Bangladesh's human rights obligations under international human rights treaties to which Bangladesh is a state party. These include the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination against Women.

The current report also makes recommendations about the steps the government should take to ensure proper training of the law enforcement personnel and proper monitoring of their conduct so that they do not violate human rights.

2. ARBITRARY DETENTION, UNDERMINING THE JUDICIAL SYSTEM

Each year, thousands of people are arbitrarily detained under administrative detention laws which deny them access to judicial remedies. The most commonly used of these laws is the Special Powers Act, 1974 (SPA).

The SPA overrides safeguards against arbitrary detention in excess of 24 hours in Bangladeshi laws. It allows the government not only to detain anyone without having to justify the detention before a court, but also to keep the detainee in prison initially for up to four months or, in certain cases, indefinitely, without charge.

Amnesty International believes that states should not detain people unless they are charged with recognizably criminal offences promptly and tried within a reasonable period; or unless action is being taken to extradite or deport them within a reasonable period. Human rights standards relating to the rules of evidence and standard of proof to be applied in the criminal justice system have been prescribed in order to minimize the risk of innocent individuals being convicted and punished. It is unacceptable for governments to circumvent these safeguards and Amnesty International believes that it is a violation of fundamental human rights for states to detain people whom they do not intend to prosecute or deport.

The SPA was promulgated by the Awami League Government of Sheikh Mujibur Rahman on 9 February 1974. It allows the government to detain anyone on suspicion of involvement in a "prejudicial act", defined as follows:

> *"2. DEFINITION – In this act, unless there is anything repugnant in the subject or context, -……*
>
> *(f) "prejudicial act" means any act which is intended or likely –*
>
> *(i) to prejudice the sovereignty or defence of Bangladesh;*
>
> *(ii) to prejudice the maintenance of friendly relations of Bangladesh with foreign states;*
>
> *(iii) to prejudice the security of Bangladesh or to endanger public safety or maintenance of public order;*
>
> *(iv) to create or excite feelings of enmity or hatred between different communities, classes or sections of people;*
>
> *(v) to interfere with or encourage or incite interference with the administration of law or the maintenance of law and order;*
>
> *(vi) to prejudice the maintenance of supplies and services essential to the community;*
>
> *(vii) to cause fear or alarm to the public or to any section of the public;*
>
> *(viii) to prejudice the economic or financial interests of the State;"*

Two authorities can invoke the SPA – a) the Government[1], and b) the District Magistrate or an Additional District Magistrate[2]. A SPA detention order issued by either of these authorities has the status of a warrant of arrest and is applicable in all parts of the country. A SPA detention order made by the government can remain in force indefinitely subject to confirmation by an Advisory Board (see below) but an order made by the District Magistrate or an Additional District Magistrate remains in force for 30 days "unless in the meantime it has been approved by the Government".[3]

In practice, when the government invokes the SPA, it is invariably to detain members of opposition parties.[4] When the district magistrates invokes the Act, it is usually to secure the detention of someone whose release – whether or not on bail – would, in their opinion, cause the commission of a "prejudicial act".

Under the act, the government can even determine the place and the condition of detention of the detainee:

> *"5. POWER TO REGULATE PLACE AND CONDITIONS OF DETENTION –*
>
> *Every person in respect of whom a detention order has been made shall be liable –*
>
> *(a) to be detained in such place and under such conditions, including conditions as to discipline and punishment for breaches of discipline, as the Government may, by general or special order specify: and*
>
> *(b) to be removed from one place of detention to another place of detention by order of the Government."*

The SPA provides that the grounds on which a detention order has been made should be communicated to the detainee "as soon as may be" but no later than 15 days from the date of detention "to enable him to make a representation in writing against the order". However, there is no requirement to supply all the information on which the order is based to the detainee so that he/she knows the basis for the detention. The authority can refrain from disclosing "the facts which it considers to be against the specific interest to disclose".[5]

The government is required to constitute an Advisory Board (AB) consisting of two persons "who are, or have been, or are qualified to be appointed as, Judges of the High Court" and a third person "who is a senior officer in the service of the Republic", all appointed by the government. It is also required to place before this AB, within 120 days from the date of detention under the SPA order, "the grounds on which the order has been made and the representation, if any, made by the person affected by the order". There is no right of legal representation before the Board.

The AB shall consider material placed before it and seek further information from the government or the detainee if necessary and submit its report to the Government within 170

days from the date of detention. In this report "the opinion of the Advisory Board as to whether or not there is sufficient cause for the detention of the person concerned" will be specified. If the AB approves the grounds for detention, the prisoner shall remain in detention indefinitely and the only remedy will be a review of the case by the AB every six months. However, a detention order under the SPA may at anytime be revoked or modified by the government.[6]

The SPA provides immunity from prosecution for the use – or abuse - of the Act by the government even when this contravenes fundamental rights.

> *"34. BAR ON JURISDICTION OF COURTS – Except as provided in this Act, no order made, direction issued, or proceeding taken under this Act, or purporting to have been so made, issued or taken, as the case may be, shall be called in question in any Court, and no suit, prosecution or other legal proceeding shall lie against the Government or any person for anything in good faith done or intended to be done under this Act."*

To ensure the supremacy of the SPA, it provides:

> *"34B. ACT TO OVER-RIDE ALL OTHER LAWS – The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Code or in any law for the time being in force."*

Although the SPA gives a wide discretion to the detaining authority to act according to its own opinion, in practice, most detention orders are declared unlawful by the high court - but only on procedural grounds. This is because the Constitution empowers the High Court to satisfy itself that a person is detained in custody under a lawful authority.[7]

Lawyers seeking to overturn a SPA detention order identify omissions or errors in the application of the SPA which allow the High Court to declare such orders illegal. For example, the grounds given may not fit the definition of "prejudicial act", or the grounds for detention may not be communicated to the person within 15 days, as required.

According to a parliamentary sub-committee studying the use of the SPA from its inception in February 1974 until December 1998, at least 69,010 people had been detained under the law during this period. Of these, 68,195 (98.8%) detainees were eventually released after their detention was declared unlawful by the High Court on the grounds, for example, that the SPA orders had been vague, issued by unlawful authority, not placed before the Advisory Board within 120 days, or that different reasons for detention were mentioned in the order and in the affidavit-in-opposition, or the detaining authority failed to communicate the grounds for detention to the detainee within 15 days, or it failed to produce the necessary papers in court, or because of delays in ordering an extension of detention.[8]

Calls for the repeal of the SPA has come from the Bangladeshi legal community and human rights organizations. It has also come from political parties but only when they are in opposition. When in government, they have defended the use of the SPA and maintained it.

A rare pledge by any government to repeal the SPA was made by the current Prime Minister, Begum Khaleda Zia, in her "Speech for the Nation" delivered on 19 October 2001 in Dhaka:

> *"Dear brothers and sisters,*
> *Now I shall give you some good news.*
> *We have finalized our new government's 100-days activities. ……*
> *Following are the highlights of the programme:*
> *Observing a day to thank the voters for the victory of the four-party alliance. ……..*
> *Starting the process of repealing the Public Safety Act (PSA) and Special Power Act (SPA).*
> *Starting legal process for releasing the persons who are in prison without trial and political prisoners.*
> *Repealing all previous unfair administrative orders……….*
> *Starting the process of judicial inquiry into the much talked about bomb explosions."* [9]

Despite this pledge, the government continued to detain people under both the Special Powers Act and the Public Safety Act. Of these two laws, the Public Safety Act, which had been enacted by the previous government in February 2000 and which denied certain categories of prisoners the right to appeal for release on bail, was repealed by Parliament on 2 April 2002. However, the Special Powers Act still remains in force.

3. TORTURE IN BANGLADESH

For many years, torture has been the most widespread and persistent human rights violation in Bangladesh but has been routinely ignored by successive governments since Bangladesh's independence in 1971.

Children, women, the elderly, opposition politicians, criminal suspects, and innocent bystanders in the streets, have all been victims of torture. Perpetrators are most often police personnel but members of the armed forces carrying out law enforcement duties have also been involved in torture.

Methods of torture have included beating with rifle butts, iron rods, bamboo sticks, or bottles filled with hot water so they do not leave marks on the body, hanging by the hands, rape, "water treatment" in which hose pipes are fixed into each nostril and taps turned on full for two minutes at a time, the use of pliers to crush fingers, and electric shocks.

3.1 The failure to curb torture and impunity

Successive governments in Bangladesh have failed to prevent torture, despite provisions in the Constitution of Bangladesh and their obligation to provide durable and effective protection against torture to the people in the country under treaties which Bangladesh has ratified. These treaties - with the dates they were ratified - include: the International Covenant on Civil and Political Rights (6 September 2000), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (5 October 1998), Convention on the

Rights of the Child (3 August 1990), and the Convention on the Elimination of All Forms of Discrimination against Women (6 November 1984).

Amnesty International has documented instances of torture in Bangladesh for many years. In November 2000, it published a report entitled Bangladesh: Torture and impunity[10], which concluded that law enforcement agencies used torture for a variety of reasons, including to extract money from detained suspects or their families; as favour to local politicians in return for a bribe; and to obtain confessions from detainees.

Impunity is one of the major reason why torture continues. Government authorities have persistently failed to bring perpetrators of torture to justice. Allegations of torture are rarely investigated, particularly when victims are members of opposition parties. On the rare occasions when allegations of torture have been investigated, this has usually been due to a public outcry generated by the death of the victim. In other cases, victims who have filed complaints about torture in police custody have been put under pressure by police to withdraw the case. This has most often been done by threats and intimidation, but in some instances, money has been offered to the victim in return for the withdrawal of the case as "out of court settlement".

Furthermore, judicial proceedings against a public employee – including a police officer - can proceed only if the government authorises that proceeding.[11] In practice, the government rarely does so.

In its November 2000 report, Amnesty International urged the Government of Bangladesh to establish clear and enforceable safeguards against abuse of administrative detention procedures resulting in torture; to ensure that magistrates do not ignore safeguards against unlawful detention when considering police request for prisoners' remand; that magistrates ensure physical presence of the prisoner before them as required by law; that they do not ignore signs of torture on the prisoner's body or the prisoners' allegations of torture. It also urged the government to ensure investigation of every allegation of torture through an independent and impartial inquiry; to make public the findings of all such inquiries ensuring that perpetrators are brought to justice; to introduce training for police, including in professional methods of investigation which exclude torture and by making clear to them that torture is a criminal act punishable by law; and to ensure that victims or their families are compensated.

Amnesty International sent this report to the then Prime Minister and to various government authorities in Bangladesh. In addition, Amnesty International members brought the matter to the attention of the Awami League government through letters or in representations they made to a number of Bangladesh diplomatic missions.

However, by the end of the tenure of the Awami League government, Amnesty International had received no substantive response to its recommendations, nor was it aware of any effective measures taken by the government to address the issue of torture and impunity in the country.

In January 2002, Amnesty International brought to the attention of the new BNP government its longstanding concern about torture. To date the organization has received no reply from the current BNP-led government either.

3.2 Government blocking judicial processes against torture

In April 2002, Amnesty International raised serious concern about steps taken by the Government to stop disclosure of information about a case of torture to a court. The prisoner, an opposition politician, was reported to have been held in early March 2002 in army custody and severely tortured.[12] The High Court ordered on 3 April 2002 that:

> *"To ascertain whether the accused was subjected to any torture as alleged, it is necessary to obtain a statement from the I.O. [Investigating Officer] who took the accused on remand and kept him in his custody for the purpose of interrogation for more than five days, for about seven days. So, he must explain in which places the accused was kept during this period of about seven days. Whether the accused was taken to the cantonment [military area] and if so, under whose order or authority".*

This High Court order was stopped on 8 April 2002 through a "stay order" issued by the Appellate Division of the Supreme Court on an appeal by the Attorney General on behalf of the government. The High Court had also ordered on 3 April 2002 that a new medical board should be set up to examine the prisoner as there were grounds to believe that a previous medical board had failed to record or disclose the details of the alleged torture to the court. This order was also stopped by the same "stay order" issued by the Appellate Division, through an appeal by the government.

Amnesty International has serious concerns in relation to such developments. It is the obligation of the authorities to investigate promptly, effectively, independently and impartially all allegations of torture, and to bring perpetrators to justice. Stopping the process of investigation reinforces a climate of impunity, violating not only fundamental rights enshrined in the Bangladesh Constitution but also international human rights standards. Article 12 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which Bangladesh is a party, states:

> *"Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction."*

Amnesty International was particularly concerned that the Government, instead of ensuring that Bangladesh's competent authorities proceeded to a prompt and impartial investigation of the allegations of torture, was effectively blocking such an investigation. To date, no investigation of the allegations of torture made by the prisoner has been carried out.

3.3 Legislation facilitating torture

While the constitution of Bangladesh guarantees fundamental human rights and specifically forbids torture and while torture is a criminal act under the Penal Code[13], a number of laws in

Bangladesh create the conditions which facilitate torture. The most commonly used of these is Section 54 of the Code of Criminal Procedure (Act V of 1898). Section 54 enables the police to arrest anyone without a warrant of arrest and keep them in detention for up to 24 hours on vaguely formulated grounds – for details, see Appendix 1.

Any person arrested by the police can be detained for up to 24 hours.[14] At the end of this period, the prisoner should be either released or produced before a magistrate - either to be formally charged with a criminal offence or to be remanded in custody for further investigation. According to reports from many sources, detainees arrested by the police are usually offered the option to buy their release through a bribe.

There is reportedly a lack of due diligence by magistrates in exercising their powers. They do not scrutinize the case to ensure that there are objective and legitimate grounds for remand, and do not record the reasons for ordering further remand in police custody – although this is a requirement under the Code of Criminal Procedure.[15] There are persistent reports that magistrates do not take allegations of torture seriously, and rarely seek an investigation of these allegations. Often, they do not even record them.

Exact statistics on the number of people arrested under Section 54 are not available, partly due to the fact that the detention of many detainees who are released after the payment of a bribe is never recorded.

In all cases of detention under Section 54 of the Code of Criminal Procedure reported to Amnesty International, the detainees claimed that they had been tortured and that torture began from the moment of their arrest.

3.4 Legal immunity from prosecution to perpetrators of torture

On 9 January, President Iajuddin Ahmed issued "The Joint Drive Indemnity Ordinance 2003" which provided impunity to "members of the joint forces and any person designated to carry out responsibilities in aid of civil administration during the period between 16 October 2002 and 9 January 2003". Under the ordinance, no civil or criminal procedure could be invoked against "disciplinary forces" or any government official for "arrests, searches, interrogation and [other] steps taken" during this period.

The Ordinance related to “Operation Clean Heart" which started on 17 October as a campaign against crime carried out jointly by army and police forces. The campaign was the government's response to growing concern within Bangladesh and the international community about the continuing deterioration in law and order, including a rise in criminal activity, murder, rape and acid throwing.

As the campaign proceeded, there were mounting allegations of torture in army custody. At least 40 men reportedly died as a result of torture after being arrested by the army. The government acknowledged only 12 deaths and claimed they were due to heart failure. Families of the victims and human rights activists, however, claimed the deaths resulted from severe torture while in army custody.

Amnesty International called upon the government to withdraw the Ordinance, institute an effective, independent and impartial investigation of the deaths and other allegations of

torture, and bring perpetrators to justice. Bangladeshi media as well as human rights organizations in the country also expressed serious concern about the ordinance.

Far from withdrawing the ordinance, the government placed it before parliament as “The Joint Drive Indemnity Bill, 2003”. The Bill was amended to provide the aforementioned immunity from prosecution in any “criminal or civil court or tribunal, including the Supreme Court” with the exception of “courts or tribunals constituted under laws governing the security forces and their members”. The “Joint Drive Indemnity Act, 2003” was passed by Parliament on 23 February 2003.

The legal status of the Act has been challenged before the High Court. Following a petition before the Court by a woman seeking compensation for her brother’s death allegedly as a result of torture in custody during “Operation Clean Heart”, the Court ordered the government on 13 April 2003 to explain within four weeks why the Joint Drive Indemnity Act, 2003 should not be declared illegal.[16]

Concern about the Act has continued to be raised within Bangladesh and internationally. At the conclusion of a four day visit to Bangladesh on 27 February 2003, a European Union parliamentary delegation stated:

> *"The recent indemnity law limiting retrospectively the possibility to prosecute members of the armed forces but in court martial, and totally indemnifying police forces and political personnel from acts of murder, torture, illegal arrests and other Human Rights violations committed during the 'Operation Clean Heart' is a blatant violation of the responsibility of Bangladesh to abide the Rule of Law."*[17]

To the best of Amnesty International’s knowledge, no army or police personnel has been brought to justice for acts of torture allegedly perpetrated by the joint forces during this period - 17 October 2002 to 9 January 2003.

Amnesty International is concerned that the Joint Drive Indemnity Act, 2003, together with other legislation which allows the government to block judicial proceedings against officials, will only perpetuate the climate of impunity which prevails in Bangladesh, giving yet another signal to those who use torture that they can continue to do so with impunity.

4. HIGH COURT RULING FOR SAFEGUARDS AGAINST TORTURE

On 7 April 2003, the High Court announced its judgement on a writ petition in public interest filed before the court in November 1998 by three Bangladeshi human rights organizations and five concerned individuals following the death of a man in police custody in July 1998. The petition sought mandatory guidelines to prevent torture in custody after arrest under Section 54.[18]

An authorised copy of the judgement is not available to Amnesty International at the time of writing. According to press reports and Bangladeshi lawyers contacted by Amnesty International, the judgement restricts arbitrary use of administrative detention law including the Special Powers Act. It makes it mandatory for the police to inform the family members of anyone arrested; for the accused to be interrogated by an investigation officer in prison

instead of police interrogation cell, and behind a glass screen so that his/her family members and lawyers can observe whether or not he or she is being tortured; and for the detainee to receive medical examination before and after remand into police custody. It empowers the courts to take action against the investigating officer on any complaint of torture if it is confirmed by medical examination. It directs the government to amend relevant laws, including Section 54, within six months to provide safeguards against their abuse, and recommends raising prison terms for wrongful confinement and malicious prosecution.

Amnesty International welcomes these recommendations and urges the Government of Bangladesh to implement them without delay.

5. LACK OF INDEPENDENT BODIES TO INVESTIGATE HUMAN RIGHTS VIOLATIONS

Fundamental rights are guaranteed by the Constitution of Bangladesh. These include freedom of movement, assembly, association, thought and conscience, speech and religion. The Constitution also guarantees equality before law, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth; equal rights for women and men in the public sphere; affirmative action "in favour of women or children or for the advancement of any backward section of citizens"; equal opportunities for employment save in areas where certain sections of the society are under-represented or in religious institutions which require "persons of that religion or denomination" or where the work "is considered by its nature to be unsuited to members of the opposite sex".[19]

Article 31 of the Constitution states:

> *"To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law."*

The Constitution includes provisions against unlawful detention and unfair trials - but it does not oppose administrative detention. Article 35 of the Constitution specifically prohibits torture:

> *" (4): No person accused of any offence shall be compelled to be a witness against himself. (5) No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment."*

The Penal Code[20] generally reflects the guarantees of fundamental rights set out in the Constitution. Nonetheless, violations that contravene some of the provisions of the Constitution as well as international human rights law, continue to occur. Of these torture and arbitrary detention are widespread.

Government failure to protect people against human rights violations has followed a clear pattern. Except in cases where there is a public outcry - usually following the death of the victim as a result of torture or rape in custody by police or other security personnel -

Bangladeshi governments have hardly ever taken action to investigate the case. Under pressure from public opinion, the government may constitute a judicial inquiry but to Amnesty International's knowledge, the terms of reference of such inquiries have never been made public. When the inquiry has been completed and its report submitted to the government, the authorities have not made the report public. Except in a few high-profile cases, successive governments have failed to prosecute the law enforcement personnel involved in acts of torture or other human rights violations.

The following case is a recent example: on 24 July 2002, police raided Shamsunnahar hall of residence at Dhaka University and subjected dozens of female students to brutal beatings. More than 50 students were reportedly injured. Following widespread condemnation of the action, the authorities ordered a judicial inquiry which submitted its findings in September 2002. The inquiry reportedly confirmed police brutality and recommended that the perpetrators should be punished. However, as in the past, the report of this inquiry was not made public and there has been no news of any action taken by the government against the police personnel involved in the attack.

The failure of successive governments to address human rights violations in a consistent and effective manner points to the desperate need for an independent, impartial and competent human rights watchdog in the country - such as a National Human Rights Commission (NHRC). Human rights defenders and the international community have been urging Bangladeshi governments to set up a NHRC. Both the previous Awami League government and the present BNP government have acknowledged the necessity for its formation, but neither have taken the appropriate action to establish it.

In April 1995, the then BNP Government of Prime Minister Begum Khaleda Zia approved a project to assess the need for a NHRC and make recommendations on its establishment. This project was to start in July 1995, but it was delayed reportedly due to a political crisis in the country.

Work on the project formally began in July 1996 under the then Awami League Government of Prime Minister Sheikh Hasina. The project was supported by the United Nations Development Program which had assisted the establishment of such national institutions in a number of other countries.

In June 1997, Amnesty International published a report[21] in which it reviewed the content of the "Action research study on the institutional development of human rights in Bangladesh" which had been completed within the above-mentioned project. Amnesty International made a series of recommendations aimed at ensuring that the body be fully independent, empowered and effective in the promotion and protection of human rights in Bangladesh and providing redress to victims.

In March 1998, Amnesty International received an updated draft of the "Bangladesh Human Rights Commission Act, 1998". The draft reflected most of the recommendations made by Amnesty International and Bangladeshi human rights groups.[22] It was understood that the draft would be approved by the cabinet shortly and would be sent as a bill to Parliament soon.

However, by early 2000, the government had not yet placed the bill before Parliament. On 27 April 2000, Amnesty International conveyed its concern to the then Government of Prime Minister Sheikh Hasina about the lack of progress with regard to the establishment of the NHRC. It expressed concern about reports that a draft bill finalised and approved by the cabinet in April 1999 had been sent to a special review committee because the Home Ministry objected to some of its provisions. Amnesty International sought clarification from the government about this delay but received no reply.

In late 2001, Bangladeshi newspapers reported that on 10 December that year a cabinet committee headed by Moudud Ahmed, Minister of Law, Justice and Parliamentary Affairs, had been formed to examine the prospect of setting up the NHRC. Throughout 2002, there were sporadic news reports that work on finalizing a draft bill for a NHRC was under way.

On 23 January 2003, it was reported that the cabinet committee formed in December 2001 had finalized the draft bill, and that it would be placed before parliament on 3 February 2003. So far, however, there has been no further news about the status of the draft bill.

Amnesty International would welcome the creation of a National Human Rights Commission if it is empowered as an independent body to investigate all instances of human rights violations impartially and competently, regardless of the identity of the perpetrator or their links to political parties. However, Amnesty International recommends that such an initiative should be accompanied by a determined government policy aimed at holding the perpetrators of human rights violations fully accountable, thus ensuring that those who violate human rights cannot do so with impunity.

Amnesty International reiterates that while the creation of a national human rights commission can be an important mechanism for strengthening human rights protection, it can never replace, nor should it in any way diminish, the safeguards inherent in comprehensive and effective legal structures enforced by an independent, impartial, adequately resourced and accessible justice system. The creation of a national human rights commission should, therefore, go hand in hand with a thorough review of existing legal and other institutions in order to make these more effective instruments of human rights protection.

In October 2001, Amnesty International published a set of recommendations for the effective protection and promotion of human rights with particular reference to the establishment of national human rights institutions. Amnesty International believes that these recommendations are essential elements to ensure the independence and effective establishment and functioning of such institutions. [23]

Amnesty International calls upon the Government of Bangladesh to incorporate these recommendations, alongside other guidelines such as the “Principles relating to the status of national institutions” (adopted in the UN Commission on Human Rights Resolution 1992/54, known as “the Paris Principles”), in the statute of the proposed national human rights commission in Bangladesh.

6. AMNESTY INTERNATIONAL RECOMMENDATIONS

1. Concerning the Special Powers Act

Amnesty International considers the Special Powers Act a law designed to bypass safeguards against arbitrary detention. It allows the government to detain people who are not charged with recognizably criminal offences. It circumvents the rules of evidence and standard of proof in the criminal justice system, leaving individuals, who should be presumed innocent unless found guilty by a court, at risk of being punished without trial.

Amnesty International believes that it is a violation of fundamental human rights for states to detain people whom they do not intend to prosecute or deport.

> **1.A** Amnesty International is therefore urging the Government of Bangladesh to repeal the Special Powers Act as it has pledged to do.

2. Concerning the use of Section 54 of Code of Criminal Procedure

Amnesty International particularly welcomes the High Court ruling on 7 April 2003 – see section 4 above - for the establishment of safeguards against torture. In support of that ruling, Amnesty International reiterates the recommendations it has made to the present and previous governments of Bangladesh since November 2000. These are as follows.

> **2.A**. Establish clear and enforceable safeguards against abuse of Sections 54 of the Code of Criminal Procedure and other administrative detention procedures resulting in torture.
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> **2.B** Ensure that the magistrates do not ignore safeguards against unlawful detention when ordering a prisoner's remand into police custody; to that effect, ensure that the prisoners are physically produced before the magistrates when police request a prisoner's remand into custody, and ensure that the magistrates actively take steps to ascertain whether or not the detainee has been tortured, taking care not to prejudice the detainee's safety, for example, by asking questions in the presence of the detaining police officers.
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> **2.C** Investigate every allegation of torture through an impartial and independent inquiry to identify perpetrators of torture according to international standards.
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> **2.D** Ensure that all perpetrators of torture and those whose negligence has facilitated torture are brought to justice without delay.
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> **2.E** Make public all reports of previous commissions of inquiry into allegations of torture and any such future reports.
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> **2.F** Provide compensation to torture victims or their families.
>
> **2.G** Invite the Special Rapporteur of the United Nations Commission on Human Rights on Torture to visit Bangladesh.
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> **2.H** Amend Bangladeshi law to reflect the provisions of the international human rights instruments to which Bangladesh is a party.

2.I Implement the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Adopted by General Assembly resolution 55/89 Annex, 4 December 2000) - please see Appendix 2.

2.J Implement the recommendations of the UN Special Rapporteur on torture to the General Assembly of July 2001(UN Doc A/156/56, para 39 – 3 July 2001).

3. Concerning police training

3.1 Train police personnel in effective methods of investigation which respects human rights. Make it clear to them that any act of torture including rape and sexual abuse of detainees is a criminal act punishable by law.

3.2 Ensure that training on the gathering, analysis and preservation of evidence and other aspects of the investigation of alleged crimes, including techniques of interviewing and taking statements from suspects and witnesses, is designed to develop the capacity of the police to build a case in an efficient manner that avoids reliance on coercion.

3.3 Ensure that human rights is a permanent component of police training, reflected in long-term training plans and resources allocation. It should be key component of all basic training for new recruits. It should also be included in all relevant in-service courses, such as refresher courses, training in crime investigation skills and public order policing.

3.4 Ensure that police personnel at all levels know that they will be held personally responsible and accountable for their own actions or omissions. Police personnel at all levels should be made aware that they have a right and duty to disobey orders to carry out acts of torture or ill-treatment.

3.5 Ensure that all detainees are given immediate access to relatives, legal counsel, medical assistance and relatives after being taken in custody.

3.6 Ensure that the detainees are promptly informed of their rights to lodge complaints about their treatment.

3.7 Ensure that special training is given to the police on dealing sensitively with issues of violence against women, as well as how to deal with all women victims of crime, Female guards should be present during the interrogation of female detainees and should be solely responsible for carrying out any body searches of female detainees.

3.8 Ensure that children are detained only as a last resort and for the shortest possible time. Special training should be given to the police on the specific rights and needs of children. Training should involve how to deal sensitively with issues of violence against children, as well as how to deal with children that have been victims of crime.

3.9 Ensure that all training initiatives are linked to the creation of effective accountability mechanisms.

3.10 Establish internal monitoring and investigation procedures to ensure that allegation of human rights violations committed by police are immediately and impartially investigated and those found responsible are brought to justice.

4. Concerning the creation of a National Human Rights Commission

Amnesty International encourages the creation of a national human rights commission in Bangladesh if it conforms to Amnesty International recommendations as detailed in its publication entitled: *National Human Rights Institutions: Amnesty International's recommendations for effective protection and promotion of human rights*.[24]

4.1 It urges the Government of Bangladesh to ensure from the outset that a such a commission is empowered as an independent body to investigate all instances of human rights violations impartially and competently, regardless of the identity of the perpetrator or their links to political parties.

4.2 It recommends that the creation of a national human rights commission should be accompanied by a determined government policy aimed at holding the perpetrators of human rights fully accountable, thus ensuring that those who violate human rights cannot do so with impunity.

4.3 It reiterates that the creation of such a commission should go hand in hand with a thorough review of existing legal and other institutions in order to make these more effective instruments of human rights protection.

Appendix 1: Section 54 of Code of Criminal Procedure (ACT V OF 1898)

"54.-(1) Any police-officer may, without an order from a Magistrate and without a warrant, arrest-

first, any person who has been concerned in any cognizable offence or against whom a reasonable complaint has been made or credible information has been received, or a reasonable suspicion exists of his having been so concerned;

secondly, any person having in his possession without lawful excuse, the burden of proving which excuse shall lie on such person, any implement of house-breaking;

thirdly, any person who has been proclaimed as an offender either under this Code or by order of the [Government];

fourthly, any person in whose possession anything is found which may reasonably be suspected to be stolen property [and] who may reasonably be suspected of having committed an offence with reference to such thing;

fifthly, any person who obstructs a police-officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody;

sixthly, any person reasonably suspected of being a deserter from [the armed forces of [Bangladesh;]]

seventhly, any person who has been concerned in, or against whom a reasonable complaint has been made or credible information has been received or a reasonable suspicion exists of his having been concerned in, any act committed at any place out of Bangladesh, which, if committed in Bangladesh, would have been punishable as an offence, and for which he is, under any law relating to extradition or under the Fugitive Offenders Act, 1881, or otherwise, liable to be apprehended or detained in custody in Bangladesh;

eighthly, any released convict committing a breach of any rule made under section 565, sub-section (3)

[ninthly, any person for whose arrest a requisition has been received from another police-officer, provided that the requisition specified the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition."]

Appendix 2: Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

(Adopted by General Assembly resolution 55/89 Annex, 4 December 2000)

1. The purposes of effective investigation and documentation of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter "torture or other ill-treatment") include the following:

(a) Clarification of the facts and establishment and acknowledgement of individual and State responsibility for victims and their families;

(b) Identification of measures needed to prevent recurrence;

(c) Facilitation of prosecution and/or, as appropriate, disciplinary sanctions for those indicated by the investigation as being responsible and demonstration of the need for full reparation and redress from the State, including fair and adequate financial compensation and provision of the means for medical care and rehabilitation.

2. States shall ensure that complaints and reports of torture or ill-treatment are promptly and effectively investigated. Even in the absence of an express complaint, an investigation shall be undertaken if there are other indications that torture or ill-treatment might have occurred. The investigators, who shall be independent of the suspected perpetrators and the agency they serve, shall be competent and impartial. They shall have access to, or be empowered to commission investigations by, impartial medical or other experts. The methods used to carry out such investigations shall meet the highest professional standards and the findings shall be made public.

3. (a) The investigative authority shall have the power and obligation to obtain all the information necessary to the inquiry. The persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige all those acting in an official capacity allegedly involved in torture or ill-treatment to appear and testify. The same shall apply to any witness. To this end, the investigative authority shall be entitled to issue summonses to witnesses, including any officials allegedly involved, and to demand the production of evidence.

(b) Alleged victims of torture or ill-treatment, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation that may arise pursuant to the investigation. Those potentially implicated in torture or ill-treatment shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as those conducting the investigation.

4. Alleged victims of torture or ill-treatment and their legal representatives shall be informed of, and have access to, any hearing, as well as to all information relevant to the investigation, and shall be entitled to present other evidence.

5. (a) In cases in which the established investigative procedures are inadequate because of insufficient expertise or suspected bias, or because of the apparent existence of a pattern of

abuse or for other substantial reasons, States shall ensure that investigations are undertaken through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any suspected perpetrators and the institutions or agencies they may serve. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.10/

(b) A written report, made within a reasonable time, shall include the scope of the inquiry, procedures and methods used to evaluate evidence as well as conclusions and recommendations based on findings of fact and on applicable law. Upon completion, the report shall be made public. It shall also describe in detail specific events that were found to have occurred and the evidence upon which such findings were based and list the names of witnesses who testified, with the exception of those whose identities have been withheld for their own protection. The State shall, within a reasonable period of time, reply to the report of the investigation and, as appropriate, indicate steps to be taken in response.

6. (a) Medical experts involved in the investigation of torture or ill-treatment shall behave at all times in conformity with the highest ethical standards and, in particular, shall obtain informed consent before any examination is undertaken. The examination must conform to established standards of medical practice. In particular, examinations shall be conducted in private under the control of the medical expert and outside the presence of security agents and other government officials.

(b) The medical expert shall promptly prepare an accurate written report, which shall include at least the following:

(i) Circumstances of the interview: name of the subject and name and affiliation of those present at the examination; exact time and date; location, nature and address of the institution (including, where appropriate, the room) where the examination is being conducted (e.g., detention centre, clinic or house); circumstances of the subject at the time of the examination (e.g., nature of any restraints on arrival or during the examination, presence of security forces during the examination, demeanour of those accompanying the prisoner or threatening statements to the examiner); and any other relevant factors;

(ii) History: detailed record of the subject's story as given during the interview, including alleged methods of torture or ill-treatment, times when torture or ill-treatment is alleged to have occurred and all complaints of physical and psychological symptoms;

(iii) Physical and psychological examination: record of all physical and psychological findings on clinical examination, including appropriate diagnostic tests and, where possible, colour photographs of all injuries;

(iv) Opinion: interpretation as to the probable relationship of the physical and psychological findings to possible torture or ill-treatment. A recommendation for any necessary medical and psychological treatment and/or further examination shall be given;

(v) Authorship: the report shall clearly identify those carrying out the examination and shall be signed.

(c) The report shall be confidential and communicated to the subject or his or her nominated representative. The views of the subject and his or her representative about the examination process shall be solicited and recorded in the report. It shall also be provided in writing, where appropriate, to the authority responsible for investigating the allegation of torture or ill-treatment. It is the responsibility of the State to ensure that it is delivered securely to these persons. The report shall not be made available to any other person, except with the consent of the subject or on the authorization of a court empowered to enforce such a transfer.

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[1] Section 3.1 of the Special Powers Act, 1974 (SPA)
[2] Section 3.2 of the SPA
[3] Section 3.3 of the SPA
[4] For example, see, *Bangladesh: Senior Awami League politician in danger of torture* (AI Index: ASA 13/002/2003 <http://web.amnesty.org/library/Index/ENGASA130022003?open&of=ENG-BGD>
[5] Sections 8.1 and 8.2 of the SPA
[6] Sections 9, 10, 11, 12, 13 of the SPA.
[7] Obaidul Huq Chowdhury, Special Powers Act, Case Law: *Abdul Latif Mirza Vs. Bangladesh 31 DLR (AD)1,* Al-Afsar Press, Dhaka, 1996, p.15
[8] See: 'SPA mostly misused', Daily Star, 8 September 2000. The three member sub-committee submitted its report to Parliament in September 2000, but opposed a proposed amendment to the SPA which would provide for financial compensations in those SPA orders declared unlawful by the High Court.
[9] Excerpts from the "Speech for the Nation" by Begum Khaleda Zia, 19 October 2001, Dhaka (http://www.bangladeshgov.org/pmo visited 19/03/03, 17:30gmt)
[10] AI Index: ASA 13/07/00
[11] Section 197 of The Code of Criminal Procedure (1898) [as modified up to 30 September 1993].
[12] See *Bangladesh: Government to stop disclosure of information on torture to the court* (AI Index: ASA 13/004/2002), Amnesty International 19 April 2002. <http://web.amnesty.org/library/Index/ENGASA130042002?open&of=ENG-BGD>
[13] See *Bangladesh: Torture and impunity* (AI Index: ASA 13/07/00), Amnesty International, November 2000, section 7.1
[14] Section 61 of the Code of Criminal Procedure (Act V of 1898) [as modified up to September 1993], Bangladesh Government Press, Dhaka, 1993.
[15] Section 167 of the Code of Criminal Procedure
[16] 'Why indemnity is not illegal – High Court ask government', the Daily Star, 13 April 2003.
[17] 'European team urges Bangladesh to respect human rights, democratic values', Agence France-Presse, 27 February 2003, 17:02:00
[18] For more details about the petition, see *Bangladesh: Torture and impunity* (AI Index ASA 13/07/00), Amnesty International, November 2000, section 7.3, p.25
[19] Constitution of the People's Republic of Bangladesh [as modified up to 30 April 1996], Articles 26-29.
[20] The Penal Code (Act XLV of 1860) [as modified up to 30 September 1991], Bangladesh Government Press, Dhaka, 1998.
[21] *Bangladesh: Proposed standards for a national human rights commission*, (AI Index: ASA 13/03/97), Amnesty International publication, June 1997.

[22] These recommendations were given in the Amnesty International report, *Bangladesh: Proposed standards for a national human rights commission* (AI Index: ASA 13/03/97) and subsequent letters to the authorities with further recommendations.
[23] See *National Human Rights Institutions: Amnesty International recommendations for effective protection and promotion of human rights* (AI Index: IOR 40/007/2001), Amnesty International publication, October 2001 <http://web.amnesty.org/library/index/ENGIOR400072001>
[24] See reference at endnote 22.