

HUMAN RIGHTS IN BANGLADESH 2008: DASHED HOPES, RECEDING HORIZONS, NEW FRONTIERS

SUMMARY

Background and Overview

The political landscape in 2008 shifted dramatically at the very end of the year. After nearly two years of a State of Emergency (SOE) under a military-backed caretaker government (CTG), during most of which several fundamental rights were suspended and in which political activity banned, the Emergency was lifted on 17 December. Much anticipated and twice-postponed parliamentary elections finally took place on 29 December in a peaceful atmosphere, with a large turnout of voters. These two significant events of the year were certain to have direct and indirect effects on the human rights environment.

The lifting of the SOE from midnight on Victory Day, 16 December, less than two weeks before the elections, was, among other things, deeply symbolic. Whether the much awaited transfer of power to elective political institutions would lead to qualitative as well as symbolic changes remained a matter of concern on the eve of the elections. Would the outcome be anti-climactic after two years of the attempts by an unelected government to reshape the broader political culture? Had the country come full circle, back to the point of departure? After all, Bangladesh was poised for the return of the same two dominant political parties, led by the two same people, and with the same undemocratic structures within the parties. Or had the changes initiated by the CTG fundamentally shifted the nature of politics, chipping away at the culture of impunity, partisanship and anti-democratic tendencies that dominated the landscape? Keeping these questions in mind, this introduction briefly assesses key developments in Bangladesh in relation to the human rights records in 2008.

2008 at a glance: Dashed Hopes and Receding Horizons

In early 2007, the unelected Caretaker Government pledged total rehaul of the electoral system, prioritizing the reform of political parties and the eradication of institutionalized corruption. By November 2008, when the CTG finally relaxed the ban on outdoor political activities, their authority had significantly reduced, the result of a series of political missteps as well as external factors such as the global food crisis and the spiraling prices of essentials.

The CTG's human rights and policy record continued to be uneven and inconsistent in 2008. Emergency Power Rules (EPR) provisions authorizing arrest without warrant and preventive detention and imposing a blanket ban on the right to seek bail for anyone arrested under the EPR remained in force. These rules were applied amongst others, in cases concerning high profile former ministers or ranking political party leaders who had been hitherto been untouchable under ordinary criminal laws. Government enforcement of restrictions on rights to assembly, to freedom of expression and to freedom of religion (especially through Sections 54 and 144, and DMP Ordinance section 86) continued to be disturbingly selective (see also 2007 report).

The government flip-flopped on the relationship between religion and state policy, seemingly capitulating to religious extremists at crucial moments and allowing religion and culture to become sites of contention in national politics, as the expense of promotion of the gender equality or protection of freedom of expression (see the example of the Women's Development Policy and the destruction of public artwork below).

State intimidation of journalists critical of the Government continued to be reported, but there was a very significant expansion of media freedom in the immediate run-up to elections, and intensive coverage of the electoral process and the run up to it in the press throughout the year even under the SoE. Indeed it appeared at times that the prioritization and nature of the election process in the media obscured reporting of more substantive questions arising regarding the quality of candidates, and certainly of broader human rights concerns, with the one significant exception of the question of alleged war criminals running for office. While this issue was extensively covered by both the press and private television channels, and addressed in public discussions, the media took no steps to highlight the allegations of serious crimes against many other high profile candidates. For example, even though the Election Commission had made it mandatory for candidates to submit affidavits containing their personal information on their profession, education, wealth and criminal back ground (if any), which was available on the official EC website, it received little or no attention in the majority of the media.

Militarization of the bureaucracy and administration continued in 2008, making the possibility of "de-civilianizing" the army even more remote.¹ The highly publicized anti-corruption drive launched in 2007 by the Government had lost steam by the end of the year as a result of the selective, aggressive and occasionally extra legal measures taken by the government. In an extraordinary about turn, the Government appeared to backtrack from its pledges to counter corruption and began to intervene in 'high-profile' cases involving politicians, so that cases which had been fast-tracked cases suddenly began to dwindle to a virtual halt. This change of direction accompanied significant pledges regarding the election process remained unfulfilled, with a flawed and selective reform process. Political accommodations made to ensure the participation of the AL and BNP in elections proved to be counterproductive. In 2008, two of the most high profile subjects of corruption prosecutions, former Prime Ministers Sheikh Hasina of the AL and Khaleda Zia of the BNP, were released from custody as part of negotiations with their political parties aimed to bring them into the electoral preparations. After their release, the progress in the criminal cases pending against them slowed down significantly or ended. A number of other high profile detainees, such as Khaleda Zia's son and the Joint Secretary of the BNP, Tareq Rahman, went abroad while on bail, ostensibly for medical treatment. Similar facilities were not available for other less high profile prisoners.

The failure to carry through with prosecutions and other instances, human rights defenders argue, made a mockery of the justice system, undermining its neutrality and integrity. Factual reports appeared in the press noting that a single Bench in the High Court granted 298 bails in one day, averaging one order per several minutes. No investigation or inquiry has been held into these development by the Court or any other authority to date – but the newspaper which published the report is now facing contempt charges. In the words of one human rights defender, commenting on the sudden go-slow in corruption cases, "There is now no justice because there can be no

trials of ‘very important persons’. In the past, some people were above the law -- now everyone is above the law, effectively”.

Moreover, it seemed that the moves to reform internal party structures had failed to a significant degree. While the Election Commission established disqualifications for candidates as well as pre-conditions for party registration, these criteria were not applied uniformly or rigorously, allowing applications by major parties which made no secret of their failure to comply with the provisions. The electoral reforms relating to disqualifications of candidates, and disclosure of personal information, were meant to pave the way for candidates with clean records to compete. Yet many candidates who had been charged with/convicted of corruption stood for elections. In some instances, jailed /convicted male candidates put forward their spouses to stand on their behalf, effectively as proxy candidates. At the very last minute the apex Court, overturning EC decisions, gave a number of interim orders allowing individuals convicted in various cases to contest the polls. Former military dictator, HM Ershad, leader of the Jatiyo party and part of the AL’ ‘Grand Alliance’, has himself, according to his affidavit to the Election Commission, four pending criminal cases (one relating to an accusation of culpable homicide, and another three relating to corruption), four further cases ‘under investigation’ and two convictions which resulted in sentences of imprisonment. The nomination of candidates with criminal records of this nature appears to indicate a profound disregard for the principles of criminal justice and moral accountability.

Citizens’ Resistance to Politics as Usual

The inclusion of a ‘No-vote’ option in the ballot appeared to reflect a sense of weariness among the electorate about existing political choices. However, ultimately there was little public discussion or awareness about the implications of casting such a vote, nor were many in fact cast. There were few reports of violence, intimidation or rigging. The front runners, the Awami League and its allies (which included left parties such as the Workers’ Party and JSD (Inu) as well as former military dictator Ershad’s faction of the Jatiyo Party and a breakaway faction of the Islami Oikkyo Jote) won a landslide victory. The BNP and its right-wing Islamist party allies, notably the JI, were firmly routed, and only two Islamist candidates were elected. Several high profile JI politicians who had been identified in very visible and high-profile citizen’s movements as being responsible for war crimes were trounced at the polls.

It appeared the people had spoken – for bringing alleged war criminals to trial, against the blatant (mis)use of religion in politics and against corruption. All in all, this was a remarkable achievement given the many uncertainties of just weeks earlier, including the BNP’s reluctance to participate. The CTG and the military appeared to have delivered on their promise of handing over power to an elected government. Some of the electoral reforms and legislative developments that enabled and signified this process, along with other policy and legislative changes are enumerated below.

Electoral Reforms, Legislative Developments and New Policies

- A reformed and effective Election Commission which was able to put in place a new electronic voter roll, including many previously excluded categories of persons, which minimized chances of fraud and rigging. From all accounts this was one of the biggest

achievements of the past two years, although there is concern in some quarters about the increased surveillance of citizens such a system necessarily entails.

- A revised Representation of the People Order (RPO), 2008 which laid down among other things, guidelines for political reforms such as party registration, procedures for democratizing of the nomination process, amendment of party constitutions to sever ties with student wings, ensure nomination of 33% women,. The RPO required party constitutions to be consistent with the constitution of the state and provided that any party which could be shown to be engaged in any communal activity could not be so registered. Although objections to the registration of the Jamat-i-Islami failed, this party finally formally acknowledged the Liberation War and extended membership to non-Muslims.
- The EC expanded the set of disqualifications for parliamentary candidates, but another instance of “accommodation” took place with regard to loan defaulters. Under the provisions of the original 2008 RPO, loan defaulters were barred if they did not reschedule at least six months before the deadline for nomination; under political pressure, the time limit was changed to least a week before.
- The creation and establishment by year end of a National Human Rights Commission, in spite of limitations on its mandate and lack of conformity with international standards – with a credible Chairperson with long experience in the judiciary was seen as a step forward.
- The creation of a Supreme Judicial Commission to establish a process for appointments to the High Court – while this appeared to be a step in the right direction, the new body was questioned with regard to the initial dominance of executive members, and the lack of any criteria for appointment. with the appointments it ultimately made also becoming quickly the subject of controversy.
- Promulgation of the Right to Information Ordinance 2008, albeit with a raft of exclusions in respect of intelligence agencies, raised hopes that demands for access to information could start to be translated into action.
- Promulgation of a Contempt of Court Ordinance 2008, which effectively curtailed the Courts powers of contempt and also allowed constructive criticism of judgments appeared to over-reach in providing protections for civil servants, and was struck down by the High Court.
- Following calls by different sectors of civil society, in particular teachers and students, the submission by the University Grants Commission of a draft policy on sexual harassment prevention to the Ministry of Education.
- The National Women’s Development Policy was adopted, in response to demands by women’s rights groups, which effectively re-instated the Policy of 1997.
- The National Child Development Policy was adopted in 2008 in compliance with the MDGs.

Civil and Political Rights

The rule of law has been seriously undermined by all governments since Independence. Under both elected and non-elected governments in the past few years, impunity for extra judicial executions or custodial torture by RAB or the police has threatened citizens’ rights to liberty. And this continued under the Caretaker Government. While law enforcement measures by RAB

and the Police led to 116 extra judicial executions in 2008, the government did not investigate the incidents nor did it circumscribe its powers.

The Anti-Terrorism Ordinance 2008, has been widely critiqued as itself likely to enable further abuse of human rights given that it provides law enforcing agencies with extensive powers subject to limited scrutiny, establishes a raft of vaguely defined offences which may be used as a catch all to prohibit legitimate and peaceful dissent and imposes harsh penalties including the death penalties. In contrast to the hurried passage of this law, the much awaited Police Bill, which could have encouraged accountability and efficiency of the police service, remained in draft form at the end of the year.

The year witnessed further human rights violations by law-enforcing agencies and legal battles for restoring the right to liberty amid the continuing state of emergency (SoE). The judgment of the apex court upholding the blanket prohibition, subject to very limited exceptions, on seeking bail in cases brought under the Emergency Regulations drew sharp criticism from the lawyers, litigants and rights activists. Thus, despite widespread public support for much-belated, and long-obstructed legal action against corruption suspects, the prolongation of this effectively total ban on bail in cases under the EPR, as well as the selectivity in filing cases, and the slow progress of investigation of cases against many high-profile corruption suspects brought the entire corruption drive into question. Over 200 cases filed by the Anti-Corruption Commission (ACC) and National Board of Revenue (NBR) against some high-profile politicians and businessmen were challenged in the High Court, many on procedural grounds. Many of the high profile accused were ultimately able to secure bail. Such measures adopted in granting bail and staying proceedings against corruption suspects can partly be attributed to the loopholes in the Anti-Corruption Commission (ACC) laws and rules and partly to reasons of political expediency – namely the compulsions generated by political pressure domestically and internationally for holding parliamentary election in December 2008 - -which effectively influenced the legal process.

Cases of mass arrests, affected possibly over 20,000 persons, occurred during the year, again resorting to the arbitrary application of existing criminal laws as well as the Emergency Rules, ostensibly in an anti-crime drive.

A number of serious allegations of torture were brought against RAB and the Police, including of torture of a senior member of Joypurhat Bar Association, and custodial rape of four women. The High Court asked RAB to explain in October why it would not be ordered to produce Hasan Khan, whom it had allegedly detained and whose whereabouts were since unknown. There was no action reported on investigation of earlier reports of torture, for example against journalists Tasnim Khalil or Jahangir Alam Akash, or NGO worker Shahidul Islam.

Minority Rights in 2008

- In May 2008, the High Court declared all so-called “Stranded Pakistanis” that is the Urdu-speaking community that migrated to these territories after 1947, eligible to be Bangladeshi citizens and thus to be enrolled as voters. This was a landmark judgment for

this community, and more than 40,000 Urdu speaking Bangladeshis thus became eligible to vote.

- For first time, 100,000 *hijras* were able to enroll as voters (although not yet recognized as a third gender). Registration of the *bedeys* (river gypsies) by the Election Commission was also a first.
- The CHT saw two major positive changes. The High Court, in a landmark judgment, directed the government to set up criminal and civil courts in each of the three districts of the Hill Tracts. The courts were set up in July in order improve access to justice, and were expected to take up over 3500 cases that are pending.
- In a separate move, the restriction on the use of mobile phones in the CHT was withdrawn in May.
- However, despite provisions in the Peace Accord, the EC did not provide separate electoral rolls for the CHT, thereby potentially legitimating the claims of Bengali settlers to the same rights as the original inhabitants of the area.
- In other ways as well, the situation was depressingly similar to earlier years. Many incidents of land expropriation by Bengali settlers, often backed by the army and in one instance, a local NGO, were reported throughout the year. In April 2008, eight villages in the Sajek Union of Rangamati district were subject to an extensive arson attack, which several human rights monitors alleged appeared to have occurred without necessary intervention by the authorities and despite the presence of nearby army camps.
- Displacement and land grabbing were major concerns for ethnic minority groups in the plains as well. Here too, state agents in the form of forest department officials, were frequently complicit in eviction, appropriation and the violence that accompanies these.
- During the year, the CTG announced the formation of a Vested Property Return Tribunal and Appeal Tribunal to deal with the appropriation of Hindu land through loopholes in the existing Vested Property Return Act. Unfortunately, as in many other cases, the CTG proceeded in typical authoritarian fashion, without any consultation with or representation of the primary stakeholders, thus minimizing effectiveness and no further action was taken. Attempts to make further amendments to the law on vested property also stumbled in the face of criticism from informed commentators and affected groups.
- Investigations into extra judicial killings of Cholesh Richil and other instances of custodial torture were not pursued. A prominent human rights defender, Rang Lai Mro, arrested and convicted after a virtually summary trial under the EPR, was not released, even though he had a serious heart condition.

In many ways, then, 2008 did not protect full rights of ethnic and religious minorities or prevent their violations. A number of new developments at year end were especially ominous, however, notably those surrounding demands for blasphemy laws (which found fruit in manifesto commitments to enact such a law being made by JP and JI) and, in a direct challenge to the Constitution, the demand, responded to in the AL's election promises, that no law "contrary" to the Holy Quran and Sunnah would be passed. Also disturbing were demands from right wing groups (and government responses to them) to dismantle any form of public art that religious extremists claimed to find objectionable and "anti-Islamic", accompanied by actual assaults on statutes across Dhaka city with virtually no response from the authorities.

Religion, Art and the Cultural Politics of Women's Rights

In March 2008, in the face of sustained pressure from women's groups, the CTG introduced a fairly progressive version of the much contested Women's Development Policy (for details, see 2005 and 2006 reports). Other than the omission of equal inheritance rights, the CTG document did not stray too much from the 1997 original. However, it produced an immediate and unanticipated backlash from Islamist extremist groups who took to the streets to protest the policy, among other things, for its supposed promotion of equal inheritance rights for men and women. Members of the Islamic Oikyo Jote and others also demanded that henceforth no law should be passed that contravened the Sharia. As it had done in other instances, the government permitted and even protected the sometimes violent street protests by radical Islamists, even though these contravened the EPR.

More troubling was the CTG decision to convene a special board of religious scholars to scrutinize and suggest revisions to the Policy. Typically the CTG sent mixed messages, perhaps as a result of internal power struggles. The CTG did not withdraw or revise its version of the document. Nor did it respond officially to the suggested deletions and revisions of the ulema board. Whatever the fate of the women's policy, the government's apparent strategy to accommodate all sides by waffling has had the unfortunate effect of giving religious figures the kind of authority over development policy they had never had in the past. This was not a good precedent.

Later in the year, religious extremists attempted to rally support by denouncing public sculpture they deemed un-Islamic. The destruction of statues of the 19th century devotional figure Lalon Fakir – commissioned just months earlier by CTY, and then of storks (!) in the old commercial district, appeared calculated to invoke associations with a Taliban-like brand of Islam. The rather desperate move backfired, as revealed by the tremendous civil society response to the destruction of the statues and IOJ inspired attempts to reshape Bengali and Muslim culture in Bangladesh.

Economic and Social Rights

The erosion of social and economic rights, especially rights to food, a secure livelihood and shelter were major concerns during the year. Bangladesh, like the rest of the world, was impacted by global food and fuel crises, both of which exacerbated existing inequalities. Neo-liberal policies discouraging investment in the agricultural sector and encouraging retrenchment of "unprofitable" industries, government missteps in procurement and stockpiling, soaring global prices for food, and a downturn in the construction sector all led to the direct loss of livelihoods, which in turn created sharp falls in food consumption.

Discrimination in ensuring the right to shelter was demonstrated by the government's continuing the priority given by earlier regimes to allot prime urban land for luxury constructions resulting in mass evictions of low-income families from slums across the cities. As in earlier years, and despite the state of emergency, the Court provided much needed protection to safeguard slum dwellers from forcible eviction and overnight destitution. By year end, the Government had not as yet completed the process for allotting the one plot of land which it had agreed to provide for resettlement of a miniscule proportion of the slum dwellers who faced evictions in the capital in 2007.

Even though restrictions on trade union activities under the Emergency Rules were partially lifted in September, amendments to the labour laws were made restricting trade union rights in ports. Worker safety remained unaddressed as non-compliance with the Building Code led to over 100 deaths just in the construction sector. The High Court called for particular safety measures in ship building, and compensation to families for worker deaths. Jute mill workers and garments workers continued to agitate through the year for payment of arrears or for minimum conditions of work to be guaranteed.

Migrant workers integrated into the global economy, faced abuse of their rights with troubling frequency, by fraudulent recruitment agencies at home and employers subjecting them to appalling “slave-like” working conditions in some destination countries. The absence of protective measures in bilateral agreements with labour importing countries, and the lack of any effective safeguards in Bangladesh led to violations of the rights of migrant workers and their deportation from several countries in the Middle East including Bahrain, Kuwait and Saudi Arabia, and no support services available to them on their return.

Significant progress was made in achieving MDGs related to education, during the course of the year. Controversies arose over whether the training and supervision of primary school teachers could be placed under BRAC, a leading NGO. Concerns also continued as in previous years with the poor quality of text books and the lack of prompt or adequate availability, as well as the lack of regulation of private schools and universities in particular. Efforts were made during the year to address issues of corruption and violence, including sexual harassment, on campuses.

Despite positive measure during the year including adoption of the child development policy and a far-reaching High Court judgment on children in jails, general concerns remained with the widespread prevalence of child labour in hazardous industries such as ship breaking. Abuse of child workers and violence against children was also not addressed effectively by government programmes.

Conclusion: Back to the Future or New Frontiers?

The 2007 human rights report had noted that rights violations during the year had striking continuities with the past, and did not always depend on whether a Government was elected or not. Civil and military regimes in Bangladesh have conventionally shared certain features such as the promotion of a culture of impunity and a tendency toward authoritarianism.

The AL’s landslide victory in the December elections will create new challenges for democratization and decentralization and for continuing the political and institutional reforms initiated by the CTG. It is imperative however that the majority party should be responsive to the demands raised by citizens for accountability – for war crimes as well as for serious human rights violations and more generally for abuse of power -- as well as for a tolerant and consultative political process. These will need to be backed up by structural changes to make institutions functional and non-partisan.

However, the establishment of a stable and political culture conducive to human rights will require more than cooperation between the two main political parties. The incoming Government can, if it desires, easily ratify the positive reforms initiated by the CTG. But it will

be on delicate ground when it comes to ratifying actions that have involved arbitrary use of powers of arrest or detention or resulted in torture and ill-treatment and deaths in custody. To do would be to perpetuate the culture of impunity and ignore the many excesses perpetrated under the SOE. Citizens had signaled their welcoming of the campaign against corruption, and it would be disastrous for political parties to ignore this and continue with business as usual.

The political manifestos have held out many promises, some doable, some no more than a shopping list. On the other hand many citizens' groups articulated their own priorities in governance to ensure civil liberties, human rights, women's rights, to eliminate social discrimination of the marginal communities, to protect minority rights and to make political participation meaningful. These voices need to be heard by those who will now find themselves in Parliament. If they don't do so it may be at their own peril. Citizens have spoken loudly that they will not remain silent and passive, that they will demand change.

The main successes of the year undoubtedly belong to the active citizenry. For instance, the sustained movement of many years to bring war criminals to justice and to question their legitimacy to represent people was undoubtedly a considerable factor in the defeat of the Jamaat e Islami and Islami Oikkyo Jote candidates. People's struggles and voices made a difference. Cultural politics took a front seat but few people were swayed by the religious card.

Ultimately the election results appear to be a firm rejection of the principles of impunity and to constitute a demand for responsible government and for accountability – for bringing to justice war criminals and perpetrators of human rights abuses, for an end to rampant corruption and distortions of the process of justice delivery, for some assertion of principles of equality and for the fulfillment of the basic rights of survival to food and shelter. ASK calls on the Government to respond urgently to these demands.
