

BANGLADESH

Country Report: Anti-terrorism laws & policing

1. Country summary

- a. **Government:** Parliamentary Republic
- b. **Population:** 147 365 000 people
- c. **Size:** 144 000 sq km
- d. **Region:** South Asia

e. General

In 1947, partition divided British colonial India into India and Pakistan. Pakistan included West Pakistan and East Bengal (later East Pakistan). In 1971, East Pakistan became independent from West Pakistan and was renamed Bangladesh. Bangladesh's independence history has been marked by political turmoil and violence, with four coups and thirteen different leaders since 1971. It is amongst the most densely populated countries in the world and is the world's third largest Muslim-majority nation.

Ethnic conflict

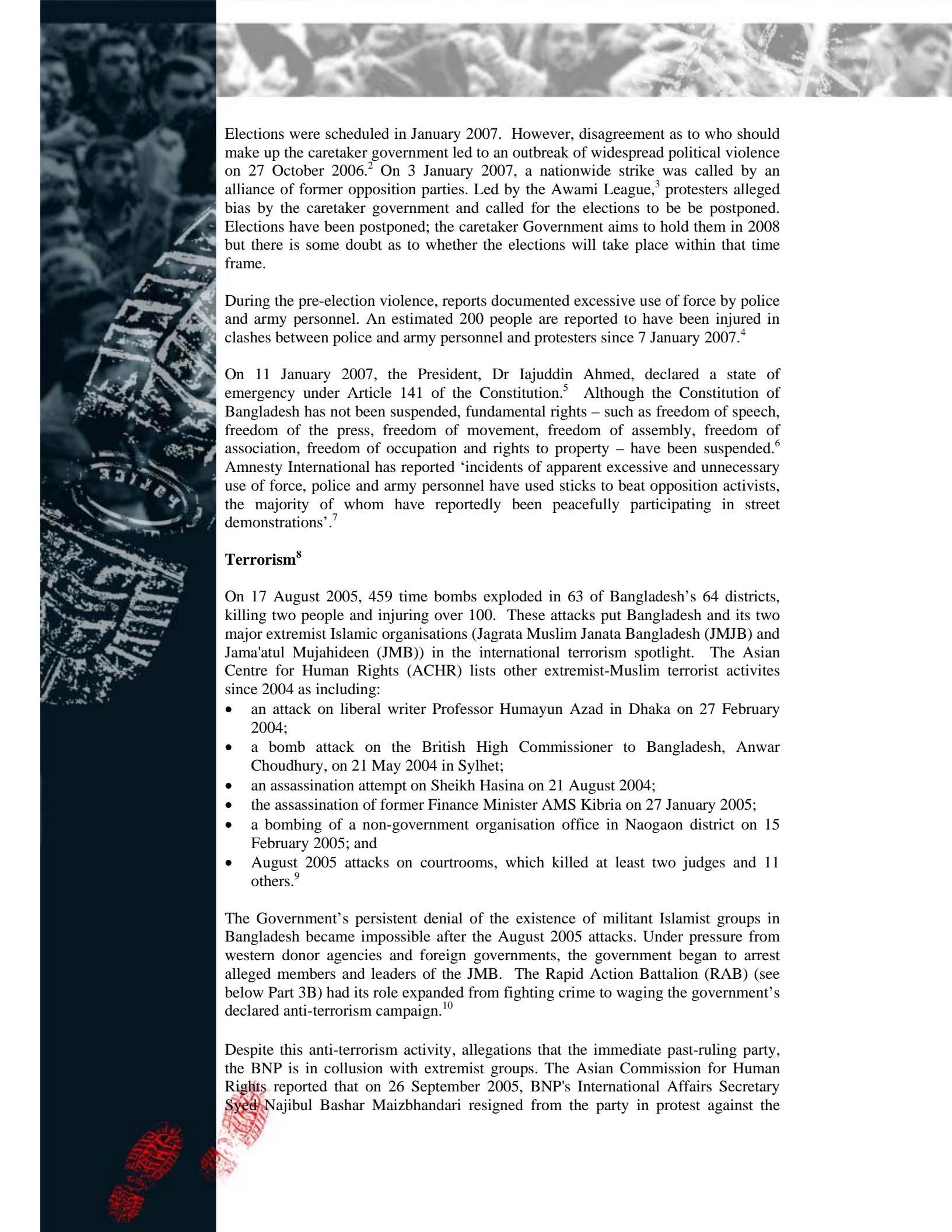
Bangladesh is largely populated by with Bengalis who make up 98% of the population.

The Chittagong Hill Tracts are a semi-autonomous region in south eastern Bangladesh. This region is populated by thirteen indigenous tribal communities. During the 1980s, the Bangladeshi Government attempted to resettle the area with Bengali migrants. This attempt was met with resistance from the tribals and the area became a conflict zone. The conflict was brought to an end with the signing of the Chittagong Hill Tracts Accord between the Bangladesh government and the Jana Samhati Samiti (a major guerilla group) on 2 December 1997, and granted the region is limited autonomy.¹ However, indigenous communities have continued to face discrimination and violence.

A further ethnic group in Bangladesh are the Ahmadiyas, a group who consider themselves Muslim, but who are not accepted by the mainstream Muslim faith. Ahmadiyas have been declared unlawful in Bangladesh and have faced persecution.

Current situation

Bangladesh's unique system of government succession at elections has led to recent violent conflict. Under the system, which was pioneered in 1991 and institutionalised in the Constitution in 1996, a caretaker government, made up of non-partisan members, takes power for three months before an election, to prepare for the election and transfer of power to a new government.



Elections were scheduled in January 2007. However, disagreement as to who should make up the caretaker government led to an outbreak of widespread political violence on 27 October 2006.² On 3 January 2007, a nationwide strike was called by an alliance of former opposition parties. Led by the Awami League,³ protesters alleged bias by the caretaker government and called for the elections to be postponed. Elections have been postponed; the caretaker Government aims to hold them in 2008 but there is some doubt as to whether the elections will take place within that time frame.

During the pre-election violence, reports documented excessive use of force by police and army personnel. An estimated 200 people are reported to have been injured in clashes between police and army personnel and protesters since 7 January 2007.⁴

On 11 January 2007, the President, Dr Iajuddin Ahmed, declared a state of emergency under Article 141 of the Constitution.⁵ Although the Constitution of Bangladesh has not been suspended, fundamental rights – such as freedom of speech, freedom of the press, freedom of movement, freedom of assembly, freedom of association, freedom of occupation and rights to property – have been suspended.⁶ Amnesty International has reported ‘incidents of apparent excessive and unnecessary use of force, police and army personnel have used sticks to beat opposition activists, the majority of whom have reportedly been peacefully participating in street demonstrations’.⁷

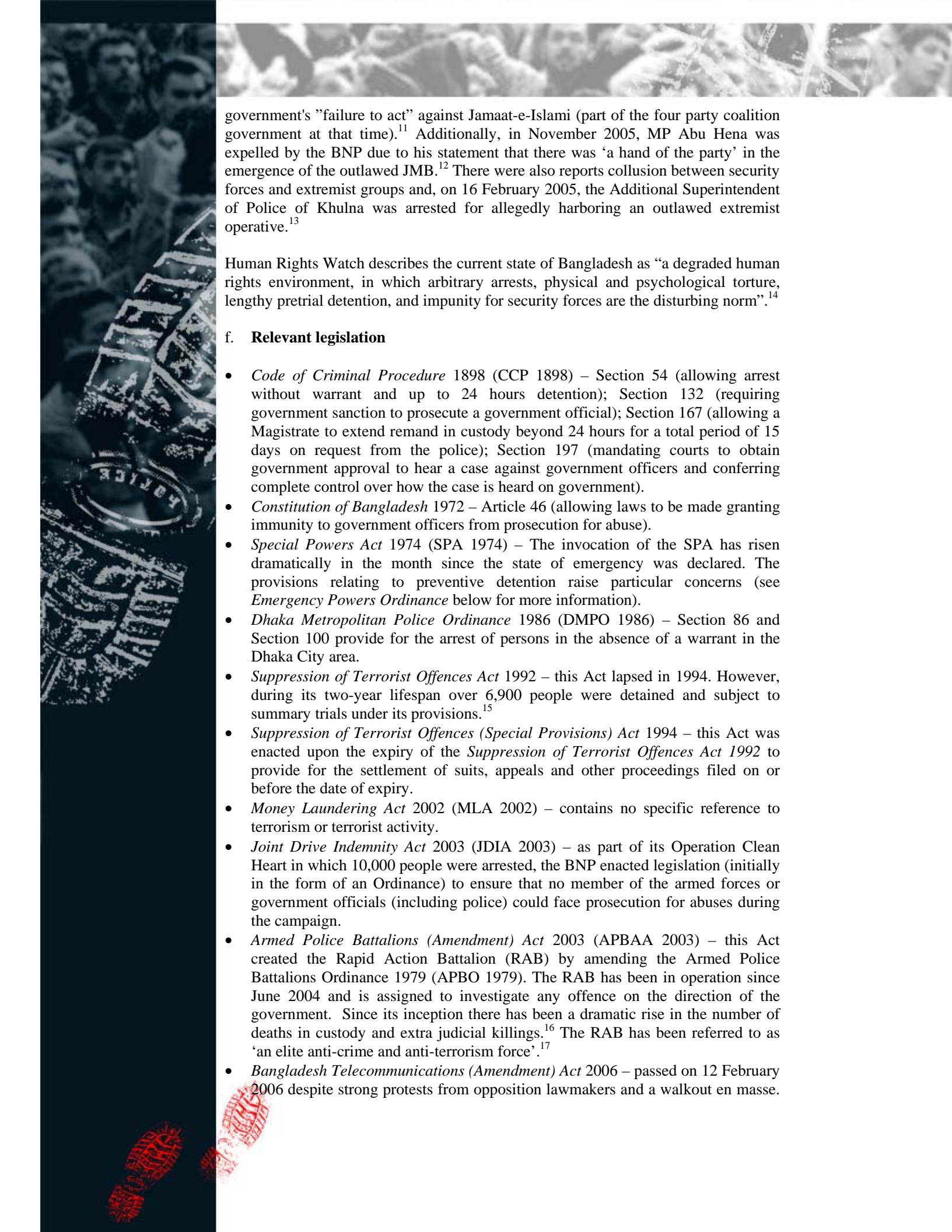
Terrorism⁸

On 17 August 2005, 459 time bombs exploded in 63 of Bangladesh’s 64 districts, killing two people and injuring over 100. These attacks put Bangladesh and its two major extremist Islamic organisations (Jagrata Muslim Janata Bangladesh (JMJB) and Jama’atul Mujahideen (JMB)) in the international terrorism spotlight. The Asian Centre for Human Rights (ACHR) lists other extremist-Muslim terrorist activities since 2004 as including:

- an attack on liberal writer Professor Humayun Azad in Dhaka on 27 February 2004;
- a bomb attack on the British High Commissioner to Bangladesh, Anwar Choudhury, on 21 May 2004 in Sylhet;
- an assassination attempt on Sheikh Hasina on 21 August 2004;
- the assassination of former Finance Minister AMS Kibria on 27 January 2005;
- a bombing of a non-government organisation office in Naogaon district on 15 February 2005; and
- August 2005 attacks on courtrooms, which killed at least two judges and 11 others.⁹

The Government’s persistent denial of the existence of militant Islamist groups in Bangladesh became impossible after the August 2005 attacks. Under pressure from western donor agencies and foreign governments, the government began to arrest alleged members and leaders of the JMB. The Rapid Action Battalion (RAB) (see below Part 3B) had its role expanded from fighting crime to waging the government’s declared anti-terrorism campaign.¹⁰

Despite this anti-terrorism activity, allegations that the immediate past-ruling party, the BNP is in collusion with extremist groups. The Asian Commission for Human Rights reported that on 26 September 2005, BNP’s International Affairs Secretary Syed Najibul Bashar Maizbhandari resigned from the party in protest against the




government's "failure to act" against Jamaat-e-Islami (part of the four party coalition government at that time).¹¹ Additionally, in November 2005, MP Abu Hena was expelled by the BNP due to his statement that there was 'a hand of the party' in the emergence of the outlawed JMB.¹² There were also reports collusion between security forces and extremist groups and, on 16 February 2005, the Additional Superintendent of Police of Khulna was arrested for allegedly harboring an outlawed extremist operative.¹³

Human Rights Watch describes the current state of Bangladesh as "a degraded human rights environment, in which arbitrary arrests, physical and psychological torture, lengthy pretrial detention, and impunity for security forces are the disturbing norm".¹⁴

f. **Relevant legislation**

- *Code of Criminal Procedure* 1898 (CCP 1898) – Section 54 (allowing arrest without warrant and up to 24 hours detention); Section 132 (requiring government sanction to prosecute a government official); Section 167 (allowing a Magistrate to extend remand in custody beyond 24 hours for a total period of 15 days on request from the police); Section 197 (mandating courts to obtain government approval to hear a case against government officers and conferring complete control over how the case is heard on government).
- *Constitution of Bangladesh* 1972 – Article 46 (allowing laws to be made granting immunity to government officers from prosecution for abuse).
- *Special Powers Act* 1974 (SPA 1974) – The invocation of the SPA has risen dramatically in the month since the state of emergency was declared. The provisions relating to preventive detention raise particular concerns (see *Emergency Powers Ordinance* below for more information).
- *Dhaka Metropolitan Police Ordinance* 1986 (DMPO 1986) – Section 86 and Section 100 provide for the arrest of persons in the absence of a warrant in the Dhaka City area.
- *Suppression of Terrorist Offences Act* 1992 – this Act lapsed in 1994. However, during its two-year lifespan over 6,900 people were detained and subject to summary trials under its provisions.¹⁵
- *Suppression of Terrorist Offences (Special Provisions) Act* 1994 – this Act was enacted upon the expiry of the *Suppression of Terrorist Offences Act 1992* to provide for the settlement of suits, appeals and other proceedings filed on or before the date of expiry.
- *Money Laundering Act* 2002 (MLA 2002) – contains no specific reference to terrorism or terrorist activity.
- *Joint Drive Indemnity Act* 2003 (JDIA 2003) – as part of its Operation Clean Heart in which 10,000 people were arrested, the BNP enacted legislation (initially in the form of an Ordinance) to ensure that no member of the armed forces or government officials (including police) could face prosecution for abuses during the campaign.
- *Armed Police Battalions (Amendment) Act* 2003 (APBAA 2003) – this Act created the Rapid Action Battalion (RAB) by amending the *Armed Police Battalions Ordinance* 1979 (APBO 1979). The RAB has been in operation since June 2004 and is assigned to investigate any offence on the direction of the government. Since its inception there has been a dramatic rise in the number of deaths in custody and extra judicial killings.¹⁶ The RAB has been referred to as 'an elite anti-crime and anti-terrorism force'.¹⁷
- *Bangladesh Telecommunications (Amendment) Act* 2006 – passed on 12 February 2006 despite strong protests from opposition lawmakers and a walkout en masse.



The Bill allows intelligence and law enforcement agencies to tap telephone conversations. It was justified as being necessary to curb militancy.¹⁸

- *Emergency Powers Ordinance 2007* – introduced on 25 January 2007, the rules promulgated under the Ordinance allow the government to ban any meeting, procession, siege, demonstration, speech, statement or any harmful news or information in the interest of government, state or public security and peace. The government can also restrict any publication or transmission of any anti-government news, editorial, post editorial, article, feature, cartoon, talk show or discussion in print or electronic media and any mass media, including the internet.¹⁹ Offences under this Ordinance are cognisable (this means that arrests can be made without a warrant). Any individual can be preventively detained under the *Special Powers Act 1974* if deemed that the individual might commit an offence under the emergency rules.²⁰

g. Law summary

a. History

The South Asia Human Rights Documentation Centre (SAHRDC) states that "Bangladesh's short history has been littered with preventive detention and anti-terrorism laws – the most well established and draconian of which is the Special Powers Act 1974".²¹

SAHRDC's report details the history of the SPA 1974 and its preventive detention provisions. Although the 1972 Constitution of Bangladesh did not allow for the preventive detention, Parliament passed a Second Amendment Bill in September 1973 that amended Article 33 of the Constitution, authorising Parliament to pass preventive detention laws. SAHRC's report notes that '[w]hile the inserted provision did provide for some safeguards – such as the production of the detainee before an Advisory Board within six months of his or her detention – the effect of the amendment was to open the way for wide-scale arbitrary detentions'.²² The SPA 1974 was passed five months after the Second Amendment and was immediately used against political opponents.


b. Issues of concern

Legislation

Since the expiry of the *Suppression of Terrorist Offences Act 1992* in 1994 there is no legislative instrument in Bangladesh that deals specifically with 'terrorism'.

The SPA 1974's provisions on preventive detention can be invoked and justified by any behaviour identified as a "terrorist threat". In the absence of any legislative definition of terrorism, the range of activities that may be branded as such and dealt with under the SPA 1974 is dangerously wide. This is particularly concerning given the opportunistic manner in which the threat of terrorism has been both exaggerated and denied by government in Bangladesh. For example, as noted above, it was not until the August 2005 bombings that the Government conceded the existence of extremist organisations. Prior to this however, the Rapid Action Battalion (see below) had been formed as an "anti-crime and anti-terrorism force".

In regard to the current situation, the Asian Human Rights Commission reports: 'Arbitrary arrest and torture in military custody has become common practice in Bangladesh since a state of emergency was imposed throughout the country. The



current situation has seen an increase in the use of the *Special Powers Act 1974* resulting in an exceptional abuse of power.²³

Other legislative provisions that have been found to facilitate abuse that become particularly concerning when employed in the name of anti-terrorism include Section 54 of the *Code of Criminal Procedure 1898*, which allows for arrest without warrant and up to 24 hours of detention; Article 46 of the Constitution which allows legislation to be introduced to immunise police against civil and criminal action; and Sections 132 and 197 of the *Code of Criminal Procedure 1898* which combine to create allow police and government impunity.

Rapid Action Battalion

Bangladesh's Rapid Action Battalion (RAB), which was formed in March 2004, is labeled as 'Bangladesh's elite anti-crime and anti-terrorism force'.²⁴ Human Rights Watch reports that since its inception, the RAB has been implicated in the unlawful killings of at least 350 people in custody and the alleged torture of hundreds more. Many of the deaths for which RAB is considered responsible resulted from summary executions. Others came after alleged extreme physical abuse.²⁵ The RAB is a composite force comprising elite members from the military (army, air force and navy), the police, and members of Bangladesh's various law enforcement groups and reflects the concerning tendency of anti-terrorism responses to include joint police-military operations.²⁶ According to the military, 60% of RAB members come from the police and the rest from the military and various civilian organisations. However, Human Rights Watch has received reports that 70% of the force is military and 30% police.²⁷ The Asian Human Rights Commission has observed the problem of accountability – or lack thereof – that results from the structure of the RAB:

Police personnel are obligated to follow *the Police Regulation of Bengal and Police Act 1861*. Yet the 2003 amended act to introduce the RAB makes no mention about whose guidelines it is meant to follow, and at the same time gives authority for the making of orders to the Ministry of Home Affairs rather than the chief of police. The multiplicity of persons apparently or actually in charge of the RAB, and duplication of command hierarchies, frees the RAB from any particular responsibility to anyone.²⁸

2. Provisions

a. Definitions

Section 2 of the SPA 1974 defines a number of “prejudicial acts” that can be subject to preventive detention:


Special Powers Act 1974


(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.

No current legislation defines a terrorist offence. The last law that defined a terrorist offence was the Suppression of Terrorist Offences Act 1992, which set down an extremely wide definition. In light of the lack of a current definition, it is useful to consider the previous definition.

Suppression of Terrorist Offences Act 1992

2(2) "Terrorist offence" means-

a) by holding out any kind of threat or applying any kind of illegal force-

i) to collect or acquire from any person or institution money or property as contributions, assistance or by whatever other name it may be called-

ii) to obstruct or impede the traffic by land, on railroads, by water or on air routes, or to alter the course of any vehicle against the wishes of the conductor of the vehicle-

b) to intentionally damage any vehicle;

c) to intentionally destroy or damage any property, whether movable or immovable, belonging to the Government or any institution under the control of the Government, or to any institute, authority or institution founded, established or created under the law, or to any company, firm or private non-governmental organization, any embassy or foreign institute or institution, or any person;


d) to steal or seize by force from any person any money, jewellery, valuable article or any other article or vehicle;

e) to outrage the modesty of, or to molest, any minor or adult woman, including any female child, adolescent and young woman on the streets or ghats, in vehicles, in educational institutions or in the vicinity thereof or in public places;

f) to create, alone or in a group, with or without premeditation, fear, terror, confusion or anarchy by ostentatiously displaying force or power at any place, in any building, shop, market and bazar, on any street or ghat, in any vehicle or in any institution;

g) to obstruct or impede by use of force the buying, accepting or entering of bills of sale by any institution or to illegally compel anybody to accept bills of sale.

b. Arrest



Section 54 of the Code of Criminal Procedure empowers the police to arrest a person without an arrest warrant and Section 61 allows that person to be kept in detention for up to 24 hours.²⁹ Amnesty International has found there to be a link between the use of this provision to conduct an arrest and instances of torture (see below Part 4D of this report).³⁰ Section 54 specifically lists situations when police may arrest without warrant:

Code of Criminal Procedure

(1) Any Police-officer may, without an order from a Magistrate and without a warrant, arrest:

Firstly, 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.

According to reports made to Amnesty International, detainees arrested by the police under Section 54 “are usually offered the option to buy their release through a bribe”.³¹



In combination, Sections 86 and 100 of the *Dhaka Metropolitan Police Ordinance* 1986 (DMPO 1986) (which only applies to Dhaka city) also allow for the arrest of persons on the suspicion of criminal activity without an order from a magistrate or a warrant. Section 86 defines the offences:

Dhaka Metropolitan Police Ordinance 1986

If any person is found in the following situations during the period between sunset to sunrise:

- a) equipped with dangerous machinery without satisfactory justification; or
- b) covered face or in disguise without satisfactory justification; or
- c) present in any residence or any other building or any boat or water vessel or any other transport without satisfactory justification; or
- d) sleeping or wandering on any street or in any place without satisfactory justification; or
- e) possessing the tools of entering any house forcefully without satisfactory justification;

then the person will be liable for one year imprisonment or a fine of 2,000 taka or both.

Section 100 states: 'In the presence of any police officer, or in his attention, if any person commits any offence under this ordinance or any other law in force, that police officer can arrest him without warrant'.


The *Emergency Powers Ordinance* 2007, introduced on 25 January 2007, allows the Government to ban activities seen as adverse to government and state security and makes it an offence to violate these bans. It also deems the offences in the Ordinance to be cognisable (no warrant is needed to conduct an arrest).

National security legislation such as the SPA 1974 is also reported to have been frequently used to arrest persons arbitrarily and to detain citizens without filing formal charges or specific complaints (see below Part 4C for discussion).³²

c. Detention/custody

The SPA 1974 provides for the preventive detention of individuals who might commit "prejudicial acts" against the State. Although it is only the Government or District Magistrates who are authorised to make the orders, it falls to police officers to carry out those orders by bringing people into custody.

Under Section 2(f) of the SPA 1974, "prejudicial acts" include undermining the sovereignty or security of Bangladesh, creating or exciting feelings of enmity and hatred between different communities or interfering with the maintenance of law and order (see above Part 4A for the full definition of prejudicial acts). The Act provides no guidance on the burden of proof necessary for the Government to conclude that an individual is likely to commit a prejudicial act. As a result, detentions under the SPA 1974 can occur on allegations with very little evidence.³³



Section 3 of the SPA 1974 lays down the substantive power and conditions of an order of preventative detention. Section 3(1) of the Act empowers the Government to order detention of a person. It states:

The Government may, if satisfied with respect to any person that with a view to preventing him from doing any prejudicial act it is necessary so to do, make an order-

- (a) directing that such person be detained;
- (b) directing him to remove himself from Bangladesh in such manner, before such time and by such route as may be specified in the order;

Provided that no order of removal shall be made in respect of any citizen of Bangladesh.


Section 3(2) of the SPA 1974 provides District Magistrates with the power to detain with a view to preventing a prejudicial act being committed. Section 3(3) requires that an order of detention passed by a District Magistrate or an Additional District Magistrate shall not remain in force for more than thirty days after the order has been made unless it has, in the meantime, been approved by the Government.³⁴ After the initial one-month period of detention, Section 12 provides that the Advisory Board can indefinitely extend the detention for six-month periods at a time. Additionally, detainees are denied the right to legal representation before the Advisory Board.³⁵

Section 8 of the SPA 1974 requires that the Magistrate must, by the fifteenth day, inform the detainee of the grounds of his or her detention, and inform him or her that they have a right to submit a representation in writing against the order of detention.

Section 9 of the SPA 1974 requires the Government to constitute an Advisory Board consisting of three persons of whom two persons are or have qualified as judges of the Supreme Court and another who is a senior officer in the public service. After four months from the date of detention, Section 10 requires that the Government present the grounds of detention and any representation by the detainee to the Advisory Board for examination.³⁶

These apparent limitations on periods of detention and requirements for review do little in reality. The Commonwealth Parliamentary Association reports that the wide ranging powers of detention without express reasons under the SPA 1974 have been widely used against political opponents and that, in reality, detainees are held for much longer periods than those specified in the Act.³⁷ A 2002 study by the Bangladesh Law Commission found that in 99% of cases challenging preventive detention under the SPA 1974 (between 1998–2001), the detention orders were found to be illegal and without lawful authority. Its report stated, "this fact indicates how carelessly and without regard to the provisions of the law of detention as they stand today in Bangladesh, the detaining authorities applied this law".³⁸

Section 54 of the *Code of Criminal Procedure* 1898 (CCP 1898) enables the police to conduct arrests in the absence of a warrant and to detain persons for up to 24 hours (see discussion below Part 4D). Section 167 of the CCP 1898 allows a Magistrate to extend remand in custody beyond 24 hours for a total period of 15 days on request by a police officer after he or she is satisfied that "there are grounds for believing that the accusation or information is well-founded" (Section 167(1)), and that the Magistrate has recorded the reasons for ordering remand into police custody (Section 167(3)). It requires the Magistrate to order the release of the detainee and to end the investigation if it has not been completed "within sixty days from the date of the receipt of information relating to the commission of the offence or order of the Magistrate for such investigation ... unless the officer making the investigation satisfied the Magistrate that for special reasons and in the interest of justice" further



investigation is necessary” in which case the Magistrate may extend the period up to thirty days” (Section 167(5)).³⁹ See the discussion below in Part 4D regarding the link between Sections 54 and 167 of the CCP 1898 and the infliction of torture.

d. Use of force

Amnesty International reports that ”a number of laws in Bangladesh create the conditions which facilitate torture”.⁴⁰ The most commonly used of these is Section 54 of the *Code of Criminal Procedure*. As discussed above, Section 54 enables the police to conduct arrests in the absence of a warrant and to detain persons for up to 24 hours. Amnesty notes that “[i]n 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”.⁴¹

Amnesty has also identified the way in which Section 54 is reinforced by Section 167 (discussed above in Part 4C) to exacerbate the likelihood of torture. It reports that the power of arrest without warrant under Section 54 is misused by the police ”so as to inflict torture on the detainees in order to extract money from them or their families” and that “[i]f such money is not available within the 24-hour period, police seek from the Magistrate the remand of the detainees into police custody [under Section 167] under the pretext of further investigation. Such remand invariably results in further torture”.⁴²


On 7 April 2003, the Bangladesh High Court handed down a judgment on a public interest petition filed before the court in November 1998 by three Bangladeshi human rights organisations and five concerned individuals. The petition was filed following a death in police custody in July 1998. The petition sought mandatory guidelines to prevent torture in custody after arrest under Section 54 of the CCP 1898. Amnesty International released a report on the judgment, noting that it:

- restricts the arbitrary use of administrative detention law, including the *Special Powers Act 1974*;
- 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;
- empowers the courts to take action against an investigating officer on any complaint of torture confirmed by medical examination;
- directs the Government to amend relevant laws, including Section 54 within six months and to provide safeguards against their abuse; and
- recommends raising prison terms for wrongful confinement and malicious prosecution.⁴³

These recommendations have not been implemented and there are continuing reports of torture. Section 54 of the CCP 1898 continues to be used.

e. Immunity

Human Rights Watch reports that “[i]mpunity for torture and extrajudicial executions by RAB is near absolute ... According to some media reports, RAB members



involved in unlawful deaths have been held accountable, but the government and RAB provide few details and no members are known to have suffered a punishment worse than release from the force.’⁴⁴

Section 46 of the Constitution empowers the government to extend immunity from prosecution to any state officer on any grounds:

Notwithstanding anything in the foregoing provisions of this part, Parliament may by the law make provision for indemnifying any person in the service of the Republic or any other person in respect of any act done by him in connection with the national liberation struggle or the maintenance or restoration or order in any area in Bangladesh or validate any sentence passed, punishment inflicted, forfeiture ordered, or other act done in any such area.

The Asian Human Rights Commission notes that ‘[a]lthough this provision was originally intended with reference to the 1971 war for independence from Pakistan, it is now being used to protect police and joint operations units from prosecution for human rights abuses.’⁴⁵

It was an expansive interpretation of this Constitutional provision which led to the *Joint Drive Indemnity Ordinance 2003* (later enacted as the *Joint Drive Indemnity Act 2003* (JDIA Act 2003)). This Ordinance was introduced at the beginning of the BNP’s term as part of Operation Clean Heart. Operation Clean Heart was designed as a crackdown on crime; during the operation approximately 10 000 people were arrested and at least 40 died at the hands of security forces. The JDIA 2003 granted immunity from prosecution to armed forces and government officials (including police) for their involvement in “any casualty, damage to life and property, violation of rights, physical or mental damage” between 16 October 2002 and 9 January 2003.⁴⁶ The Act overrode all existing laws and judgments relating to armed forces and police and provided that officers deployed in the drive were indemnified against civil and criminal action in regard to all activities including arrest, search, custody and interrogation performed during the operation.


The Law Minister at the time, Barrister Moudud Ahmed, was reported to have said that “members of the joint forces have been given indemnity for their noteworthy role in bolstering internal security, public safety, curbing terrorism and recovering illegal arms across the country during the drive.”⁴⁷

The SPA 1974 also provides immunity from prosecution for its use by the Government.⁴⁸ Section 34 bars the 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.

Section 34B ensures the supremacy of the SPA: ‘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.’

Other significant obstacles to holding police – particularly those in the RAB – accountable for abuse are that, first, alleged abuses are reviewed by a special RAB court, similar to a court martial, second, there is a fear-based reluctance among victims and their families to file complaints, third, police refusal to accept cases



against RAB members is common and four, there is a legal requirement that the Government must sanction courts' consideration of any offence by a public servant on official duty, including members of the police and other security forces.⁴⁹

The last of these listed obstacles to holding police accountable is entrenched in Section 132 and Section 197 of the Code of Criminal Procedure 1898. Section 132 provides that no criminal complaint can be lodged against any official without prior sanction from the Government. This essentially means that:

'[C]omplainants must first lodge a case with a magistrate, argue the case and have it investigated simply in order to get it opened. Furthermore, an accused person who is found to have been acting "in good faith" or on orders from a superior shall never be charged and his actions shall never be considered a crime'.⁵⁰

Section 197 of the Code of Criminal Procedure 1898 mandates that a court must obtain Government approval to hear a case against one of its officers, and, even if it is approved, the Government then has complete control over how the case is heard:

(1) When any person who is a Judge within the meaning of section 19 of the [Penal Code], or when any Magistrate, or when any public servant who is not removable from his office save by or with the sanction of the [Government], is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the [previous sanction of the Government]-

(2) [The Government] may determine the person by whom, the manner in which, the offence or offences for which, the prosecution of such Judge, [Magistrate] or public servant is to be conducted, and may specify the Court before which the trial is to be held.


f. General

Overlap of the military and civilian policing

As noted above, the formation of the RAB illustrates a common trend in anti-terrorism approaches to blur police/military distinctions. The *Armed Police Battalions (Amendment) Act 2003* placed the RAB under the command of the Inspector General of Police and, by extension, the Minister of Home Affairs. The Act requires the RAB to be commanded by an officer not below the rank of Deputy Inspector General of Police or a person of equivalent rank from the army, navy, air force, or other disciplined force. Human Rights Watch notes that the main tasks of the RAB, according to the law, are to:

- Provide internal security;
- Conduct intelligence into criminal activity;
- Recover illegal arms;
- Arrest criminals and members of armed gangs;
- Assist other law enforcement agencies; and
- Investigate any offense as ordered by the Government.

Human Rights Watch also quotes a human rights lawyer who refers to the RAB's existence as martial law in disguise.⁵¹





Terrorism related offences

The SPA 1974 provides examples of offences that echo, but pre-date, current trends in anti-terrorism legislation, such as "associating with terrorist organisations" For example:

- Section 19 of the SPA 1974 empowers the Government to suspend, by order, the activities of any association which acts in a manner prejudicial to public order for a period not exceeding six months. Section 19(6) then prohibits all persons from managing or assisting, etc. such associations during the period its activities are suspended.⁵²
- Section 20 of the SPA 1974 prohibits formation of, and association with, any communal association or any association which uses religion for political purpose, Section 20(2) empowers the Government to dissolve such associations and Section 20(3) makes membership or taking part in such a dissolved association a punishable offence.

The use of powers under the Act against political opponents and dissidents illustrate the danger of extending criminal activity relating to association and associations.

Examples

a. Arrest

Section 54 of the *Penal Code*, which empowers police to arrest without a warrant, was heavily used by police during the period of conflict in the Chittagong Hills. The Asian Centre for Human Rights reports that "[a]rbitrary arrests without producing the arrested persons before the court within 24 hours as required under the Constitution of Bangladesh and torture in custody were common practice".⁵³


The 2006 US State Department Country Report recorded that police arrested a total of 3,912 people from January through August 2006 under Section 54 of the *Criminal Procedure Code* and in the Dhaka metropolitan area another 25,374 people were arrested under Sections 86 and 100 of the DMP Ordinance.⁵⁴

Since the current caretaker government assumed power with army backing on 12 January 2007, the army, police and RAB have conducted what they call an "anti-crime and anti-corruption campaign". Human Rights Watch reported that on 13 January 2007, the police said that security forces had arrested 2,552 people on various charges. On 17 January 2007, the Government asked the army to stay on the streets for as long as it took to restore law and order. That day, the Home Ministry said that police and RAB had arrested more than 1,700 people. Three days later, the police said they had arrested 2,265 people during the previous 24 hours.⁵⁵

b. Use of force

The World Organisation Against Torture reports that, in the first two weeks of the state of emergency declared on 11 January 2007, a total number of at least 19 persons, including a minor, were killed by members of the army, the police and the RAB.⁵⁶

In December 2006, Human Rights Watch documented killings by RAB in a detailed report, *Judge, Jury, and Executioner: Torture and Extrajudicial Executions by Bangladesh's Elite Security Force*. The report found that the "RAB has been implicated in more than 350 killings in custody since 2004".⁵⁷



A May 2006 article in the *Independent* reported that the RAB had prepared dossiers of nearly 927 “high-profile terrorists still active in the country”.⁵⁸ Information collected for these profiles was reported to include:

- the track records of criminals;
- bank account details;
- sources of income;
- suspected foreign trips;
- police records;
- photographs;
- phone numbers;
- physical identification marks;
- favorite food items;
- family condition;
- godfathers; and
- video and audio records.

In response to the question of how the profile was prepared a high-ranking RAB official reportedly stated that, ‘we are preparing the profile of the terrorists following the model of FBI.’⁵⁹

¹ The Treaty can be found at South Asia Terrorism Portal, *Chittagong Hill Tracts Treaty, 1997*, <http://www.satp.org/satporgtp/countries/bangladesh/document/actandordinances/CHT1990.htm>.

² South Asia Terrorism Portal, *Bangladesh Assessment 2006*: <http://www.satp.org/satporgtp/countries/bangladesh/index.htm>.

³ The Awami League is the mainstream secular political party in Bangladesh. The party is now headed by Sheikh Hasina, the daughter of the deceased Sheikh Mujibur Rahman.

⁴ Amnesty International (2007) *Bangladesh: Human Rights Under Threat as Election Tensions Intensify*, AI Index: ASA 13/001/2007, 9 January:

<http://www.amnestyusa.org/countries/bangladesh/document.do?id=ENGASA130012007>.

⁵ Asian Forum for Human Rights and Development (2007) *Human Rights Should be Respected in Every Situation During Bangladesh Emergency*, 22 January: http://www.forum-asia.org/index.php?option=com_content&task=view&id=213&Itemid=32.

⁶ Ibid.

⁷ Amnesty International (2007) *Bangladesh: Human Rights Under Threat as Election Tensions Intensify*, AI Index: ASA 13/001/2007, 9 January:

<http://www.amnestyusa.org/countries/bangladesh/document.do?id=ENGASA130012007>.

⁸ In the absence of internationally accepted definitions of the terms “terrorism”, “terrorist” and “terrorist act”, in this report these terms refer to either the definition as enshrined in the country’s legislation, or the common use of the term. The use and meaning of these terms is addressed in CHRI’s report “Stamping Out Rights: The impact of anti-terrorism laws on policing” (2007).

⁹ Asian Centre for Human Rights (2006) *SAARC Human Rights Report 2006: Bangladesh* http://www.achrweb.org/reports/saarcar2006/bangladesh.htm#_Toc153260790.

¹⁰ Human Rights Watch (2006) *Judge, Jury, and Executioner: Torture and Extrajudicial Executions by Bangladesh’s Elite Security Force*, December: http://www.hrw.org/reports/2006/bangladesh1206/2.htm#_Toc153101156.

¹¹ Asian Centre for Human Rights (2006) *SAARC Human Rights Report 2006: Bangladesh* : http://www.achrweb.org/reports/saarcar2006/bangladesh.htm#_Toc153260790.

¹² Ibid. See also Rahman, W (2005) “Bangladesh Ruling Party Expels MP”, *BBC News*, 25 November: http://news.bbc.co.uk/2/hi/south_asia/4470254.stm.

¹³ Asian Centre for Human Rights (2006) *SAARC Human Rights Report 2006: Bangladesh* : http://www.achrweb.org/reports/saarcar2006/bangladesh.htm#_Toc153260790.

¹⁴ Human Rights Watch (2006) *Judge, Jury, and Executioner: Torture and Extrajudicial Executions by Bangladesh’s Elite Security Force*, December: http://www.hrw.org/reports/2006/bangladesh1206/2.htm#_Toc153101156.

¹⁵ South Asia Human Rights Documentation Centre (1999) *Dealing with Dissent: The ‘Black Laws’ of Bangladesh*, HRF/8/99, 11 October: <http://www.hri.ca/partners/sahrdc/hrfeatures/hrf8.htm>.

¹⁶ Farhad Mazhar and Abu Saleh Mohammad Elan (2005) ‘Who’s Security?’ *The Daily Star: Law and Our Rights*, 10 December: <http://www.thedailystar.net/law/2005/12/02/index.htm>.

¹⁷ International Secretariat of the World Organisation Against Torture (2007) *Bangladesh: State of emergency causing the death of at least 19 persons, including a minor, by security forces*, 26 January: <http://www.crin.org/resources/infodetail.asp?id=12374>.

¹⁸ (2006) ‘JS Okays Tele-Tapping as AL Walks Out’ *The Daily Star*, Bangladesh, 13 February: <http://www.thedailystar.net/2006/02/13/d6021301085.htm>.

¹⁹ (2007) ‘Rules Promulgated to Curb Political Activity’ *The Daily Star*, Bangladesh, 27 January: <http://www.asiamedia.ucla.edu/article-southasia.asp?parentid=62345>.

²⁰ Ibid.

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- ²¹ South Asia Human Rights Documentation Centre (1999) *Dealing with Dissent: The 'Black Laws' of Bangladesh*, HRF/8/99, 11 October: <http://www.hri.ca/partners/sahrdc/hrfeatures/hrf8.htm>.
- ²² Ibid.
- ²³ Asian Human Rights Commission (2007) *Bangladesh: Arbitrary Arrest; Torture; Detention; Concealing Medical Evidence; Abuses under the State of Emergency* (Urgent Appeal), 2 February: <http://www.ahrchk.net/ua/mainfile.php/2007/2201/>.
- ²⁴ Human Rights Watch (2006) *Judge, Jury, and Executioner: Torture and Extrajudicial Executions by Bangladesh's Elite Security Force*, December: http://www.hrw.org/reports/2006/bangladesh1206/2.htm#_Toc153101156.
- ²⁵ Ibid.
- ²⁶ Ibid.
- ²⁷ Ibid.
- ²⁸ Ibid.
- ²⁹ Amnesty International (2003) *Death in Custody, Torture, Arbitrary Arrest and Other Human Rights Violations Routinely Ignored by Government*, 8 June: <http://www.thedailystar.net/law/200306/02/index.htm>.
- ³⁰ Ibid.
- ³¹ Amnesty International (2003) *Urgent Need for Legal and Other Reforms to Protect Human Rights*, ASA 13/012/2003, 16 May: <http://web.amnesty.org/library/Index/ENGASA130122003>.
- ³² United States State Department (2005) *Country Report – Bangladesh* <http://www.state.gov/g/drl/rls/hrrpt/2005/61705.htm>.
- ³³ South Asia Human Rights Documentation Centre (1999) *Dealing with Dissent: The 'Black Laws' of Bangladesh*, HRF/8/99, 11 October: <http://www.hri.ca/partners/sahrdc/hrfeatures/hrf8.htm>.
- ³⁴ Law Commission of Bangladesh (2002) *A Complete Report by the Law Commission on the Provisions relating to Preventative Detention and Offences under the Special Powers Act 1974*, Dhaka, 15 May.
- ³⁵ South Asia Human Rights Documentation Centre (1999) *Dealing with Dissent: The 'Black Laws' of Bangladesh*, HRF/8/99, 11 October: <http://www.hri.ca/partners/sahrdc/hrfeatures/hrf8.htm>.
- ³⁶ United States State Department (2005) *Country Report – Bangladesh* <http://www.state.gov/g/drl/rls/hrrpt/2005/61705.htm>.
- ³⁷ Commonwealth Parliamentary Association (2003) *Anti-Terrorism Legislation in the Commonwealth* (A Briefing Paper for the Commonwealth Human Rights Initiative written by Bascombe, D in May 2003), 49th Commonwealth Parliamentary Association Conference, 4-12 October 2003, p. 8: <http://www.cpahq.org/uploadstore/docs/23.pdf>.
- ³⁸ Law Commission of Bangladesh (2002) *A Complete Report by the Law Commission on the Provisions relating to Preventative Detention and Offences under the Special Powers Act 1974*, Dhaka, 15 May, p. 26.
- ³⁹ Amnesty International (2000) *Bangladesh: Torture and Impunity*, AI Index: ASA 13/007/2000, 29 November: <http://web.amnesty.org/library/Index/ENGASA130072000?open&of=ENG-376>.
- ⁴⁰ Amnesty International (2003) *Death in Custody, Torture, Arbitrary Arrest and Other Human Rights Violations Routinely Ignored by Government*, 8 June: <http://www.thedailystar.net/law/200306/02/index.htm>.
- ⁴¹ Ibid.
- ⁴² Amnesty International (2000) *Bangladesh: Torture and Impunity*, AI Index: ASA 13/007/2000, 29 November: <http://web.amnesty.org/library/Index/ENGASA130072000?open&of=ENG-376>.
- ⁴³ Amnesty International (2003) *Urgent Need for Legal and Other Reforms to Protect Human Rights*, ASA 13/012/2003, 16 May: <http://web.amnesty.org/library/Index/ENGASA130122003>.
- ⁴⁴ Human Rights Watch (2006) *Judge, Jury, and Executioner: Torture and Extrajudicial Executions by Bangladesh's Elite Security Force*, December: http://www.hrw.org/reports/2006/bangladesh1206/2.htm#_Toc153101156.
- ⁴⁵ Md. Ashrafuzzaman (2006) 'Laws Without Order and Courts of No Relief in Bangladesh' in Asian Human Rights Commission, *Special Report: Lawless Law-Enforcement and the Parody of Judiciary in Bangladesh*, 4 August: <http://www.article2.org/mainfile.php/0504/243/>.
- ⁴⁶ Human Rights Watch (2006) *Judge, Jury, and Executioner: Torture and Extrajudicial Executions by Bangladesh's Elite Security Force*, December: http://www.hrw.org/reports/2006/bangladesh1206/2.htm#_Toc153101156.
- ⁴⁷ 'Joint Drive Indemnity Ordinance Promulgated' (2003), Bangladesh Sangbad Sangstha, 9 January: <http://www.bssnews.net/index.php?genID=BSS-10-2003-01-09&id=7>.
- ⁴⁸ Amnesty International (2003) *Urgent Need for Legal and Other Reforms to Protect Human Rights*, ASA 13/012/2003, 16 May: <http://web.amnesty.org/library/Index/ENGASA130122003>.
- ⁴⁹ Human Rights Watch (2006) *Judge, Jury, and Executioner: Torture and Extrajudicial Executions by Bangladesh's Elite Security Force*, December: http://www.hrw.org/reports/2006/bangladesh1206/2.htm#_Toc153101156.
- ⁵⁰ Md. Ashrafuzzaman (2006) "Laws Without Order and Courts of No Relief in Bangladesh" in Asian Human Rights Commission, *Special Report: Lawless Law-Enforcement and the Parody of Judiciary in Bangladesh*, 4 August: <http://www.article2.org/mainfile.php/0504/243/>.
- ⁵¹ Ibid.
- ⁵² Law Commission of Bangladesh (2002) *A Complete Report by the Law Commission on the Provisions relating to Preventative Detention and Offences under the Special Powers Act 1974*, Dhaka, 15 May, p. 30.
- ⁵³ Asian Centre for Human Rights (2006) *SAARC Human Rights Report 2006: Bangladesh* http://www.achrweb.org/reports/saarc2006/bangladesh.htm#_Toc153260790.
- ⁵⁴ United States State Department (2005) *Country Report – Bangladesh* <http://www.state.gov/g/drl/rls/hrrpt/2005/61705.htm>.
- ⁵⁵ Human Rights Watch (2007) *Bangladesh: Stop Killings by Security Forces - Arbitrary Arrests Mock Rule of Law*, 25 January: <http://www.hrw.org/english/docs/2007/01/25/bangla15182.htm>.
- ⁵⁶ International Secretariat of the World Organisation Against Torture (2007) *Bangladesh: State of emergency causing the death of at least 19 persons, including a minor, by security forces*, 26 January: <http://www.crin.org/resources/infodetail.asp?id=12374>.
- ⁵⁷ Human Rights Watch (2007) *Bangladesh: Stop Killings by Security Forces - Arbitrary Arrests Mock Rule of Law*, 25 January: <http://www.hrw.org/english/docs/2007/01/25/bangla15182.htm>.
- ⁵⁸ Asraful Huq (27 May 2006) "Dossiers of 1000 high profile terrorists prepared: RAB follows FBI model; work on 4000 others in progress" *The Independent* <http://independent-bangladesh.com/news/may/27/27052006ts.htm>.
- ⁵⁹ Ibid.