

**Refugee Review Tribunal
AUSTRALIA**

RRT RESEARCH RESPONSE

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Questions

- 1. Please describe the steps involved in lodging an FIR in Bangladesh and what happens after it is lodged.**
- 2. Please advise the offences set out in s.143/149/324/326/427/34 of the Penal Code and Section 6/7 of the Explosive Act.**
- 3. Please provide brief details on MSR Global YS, a business operating from Singapore.**
- 4. Please advise the present caretaker's government attitude to politically motivated cases lodged prior to the State of Emergency.**
- 5. When are the next national elections due to be held and what is the current level of political activity of the major parties.**
- 6. Please advise the name of the wards and seats covering the area in Comilla and advise the names of the sitting members.**

RESPONSE

- 1. Please describe the steps involved in lodging an FIR in Bangladesh and what happens after it is lodged.**

The Dhaka Metropolitan Police website provides the following overview of the requirements for registering a First Information Report (FIR) along with other explanations of related concerns, such as: the categorization of cognizable and non-cognizable offences; the police station general diary; and the role of the Charge Sheet and Final Report. The relevant extracts follow:

4. What do you mean by FIR?

FIR means First Information Report. It is a written or oral complaint to the officer in charge of a police station of any cognizable crime mentioned in the section 154 of the Code of Criminal Procedure. The complaint is recorded in a Government prescribed form BP 27.

The FIR should contain the following information:

- Date and time of occurrence
- Name, address & cell phone number (if any) of the complainant
- Place of occurrence
- Description of the event/incident
- Mode of operation of the incident
- Description of the arms, knives or any others (as an evidence, if used any)
- The complaint must be signed by the complainant and by the recording officer.

In a nutshell, the FIR should contain the answers: who, what, when, where, whom, why and how.

...1.What do you mean by cognizable and non-cognizable offence?

The word 'Offence' denotes to an act made punishable by the Penal Code (Act XLV) 1860. A few examples of offence are theft, assault, house trespass, kidnapping, extortion & rioting.

Cognizable offence: According to the Section 4(f) of the Code of Criminal Procedure 1898, cognizable offences are those offences where a police officer may, in accordance with second schedule of the CrPC or under any law for the time being in force, arrest a person without a warrant.

A few examples of cognizable offences are: murder, dacoity, robbery, theft, rape, attempt to commit suicide, wrongful confinement, assault, kidnapping, extortion, house trespass, & rioting etc.

Non-cognizable offence: Non-cognizable offence are those offences where police officer may not arrest without a warrant.

A few examples of non-cognizable offences, as described in the second schedule of (CrPC) are, sedition, committing affray, bribery, making atmosphere noxious to health, committing a public nuisance, defamation etc.

However, police can arrest in non-cognizable offences after receiving a warrant from the court.

...3. What do you mean by GD? Do I need to pay to make an entry into the GD?

GD means general diary. It is a valuable register maintained at the Police Stations and at the police outposts. The general diary as prescribed under section 44 of the Police Act 1861, 377 of the Police Regulation and 154 & 155 of the Code of Criminal procedure is written in duplicate with carbon paper. Each book contains 200 pages, duly numbered. The diary is closed and dispatched at 0800hrs.

Every entry made shall be numbered in a monthly series and signed by the officer in charge at that time. Every occurrence which may be brought to the knowledge of the officers of police shall be entered in the diary at the time at which it is communicated to the station.

In it shall be recorded all complaints and charges preferred, whether cognizable or not, the names of the complainants, the names of all persons arrested, the offences charged against them, the weapons or property of which the police have taken possession, and the names of the witnesses who have been examined, name of the persons arrested, the number of the case, the dates of arrest and receipt in the station lock-up, the date and hour when forwarded to the court, and the expenses, if any.

The following information obtained shall also be entered: the state of crops, roads, rivers, bridges, railway fences, the occurrence of large fires, inundations, railway or road accidents, outbreak of any serious disease, particulars of taking & making over charge, change of the station sentry, presence of suspicious characters, gamblers, swindlers, foreigners,

You don't need to pay any fees/charges to make an entry into the GD.

...6. What do you mean by a Police Report? What is a Charge Sheet and what is a Final Report?

Police Report: It is a report forwarded by the investigating officer to the court on the completion of investigation of a case. It could either be a Charge Sheet or a Final Report, depending respectively, on whether the charges are proved or not proved.

Charge sheet: Charge sheet is a report submitted to the court, on the completion of an investigation, by the investigating officer, when the charges against the accused are found proved and the investigating officer proposes to proceed against the accused. It is submitted in a govt. prescribed form.

Final Report: Final report is a report submitted to the court, on the completion of an investigation, by the investigating officer, when the charges against the accused are not found proved. It is also submitted in a govt. prescribed form ('Police Matters' (undated), Dhaka Metropolitan Police website <http://www.dmp.gov.bd/static/faq1.php?Category=Police%20Matters> – Accessed 10 July 2008 – Attachment 1).

For an extensive overview of the articles, scope and application of the Bangladesh Code of Criminal Procedure as it relates to the recording and investigation of information by police (Sections 154 to 176) see 'Part V Information to the Police and their Powers to Investigate' in Zahirul Huq's 2003 edition of *Law and Practice of Criminal Procedure*. Part V is supplied in its entirety as Attachment 2. For summary overviews of these procedures, including the manner in which procedures may vary in practice, see the source information detailed below (Huq, Z. 2003, 'Part V Information to the Police and their Powers to Investigate', in: *Law and Practice of Criminal Procedure*, Bangladesh Law Book Company, Dhaka, pp.210-324 – Attachment 2).

A February 2004 report prepared for the Human Development Research Centre (HDRC) provides the following overview of the role of the FIR within the criminal administration of justice in Bangladesh:

Under the criminal administration of justice, offences are generally categorised into cognizable and non-cognizable with their classification as to arrest, bail, compoundability, courts by which to be tried, procedure of trial etc. shown in the Second Schedule of the Code of Criminal Procedure (CrPC). Criminal proceedings are initiated by either complaint or First Information Report (FIR). In cognizable cases, police can arrest the alleged offenders without warrant from the court. Prosecution in cognizable cases is the state's responsibility. A criminal proceeding comprises of investigation and trial during which offenders are detected and apprehended, evidences are collected and the case is made ready for trial. The foundation of the case is built during investigation. Detection of the real criminal and collection of proper evidence lay the real foundation of a criminal case because the success of the prosecution depends on the efficient handling of the cases by the investigators. The methodology for investigations to be conducted, and whether statements of witnesses, confessional statements of the accused and the dying declaration are to be recorded will all be regulated by specific provisions of law (Barkat, A., Hoque, M., Chowdhury, Z.H. 2004, 'State Capacity in

Promoting Trade and Investment: The Case of Bangladesh', UN Public Administration Network website, source: Human Development Research Centre (HDRC), 25 February <http://unpan1.un.org/intradoc/groups/public/documents/UN/UNPAN015171.pdf> – Accessed 10 July 2008 – Attachment 3).

An August 2004 report on torture in Bangladesh, produced by the Redress human rights group, provides the following information on the lodging and police responses to FIRs in the context of discussing investigations into allegations of torture:

Investigations into allegations of torture

A victim of torture may lodge a complaint with the police or a magistrate. In the absence of an independent body responsible for investigating human rights violations, investigations are carried out by the police and the magistrate.

Complaints to the police may be made by any person in writing or they can be made orally and recorded.

There are procedural differences depending on whether the offence in question is cognisable, which applies to most offences that may be applied in the absence of a specific offence of torture, or non-cognisable. In cases of non-cognisable offences, the police will record the information and refer the informant to a magistrate. The police officer may only investigate the case by order of a magistrate. When a magistrate has made such an order, the police officer has the same powers of investigation that a competent officer may exercise in respect of cognisable offences, except for the power to arrest without a warrant.

Cognisable offences are investigated by the police. As a general rule, upon receiving information about the commission of a criminal offence, the officer-in-charge draws up a First Information Report (FIR). Where the officer believes that an offence has been committed, he or she sends a report to the magistrate, who will then hold a preliminary inquiry or otherwise dispose of the case.

Any police officer can investigate a cognisable offence. The officer-in-charge has some discretion, and can refuse to investigate if “it appears to [him or her] that there is no sufficient ground for entering on an investigation,” but the officer must advise the informant about the reasons for not proceeding. If the officer-in-charge of a police station refuses to record a complaint concerning a cognisable offence, the informant may send the substance of the information, in writing, to the relevant Superintendent of Police, who has the authority to investigate the case him/herself or direct that an investigation be opened.

The police are prohibited from offering any inducement to make a statement. In order for statements and confessions to be used as evidence, they must be recorded by a magistrate. If there is an allegation of torture, it is not mandatory for there to be an immediate medical examination, though with rape allegations medical examinations must be performed as soon as possible. However, a magistrate may order a medical examination, either on his or her own motion or upon application by a detainee.

Upon completion of the investigation, the police officer-in-charge sends a report, either as a final report or charge sheet, to the relevant magistrate and informs “the person, if any, by whom the information relating to the commission of the offence was first given”. The complainant may raise an objection (naraji petition) to the charge sheet or the final report following which the petitioned Court may order a re-investigation or proceed against another person. The magistrate may either disagree with the conclusions of the report from the police officer-in-charge, in which case he or she will call for further investigations, or the magistrate may accept it and, as the case may be, take cognisance of the offence (Redress 2004, ‘Torture

in Bangladesh 1971-2004', August <http://www.redress.org/publications/Bangladesh.pdf> – Accessed 10 July 2008 – Attachment 4).

An overview of the procedures and practices which may surround the lodging of an FIR is presented in a March 2007 study into the manner in which policing in Bangladesh affects women and children. Produced by a Dhaka based NGO, the Centre For Women And Children Studies, the study finds that actual police practices often differ from the specified procedures in certain regards. For example: “The Investigating Officer is expected to proceed to the scene of crime soon after recording the FIR. But, by and large, promptness in this regard is an exception rather than the rule”. The relevant section follows:

When we take a look at the existing police practices in the processes of investigation at different stages, we find that there are various flaws that endanger the rights of women. The First Information Report, popularly known as FIR is the written information relating to cognizable offense given to the Officer in Charge of a police station shall be signed by the person giving it under Section 154 of the Criminal Procedure Code.

In some cases, police view the FIR as the only statement made to them that can be produced during trial to support the informant's testimony. However, as the FIR forms the basis of a criminal case, the Investigating Officers also tend to attach undue importance to it on the mistaken notion that a successful investigation and prosecution cannot be ensured if the First Information Report is not well elaborated. As a result, the Investigating Officers take recourse to devious practices, such as delay in drawing up of First Information Report with a view to collecting more information, or insisting upon a written FIR being given, or even going out for fact finding before recording the First Information Report.

The Investigating Officer is expected to proceed to the scene of crime soon after recording the FIR. But, by and large, promptness in this regard is an exception rather than the rule. Due to a variety of reasons, valuable clues are destroyed by the people or the neighbourhood where the crime has occurred by mishandling the exhibits before arrival of police. Delay in reaching the scene of crime, apart from leading to loss of valuable evidence, also causes dissatisfaction among the victim/complainant as well as the witnesses. Needless to emphasize that the Investigating Officer should reach the scene of the crime as soon as possible.

Section 160 Code of Criminal Procedure empowers the Investigating Officer to require attendance of witnesses familiar with the facts and circumstances of the case under investigation. Furthermore, Section 161 empowers the Investigating Officer to orally examine such witnesses and record their statements, but such statements are not to be signed by the witness as per Section 162. Workable and acceptance procedure would be to examine as many witnesses as possible during the visit to the scene of crime. It will also have the advantage of recording the statements of witnesses in time before their memory fade with the lapse in time and then they take recourse to filling up the gaps according to their own imagination or what they have heard from others.

The next step in the investigation process is the interrogation of suspects, which is one of the toughest of the police tasks. Here the subject is not merely reluctant and unwilling but also, in the majority of cases, definitely hostile towards the interrogator, whom he considers to be a potential source of danger to his own security. Before interrogating suspects, the Investigating Officer should have as much facts of the case as collected by visit to scene of crime, examination of witnesses, technical aids, etc. Section 157 of the Criminal Procedure Code enjoins upon the Investigating Officer to find out the facts and circumstances of a case and “if necessary to take measures for the discovery and arrest of the offender” (Shamim, I. 2007, ‘Towards Pro-Women and Child-Friendly Policing in Bangladesh: Our Experiences’, Commonwealth Human Rights Initiative website, source: Centre For Women And Children

Studies, 13 March

<http://www.humanrightsinitiative.org/programs/aj/police/exchange/Paper%20on%20Pro-Women%20Policing%20for%20India%2013%20March%2007.doc> – Accessed 10 July 2008 – Attachment 5).

Transparency International Bangladesh's 'National Household Survey 2007 on Corruption in Bangladesh' found that "the overwhelming majority of households (93.4%) had the experience of being victims of corruption" when dealing with "law enforcing agencies". Some respondents also claimed to have suffered from the "filing of false FIR/charge sheet (6.7%) and negligence in filing cases (4.3%)". The relevant section follows:

The survey revealed that 96.6% among the surveyed households experienced harassment and corruption during interacting with or receiving services from law enforcing agencies. Among them, the overwhelming majority of households (93.4%) had the experience of being victims of corruption. Among the victims, 62% are male and 38% female.

The households reported bribery (41.5%) as the most prevalent form of corruption indulged by the law enforcement agencies. The other forms of corruption committed by law enforcing agencies include misbehavior (21.5%), threat for torture (10.7%), arrest without warrant or case (8.0%), filing of false FIR/charge sheet (6.7%) and negligence in filing cases (4.3%). Most of these harassments and irregularities were committed by the police. The joint force personnel mostly involved in misbehavior and threat of torture (Transparency International Bangladesh 2007, 'National Household Survey 2007 on Corruption in Bangladesh – Substantive Summary', 18 June <http://www.ti-bangladesh.org/research/HHSurvey07SubstSum180608.pdf> – Accessed 10 July 2008 – Attachment 6).

A previous 2005 survey of corruption in Bangladesh produced by Transparency International Bangladesh found that "92% [of] households who lodged FIR to the police station had to pay an average of 2430 taka as bribes" (Transparency International Bangladesh 2005, 'Corruption in Bangladesh: A Household Survey', 20 April <http://www.ti-bangladesh.org/documents/HouseholdSurvey200405-sum1.pdf> – Accessed 10 July 2008 – Attachment 7).

A 2004 report produced by Bangladesh's Odhikar human rights monitor claims that FIRs have frequently been employed improperly as means of abusing powers set out under Section 54 (S54) of the Code of Criminal Procedure. According to Odhikar: "There have also been cases where the police have arrested a person under S 54 of the Code of Criminal Procedure and then included his name in a criminal case – even though his name was not found in the First Information Report (FIR). Thereafter, the unfortunate detainee is charge sheeted". Some pertinent extracts follow.

Under Section 54 (S54) of the Code of Criminal Procedure of 1898, individuals may be arrested under suspicion of criminal activity without any order from a magistrate or a warrant. According to the Section, there are nine specific reasons for which the police may arrest someone under this law. These reasons (summarised from the original) are:

- If the person arrested has been concerned in any cognizable offence or if there has been credible information against him or the police have reasonable suspicion to think so;
- If the person has in his possession any implement of housebreaking and cannot give a lawful excuse for doing so;

- If a person has been proclaimed under this or any other Code, or by Government Order, to be an offender;
- If there is reasonable suspicion to believe that the person possesses stolen property;
- If the person obstructs a police officer on duty; or if he has or attempts to escape from lawful custody;
- If the person is a deserter from the armed forces of Bangladesh;
- If the person has been concerned in; or if there is credible information of his being so involved in; or there is reasonable suspicion that he is concerned in committing any act abroad which would have been a punishable offence in Bangladesh (if committed in this country). He would be detained under custody in Bangladesh under the Fugitive Offenders Act 1881 or under extradition laws.
- If the person is a released convict, he can be arrested if he does not notify the sentencing judge of his change in address or absence from residence;
- If the arrest of a specific person for a specific crime has been made by another police officer by requisition.

Some persons initially detained under S 54 are subsequently charged with a crime, while others are released without charge. However, as can be seen, the term “reasonable suspicion” appears in several of the reasons under which a police officer can arrest a person under S 54 of the Code of Criminal Procedure. Unfortunately, this term is one of the reasons why this section is so misused.

...It is common for persons arrested under S 54 to find themselves later charged under the Special Powers Act 1974, a repressive law favoured by all the governments. This conversion occurs when a prayer or petition, for detention under the Special Powers Act, is submitted to the District Magistrate from the concerned police station, through the Superintendent of Police. The District Magistrate will then issue a detention order and send it for approval to the Ministry of Home Affairs.

There have also been cases where the police have arrested a person under S 54 of the Code of Criminal Procedure and then included his name in a criminal case – even though his name was not found in the First Information Report (FIR). Thereafter, the unfortunate detainee is charge sheeted (Odhikar 2001, Abuse of Section 54 of the Code of Criminal Procedure, May http://www.odhikar.org/pubs/pdf/abuse_of_section_54_of_the_code_of_criminal_procedure.pdf – Accessed 10 July 2008 – Attachment 8).

2. Please advise the offences set out in s.143/149/324/326/427/34 of the Penal Code and Section 6/7 of the Explosive Act.

Attachment 9 provides the following sections of the Bangladesh Penal Code: S.143 and S.149 from ‘Of offences against the public tranquility’; S.324 and S.326 from ‘Of Hurt’; and S.427 and S.434 from ‘Of Mischief’ (Huq, Z. 2001, S.143 and S.149 from ‘Of offences against the public tranquility’; S.324 and S.326 from ‘Of Hurt’; and S.427 and S.434 from ‘Of Mischief’, in: *The Penal Code*, 4th edn, Anuoam Gyan Bhandar, Dhaka – Attachment 9).

Attachment 10 provides the Explosives Act [IV of 1884] (Chowdhury, E.H. 2002, ‘Explosives Act [IV of 1884]’, in: *The Special Powers Act with 9 other Acts*, 7th edn, Dhaka Law Reports, Dhaka – Attachment 10).

3. Please provide brief details on MSR Global YS, a business operating from Singapore.

No information could be found on a business known as MSR Global YS. Information on businesses with similar names may be of interest and follow below:

- Information was located on a business called, “MSR Global Customs”, “an Import and Export Customs Compliance Expert located in Toronto, Canada”. The firm’s own website would appear to be that of “eCustoms”, “a division of MSR Global Customs Group”. No information could be located on this website in regard to a Singapore office (‘MSR Global Customs Consulting’ (undated), Higher Technologies of New York website <http://www.ht-ny.com/project.aspx?pid=8> – Accessed 14 July 2008 – Attachment 11; ‘Corporate Information’ (undated), eCustoms website http://www.ecustoms.com/corporate_info.cfm – Accessed 14 July 2008 – Attachment 12).
- Information was located on “The Mongolia Ship Registry Pty Ltd, Singapore (MSR)” which reportedly “works as the exclusive principle agent to process registration applications for ships flying the Mongolian flag” (‘Mongolian ships comply with rules’ (undated), *Mongol Messenger* <http://www.mongolmessenger.mn/issue/080209.php> – Accessed 14 July 2008 – Attachment 13).

4. Please advise the present caretaker’s government attitude to politically motivated cases lodged prior to the State of Emergency.

In December 2007 the Bangladesh post of the Department of Foreign Affairs and Trade (DFAT) advised the Tribunal that: “According to a senior legal official, the current Caretaker Government has been reviewing cases filed during the periods of previous governments...with the view to identifying those cases which have been either politically motivated or filed under false pretences. Where a case has been determined to be politically motivated or false, the charges may be dropped.” Nonetheless, the post also advised that: “Without specific knowledge of the case in question, DFAT is not in a position to make any judgement as to whether the charges could reasonably be considered to be ‘politically motivated’”. Further to this, in October 2007 DFAT’s Bangladesh post advised the Tribunal that: “The laying of false charges or complaints has been a widely prevalent occurrence/practice in Bangladesh”; and that: “There are no special protection measures available for persons who claim they have been falsely charged” (Department of Foreign Affairs and Trade 2007, *DFAT Report No. 744 – Bangladesh: RRT Information Request: BGD32651*, 5 December – Attachment 23; Department of Foreign Affairs and Trade 2007, *DFAT Report No.519 – Bangladesh: RRT Information Request: BGD32346*, 3 October – Attachment 14).

Also of interest may be reports that the Caretaker Government has attempted to remove executive appointed magistrates from the judicial system with a view to depoliticizing the hearing of the immense backlog of cases currently pending with Bangladesh’s magistrate’s courts. DFAT’s October 2007 advice relates that: “According to a report submitted by the Bangladesh Government to the Bangladesh Supreme Court on 15 April 2007, the number of

cases pending with the magistrate's courts across the country as at 28 February 2007 was 484,832". A November 2001 *Asia Sentinel* report relates that "4.85 million cases pending in magistrates' courts across Bangladesh"; and according to a *Daily Star* report of the same period: "A total of 91,000 criminal cases have been pending with 25 magistrate courts in Dhaka" alone. It should also be noted that the Caretaker Government itself stands accused of pursuing politically motivated cases against persons associated with both the Awami League and the Bangladesh Nationalist Party. The present Caretaker Government, led by Fakhruddin Ahmed, was constituted after former Caretaker Government head, Iajuddin Ahmed, declared a state of emergency on 11 January 2008 and resigned from the post he had held since 29 October 2006 (Department of Foreign Affairs and Trade 2007, *DFAT Report No.519 – Bangladesh: RRT Information Request: BGD32346*, 3 October – Attachment 14; for the Caretaker Government's magistrate's court reform program, see: Thakuria, N. 2007, *Asia Sentinel*, 'Despite human rights concerns, the interim government in Dhaka has given the courts their independence', 8 November http://www.asiasentinel.com/index.php?option=com_content&task=view&id=859&Itemid=31 – Accessed 14 July 2008 – Attachment 19; Manik, J.A. 2007, 'Judiciary freed from the executive fetters today', *Daily Star*, 1 November http://www.thedailystar.net/pf_story.php?nid=9805 – Accessed 14 July 2008 – Attachment 22; for the issue of politically motivated cases being pursued by the Caretaker government, see pages 17 to 18 of: International Crisis Group 2008, *Restoring Democracy in Bangladesh*, Asia Report no.151, 28 April – Attachment 18; for a timeline of the events of 2006 to 2007 see 'Figure 1: Bangladeshi Crisis at a Glance', in: Kumaraswamy, P.R. & Datta, S. 2007, 'Democracy in Bangladesh: From Fragility to Collapse?', *Strategic Insights*, vol.6, no.4, June <http://www.ccc.nps.navy.mil/si/2007/Jun/kumaraswamyJun07.pdf> – Accessed 30 July 2007 – Attachment 16).

An overview of the source information summarized above follows below.

In November 2007 the Tribunal sent a request to the Department of Foreign Affairs and Trade asking for the post in Bangladesh for advice on "the status of charges laid under the previous government" and whether "charges that were laid in 2005 and were allegedly politically motivated be likely to be proceeding". The post replied as follows on 5 December 2007:

DFAT understands that charges laid under the previous government still stand under the current Caretaker administration.

According to a senior legal official, the current Caretaker Government has been reviewing cases filed during the periods of previous governments, including both the BNP (1991-1996 and 2001-2006) and the Awami League (1996-2001), with the view to identifying those cases which have been either politically motivated or filed under false pretences. Where a case has been determined to be politically motivated or false, the charges may be dropped.

Faced with a significant backlog of cases (43,000 cases in Dhaka alone during 2006, according to the US State Department), the Caretaker Government has been attempting to prioritise cases and bring the more serious ones to trial.

Without specific knowledge of the case in question, DFAT is not in a position to make any judgement as to whether the charges could reasonably be considered to be "politically motivated". However, as indicated above, under the current arrangements if the case was determined to be genuinely politically motivated, the authorities may decide that the charges should be dropped (Department of Foreign Affairs and Trade 2007, *DFAT Report No. 744 –*

Bangladesh: RRT Information Request: BGD32651, 5 December – Attachment 23; for the enquiry which elicited this request, see: RRT Research & Information 2007, Email to DFAT ‘Country Information Request – BGD32651’, 20 November – Attachment 24).

On 11 September 2007 the Tribunal sent a request to the Department of Foreign Affairs and Trade asking for the post in Bangladesh to comment on: “the procedure for making a complaint or charge under Bangladeshi criminal law”; and “the prevalence of false complaints or charges being laid”. The post replied as follows:

6. Under the Bangladesh criminal law, there are two ways of making a complaint or a charge: a) to file a charge directly at the police station, or b) to file a complaint in local courts.

7. The laying of false charges or complaints has been a widely prevalent occurrence/practice in Bangladesh. According to a report submitted by the Bangladesh Government to the Bangladesh Supreme Court on 15 April 2007, the number of cases pending with the magistrate’s courts across the country as at 28 February 2007 was 484,832. While it is not possible to determine the percentage of these cases which may be false, it illustrates the extent to which some cases may be held up in the backlog before being brought to trial.

8. There are no special protection measures available for persons who claim they have been falsely charged. The accused can hire an advocate to prove their innocence in the court. To discourage the laying of false charges, where a person has been found to have filed false charges against someone, charges are automatically filed by the court against the complainant under Section 211 of the penal code (Department of Foreign Affairs and Trade 2007, *DFAT Report No.519 – Bangladesh: RRT Information Request: BGD32346*, 3 October – Attachment 14; for the enquiry which elicited this request, see: RRT Research & Information 2007, Email to DFAT ‘Refugee Review Tribunal Information Request: BGD32346’, 11 September – Attachment 15).

A June 2007 report authored by two New Delhi based analysts, Dr. P.R. Kumaraswamy and Dr. Sreeratha Datta, provides the following assessment of the Caretaker Government’s policy direction in terms of judicial reform six months into its administration:

Judiciary

Through a government notification issued on January 16, 2007, the Caretaker Government began the process of separating the Judiciary from the administrative control of the Executive. This was a delayed implementation of a Supreme Court ruling of December 1999 that ruled that the independence of the Judiciary could not be maintained if it remained an arm of the Executive. Political parties supported this position while in opposition, but quickly took a different stand when elected to power. Though done without much public debate, the decision has enjoyed widespread public support.

Though the separation is yet to be formalized, the popular support for the decision has energized the Judiciary to challenge some of the actions of the Caretaker Government. The High Court, for example, has challenged the government’s initial plans to prevent Hasina returning to Bangladesh from her overseas trip or to keep Khaleda under house arrest. The Judiciary is the only institution which could gain popular respect, power and influence in the ongoing crisis in Bangladesh. The erstwhile linkages with politicians and prolonged patronage of the Executive are so deep-rooted that independence of the Judiciary would be a long drawn process (Kumaraswamy, P.R. & Datta, S. 2007, ‘Democracy in Bangladesh: From Fragility to Collapse?’, *Strategic Insights*, vol.6, no.4, June <http://www.ccc.nps.navy.mil/si/2007/Jun/kumaraswamyJun07.pdf> – Accessed 30 July 2007 – Attachment 16).

On 28 April 2008 the International Crisis Group (ICG) published an extensive overview of the political situation in Bangladesh noting the progress of initiatives intended to “depoliticise court rulings” while also noting claims that the Caretaker Government (referred to in the report as the CTG) itself appeared to be undertaking prosecutions. According to sources informing the ICG the Caretaker Government’s anti-corruption arrests came to “cast a wider net” taking in political and personal opponents and attempting to clear the way for the military’s vision of a re-made political landscape. The ICG reports that the “primary objective” of the Caretaker Government is “to remove Sheikh Hasina and Khaleda Zia from politics and weaken their parties. ...Some even believe the CTG aims to remove the Awami League and BNP from politics altogether”. Those arrested as part of this program have been tried in “special courts” whose “[t]rials are speedier than in regular courts and closed to the public”. Relevant extracts follow:

Separation of the judiciary. On 1 November 2007, an amendment to the Criminal Procedure Code Ordinance came into effect formally separating the judiciary from the executive. The move is an attempt to depoliticise court rulings and end the influence of the office of the prime minister (chief adviser) in all judicial proceedings. This followed a decision by the chief justice of the Supreme Court, in accordance with Article 22 of the constitution mandating the independence of the judiciary. Pervasive corruption in the lower ranks of the judiciary and a lack of staff and adequate funds have prevented a full separation. The CTG has at least acknowledged the problem of massive staff shortages and has created an additional 655 magistrate posts to deal with backlog of about 400,000 cases. However, lawyers say that more and better trained judges are needed. (p.15)

...In the first hours of the emergency, the military imposed a countrywide curfew and raided Awami League and BNP politicians’ homes, arresting 2,552 individuals on “various charges”. Between 2 and 5 February 2007, security officials arrested another 10,000.

...As the campaign progressed, the Joint Forces cast a wider net. “Anyone deemed to be a political threat to the caretaker government is threatened or arrested”, said a foreign official. In its first months, the anti-corruption drive netted over 100,000 people. Some sources put the number of arrests closer to 200,000. According to Odhikar, a leading Bangladeshi human rights organisation, in the first year of emergency rule 440,000 people were arrested, only 239,480 of whom had arrest warrants issued against them. Many were subsequently released, but neither the government nor independent monitors can give exact numbers.

...By late 2007, the wave of arrests caused enough public discontent to prompt a government rethink. A senior army officer admitted the anti-corruption drive had turned into a “witch-hunt” to “settle political and personal scores: the government is targeting the corrupt, but doing nothing to deal with corruption...it’s a witch-hunt without a strategic vision”.

Special courts established under emergency provisions are trying 222 senior officials and 1,000 associates who were arrested and charged by the NCC [the National Coordination Commission on Combating Corruption and Crime]. Trials are speedier than in regular courts and closed to the public. The courts also hand down harsher sentences. There are not enough special courts to deal with the flood of cases, and more are being created. Lt.-Gen. Masud Uddin Chowdhury, the NCC head, is concerned they will be unable to try all the cases before the emergency is lifted ahead of elections in December 2008. Some suspect the CTG will hold elections under the state of emergency to allow the special courts to continue; others fear the trials could be used to justify delaying the vote. (pp.17-18) (International Crisis Group 2008, *Restoring Democracy in Bangladesh*, Asia Report no.151, 28 April – Attachment 18; for further information on the reform initiative at this time, see: Shahiduzzaman & Moneruzzaman 2007, ‘Too huge burden for too few judicial magistrates’, *New Age*, 2

In November 2007 the *Asia Sentinel* provided the following overview of the manner in which the Caretaker Government had taken steps towards the reform of the Bangladesh judicial system while also being accused of pursuing politically motivated case itself. In discussing the Caretaker Government's reform agenda the report relates that there were "4.85 million cases pending in magistrates' courts across Bangladesh" at the time.

Despite human rights concerns, the interim government in Dhaka has given the courts their independence.

...It is a curiously positive development for a government set up by the military, and civil rights and reform organizations welcomed the move by the interim government headed by Fakhruddin Ahmed, a former World Bank official who made the announcement last week. To some extent the development allays growing worries in Dhaka, the country's capital, over when democracy will return to the country. The interim government has promised elections by December 2008.

Barrister Mainul Hosein, the Adviser for Law, Justice and Parliamentary Affairs to the caretaker government, said in a speech, "We (the government) have separated the judiciary from the interference of the executive not as a favour to the judges, but to assign them with the heavy responsibility of upholding justice and contributing to good governance as contemplated by the Constitution."

However, Amnesty International continues to express a broader concern about human rights, most recently over the arrest of Jahangir Alam Akash, the local head of two NGOs, the Task Force against Torture and the Bangladesh Institute of Human Rights and a journalist with the independent TV station CBS News. Akash was arrested on rape charges, but Amnesty International in a press release quoted family members and friends as saying the charges are false, politically motivated and a pretext to detain him for opposing human rights violations.

The Bangladesh military's seizure of power was initially applauded by many relieved citizens who hoped it would end the internecine squabbling between the country's two strong political women, Sheikh Hasina Wajed, and her bitter rival, Begum Khaleda Zia. However, as the interim government appointed by the military has worn on, relief has begun to turn to dismay both inside and outside Bangladesh that the takeover has spawned widespread human rights violations including scores of extrajudicial killings and mass arrests.

...The ceremony coincided with celebrations in 64 district judicial magistracies and three metropolitan magistracies of Bangladesh. The government has created nearly 4,300 new judicial magistracy posts, Ahmed said, to facilitate an independent judiciary.

The change can't come too soon for a desperately overburdened system. There are 4.85 million cases pending in magistrates' courts across Bangladesh, which has a population of 140 million people. The real test, though, for an independent judiciary will lie in how it deals with the trials of some very senior political leaders, including the two former prime ministers, Begum Khaleda and Sheikh Hasina, who are presently serving jail terms for corruption and misuse of power during their respective reigns.

...The immediate past government, led by the Awami League, openly interfered with the judiciary, says a Dhaka-based social activist who told *Asia Sentinel* that executive magistrates were pressured into granting bail and passing other orders for the ruling party. The magistracy, he said, was almost synonymous with corruption.

Bangladesh has two sets of magistrates, judicial and executive. According to the amended Code of Criminal Procedure, the judicial magistrates will run the courts. They will be appointed and supervised by the Supreme Court.

Executive magistrates, including the previously powerful deputy commissioners, have been stripped of judicial powers and will exercise only executive power, which removes a burden from the system. Most of the executive magistrates lacked credible knowledge of the law despite their power to deliver justice.

As Bangladesh has no provinces (and thus no provincial chief ministers demanding a share of power), the deputy commissioners locally wielded the most clout after the prime minister. Often overburdened, they had to perform their duties in a complex structure in which their primary responsibilities were administration and revenue collection, both of which provide ample opportunity for graft (Thakuria, N. 2007, *Asia Sentinel*, 'Despite human rights concerns, the interim government in Dhaka has given the courts their independence', 8 November

http://www.asiasentinel.com/index.php?option=com_content&task=view&id=859&Itemid=31 – Accessed 14 July 2008 – Attachment 19).

For further background on such concerns with regard to the Caretaker Government's pursuit of members of some political parties but not others, see Question 1 of *Research Response BGD32131* of 6 August 2007 and Question 2 of *Research Response BGD32062* of 26 July 2007 (RRT Research & Information 2007, *Research Response BGD32131*, 6 August – Attachment 20; RRT Research & Information 2007, *Research Response BGD32062*, 26 July Attachment 21).

5. When are the next national elections due to be held and what is the current level of political activity of the major parties.

On 28 April 2008 the ICG published an extensive overview of the political situation in Bangladesh discussing both the Caretaker Government's plans to hold elections in December 2008 and the level of political activity being engaged in by the major parties.

In his first public appearance as chief adviser ten days after the takeover, Fakhruddin Ahmed presented an ambitious but vague set of reforms meant to pave the way for new elections. Six months later the government announced a December 2008 target, but it has yet to set a firm date. The agenda embraces three main elements: tackling corruption; reforming electoral machinery and practices; and reforms aimed at depoliticising state institutions, including the civil service.

...Electoral reform

The Election Commission is discussing its proposed modifications to electoral laws with the political parties in two rounds.

Both major parties, however, have shown little willingness to act constructively. Instead of addressing issues like endemic party corruption, they devoted much of 2007 to wrangling over who would replace the top officials arrested in the anti-corruption drive. Party leaders correctly pointed out that the ban on political activity prevented them from building the necessary consensus throughout their structures to carry out sustainable reforms. However, the leaders (including those of both BNP factions) have failed to build this consensus even at the national level. An international development official familiar with the parties said,

“nothing has prevented the leadership of any party from meeting in Dhaka. The Awami League and BNP leaders, in particular, have squandered a year of opportunity to at least agree on the necessary framework to democratise their decision-making process”.

...Elections

The Election Commission’s roadmap states that it will hold three local and national elections by the end of 2008. The first are likely to be municipal and city corporation polls in May. These were supposed to be completed by the end of December 2007 but had to be postponed due to delays over the voter list. The second could be the subdivision, upzilla parishad (UP), polls beginning in late May. The roadmap indicates that these are to be held simultaneously with the general elections at the end of the year, but the CTG has urged the Commission to move them up. The Commission has agreed but not yet announced a date.

However, such parties as the Awami League, BNP, and Jamaat-e Islami are opposed to holding local elections before the parliamentary vote, concerned that the government might use them to influence the outcome of the latter. The last UP election was held in 1990 by the previous military government of General Ershad, who had instituted the UP system five years earlier to create a grass roots political base for himself and bypass the parties.

...THE REAL AGENDA

The CTG has more ambitious goals than its stated agenda suggests. It seeks to change the way Bangladeshi politics works – attempting to embed military influence in “depoliticised” state institutions and use anti-corruption charges to weaken the parties and marginalise their main leaders.

1. The army role

The military intelligence agency, the Directorate General of Forces Intelligence (DGFI), is the driving force behind military rule. ...there is presently no real civilian control over the army and the DGFI. A prominent Bangladeshi academic said, “never mind what the generals say about the army acting in support of the CTG. The clear reality is the CTG is acting in support of our army regime, and the DGFI is making all the decisions”.

...IV. STATE OF THE PLAYERS

...Despite their imprisonment, both Hasina and Zia still exercise great influence over their parties. The Awami League and BNP remain highly personalised and centralised around their founding families. The familial structures of both parties support a rigid hierarchy, allowing almost no policy input from lower levels and stimulating dissatisfaction among a younger generation of members.

...senior Awami League and BNP leaders have been reluctant to initiate reforms without the approval of the imprisoned leaders. An Awami League member said, “the government does not look strong right now. Some party leaders think this government will go, and Sheikh Hasina will be released, and are frightened to cross her. Anyone that has been disloyal to Sheikh Hasina while she has been in jail will pay the price”. At the local level, activists remain as loyal to both women as they do to the party.

...The unique space the emergency has created for the Jamaat and the smaller Islamist parties has not strengthened them to the extent that they can successfully contest the elections alone. The BNP will continue to view its ties with the Jamaat as central to a return to power. The grouping of centre-left parties remains intact, but pressure from its leftist allies may force the Awami League to drop the Khelafat Majlish, an Islamist party, from the alliance.

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...The BNP

The BNP is unlikely to come out of the emergency unchanged. On 25 June 2007, Secretary General Abdul Mannan Bhuiyan announced a fifteen-point proposal for internal reforms, including one aiming to dislodge Khaleda Zia as party chairperson.

...The party has split into two factions – BNP-Saifur and BNP-Khaleda Zia. The former is comprised of Mannan Bhuiyan's supporters and party reformists and led by Saifur Rahman, who was appointed acting chairperson on 29 October 2007. BNP-Khaleda Zia is the rump faction of the former prime minister's supporters, led by the ailing Khandaker Delwar Hossain while she is in prison. Both factions have some grounds for their claim to represent the true mainstream BNP. Many BNP voters were fed up with the leadership's authoritarian tendencies and support the Saifur faction's reform agenda. However, even many reformists consider Khaleda Zia the undisputed torchbearer.

The Election Commission has recognised BNP-Saifur as the official party, adding to suspicions the party's split was designed to weaken Zia.

...The Awami League

The Awami League has remained fairly united despite DGFI efforts to weaken it. "The military now has to put the BNP back together. It will continue to try to weaken us or reunite them. A weak BNP and a strong Awami League is something they cannot work with", a party official said. There are tensions, however, between reform-minded members and those who see the reforms as an effort to dislodge the party president, Sheikh Hasina.

...If the party can stay together, it may emerge from elections as the big winner. It maintains support throughout the country, and Hasina is popular, particularly at the grassroots level. The party is still seen as the "Liberation War party" and leads a campaign to ban collaborators from the 1971 conflict from standing for parliament. This is popular with many voters, including BNP supporters. The party's main rival is in disarray and its factions could pose a bigger electoral threat to each other than to the Awami League. The party is also likely to attract many independent voters and perhaps even BNP supporters disillusioned by the previous government's performance. Should the Awami League itself split, the faction with Sheikh Hasina's endorsement would be considered the mainstream party.

...The Islamists

The Islamist parties, mainly the Jamaat-e Islami, have weathered the emergency far better than the Awami League and BNP, mostly because they have not come under nearly the same pressure. The Jamaat's dual status as a religious organisation and political party has allowed it to remain relatively active. It and smaller Islamist parties, like the Islami Oikya Jote (IOJ), are relatively untouched by the anticorruption drive. Only eight Jamaat members have been imprisoned and eleven charged (International Crisis Group 2008, *Restoring Democracy in Bangladesh*, Asia Report no.151, 28 April – Attachment 18).

In early June there were reports of mass arrests as prominent party leaders and lower level activists of the BNP and Awami League were rounded up in wide ranging sweeps. An overview of the reportage at the time follows below:

1 June 2008, *The Daily Star*

Over 200 people including 33 district and upazila level top leaders of Awami League, BNP and their front organisations, municipality and union parishad chairmen and transport leaders were arrested as of yesterday during a sudden crackdown by the joint forces starting Friday midnight.

Of the arrestees, 140 were held in the capital alone as the joint drive coincided with a special drive by Dhaka Metropolitan Police (DMP) to recover illegal firearms and arrest professional killers, criminals, drug peddlers and robbers.

Forty-one persons including the 33 political leaders and activists were arrested outside Dhaka. The Rapid Action Battalion (Rab) also arrested 23 persons during the drive across the country.

The political leaders and workers were arrested under section 16(2) of the Emergency Power Rules (EPR), police said.

Inspector General of Police (IGP) Nur Mohammad said the drive is aimed at arresting only those against whom there are specific allegations of criminal activities, those who are on the police list of criminals and those against whom there are arrest warrants.

“None other than these people have been arrested and there is no question of arresting and harassing any political person,” the IGP said.

He said they have already ordered the authorities concerned to mount vigil at all land and airports so that no criminal can flee the country.

The crackdown began days after the Awami League (AL) threatened with disobeying the law and BNP Secretary General Khandaker Delwar Hossain with street movements if their chiefs are not released soon (the report also provides extensive details of the names, locales and affiliations of the persons arrested at this time, see: ‘Sudden crackdown on political leaders, workers’ 2008, *Daily Star*, 14 July <http://www.thedailystar.net/story.php?nid=39174> – Accessed 14 July 2008 – Attachment 25).

4 June, *The Associated Press*

Bangladesh’s military-led security forces said Wednesday they have detained more than 10,000 people in a nationwide anti-crime drive over the past week, but political parties accused the government of targeting their members in a political crackdown.

Police Chief Nur Mohammad said the special drive was launched last Friday to improve law and order before national elections planned late this year.

He said more than 1,700 people were detained in the past day, taking the number of detainees to more than 10,000.

The detainees have been accused of crimes such as murder, muggings and violation of emergency rules, Mohammad said.

He denied accusations from political parties that the drive was politically motivated and that many of the detainees are party members (‘Bangladesh police detain over 10,000 in crackdown ahead of elections’ 2008, *International Herald Tribune*, source: *Associated Press*, 4 June <http://www.ihf.com/articles/ap/2008/06/04/asia/AS-GEN-Bangladesh-Crime-Crackdown.php> – Accessed 14 July 2008 – Attachment 26).

9 June 2008, *The Asia Sentinel*

After nearly two years of caretaker government in Bangladesh, the politics of the country seem to be heating up as all the political parties, including the two major ones, grow increasingly frustrated with the pace of progress toward elections.

Although the army-backed government headed by Fakhruddin Ahmed, a former World Bank economist, has announced elections for the third week of December, sudden mass arrests of an estimated 12,000 people since May 28 have added to the concern prevailing in Dhaka's political circles. Some are beginning to doubt whether elections will be held at all. But the caretaker government continues to assure people at regular intervals that they are committed to holding the elections in time.

...Although officials said the latest round of mass arrests have been carried out in the name of improving the situation before the elections, police authorities say that law and order haven't deteriorated although rising energy prices are beginning to cause unrest. The caretaker government has made little progress in attempts at political dialogue with either the Awami League or the Bangladesh Nationalist Party.

Interestingly, the frustration is not limited only to the political parties. The caretaker government also seems stymied in its efforts to implement its so-called minus-two policy – minus Khaleda and Hasina. Both remain in jail. In fact, the government got so engrossed in getting rid of the two that it did not pursue the case against Khaleda as assiduously as it could have. It also failed to take the cases to their logical conclusion as it widened the crackdown on corruption. In a short period, it tried to set right everything that was wrong in Bangladesh politics.

The failure of the caretaker government to prosecute Khaleda effectively has once again made her assertive in her demands. Her confidence has increased as the Bangladesh Nationalist Party's four coalition parties have come together again. The four-party coalition faced considerable strain immediately after it handed over power to the caretaker government headed by the president, Iajuddin Ahmed. No doubt, it was the glue of power that was holding this coalition together.

For instance, Jamaat-e-Islami, the fundamentalist Islamic party, was using this opportunity to increase its hold in the country. Once out of power, parties like the splinter Islami Oikyo Jote, with only three seats in the parliament, tried to bargain afresh with the BNP for greater allocation of seats in likely elections. It would have also bolstered their claim for ministries in the event that the four-party alliance came back to power.

Khaleda has already asked party leaders and the rank and file to prepare for agitation in case the caretaker government does not release her unconditionally. Some reports also suggest that Khaleda might accept some conditions but as of now the situation is completely uncertain.

The fundamentalists of Jamaat-e-Islami in all probability will join her once the unrest starts. The four-party alliance is actually waiting for the Awami League's response. They think that if all the parties increase the heat, the emerging situation will be too difficult for the caretaker government to control.

But it would be unwise for the Awami League to join the BNP and Jamaat in agitating against the coalition. Last time it happened when General Hussain Mohammad Ershad was in power. He was driven out in 1990 by the combined forces of Khaleda and Hasina, who at that point had made common cause against the dictator who had seized power nine years before. But that agitation mostly benefited the BNP and Jamaat-e-Islami, giving it a certain amount of legitimacy that it has capitalized on in the ensuing years, to the detriment of the Awami League.

Bangladesh appears to be heading towards a possible economic crisis. Its 156 million people are among the world's poorest, with per capita income of only US\$450 annually. The food situation in the country has been severely affected because of Cyclone Sidr, which killed at least 3,447 people and reduced the country's annual rice crop by 1.4 million to 2 million tonnes. The global food crisis, with its attendant rising prices, has worsened the situations. The common people of Bangladesh are unable to cope with the problem and they are likely to see the government of the day responsible for their woes.

BNP and Jamaat are now trying to capitalize on the misery, stirring unrest to seek to increase their political capital and make people forget the previous years of misrule. If Awami League joins this protest it will only serve the purpose of its political opponents (Kumar, A. 2008, 'Political Tension Rises in Bangladesh' *Asia Sentinel*, 9 June http://www.asiasentinel.com/index.php?option=com_content&task=view&id=1247&Itemid=31 – Accessed 14 July 2008 – Attachment 27).

6. Please advise the name of the wards and seats covering the area in seats covering the area in Comilla and advise the names of the sitting members.

The LCG Bangladesh website provides the following results for Comilla District under the title 'Chittagong Division: Election October 2001 Statistics':

District: COMILLA << go top >>			
Member Name	Title	Party	Constituency
M.K. Anwar	Minister, Ministry of Agriculture	Bangladesh Nationalist Party	Comilla-1, Seat-248
Khandaker Mosharraf Hossain	Minister, Ministry of Health and Family Welfare	Bangladesh Nationalist Party	Comilla-2, Seat-249
Kazi Shah Mofazzal Hossain Kaikobad		Bangladesh Nationalist Party	Comilla-3, Seat-250
Manzurul Ahsan Munshi		Bangladesh Nationalist Party	Comilla-4, Seat-251
Md. Yunus		Bangladesh Nationalist Party	Comilla-5, Seat-252
Redwan Ahmed		Bangladesh Nationalist Party	Comilla-6, Seat-253
A.K.M. Abu Taher		Bangladesh Nationalist Party	Comilla-7, Seat-254
Akbar Hossain	Minister, Ministry of Shipping	Bangladesh Nationalist Party	Comilla-8, Seat-255
Manirul Haq Chowdhury Manir		Bangladesh Nationalist Party	Comilla-9, Seat-256
M. Anwarul Azim		Bangladesh Nationalist Party	Comilla-10, Seat-257
Abdul Gafur Bhuiyan		Bangladesh Nationalist Party	Comilla-11, Seat-258
Syed Abdullah Md. Taher		Jamaat-e-Islami	Comilla-12, Seat-259

(‘Chittagong Division: Election October 2001 Statistics’ (undated), Local Consultative Groups in Bangladesh website
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