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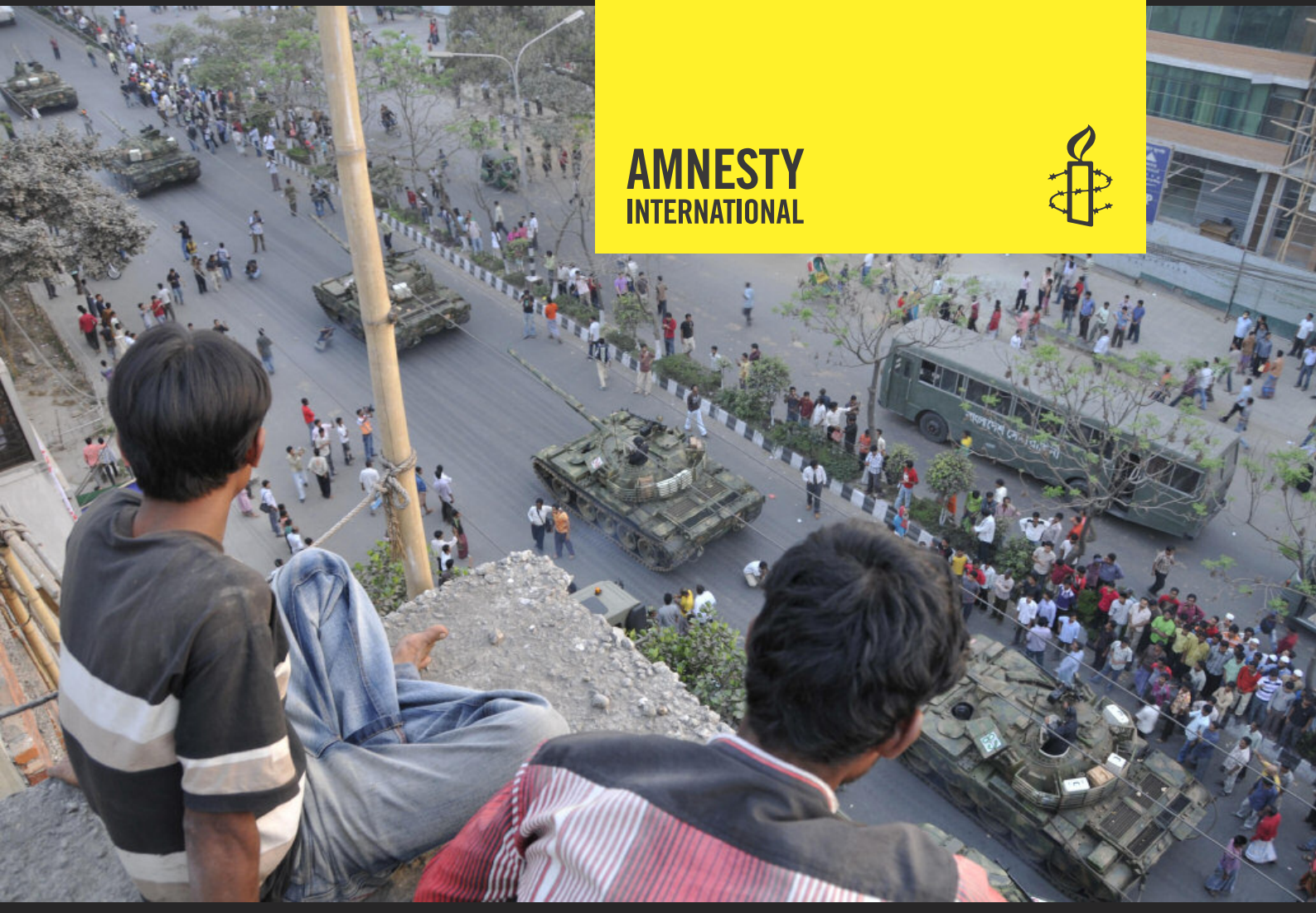
LOOKING FOR JUSTICE

MUTINEERS ON TRIAL IN BANGLADESH



AMNESTY INTERNATIONAL

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Cover photo: Army convoy heading to the Bangladesh Rifles (BDR) headquarters in Dhaka, 26 February 2009.

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INTRODUCTION

Large scale mutiny broke out at the Bangladesh Rifles (BDR) headquarters in Dhaka on 25 February 2009 just two months after the newly elected government of Bangladesh took office. It quickly spread to BDR barracks across the country and mutineers killed at least 74 people, including civilians and army officers. It was 33 hours before the government was able to negotiate an end to the mutiny.

The mutiny posed a serious threat to the government and to Bangladesh's already fragile democratic process. Democracy was only restored in December 2008 when the Awami League Party won elections. For two years previously, the country had been under a state of emergency imposed by then President Iajuddin Ahmed and maintained by the army-backed caretaker government of Dr Fakhruddin Ahmed. The sheer size of the mutiny, its location in Dhaka and the mutineers' access to a large cache of weapons brought fears of an emerging BDR coup and a possible violent counter offensive from the army.

Many army personnel were particularly angered by the mutiny. Mutineers killed dozens of their comrades and challenged the commanding role of seconded army officers in the BDR, despite the BDR not being a part of the military services.

The human rights abuses which the BDR personnel allegedly committed include the killing of six civilians (three women and three men) and 57 army officers seconded to work as BDR commanders, one army soldier, and nine *Jawans* (lowest BDR rank).

To date, the only publicly available official investigation has failed to establish the actual causes of the mutiny. Bangladeshi newspapers reported that BDR personnel mutinied because of grievances over pay and conditions. Some government officials allege it was a conspiracy to unseat the newly elected government.

Following the end of the crisis, the government announced that it would bring to justice those suspected of killings and other criminal offences during the mutiny.

Several days later, all BDR personnel were ordered back to duty. According to family members, after BDR personnel returned to their assigned compounds, thousands were confined to barracks and denied all contact with the outside world – effectively held in detention.

Reports soon emerged alleging that scores, possibly hundreds, of BDR personnel suffered human rights violations, including torture, following detention for possible involvement in the mutiny. There are also allegations that torture may have been the cause of or a contributing factor to the deaths of some of the 48 BDR personnel who have died since 9 March.

This is an opportunity for the government of Bangladesh to show its commitment to the international human rights treaties that it has ratified by ensuring that those suspected of committing crimes are brought to justice under internationally recognized fair trial standards. The government of Bangladesh is obligated under these treaties and its domestic law to

provide justice for the victims of the massacre. It also has an obligation to ensure that the human rights of those accused of the mutiny and killings are protected. Those rights include freedom from torture and other cruel, inhuman or degrading treatment or punishment, the right to family visits, access to lawyers and the right to challenge their detention. It is the government's responsibility to ensure that highly charged emotions in the aftermath of the mutiny do not mar the legal process.

The government must examine the capacity of the judicial system to ensure that it has the necessary resources to try such a large number of cases within a reasonable time.

Amnesty International urges the Bangladeshi authorities not to seek the death penalty as punishment. While the authorities have the duty to investigate grave crimes such as those alleged to have taken place during the mutiny and bring to justice those responsible, Amnesty International holds that the death penalty violates the right to life and is the ultimate cruel, inhuman and degrading punishment. As such, the organization opposes the death penalty in all cases without exception regardless of the nature of the crime.

METHODOLOGY

The information in this report was gathered during an Amnesty International mission to Bangladesh in April and May 2009. Testimonies were gathered from family members of the detainees (whose names and particulars have not been published for security reasons). Interviews were conducted with government authorities in Dhaka including the Law Minister, Secretaries at the Ministry of Law, Justice and Parliamentary Affairs and Ministry of Home Affairs, and the Attorney General. Meetings were held with BDR officials at the BDR headquarters, Pilkhana, and with the Inspector General of Police and the Director General of the Rapid Action Battalion (RAB) at the Police Headquarters. Secondary information was compiled from a variety of sources, including human rights researchers, journalists and newspaper reports from The Daily Star, the New Age, Nation Online, The Independent and bdnews24.com, as well as Reuters, Agence France-Presse and BBC reports. The report reflects observations from the Ministry of Foreign Affairs on a draft of the report.

THE BDR

The BDR is a civilian force primarily responsible for maintaining border security. It is also deployed alongside the police to uphold law and order in rural areas. It reports to the Ministry of Home Affairs through the Inspector General of Police. However, all senior commanders in the BDR are seconded army officers.

THE RAB

The RAB is a special police force created in 2004 to tackle armed criminal activity. It is made up of police and seconded military personnel. The RAB reports to the Ministry of Home Affairs through the Inspector General of Police but all senior commanders are seconded military officers. Amnesty International as well as other international and local human rights groups have accused the RAB of bypassing the due process of law and unlawful killings.

1/MUTINY IN PILKHANA

Amnesty International has received serious allegations about a range of human rights abuses at Pilkhana, Dhaka during the February 2009 mutiny. Allegations include the massacre of at least 74 people inside Pilkhana[1] including 57 army officers seconded to work as BDR commanders, one army soldier, nine *Jawans* (lowest BDR rank) who, according to BDR sources, were killed because they opposed the mutiny[2], and three female civilians.[3] Three male civilians were killed reportedly from stray bullets outside Pilkhana.[4] Two bodies recovered have not been identified.[5]

BDR personnel are alleged to be the perpetrators of the abuses, but conclusive evidence has yet to be presented to the courts.

After the mutiny, the government ordered an official inquiry. Simultaneously, the army announced that they were conducting their own inquiry, and the police announced they were conducting a criminal investigation through the Criminal Investigation Department (CID).

The government inquiry was completed on 21 May.

A separate army inquiry was completed on 12 May but its findings were not made public.

Yet another investigation by the CID was to submit its report to the court at the end of June 2009, but the deadline passed and the report is now not expected before late-October.[6]

EVENTS ACCORDING TO THE GOVERNMENT INQUIRY

The official inquiry set up by the government submitted its report on 21 May 2009. The report itself was not made public but in a break with past practice a summary was given to the media on 27 May.[7] The summary stated that the real causes and motives behind the killings could not be established "beyond doubt", but identified long-standing discontent within the BDR to have been among the prime causes of the mutiny. The summary identifies a number of issues that may have led to the mutiny including resentment of the role army officers play in the command structure of the BDR; "the mentality of not accepting the authority of the army had been dormant among BDR members for a long time" and resentment of the "luxurious lifestyle of officials". Demands for increased border allowance, ration allowance, participation in UN peacekeeping missions, and a salary structure to match that of army officers are also cited as reasons for the mutiny.

According to the summary, a group of BDR members began to organize around these demands at the time of the general election (December 2008). When they failed to gain the attention of the political parties, they held secret planning meetings to take action. These plans revolved around taking officers, including Major General Shakil Ahmed (the then Director General of the BDR) hostage on 25 February 2009, "looting the armoury" for weapons and taking control of installations and entrances at the BDR Pilkhana headquarters. Mutineers held a final meeting the night before the mutiny on 24 February, however, "only a handful of hardcore mutineers knew about the plan to kill the BDR Director General and other army officers working with the BDR". By 8am on the morning of 25 February mutineers

from BDR Battalions 13, 24, 36, and 44 had taken control of Pilkhana gates 1, 3 and 4. They began to break into the armoury and take weapons.

At around 9:27am on 25 February Major General Shakil Ahmed was delivering his address as part of BDR week[8] at Darbar hall in Pilkhana when a blank shot fired outside the building marked the beginning of the mutiny.

No specific details were given on how the killings took place.

EVENTS ACCORDING TO OTHER SOURCES

Other reports in the media and accounts from official and unofficial sources paint a fuller picture of what happened during the mutiny.

However, given the scale of the political and human rights crisis caused by the mutiny, independent verification of events at the time of their occurrence has been difficult to obtain. The accounts given below must therefore be treated as allegations requiring validation through independent and impartial examination.

According to BDR sources, after the sound of the gun shot outside Darbar hall, a group of armed mutineers stormed the hall and told the officers to line up and move out of the hall. Another group of mutineers allegedly ambushed the unarmed officers as they were leaving the hall and began shooting at them. Major General Shakil Ahmed was allegedly the first to be gunned down, followed by the killing of 16 other army officers. Another group stormed in and killed the remaining army officers who had not managed to hide.

At the same time, a third group of mutineers went to Major General Shakil Ahmed's house where they allegedly killed his wife, a female guest and a maidservant. They ransacked the house and looted valuables. More BDR personnel joined them. They ransacked other officers' homes, looted their valuables and took army officers' families hostage.

Another group of BDR personnel drove around in a jeep chanting slogans in favour of the mutiny. They used loudspeakers to brief journalists outside Pilkhana gates about the reasons for their mutiny. According to media reports, they cited poor pay and conditions of service and wanted senior BDR officers – not seconded army officers – to command them.

At some stage that afternoon a group of mutineers decided to communicate with government officials. They sent a 14-member delegation to Prime Minister Sheikh Hasina, at her house in Jamuna, Dhaka. According to newspaper reports, the Prime Minister offered a general amnesty for the mutineers and agreed to implement their list of demands that related to pay and conditions. Consequently, the BDR personnel agreed to end their mutiny.

According to a young man conveying to Amnesty International a BDR detainee's recollection of events the mutineers' negotiating team returned to Pilkhana, but those inside did not agree to lay down their arms. By the next day, 26 February, the mutiny had spread to BDR barracks in other parts of the country, but there were no killings outside Dhaka.

Public sympathy, which had existed for BDR personnel during the initial stages of the mutiny, gave way to a sense of outrage as newspapers published accounts of the killings. As

the mutiny continued, the Prime Minister went on television warning that unless the mutineers laid down their arms, she would send in the army.

Media reports said army personnel had been keen to enter the Pilkhana compound to confront the mutineers on the first day of the mutiny, but the Prime Minister had not authorised that. Government officials told Amnesty International that the Prime Minister took "thoughtful and timely logical steps to ease the tension and to avoid severe gun battles and skirmishes between the forces and also to avoid huge loss of lives on the part both of civilians and forces".[9]

The mutiny ended on 26 February and most BDR personnel reportedly fled Pilkhana. The army moved in on 27 February and found the bodies of army officers dumped in sewage manholes and buried in a makeshift mass grave in the Pilkhana compound. All the remaining hostages were released.

The massacre of army officers and the atrocities committed against their family members at the time of the mutiny are human rights abuses that the government must address by providing justice and reparation as applicable to the victims and survivors.

The guiding principle here must be the government's obligation to provide justice in a fair trial.

2/AFTER THE MUTINY

Several days after the mutiny ended the authorities called all BDR personnel back to duty. According to family members of the detainees, almost all (initially hundreds and later several thousands) were confined to barracks when they returned to their assigned compounds and allowed no contact with the outside world.

BDR officials told Amnesty International that the purpose of this incarceration was to check the identity of the returning BDR personnel against the available records – some of which had been destroyed during the mutiny. They said they wanted to identify those who had taken part in the mutiny.

Bodies of two BDR personnel killed by the mutineers. At least 57 army officers in commanding BDR positions and nine lower ranking BDR personnel were killed during the 25-26 February BDR mutiny. © Private

The measure of confining BDR personnel to barracks during the immediate aftermath of the crisis was reportedly taken to prevent further violence, and because of the difficulties in investigating such a large number of people to determine who might be prosecuted. In response to Amnesty International, the government has agreed that due to the sheer number of mutiny-related BDR detainees and the country's resource limitations not all amenities and medical care could be available to the detainees immediately, but that the situation improved soon.[10]

In Amnesty International's view, keeping hundreds of BDR personnel in de facto incommunicado detention for weeks or even months created conditions conducive to their

torture or other ill-treatment, as the information Amnesty International has gathered indicates.[11]

As the days went by, some of those confined to their barracks were officially declared as having been arrested. According to BDR sources, by late April more than 1200 BDR personnel accused of involvement in the mutiny in Pilkhana and other BDR compounds around the country had been arrested in this way. They said arrests were made after BDR personnel were screened and those involved in the mutiny were identified. The figure, however, has continued to grow and as of early August, more than 3000 BDR personnel were under arrest.[12]

The vast majority of BDR detainees have not yet been formally charged by a magistrate.[13] Formal charges will follow the completion of the CID report. The magistrates will use this report as the basis for framing charges against the accused.

LEGAL COUNSEL SEVERELY RESTRICTED

International law upholds that everyone arrested or detained – whether or not on a criminal charge – has the right to legal counsel.[14]

However, in 20 cases of detained BDR personnel known to Amnesty International, none were given the opportunity to seek the assistance of a lawyer for weeks or months. This appears to have been the case for all detainees.

Those officially declared to have been arrested were produced before a magistrate's court when authorization to extend the detainees' remand in police or jail custody[15] was sought. It was only during these court appearances that lawyers were allowed to meet the detainees.

FAMILY CONTACT DENIED

People held in custody are entitled to prompt access to their families.[16] Nonetheless, according to many detainees' families, almost all BDR personnel were held without access to their families for periods extending from four weeks to several months. Families searching for them received no news of their whereabouts from the officials.

Some of the detainees contacted their relatives on mobile phones borrowed from duty personnel, but these conversations were brief, lasting from several seconds to just over a minute. Detainees only said where they were, and whether their situation had changed. A woman who had no news about her husbands for two months told Amnesty International:

"I got such phone calls twice after my husband reported back to duty [early March], but he was scared that they might find out he was talking to me. He just said he was OK and I should not worry. Now [early May] I have not heard from him for weeks, and I am worried."

Another family member received a phone call from a detainee in the BDR compound in Chittagong who said he was likely to be taken into the custody of the Rapid Action Battalion (RAB), but the phone conversation was cut off. The family member later found out from the detainee's colleague that he had been taken into RAB custody on 22 March 2009. As of 2 May 2009, she had no news of the detainee's whereabouts despite repeatedly seeking information from the RAB.

According to family members, the police including the RAB made arrests under Section 54 of the Bangladesh Code of Criminal Procedure, which authorises police to arrest anyone on suspicion of involvement in a "prejudicial" act without an arrest warrant.[17] A detention order under the Special Powers Act was also imposed on several detainees, but human rights researchers believe this was later lifted. Only those officially declared to have been arrested were produced before a magistrate's court. The only time family members could see, or speak with, the detainees was during court appearances when authorization to extend the detainee's remand in police or jail custody was sought.

Family contacts with detainees during their court appearances were brief, lasting from several minutes to around half an hour at the discretion of the police taking them to court. Some family members were able to get close to the detainees or sit with them. Others were only allowed to speak with them from a distance.

Denial of the detainees' access to the outside world appears to have removed an essential safeguard against the human rights violations which the detainees have been subjected.

ALLEGATIONS OF TORTURE

The government has stated that it abides by international human rights standards for the treatment of the detainees and "is fully aware of the need to treat under-trial prisoners with dignity".[18] Yet accounts of torture that different detainees have provided to their families when they have been allowed to see them have been consistent and within the known patterns of torture and ill-treatment of detainees in Bangladesh.

The methods of torture the detainees have described include sleep deprivation for several days, beatings, the use of pliers to crush men's testicles, needles inserted under the nails and electric shocks. The detainees who had given this information to their families had either been victims of these types of torture themselves or knew others who had been victims. When family members have seen the detainees in court, they have noticed bald patches on the detainees' heads, detainees being unable to walk steadily, injuries to wrists due to tight handcuffs, and swollen faces and lips.

Bangladesh is party to international human rights treaties including:

- International Covenant on Civil and Political Rights
- International Covenant on Economic, Social and Cultural Rights
- Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment
- International Convention on the Elimination of All Forms of Racial Discrimination
- Convention on the Elimination of All Forms of Discrimination against Women
- Convention on the Rights of the Child

Bangladesh is not yet a state party to:

- Optional Protocol to the International Covenant on Civil and Political Rights

- Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

A woman whose husband was arrested on 2 April 2009 heard nothing about his situation or whereabouts until 16 April when she received a short phone call informing her that her husband was to be taken to the magistrate's court on 17 April for further remand into custody. She travelled from Rangpur to Dhaka to see her husband during the court hearing. She told Amnesty International:

"At first when I saw him, I did not recognize him. He looked very ill. When I got closer, I saw blood around his toenails. He could talk to me for a few minutes. He told me he had been blindfolded for the previous 15 days, had not been allowed to sleep for more than one hour a day, and has had electric shocks applied to his head. He did not know where he had been kept. Our lawyer appealed to the magistrate not to remand him into police custody again as he would not be able to survive further torture. Even the magistrate could see he was ill, so he cancelled the police application for further remand and ordered that my husband should be sent to the jail hospital."

The next day, she went to the jail and asked to see him. Jail guards told her this would not be allowed. She was able to hand in some clothes and food with a note listing the items she was sending to him. The prison guard returned the list with her husband's name on it and a hospital bed number. That was her only communication from her detained husband, and the only indication that he was in the jail hospital. As of mid-May, she had received no news on his whereabouts from official sources since her husband's appearance in court.

Another woman whose brother (a civilian accused of helping the mutineers) was detained by the RAB in early March 2009 had no news of his whereabouts for five days. She found out through unofficial sources the name of the police station where he was being detained. She went to the police station with her brother's wife and managed briefly to meet the detainee:

"My brother told me that he was tortured. I saw signs of torture on his hand and his lip. He had lost a lot of weight. My sister-in-law was pregnant so he told her that he was OK. But he told me that he had been tortured."

Family members of other detainees gave similar accounts of torture to Amnesty International. They all said the only means of official communication they had with detainees was sending them clean clothes and food. Even this had at times stopped without any explanation. Not all allegations of torture have come from family members. When brought before the courts by police seeking to secure longer detention periods, many detainees have told the courts of their torture. One detainee complained to the magistrate during a court appearance on 22 April 2009 that he had been tortured while in custody. He was nonetheless sent back to police custody and there has been no investigation into his complaint. On 15 September 2009, two BDR *Jawans* in a Dhaka hospital told a Daily Star reporter that they had fallen ill and been taken to hospital after a "Task Force for Interrogation" team had "brutally" tortured them. They had been detained at Pilkhana as mutiny suspects since 10 September 2009.

Torture and other cruel, inhuman or degrading treatment or punishments are prohibited absolutely at all times. Under the International Covenant on Civil and Political Rights (ICCPR), freedom from torture and other ill-treatment (Article 7) must be protected even "in time of emergency which threatens the life of the nation" (Article 4.1). Article 2.2 of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment states that:

"No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."

DEATHS IN CUSTODY

At least 20 BDR personnel died in custody between 9 March and 6 May 2009. BDR sources claim that four of them committed suicide, seven died of heart attacks and another nine died of other diseases. As of 10 October 2009, the total number of BDR personnel who have died in custody stood at 48.[19]

Such a large number of deaths in such a short space of time raise serious questions about the conditions under which BDR personnel were held. In the absence of a thorough independent investigation and in view of the frequent reports of torture coming from BDR detainees, there is a strong likelihood that torture may have been the cause of or a contributing factor in, the deaths of at least some of these BDR personnel.

A BDR personnel hours before he was declared dead at a Dhaka hospital on 28 September 2009. At least 48 BDR personnel have died since the mutiny, some allegedly as a result of torture. © ASK

The possibility of death from illness not caused by torture cannot be discounted, although even then issues may arise as to the quality of the medical care they received. However, torture as the cause of death, especially in deaths alleged to have been suicide cannot be ruled out without a thorough, rigorous, independent and impartial investigation.

A human rights defender who saw the body of one former detainee whose family was told by the police that he had committed suicide by hanging, saw deep injuries on his hands, back, legs and face. But he saw no marks on the outer skin of his neck, for instance from a rope or other material with which he was supposed to have hung himself. This human rights activist told Amnesty International:

"It would have been impossible for him to have committed suicide by hanging. Also, suicide by hanging cannot explain the injuries he had on his body."

The family members of another detainee, whose death was reported on 9 March to have been due to suicide, claim that their son had not committed suicide, but died because of torture in custody. In a testimony taken from them by a human rights organization, they say:

"We checked his dead body and saw several marks of torture on it. There were marks of grievous injuries to his wrists and his hands, and deep bruises on his legs."

Whilst some family members have been willing to report cases of torture to human rights organizations, family members of those who have died in custody are often less willing to do so. Human rights activists have cited two possible reasons for this: pressure from the authorities to dissuade them from speaking to human rights groups or journalists about the incident, and the authorities' offer of compensation if they keep that promise.

International law upholds that whenever the death or disappearance of a detained or imprisoned person occurs during detention or imprisonment, an inquiry into the cause of death should be held by a judicial or other authority, and its findings should be made available upon request, unless doing so would jeopardise an ongoing criminal investigation.[20]

Nonetheless, for the first three months after the mutiny, the authorities without conducting an investigation repeatedly claimed that the deaths of the BDR personnel in custody were only from health problems or suicide and not from torture.

It is the responsibility of the government to investigate every report of death in custody to ascertain the circumstances of the death. When a death in custody results from a human rights violation – for instance if it is due to torture or negligence – the government should bring those responsible to justice.

TOTURE AND ILL-TREATMENT IN BANGLADESH

Torture of criminal suspects during interrogation, leading at times to deaths in custody, is widespread and endemic in Bangladesh. It is committed with impunity. Repeated calls for the protection of people against torture have come from human rights organizations, civil society activists, and even the judiciary. A landmark High Court ruling on 7 April 2003 proposed practical steps to protect detainees against torture. Among other provisions, the ruling makes it mandatory for the police to inform family members of anyone arrested; for the accused to be interrogated by an investigating officer in prison instead of police interrogation cells, and behind a glass screen so that a detainee's family members and lawyers can observe whether or not he or she is being tortured; and for the detainee to receive a medical examination before and after remand into police custody. However, successive governments have failed to implement this ruling or to abide by the provisions of the UN Convention against Torture.

In Bangladesh, however, a persistent lack of accountability for human rights violations has effectively shielded the perpetrators from prosecution. Amnesty International has continually received detailed allegations of torture and other ill-treatment in police custody, with victims including both political detainees and criminal suspects. Some people have died as a result of torture in police or army custody. Impunity for such abuses has prevailed. Victims of torture and other ill-treatment have largely been denied justice and redress, and those responsible have not been held to account.[21]Consequently, legal safeguards against torture in Bangladeshi law do not deter interrogating personnel from committing torture.[22]

In the face of mounting national and international concern, the government established an official inquiry on 20 May 2009. A three-member committee was set up to investigate these deaths. The committee is headed by the Deputy Secretary (Police) at the Home Ministry and includes an Assistant Superintendent of Police and a BDR major.[23] According to media reports, the committee has been asked to prepare a list of those who died in custody, find out the causes of their suicide or other "unnatural" deaths, and make recommendations on how to prevent such deaths in future. The full terms of reference for the inquiry have not been made public, so it is unclear if the scope of the committee is to probe allegations of torture, or identify police or army officers that may have been responsible for torture, or recommend prosecutions.

In response to reports that some BDR detainees may have died as a result of torture the government has said it has established the inquiry committee to ascertain facts, and "the government will not allow any irresponsible acts that detract from the policy of zero tolerance against extra-judicial killings".[24]

Nevertheless, the inquiry has been very slow. As of mid October, the committee has not completed its investigation.

Under international human rights law, states must stop and prevent violations, and prosecute perpetrators to provide justice to the survivors and victims and to deter would-be violators. In its authoritative comment on what constitutes the state parties' legal obligations, the Human Rights Committee – the UN body charged with overseeing the ICCPR's implementation – stated:

"Where such investigations ... reveal violations of certain Covenant rights, States Parties must ensure that those responsible are brought to justice. As with failure to investigate, failure to bring to justice perpetrators of such violations could in and of itself give rise to a separate breach of the Covenant. These obligations arise notably in respect of those violations recognized as criminal under either domestic or international law, such as torture and similar cruel, inhuman and degrading treatment (article 7), summary and arbitrary killing... Indeed, the problem of impunity for these violations, a matter of sustained concern by the Committee, may well be an important contributing element in the recurrence of the violations."[25]

FAIR TRIAL CONCERNS

The government of Bangladesh must ensure that the victims and survivors of the mutiny receive justice and fair compensation. Ensuring justice however, demands that Bangladesh's government comply fully with its human rights obligations, specifically the right of the

accused to a fair trial.

Until mid-August 2009, the government and military officials frequently stated that BDR suspects might be tried in courts martial under the 1952 Army Act, and not in civilian courts. Under Bangladeshi law, BDR personnel as a civilian force cannot be tried in an army court. In breach of fair trial principles, any defendants tried in an army court would have no right of appeal.

President Zilur Rahman requested advice from the Supreme Court as to whether the Army Act could be extended to cover BDR personnel accused of crimes during the mutiny.

On 11 September, the Supreme Court announced that the army courts have no jurisdiction over BDR personnel accused of mass killings and other criminal offences. The Supreme Court's decision is not binding on judicial processes but the government agreed to abide by the decision. On 15 September, the government confirmed that civilian courts will try crimes committed during the mutiny including killings, attempted murder, looting and arson under the Penal Code. Amnesty International welcomes the Supreme Court's clarification and the government's decision to abide by it.

The focus should now be on the conduct of the civilian courts to ensure that trials conform to international fair trial standards. The courts must remain immune from external pressure and prosecution evidence must be strong and credible so that the courts can deliver justice to the survivors and victims of human rights abuses.

The government of Bangladesh has an opportunity to reinforce trust in the civilian courts by ensuring that the courts have the capacity to deal with several thousand defendants accused of such a wide range of criminal offences.

These are crucial issues that need to be resolved before any trials begin, especially in light of recent reports in the Bangladeshi media that the government has decided to try BDR personnel accused of killing, hostage taking and looting by Speedy Trial Tribunals.[26] Although these tribunals follow the same procedures as other trial courts, as provided in the Code of Criminal Procedure, they are required to complete the trial within 135 days. Amnesty International believes that enforcing such a time limit in the BDR trial cases, which are likely to involve hundreds, possibly thousands of defendants is neither practical nor realistic and may ultimately lead to a miscarriage of justice. Amnesty International has noted the Law Minister's remarks that the accused will be given facilities for self-defence, will be able to appoint a lawyer, present their evidence and witnesses and cross examine the witnesses giving statements against them before the court.[27] Nevertheless, rushed procedures specially in cases involving such a large number of defendants may violate the right of the accused to have adequate time and facilities for the preparation of their defence, to communicate with their own lawyer, to examine, or have examined, the witnesses against them and to obtain the attendance and examination of witnesses on their behalf under the same conditions as witnesses against them. These rights are provided for in Article 14(3) of the International Covenant on Civil and Political Rights, which is binding on Bangladesh.

The government must examine the capacity of the judicial system to ensure that it has the necessary resources to try such a multi-faceted case within a reasonable time. There is no

experience of such large scale trials in Bangladesh[28], so the government and the judiciary must take necessary measures to ensure that the criminal justice system has the competence and resources to conduct the trials in accordance with the international standards of fair trial and judges have the necessary training to conduct these trials.

Addressing these challenges in providing justice to the victims and survivors of the human rights abuses during the BDR mutiny will strengthen Bangladesh's judicial system – all the more important in light of discussions about the trial of crimes committed during the 1971 war of independence.[29]

FLAWED EVIDENCE COULD UNDERMINE FAIR TRIAL PROCESSES

Fair trials depend upon accurate and thorough evidence gathering and record keeping by the police. However, there is a strong possibility that at least some evidence to be presented to the courts may be based on confessions obtained under torture.

Cases of evidence gathered under torture have emerged in testimonies Amnesty International has received from family members of detainees. It appears that some of those detained on suspicion of participating in the mutiny at Pilkhana were not even present in their barracks on the two days of the mutiny. One such detainee was reportedly staying in a BDR guesthouse outside Dhaka when the mutiny started, but he was arrested when he reported back to duty and detained on suspicion of taking part.

Another BDR detainee was, according to his family, on night duty on 24 February. He returned to his house, which is located outside Pilkhana near Gate 5 at about 7am. He went shopping in a nearby market when he heard the sound of gunfire. He went to the police station to file a General Diary – a procedure for reporting criminal activity – to say he had heard shootings at the Pilkhana compound. The police refused to file the General Diary. On 2 March he reported back to Pilkhana and was detained. He had no official contact with his family, but was able to let them know he was ok by making brief phone calls on the mobiles of well wishing police officers. On 17 March, all communication stopped. Some 40 days later, his wife received another short phone call from him to say he was being taken to court by CID police for an extension of his remand in police custody. Four of his wife's relatives went to see him in court. At first, none of them recognized him. They said he was unable to talk properly. His face appeared disfigured, and his hair was pulled out in places. He was not allowed to talk to them.

His wife heard no more from him, despite appealing to the police and jail officials. Some days later, she read in a newspaper that her husband had made a confessional statement before the magistrate, admitting that he took part in the mutiny, fired shots in the compound and looted weapons from the armoury. His wife told Amnesty International:

"I know my husband very well, and I know where he was. He was outside Pilkhana. He couldn't have gone inside to do any shooting or looting. How could he have told the court that he had? He must have been tortured. He has been forced to say that under torture. I was not allowed to talk to him when I saw him in court, but I could see that he had been tortured."

This case illustrates that confessions likely to have been obtained under duress have been presented to court as evidence of involvement in criminal activity. Such a move is in breach

of international human rights law. Article 15 of the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment provides:

"Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made."

There has been no official investigation into allegations of torture made by BDR detainees to ensure that confessions presented to the courts have not been made under duress. More than a dozen BDR personnel have publicly alleged that their interrogators have tortured them to make them confess to committing criminal offences during the mutiny, but the government has not carried out an investigation into these allegations. According to the Daily Star newspaper, 20 BDR personnel submitted their appeals to the Dhaka Metropolitan Magistrate on 5 November 2009 to allow them to retract their confessional statements, which they say they have given because they were tortured.

In addition, apparent inconsistencies in record keeping make it possible that evidence gathered under one name may be presented under another name. The authorities have stated that as many as 10, 000 BDR personnel known to have been in Pilkhana during the mutiny are being investigated by the CID. This is a huge and unprecedented task requiring the highest level of attention to detail to ensure that proceedings are based on accurate information.

On 24 May 2009, the Dhaka-based online news website, bdnews24.com revealed that a BDR man whom the authorities declared to be a "fugitive" was in fact in detention. His brother told the news service that he had met the detainee in prison but the police had given his name to the press as being on the run. It is essential that the investigating personnel are well trained and competent in order to deal with such a high volume of cases. They must also be conversant with human rights law and standards. If not, detainees may be wrongfully charged and the defendants' right to a fair trial undermined.

3/CONCLUSIONS

Amnesty International condemns the unlawful killings, hostage taking and other human rights abuses during the mutiny and calls for the perpetrators to be brought to justice in fair trials.

At the same time, the Government of Bangladesh is obliged under international treaties to which Bangladesh is a state party to ensure that all legal processes, from arrest through to investigations and trials, conform to standards set by these international treaties.

The government's move to make public a summary of the inquiry committee report, which was set up to investigate and document what happened during the mutiny is commendable.

The government must ensure the humane treatment of detainees. There have been serious allegations of torture of BDR detainees and at least 48 have died since 9 March, some under circumstances that suggest torture may have been a factor.

Amnesty International welcomes the Supreme Court's clarification that the 1952 Army Act is not applicable to BDR suspects, and the government's announcement that it accepts this clarification.

Prosecuting such a large number of defendants in a specific trial is unprecedented in the recent history of Bangladesh. The government now has an opportunity to reinforce trust in the rule of law by ensuring the civilian courts have the capacity to deliver justice in fair trials for such a wide range of mutiny-related criminal offences involving several thousand defendants. No one should be sentenced to death.

RECOMMENDATIONS

Amnesty International welcomes the government's commitment to bring those responsible for the human rights abuses during the February 2009 BDR mutiny to justice. Heinous as are the crimes committed, suspects must not be subjected to any acts that violate their human rights.

In order to achieve these goals Amnesty International urges the government of Bangladesh to ensure that:

Continued detention and trials

- All detainees are treated humanely at all times. They must be allowed regular family visits, and be able to send and receive mail from their relatives.

- All detainees must have regular access to private meetings with lawyers of their choice and medical care.

- Detainees must be released unless they are promptly charged with recognizable criminal offences and remanded by an independent court.

- BDR personnel charged with crimes must be brought to justice in proceedings that meet international standards of fairness without recourse to the death penalty.

- The courts must not accept evidence obtained under duress.

- The government must ensure that the police keep accurate records to ensure no one is wrongfully accused of a criminal offence.

- The government must examine the capacity of the judicial system and if necessary seek assistance from relevant international bodies, to ensure that the criminal justice system has the competence and resources – and the judges have the necessary training – to conduct the trials of such a large number of BDR defendants in accordance with the international standards of fair trial.

Investigating, prosecuting and redressing human rights violations against detainees

- The government must take immediate steps to end all torture and other cruel, inhuman or degrading treatment or punishment, including of BDR personnel currently in custody.

- All complaints and reports of torture and all cases of death in custody must be investigated promptly, independently, impartially and thoroughly.

- The committee formed in May 2009 to investigate deaths of detained BDR personnel should make public its full terms of reference and methodology.

- Any investigating body established to look into these cases must be accessible to surviving victims, including those in custody, as well as relatives and witnesses, with guarantees that no one would be further tortured or come to any other harm for complaining.

- Investigations must not be confined to physical perpetrators, but also cover those with command responsibility over them, irrespective of rank.

- Anyone suspected of inflicting torture, or of causing or being otherwise responsible for the death of a detainee, including those with command responsibility, must be brought to justice in proceedings which meet international standards of fairness and without the imposition of the death penalty.

- All surviving torture victims and relatives of those who died in custody due to torture or negligence must be granted full reparations in accordance with international standards.

- Bangladesh should ratify the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and designate or establish National Preventive Mechanisms in accordance with the Protocol.

- The deaths of all civilians killed during the mutiny must be fully investigated, with those responsible for their deaths brought to justice and reparation provided to their survivors.

[1] The exact number of those killed has not been established. As of early October 2009, government sources put the number at 74.

[2] Amnesty International interview with Major General Mohammad Moinul Islam, Director General, Bangladesh Rifles (BDR), 29 April 2009, Dhaka.

[3] They were the wife of Major General Shakil Ahmed, her female guest and her maid servant.

[4] According to newspaper reports, the three civilians killed outside Pilkhana were a 52-year-old man, Amjad Ali who was hit by a stray bullet near a gate outside the compound; Hridoy Bepari, a boy aged 14 who was hit in the head by a stray bullet near another gate outside the compound; and Khandaker Tarique Aziz Sajib, a university student who was hit by a bullet outside the compound as he was helping a policeman who had been shot at. All were reportedly killed on 25 February. See "Civilian deaths, grieving families overlooked", bdnews24.com, 4 March 2009.

[5] "A summary of the national probe report on the BDR mutiny", the Daily Star, 29 May 2009. http://www.thedailystar.net/newDesign/news-details.php?nid=90347

[6] See "CID charge sheet submission on BDR mutiny likely within 2 months", The Bangladesh Today, 5 June 2009 http://www.thebangladeshtoday.com/archive/June%2009/5-6-2009.htm

[7] Reports of official inquiries remain secret and undisclosed to the public. It is yet to be seen whether under the Freedom of Information Act such reports will be released to the public. This is the first time in the recent history of Bangladesh that parts of an official inquiry report have been made public.

[8] The BDR week is a yearly event when officers and other BDR personnel from various BDR outposts celebrate the force's performance.

[9] Comments from the Ministry of Foreign Affairs on a draft of the report, received 12 October 2009

[10] Comments from the Ministry of Foreign Affairs on a draft of the report.

[11] Even by 29 April 2009 when an Amnesty International delegation visited the Pilkhana compound, only a small number of BDR soldiers were seen to be in active service. The authorities said they were increasingly giving clearance to more BDR personnel to become operative.

[12] From "Draft prepared by HQ BDR on 03 August 2009, reference proposal for the trial under the Army Act, 1952", obtained by Amnesty International.

[13] Police must present a detainee to a magistrate within 24 hours of arrest. If the police have grounds for keeping the detainee in police custody for further investigation, it proposes to the magistrate the legislation under which this can be done. The magistrate may agree and determine the length of time the detainee is to be kept in police custody, or may disagree and release the detainee. After the completion of an investigation, police prepares a charge sheet and take it to the magistrate who may accept all, some, or none of the police charges against the accused. The prisoner will be released if the magistrate presses no charges, and will either be released on bail or sent to jail custody if the magistrate presses any charges.

[14] See for instance Principle 1 of the Basic Principles on the Role of Lawyers, which states: "All persons are entitled to call upon the assistance of a lawyer of their choice to protect and establish their rights and to defend them in all stages of criminal proceedings." See also Principle 17(1) of the Body of Principles, which states: "A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it." In Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, G.A. res. 43/173, annex, 43 U.N. GAOR Supp. (No. 49) at 298, U.N. Doc. A/43/49 (1988).

[15] Police custody means interrogation is ongoing and a case is not complete; jail custody means interrogation is over but a case is not complete. Torture is most commonly used during police custody.

[16] Principle 19 of the Body of Principles states: **"**A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations."

[17] Under Bangladeshi law, police is required to take a detainee to a magistrate's court within 24 hours of arrest to obtain legal authority for their continued detention either in police custody for further interrogation, or in jail custody if further interrogation is not required.

[18] Comments from the Ministry of Foreign Affairs on a draft of the report.

[19] See "Another BDR man dies", Daily Star, 10 October 2009.

[20] Principle 34, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988

[21] See: Memorandum to the caretaker government of Bangladesh and the political parties from amnesty international, AI Index No: ASA 13/001/2008, 10 January 2008.

[22] These legal safeguards include article 35(5) of the Constitution of the People's Republic of Bangladesh, which states: "No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment"

[23] "Govt initiates inquiry into unnatural deaths of BDR soldiers", New Age 21 May 2009, and "Odd BDR deaths to be probed", the Daily Star, 21 May 2009.

[24] Comments from the Ministry of Foreign Affairs on a draft of the report.

[25] Human Rights Committee, General Comment No. 31 on Article 2 of the Covenant: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, UN Doc. CCPR/C/74/CRP.4/Rev.6, 21 April 2004, para 18.

[26] See 'Speedy court to ensure fair trial, law minister tells journos', the Daily Star, 18 September 2009.

[27] 'Speedy court to ensure fair trial, law minister tells journos'.

[28] In large scale trials known to Amnesty International, such as the trial of the killers of Shaikh Mujibur Rahman and his family members, the largest number of defendants has not exceeded 30. There is therefore a dearth of experience in dealing with trials involving a multitude of offences and thousands of defendants.

[29] Bangladeshi authorities have in recent years frequently stated that people accused of human rights abuses during the 1971 war of independence will be prosecuted but they have not yet confirmed the details of such trials or the legislation under which the accused will be tried.

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LOOKING FOR JUSTICE
MUTINEERS ON TRIAL IN BANGLADESH

Large-scale mutiny at the Bangladesh Rifles (BDR) headquarters in Dhaka on 25 February 2009 brought fears of an emerging BDR coup and a possible violent counter-offensive by the army. The mutineers killed at least 74 people, including civilians and army officers.

Amnesty International condemns the unlawful killings, hostage-taking and other human rights abuses committed during the mutiny and calls for the perpetrators to be brought to justice.

Following the mutiny, thousands of BDR personnel were confined to barracks and denied all contact with the outside world. Reports soon emerged alleging that scores, possibly hundreds of BDR personnel had suffered human rights violations, including torture, for possible involvement in the mutiny.

Those suspected of committing crimes must be brought to justice under internationally recognized fair trial standards which include the right to family visits and access to lawyers. All allegations of torture must be investigated and the perpetrators brought to justice in fair trials. Amnesty International opposes the death penalty in all cases, regardless of the nature of the crime, and urges the Bangladeshi authorities not to seek the death penalty.

Highly charged emotions in the aftermath of the mutiny must not mar the legal process. The government now has an opportunity to reinforce trust in the rule of law by ensuring that the civilian courts deliver justice.

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