

Report No. 77

**Human Security in Bangladesh:
Recent Trends and Responses**

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Centre for Policy Dialogue (CPD)

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The Centre for Policy Dialogue (CPD), established in 1993, is an innovative initiative to promote an ongoing process of dialogue between the principal partners in the decision-making and implementing process. The dialogues are designed to address important policy issues and to seek constructive solutions to these problems. The Centre has already organised a series of such major dialogues at local, regional and national levels. These dialogues have brought together Ministers, opposition frontbenchers, MPs, business leaders, NGOs, donors, professionals and other functional groups in civil society within a non-confrontational environment to promote focused discussions. The expectation of the CPD is to create a national policy consciousness where members of civil society will be made aware of critical policy issues affecting their lives and will come together in support of particular policy agendas which they feel are conducive to the well being of the country. The CPD has also organised a number of South Asian bilateral and regional dialogues as well as some international dialogues.

*In support of the dialogue process the Centre is engaged in research programmes which are both serviced by and are intended to serve as inputs for particular dialogues organised by the Centre throughout the year. Some of the major research programmes of the CPD include **The Independent Review of Bangladesh's Development (IRBD), Trade Policy Analysis and Multilateral Trading System (TPA), Governance and Policy Reforms, Regional Cooperation and Integration, Investment Promotion and Enterprise Development, Agriculture and Rural Development, Ecosystems, Environmental Studies and Social Sectors and Youth Development Programme.** The CPD also conducts periodic public perception surveys on policy issues and issues of developmental concerns.*

*As part of CPD's publication activities, a CPD Dialogue Report series is brought out in order to widely disseminate the summary of the discussions organised by the Centre. The present report contains the highlights of the dialogue jointly organised with the Asiatic Marketing Communications Ltd. on **Human Security in Bangladesh: Recent Trends and Responses held** on August 11, 2003.*

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Dialogue on

Human Security in Bangladesh: Recent Trends and Responses

The Dialogue

The Centre for Policy Dialogue (CPD) in collaboration with the Asiatic Marketing Communications Ltd. organised a dialogue on *Human Security in Bangladesh: Recent Trends and Responses* at the CIRDAP Auditorium on Monday, August 11, 2003. Moderated by CPD Chairman *Professor Rehman Sobhan* the dialogue was attended by *Justice Muhammad Habibur Rahman*, former Chief Justice and former Chief Advisor to the Caretaker Government, as the Chief Guest. *Dr Kamal Hossain*, eminent lawyer and former Minister, and *Barrister Rokanuddin Mahmud*, President of Bangladesh Supreme Court Bar Association were present as Special Guests. The event was participated, among others, by members of the parliament, government officials, academics, human rights and other civil society activists, politicians, representatives from international agencies and members of the legal institutions (*see Annex-1* for list of participants).

Welcome Speech by Dr Debapriya Bhattacharya

At the onset of the dialogue, the CPD Executive Director (ED) welcomed all to the event and appreciated their concern for the issue in question. Although the major activities of CPD deal with macro-economic issues, the existing socio-political scenario has induced the institution to put important development issues on the table.

He further stated that the dialogue would highlight the current major concerns for human security in Bangladesh and discuss how the existing legal and judicial systems could be made more pro-people. After bringing in the chief and special guests, the Executive Director of CPD acknowledged the cooperation of the Asiatic Marketing Company Ltd, UNDP and the media in successfully organising the event. He then requested the chairman to take over.

Introductory Remarks by the Chair

In a very brief introductory speech *Professor Rehman Sobhan* said that the aspects which have been covered in the presentation are very critical impinging on our daily lives and affecting the state of governance in the working of the polity in Bangladesh. He then

called upon *Dr Shahdeen Malik*, Advocate, Bangladesh Supreme Court to make the Keynote presentation.

Keynote Presentation

Dr Malik made the Keynote presentation on the theme *Human Security in Bangladesh: Recent Trends and Responses* (see Annex-2 for the full text of the keynote paper). He started the presentation with some general observations on the topic and then highlighted the major points. The presentation was built on the UNDP's publication *Human Security in Bangladesh: In Search of Justice and Dignity*.

Dr Malik informed the participants that more than half of the books written on sports are on chess, and, similarly, in the last 300 years half of the books written on law have concentrated on criminology, penal policy and criminal law. The other half covers all various legal subjects. He noted that the UNDP book was so far the only one broadly covering the issue of criminal justice. From the academic viewpoint, there is hardly any detailed publication on criminal law and security, except from a few hand books, he said. The keynote speaker then underscored two widely discussed aspects of criminology: *corruption* and *criminalisation of politics*. But such way of looking at crime and punishment through this explanation of *singularity* clearly marginalises the issue, he added.

Dr Malik criticised the existing law and order by saying that innocuous acts have been defined as crimes. "It will be a Herculean task to try to make even a partial list of the acts defined as crime" he said. Another issue that was highlighted in his presentation was *Bureaucratisation of Law*.

The presentation by *Dr Malik* concentrated on:

- A simplistic phase-wise chronology of the whole criminal justice system
- The situations involved in each of the phases as regards maintenance of law and order
- Assessment of progresses made in each phase
- Suggestions to look further into the issues.

Open Floor Discussion

The issue of human security is so wide that the discussion at the dialogue went beyond the issues underscored in the Keynote paper. Some of the participants were critical of the UNDP Report on the ground that it seemed to have confined the issue of human security in Bangladesh to a solely legal one, keeping aside various other issues such as poverty, unemployment etc. which are very much part and parcel of human security. The UNDP Report looked upon the issue of human security from a very narrow perspective, said most of them.

In this report, the proceedings of the dialogue has been organised under three headings, namely (i) Access to justice: Social, economic and political; (ii) The issue of governance: Principles of power and its exercise; and (iii) The culture of impunity and accountability vis-à-vis the rule of law. Some recommendations, as they evolved from the discussion, have also been noted here.

Access to justice: Social, economic and political dimensions

Dr Enamul Huq, former IGP, said that criminal justice system is a combination of 2 Ps (Police and Prosecution) and 2 Cs (Court and Correction), as vital instruments, to wipe out crime from our society. About the current trends of human security, he said that most of our people are not aware of the principles of law and what is the real meaning of contempt of court.

Referring to *Dr Malik's* presentation, *Barrister Rokanuddin Mahmud*, President of Bangladesh Supreme Court Bar Association, said that the present state of human security in Bangladesh is so grave that statistics can neither elaborate its clear picture nor can it provide any solution. All the political parties must have an unfeigned commitment, not a cosmetic one, towards changing the present scenario. He further described the existing state of human security as

- a total breakdown in law and order situation
- a total lack of confidence in the judicial system
- failure of police
- failure of the justice delivery system

Mr Suranjit Sengupta, MP drew reference from the Transparency International's report which indicated our law division to be the most corrupt one after police. Poor people are sceptical of the police and also they cannot afford to go to the lawyers. This situation has not been created in a day. All of us have contributed bit by bit to bring our security at present dismal state.

Criminal Justice System in our country is very weak and cannot ensure proper security to the distressed. "Who is going to give protection and security to the victims and witnesses during the legal procedures?" asked Advocate *Salma Ali*, Executive Director, Bangladesh National Women's Lawyers Association (BNWLA). She raised the question referring to the situation where criminals and musclemen continue to threaten the victim's family if they file a case against the former(s). Delay in justice is another factor that manifests the weakness in the overall human security system. *Advocate Ali* was critical to *mediation* in criminal cases. Lawyers provide all legal aids for a long period, and the process of mediation through money, pressure etc. puts an end to all efforts. She also talked of *prevention approach* and *survival approach* to combat the issues of insecurity.

Advocate Sultana Kamal, Executive Director, Ain O Shalish Kendra (ASK) described the current state of law and order as *spectacularly bad* and said that we all are insecure irrespective of our positions. We are living in a state of extensive insecurity where we do not have freedom of thoughts and speech. She blamed the undue interference of politics into law enforcement and judicial system for the deteriorating law and order situation. "This practice has dehumanised all of us", she said. The ASK chief also highlighted the following issues as contributing factors to the present state of human security in Bangladesh:

- Unequal distribution of resources
- Fundamentalism
- Clash of identity (race, religion, ethnicity etc.)
- Militarisation of politics
- Domination of market
- Privatisation without any employment generation scheme

She further held our silence and lack of protest against violence responsible for the existing situation. If we want to break the curse of violence and terrorism we have to raise

our voice and make it heard. The situation may not be changed in a few days, but sooner or later the desired goal will be achieved. Our silence will prove our acceptability and support to injustice. Such silence is disgraceful to humanity.

The current state of human security in Bangladesh is the product of politicisation of police, judiciary, executive and all other sectors related to our very security, said *Ms Taleya Rehman*, Executive Director of Democracywatch. She expressed her concerns by saying that ordinary people suffer due to their lack of knowledge about the judicial system. They must know the law not only to follow it but also to understand what to do when their rights are violated. However, she further noted, the complexity of the law and order system has made it inaccessible to the ordinary people. She then urged that the time has come for us to make some concerted efforts to change the prevailing situation.

President of Jatiya Samajtantrik Federation, Bangladesh *Mr Abul Bashar* said that the current law and order situation has reached such a stage where there is no security to those who protest against violence and terrorism. Both politics and business has become hostage to terrorism. Possible ways of recovery have been severely narrowed. Adding to this, President of Bangladesh Labour Federation (BLF) *Mr Shah Muhammad Abu Zafar* said that politics and business have become so much intertwined that the impact of politics over business, and vice-versa, is a matter of great concern. Most businesses in our country are controlled by politicians in one way or the other. He then continued that the state of our law and order is in a critical condition. There is no certainty that a convict will not get exemption from accusation by appealing to a higher court. “We don’t only want to hear that a criminal has been accused or awarded punishment, rather we want proper execution of such punishment”, he said.

Professor Muntasir Uddin Khan Mamoon of Dhaka University said that over the last 30 years, the consecutive governments have violated human rights in various ways. As a result, we have become sort of indifferent to issues like violence or human security. Today our very existence is threatened, and violation of human security over the last 30 years has marginalised our chances of recovery. The basic indicator of human security is the relationship between the government and the general people. But the existing law and order situation has created a distance between these two.

Mr G M Quader, MP of Jatiya Party started his deliberations by referring to Dr Malik's presentation and said that whatever actions we took and those being taken have failed to increase or even to ensure our security. He then said that the deteriorating state of human security may be attributed to criminalisation of politics, police and also criminalisation of courts

He referred to Operation Clean Heart (OCH) as an appropriate example of Criminalisation of Politics. He however commended the OCH for projecting peace in the country while terrorists and their godfathers stay behind bars. He finally expressed his frustration by noting that the present constitution has failed to provide security to the people of this country and, thus, it is imperative that the constitution is changed.

The issue of governance: Principles of power and their exercise

Mr Manzurul Karim, Former Home Secretary, quoted David Preston, Former Canadian High Commissioner in Bangladesh:

“Bangladesh will no longer attract foreign investors if street violence, criminal activities and influencing business contracts by power lobbying continue. These reflect a weakness in governance and low respect for rule of law which undermines Bangladesh's position as a secure and safe place for economic activities.”

Mr Karim noted that bureaucratic obstacles and undue influence too often stymie foreign investors and business people. When this happens, investors turn quickly to other opportunities. This problem has to be solved. The harsh reality is that aid is falling and it is increasingly becoming competitive for countries to attract foreign assistance. If Bangladesh wants to attract foreign investment it has to “improve its image.”

On the issue of governance, Qazi Golam Mehmud, Former President of the Supreme Court Bar Association said that insecurity is pervasive in our society. Although the aim of independence was to have a sovereign and secure country, about 38 per cent of the population happens to lead a miserable life even after 30 years of independence. Every government portrays human security not only as a critical issue but also as one of its apex priorities whenever there is a possibility of getting some foreign aid. Our leaders are always busy helping themselves. Needs of the masses seldom receive their attention. The

democratic rights of the citizens are violated consistently. These are direct results of *criminalisation of politics* and *politics of favouritism and division*.

Barrister Rokanuddin Mahmud expressed his deep concern by stating that the picture that we get from our daily news papers manifests the current law and order situation in the country to be on the wane. “There is a total lack of human security in Bangladesh”, he said. The condition of the law enforcement agencies is very poor, he continued. According to him, lack of efficiency of police can be attributed to political influence over law and justice police personnel taking advantage of political interference and criminalisation of police.

However, he noted, that the responsibility cannot be vested upon police alone. The blame has to be shared by all of us. Adding to this, *Mr Manzurul Karim* said that our police is armed with conventional weapons. “Police are less armed. Criminals are well armed, even with AK47”, he continued. He expressed concerns over arms smuggling into Bangladesh by land and sea ways. Both police and the common people have to initiate concerted efforts to curb such crimes.

Mr Abu Zafar harshly criticised the practice of offering bribes in getting jobs, even in the police. So when a person gets appointment, he is not unlikely to recover that amount by all odd means. All sectors have become corrupt. There is hardly any job without nobbling. Participants also said that police, in association with political hoodlums, attacks general students in our academic institutions. If our law enforcing authorities are used as a tool to suppress people, then who will ensure security? Frustration was clearly voiced when some of the participants said that even doctors and academics use political affiliations to reap benefits.

Barrister Rokanuddin Mahmud commented that The role of government is the most crucial one as regards ensuring human security. But the present scenario is something different. He termed it as a chronicle of failure on the part of successive governments and political parties. It is therefore the need of the time to identify the reasons behind the failure of successive governments over the last 30 years to provide us the security that we have been aspiring for. The major part of the failure is to be shared by our political

leaders. The general consensus among the people of this country is that our political leaders have failed to lead us from the front.

Mr Suranjit Sengupta, MP termed the Supreme Court as the *Chief Marshall Law Administrator*. He criticised the trend where judges resign to become ministers. Politicians are ready to do anything to go to power. Those who are, and were, in power have contributed to the present situation morally, immorally, ethically, unethically, politically and non-politically. We have used religion, ethnicity and culture for our political purposes. He termed our political leaders as the principal violators of the constitution. In this context, *Advocate Sultana Kamal* said that politics has lost its original meaning. It has turned into fight of interests from individual to international levels. “Politics today is very confrontational,” she stated. *Mr Abul Bashir* said that the government is paying no heed to the demand of appointing a *Nyaipal*. *Mr Muntasir Mamoon*, however, differed with the view and said that politicians are not the only one to be blamed for all misdoings. It will be unjust to say that only politicians interfere in judicial matters, ignoring other elements involved. Speakers at the dialogue also said that opportunism and immorality in politics, not politics itself, are to be blamed for the present state of human security. When a party comes to power, its intention turns to rule the country, not to serve her.

Mr Abu Zafar brought in the issue of security of employment. He said that the government is closing various industries and banks without any farsightedness. He referred to government’s decision of closing the Khulna Jute Mill and a number of public sector banks for incurring loss. The government on the other hand has no concrete rehabilitation programme. Such measures intensify the ever growing unemployment. The main defaulters go untouched and the poor workers suffer. This is a violation of human rights.

Majority of our garment workers are women, and as many as 90 per cent of them work without any appointment letter. This gives the employers an upper hand to dismiss any one at any point of time. *Mr Zafar* further mentioned, in this connection, that pregnant garment workers are dismissed from their jobs. He called for enforcement of Trade Union Rights to eliminate such repression. *Barrister Mahmud*, in this regard, said that the issue of gender security is very crucial in the present day context. Violation of woman rights

can be seen particularly in rural Bangladesh. Vice President of Bar Council *Barrister M Amirul Islam* said that governance today has become the absolute exercise of power to the exclusion of all the rest.

The culture of impunity and non-accountability vis-à-vis the rule of law

On this issue, Barrister *Rokanuddin Mahmud* said that there had been various Draconian laws in place but no improvement in the law and order situation. He, then, expressed unity to *Dr Malik* that introduction of Draconian laws and severe punishments are not the solution. The existing strong connection between crime, corruption and politics is the major issue of concern. The black money, taken out from our banking system, is playing a big role in the failure of all our efforts to ensure the much needed security. Those who are responsible very easily escape from all accountability.

On the issue of politicians' exercise of power to dictate law, *Advocate Sultana Kamal* said that politicians are desperate to come to power. They think that it is the duty of the people to send them to power. Basically they do not believe in empowerment of the masses. This is solely in contrast with politics in its real form. Such politicians are disposed to do anything to hold on to their power and position. Therefore, we need to revisit the very meaning of politics with due emphasis. She further said that in earlier days leaders became ministers, but now-a-days ministers turn into leaders. So the whole process has been reversed. *Qazi Golam Mehmud* described the prevalent trend of politics as *party before people*.

Our country has become a place of anarchy and lawlessness, said *Mr Abul Bashar*. Those who talk about democracy most are the most corrupt ones. The widespread use of money in politics has been taking its toll on the poorer segment of our society. During elections, the poor people join processions of various candidates only to get some money. This proves how economically vulnerable we are. Politics is not for the people, rather people seem to be meant for politics. We need some concerted efforts to fight injustice.

Mr Abu Zafar stated that there is little command and control in institutional management within the political parties. This gives the political leaders an opportunity to exercise their undue influence over the society. In this regard, the Vice President of Bangladesh Krishak League *Mr Harun-or-Rashid Hawlader* mentioned if public awareness is successfully

created, then general people will not regret for electing someone as their leader as their decision will then be taken rationally.

Barrister Amirul Islam criticised the government's prejudicial command over law and order. He referred to the ending paragraph of the *Public Safety Act* which says that pending cases can be withdrawn if the government decides to do so. Subsequently, the government withdrew 10,000 case and about 50,000 musclemen/criminals were set free. He also brought in the issue of *Operation Clean Heart* and the indemnity law that followed it. Speakers at the dialogue said that the state is to protect the fundamental rights of its citizens. If the state itself violates these rights what action should be taken? *Mr G M Quader* also expressed his disappointment by adding that under the present system, the government is in no way accountable to people. This is the biggest failure of the system and people today are totally frustrated.

Recommendations

The recommendations which evolved from the discussion at the dialogue can be summarised as follows:

- Immediate separation of the judiciary from the executive body.
- Immediate measures must be taken to deal with terrorism with strong hands. Although intellectuals are trying through their writings, political leaders must sit together, keeping aside all the differences, to talk until they find a solution. This also underscores the role that the civil society activists and think tanks in their efforts to find out a solution to the existing volatile situation.
- We need introduction of effective Draconian Laws to stop and eliminate arms smuggling into our country which poses serious threat to our security.
- We have to have strong political will. This should not be confined to politicians only, rather people from all walks of life must voice their substantive political will.
- Police has become corrupted. They have no accountability to people. The Home Ministry prepares the Annual Confidential Report (ACR) for police personnel. This has politicised police. This practice has to be changed. This responsibility should be given to people's representative or to civil administration. Only then will it create accountability of police will be ensured and, corruption in police will decline.

- Measures should be taken to ensure rehabilitation of the inmates who have been living subhuman life so that when they come out of jail, they do not engage into illegal acts. We have to make them feel that they are a part of our society.
- Formation of a “People’s Commission”. This will act as a watchdog on the overall security issues.
- Delay in trial is one of the major problems with our judicial system. We have to bring in changes to ensure proper judgement within the shortest possible time. Punishment for crimes must be ensured. Only then we can hope for a secure society.
- We need to have highly motivated political will, and transparency and accountability in administration.
- We have to identify the loopholes in our system and heal them as early as possible.
- A form of trust has to be created between politicians and common people. Formulation of public opinion is essential. Media can play a vital role in this respect. Government cannot provide security unless people themselves are aware. That’s why public awareness is so crucial.
- All efforts for development will go to drain unless the state of the people is changed. If we want to salvage our country from this disastrous condition, all of us have to unite together.
- Youths are our goldmines, but these young people are committing most of the crimes. We have to find out a solution to keep them away from such unwanted activities and turn them into treasure for the country.
- NGOs can encourage villagers to form *village police* or *community police*. The action could be divided into three different patterns i.e. short-term, mid-term and long-term. The role of mass media will be of vital importance in this regard.
- Civil societies should be the forerunner in the initiative to raise public awareness and help the government with fruitful recommendations to overcome the existing state of deteriorating human security in Bangladesh.

Remarks by the Special Guest

Advocate Kamal Hossain, former Minister and eminent lawyer, started his deliberations by thanking *Mr G M Quader, MP* for bringing in the issue of constitutional failure. The

special guest said that the period from 1982 to 1990 was a struggling phase for people from all walks of life to restore the constitution. It was the desire to get what the constitution promised, -equal protection, rule of law, independence of the judiciary, representative and accountable government. He further mentioned that failure of the constitution is not something new but attempts to suspend the constitution will never bring any fruitful result.

It is true that people are frustrated by the failure of the constitution in reducing the disparity between the rich and the poor, between villages and towns. Successive governments have failed to ensure total literacy till now. We have to find out the limitations in the institutions responsible for implementing these values of the constitution. We have to empower the people to secure what they have aspired for

The special guest also felt that it is not the illiterate landless peasants who break the law; rather, they are our productive partners, he maintained. We need to overcome our inhibitions. The real problem makers are those who protect the godfathers and are busy appropriating the black money. Arms trade and armed groups cannot be sustained without support from vested quarters. The young journalists are risking their lives to dig out information about these criminals. The protectors of the evil-doers have to be identified and tried in a court of law. He strongly criticised the role of the elites trying to suppress the voice of common people who are demanding punishment of criminals and termed it as a cultural impunity.

Dr Kamal called upon all political leaders to stop blaming one another, and uphold the values of our constitution. Along with this, he further mentioned that a parliamentary government requires effective inputs from the ministers for proper functioning of the system. If he/she is not able to have his/her advise accepted on the issue of principle, he/she is obliged to resign. On the other hand, the ministers also have to ensure responsible exercise of power. The fault is not with the constitution, but with us who have failed to realise the underlying values of the constitution and personal responsibilities that goes with it.

The former minister said that good people not only keep silent, sometimes they collaborate with the evil. He attributed the arbitrary exercise of power to those highly

educated people who use law and order to draw benefits from the system. These people encourage and provide shelter to those who have degenerated politics. In order to run the government effectively, we need regenerated politics. We cannot expect to enjoy our rights in a depoliticised society. He then termed the rejection or condemnation of politics as *very dangerous* as this erodes people's faith from over the constitution.

The special guest concluded his remarks by pronouncing that our constitution has all the provisions of economic, social, political and civil rights, and we need to exercise our rights and responsibilities, laid down in the constitution, with rationalisation. Only then can we hope for an effective government providing proper security to the statesmen. Unity amongst all, irrespective of class and culture, on the basis of common commitment to the values of the constitution is what we need to ensure proper human security in the society. He then invited the media, especially electronic media, to play a vital role in the movement against the odds.

Remarks by the Chief Guest

Justice Muhammad Habibur Rahman, former Chief Justice and former Chief Advisor to the Caretaker Government, congratulated the UNDP for the publication. However, he continued, the law has not made it to dent the literary culture of the society. We have failed to integrate the legal principles in our literary culture. The issue of human security is very complex and we cannot solve the problem by pointing towards singularisation, pluralisation or generalisation. At the moment the country is maliciously divided and the constitution is not being followed. Although there is a clear provision in the constitution that the executive and all other organs will come to the aid of the Supreme Court. It is very unfortunate that the Court's orders are not being adhered to.

The chief guest termed the challenging of the validity of the constitution as a dangerous omen. He said that although law is meant for the middle class, and the police is to protect their property and give them directions this is not happening in practice. It is true that there is an anti-law or anti-police tradition in all societies but the other side of the coin is that we cannot imagine a society without police or law enforcing agencies. We are to work with this much malign organisation. It is now our duty to organise and ensure

people's participation in all spheres of society in order to achieve the much desired sense of human security.

The chief guest concluded his remarks by describing the dialogue a step in the right direction and for the betterment of the society.

Mr Jorgen Lissner, Resident Representative of the UNDP

Mr Lissner informed the participants at the dialogue that the UNDP Report contains 131 recommendations to dent the existing state of human security in Bangladesh. He was very optimistic to say that even if half of these are yet to be implemented, the situation will definitely turn into a different one. He then called upon all to go through the suggestions.

Concluding Remarks by the Chair

In his concluding remarks, *Professor Sobhan* noted that the dialogue had raised many of the important issues that are vital in the context of human security in Bangladesh. It is up to us to come together to see that the recommendations, which have come up, are made effective and to assume responsibility for preserving the security of our society and the future of our democracy. At the end of the day it is our collective failure to effectively protect these rights which enable people who are usurping these to become the dominant force in the society. In the days to come, we have to think what collective efforts may emerge, from participation of groups like these, to go ahead and realise the elements which preserve human security in our society.

Annex-1

List of Participants

(In alphabetical order)

<i>Mr Rakib Ahsan</i>	Assisstant Programme Officer, The Asia Foundation
<i>Ms Ferdousi Akhter</i>	Member, Naripokkho
<i>Ms Zobaida Akhter</i>	Group Account Director, Asiatic Marketing Communications Ltd (AMCL)
<i>Mr S M Shah Alam</i>	Author and Director, Rural Development Bangladesh
<i>Mr Md Mahub Ali</i>	Secretary, Supreme Court Bar Association (SCBA)
<i>Advocate Salma Ali</i>	Executive Director, Bangladesh National Women's Lawyers Association (BNWLA)
<i>Md Sagir Anwar</i>	Lawyer, Supreme Court
<i>Mr Md Badiuzzaman</i>	Former DG, Bureau of Anti-Corruption
<i>Mr Abul Bashar</i>	President, Jatiya Sramik Fedaretion Bangladesh
<i>Ms Nurun Nesa Begum</i>	Assistant General Manager, Janata Bank
<i>Dr Debapriya Bhattacharya</i>	Executive Director, Centre for Policy Dialogue (CPD)
<i>Mr Sudeshna Chakrabarty</i>	Law Student, Oxford, United Kingdom
<i>Ms Salma Chowdhury</i>	Former Deputy Director, Department of Social Welfare, GoB
<i>Mr A M Chowdhury</i>	Former Chief Conservator of Forests
<i>Ms Marion Derckx</i>	Second Secretary, EC Delegation
<i>Mr Charlotte Duncan</i>	Governance Advisor, UNDP
<i>Ms Sanjida Shamsher Elora</i>	Research Associate, CPD
<i>Mr Parimal Chandra Guha</i>	Vice President, Democratic Lawyers Association and Vice President, SCBA
<i>Mr Nurul Haq</i>	Member, CPD Board of Trustees and Former Member, Planning Commission
<i>Dr M Enamul Haque</i>	Former Inspector General of Police
<i>Ms Lisa Hiller</i>	Communications Officer, UNDP
<i>Dr Kamal Hossain</i>	Vice President, Transparency International
<i>Md Sakhawat Hossain</i>	Programme Officer, Bangladesh Institute of Law and International Affairs (BILIA)
<i>Mr Sohrab Hossain</i>	Staff Lawyer, Bangladesh Legal Aid and Services Trust (BLAST)
<i>Mr Syed Saifuddin Hossain</i>	Programme Associate, CPD
<i>Mr Harun-or-Rashid Howlader</i>	Senior Vice President, Bangladesh Krishak League
<i>Dr Shahnaz Huda</i>	Associate Professor, Department of Law Dhaka University (DU)
<i>Advocate Fazlul Huq</i>	Former Executive Director, BLAST
<i>Ms Shireen Huq</i>	Member, Naripokkho
<i>Mr M Mujibul Huq</i>	Former Cabinet Secretary, GoB

<i>Md Mahmudul Huq</i>	Research Associate, Canadian International Development Agency (CIDA)
<i>Mr Hasanul Huq Inu</i>	President, Jatiyo Samajtantrik Dal
<i>Barrister M Amirul Islam</i>	Vice Chairman, Bar Council
<i>Mr Kalyankar</i>	Free Lance Researcher
<i>Advocate Sultana Kamal</i>	Executive Director, Ain-O-Shalish Kendra
<i>Mr Mostafa Kamal</i>	Executive Director, UTSA
<i>Mr Manzoor Ul Karim</i>	Former Home Secretary and Senior Advisor, UNICEF
<i>Dr Sumaiya Khair</i>	Associate Professor, Department of Law, DU
<i>Mr M Hafizuddin Khan</i>	Former Comptroller & Auditor General
<i>Ms Ayesha Khanam</i>	General Secretary, Bangladesh Mohila Parishad (BMP)
<i>Mr Abdul Matin Khasru</i>	Advocate, Supreme Court, Former Minister for Law, Justice and Parliamentary Affairs
<i>Ms Salma Khatun</i>	ERGO Researcher
<i>Mr Jorgen Lissner</i>	Resident Representative, UNDP
<i>Ms Sumona Liza</i>	Executive (Account Service), AMCL
<i>Mr Kazi Golam Mahbub</i>	Former President, SCBA and Senior Advocate, Supreme Court
<i>Barrister Rokanuddin Mahmud</i>	President, SCBA
<i>Dr Shahdeen Malik</i>	Advocate, Bangladesh Supreme Court
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Annex-2

***HUMAN SECURITY IN BANGLADESH:
RECENT TRENDS AND RESPONSE***

Dr Shahdeen Malik

Advocate, Supreme Court of Bangladesh

“Human insecurity is like a cancer – no single group of people or factors have caused it, and it can only be effectively tackled, when all segments of society work closely together – the Government, academicians, political parties, civil society, local communities and the private sector.”

From Preface, **Human Security in Bangladesh: In Search of Justice and Dignity**, UNDP, Dhaka, September, 2002

If the ‘famous’ forty thieves of Ali Baba were arrested today, would any of them be convicted and imprisoned? As they are ‘famous’, the chances are that they wouldn’t be.

BACKGROUND

UNDP’s publication **Human Security in Bangladesh: In Search of Justice and Dignity** is surely the only attempt so far, or at least that I am aware of, to put together a critical scrutiny of different aspects of the functioning of the criminal justice system and its impact on the poor. Compiled by a group of experts the publication examines relevant legislation, law enforcement apparatus, court system and prisons. In other words, the book goes beyond the conventional treatment of any one aspect or arena of the criminal justice system and assesses the functioning of laws and institutions with, as already mentioned, a clear focus on, as it were, the fate of the poor in the system.

The bulk of the work for the UNDP Report was done in 1997-1998. It was updated in 2002. The overall picture painted is gloomy, as the report itself characterises:

.... the dominating public perception that remains today is one of widespread human security violations, especially against the poor and the disadvantaged, and an inefficient, complex and corrupt criminal justice system operating in an anti-poor environment.

.... however, what is also evident in the report and emerged in numerous interviews is the existence of many determined individuals and organisations that are fighting every day to change the situation. (p.119, from Updates and Conclusions, of the UNDP Report)

The issue of human security, particularly in the context of our criminal justice system, is surely a very complex one. Currently, there are more than 150,000 police and other personnel employed by the country at a cost of at least around 2,000 crore taka per year to deter crimes and arrest, convict and punish criminals. This deployment of a considerable number of persons and outlay of substantial resources is, as is readily accepted by most, not only failing to deter crimes and punish criminals but is also unable to transform the system into an efficient and just one.

Pervasive corrupt influence of ‘politics’ is clearly at the root of the scepticism about the Criminal Justice System (CJS). The firm belief that money can buy anything and if money fails, appropriate and proper ‘connections’ can take any criminal out of any fix, rightly or wrongly, is the foundation of much of the scepticism about the criminal justice system.

However, such simplistic diagnosis of the symptom may preclude the possibilities of meaningful exercise or intervention, at one hand, and lay the whole blame squarely on someone or some institution, which may not be wholly justified. More importantly, such explanation of ‘singularities’, i.e., that corruption is the primary factor for the malfunctioning, easily obscures other more pressing and even more glaring failures which have compounded the issue. Is there a guarantee that sans corruption, the output of the system would enhance substantially? Failing total uprooting of corruption, is there an inverse proportional relationship between reducing corruption and increasing the efficiency of the system, i.e., say if corruption is reduced by 50%, will the CJS become 50% more efficient and productive leading to half the present number of crimes being committed and double the rate of conviction? More importantly, will it become more sensitive to the needs of the poor? Surely, straight forward answers to such queries would be irrational which, in turn, reinforces our assumption that the singularities centred discourse needs to be shunned for a better understanding of the functioning of the criminal justice system and the current insecurity it engenders.

Needless to say, there is none and there can hardly be any easy answer or ready-made solution to the problem of ‘law and order’ or ‘crime and punishment’. Crime is not a simple phenomenon that can be neatly examined, scrutinised and resolved and all that offered in one orderly account as ‘recommendations’.

To start with, there is no definitive count of the acts defined as crimes by our laws. In fact there is not even a count of laws currently in force in Bangladesh. These official functions of systematising laws are yet to be undertaken in earnest.

In terms of laws, until recently, the *Penal Code* (1860) as it were, was the primary depository of acts defined as crimes and punishments for such acts. However, an increasing number of recent ‘regulatory’ Acts defining the role and functions of various governmental bodies have also characterised various acts, such as non-payment of bills, as criminal acts and provided penal punishment in terms of fines or short term prison sentences. More alarmingly, a large number of ‘penal’ laws have been enacted in which a host of acts are described as heinous crimes in a sweeping manner, followed by provisions for draconian punishments. Frequent amendments or repeals and then re-enactment in a somewhat different formulation of several laws have also made the task of keeping track of acts defined as crime problematic.

These, coupled with the inherent complexities of criminal procedural laws, make the task of analysing the criminal justice system even more arduous.

Secondly, any account and diagnosis of the criminal justice system cannot but confront the problem of numbers and statistics. Our CJS is notorious for lack of accuracy of crime statistics. Under reporting of crimes is a universal phenomenon, though some countries are more afflicted than others. Where there is a popular perception about the possibilities of proper police action upon a report of crime, the numbers are more likely to reflect the actuality than in countries where police is less trusted and benefits of reporting a crime are less obvious.

The problems and complexities are many and diverse. The UNDP publication does contain a number of useful recommendations. But more significantly, it draws our attention to the issues and problems and identifies the specific lacunae, which are and would be of immense value in formulating actions and policy.

These issues and problems have to be addressed. The question, obviously, is how. I’ll not, needless to say, attempt any answer to this million dollar ‘how’! Rather, let me try to put the issue of the criminal justice system and insecurity in a somewhat different formulation

which, I desperately hope, would find some resonance with at least some of you and further the primary goal of today's exercise, i.e., focus our collective attention towards finding solutions to the issues at hand.

PHASES AND INSTITUTIONS

The first slide [HS Presentation1 – *Phases Institutions*]

.....

In looking at 'crime and punishment' as well as 'law and order', the slide offers a somewhat chronological view of phases and the relevant institutions. Ensuring security means preventing crimes, i.e., taking measure so that crimes are not committed. The primary institution responsible for crime prevention is, obviously, police and other auxiliary forces such as ansars and gram chowkidars. In addition, there are other specialised forces to prevent particular types of crimes such as BDR for smuggling; coastal guards for similar duties on the waters, and so forth.

One function of criminal law is also preventive or deterrent. The threat of punishment of criminal laws is assumed to be preventive.

The second phase is the investigating duties of police, after a crime has been committed. In this second phase the public may also be helpful in assisting the police with information and as witnesses.

The third phase is the trial of crimes and the institution is the trial court. The primary institutional actors here are judges, lawyers, prosecutors, witnesses and experts. The appeal process, needless to say, is also a part of this third phase in our scheme with another set of similar actors in appeal courts.

The last phase is that of punishment and the relevant institution is the prison.

ACTIONS RECENTLY TAKEN

The second slide [HS Presentation 2 – *Actions recently taken*]

I have tried to relate the actions recently taken to each phase, as depicted in the slide. It must be pointed out that this is by no means an exhaustive list of all the recent actions,

nor can these actions be neatly and precisely ‘fitted’ to my phases. Nevertheless, such a view of actions recently taken may serve as a useful basis for policy formulation, to which I shall return towards the end of my presentation.

For the last few years, there had been periodic announcements of proposed increase by at least 5,000 personnel of the police force. Coast guards have been commissioned recently and a specialised force currently called *Rapid Action Team*, with plans for its transformation to a more organised structure has been initiated. Other actions related to the preventive phase include recent joint and other ‘drives’ by various law enforcement agencies.

‘*Operation Clean Heart*’ was one of such drives that not only destabilised the criminal justice system but also infringed fundamental human rights of citizens many of whom were picked up on the pretext that they were criminals/terrorists, detained, tortured and later declared dead, ostensibly from heart attacks! The fact that these drives allowed no room for a fair trial where the accused could exercise his right to be heard and the subsequent move to indemnify these acts demonstrated a blatant disregard for human security, not to mention derogation of constitutional guarantees and the rule of law.

Parts of these drives would spill over to my ‘investigation of crimes committed’ phase as these drives are aimed at arresting criminals as well. Nevertheless, the deterrent and preventive impact of these drives is self-evident in so far as there seems to be clear messages to the criminals that ‘crime does not pay’.

Clearly, enactment of harsh criminal laws is another aspect of this preventive phase. We have had a number of recent laws, with harsh punishments -- *Public Safety Act* (2000); *Nari O Shishu Nirjaton Domon Ain* (2002); the acid crimes acts, the speedy trial tribunal and courts – all containing deterrent and preventive elements and these laws are supposed to convey clear signals to criminals and potential criminals about their possible fates in terms of harsh punishment to which they would be subjected to in case of transgression.

However, the current actions of enhancing punishments for different categories of crimes, with the obvious expectation that the fear of these harsher and stricter punishments would

deter would be criminals, presuppose a strong belief that threat of punishment by itself, irrespective of

- (a) whether such punishment reflects popular notions and understanding of ‘just dessert’;
- (b) whether fear of punishment is the primary determinant in decisions of criminals or would be criminals about their criminal ventures;
- (c) whether deterrence or reform of criminals is the preferred goal, for the longer the punishment the lesser is the scope and possibility of reform of criminals;
- (d) whether the resultant increase of state power, through judiciary and prison system, over the population, and
- (e) generally, the impact of a much harsher system of punishment on the other value systems in the society, and so forth are surely entangled with a number of theoretical positions which have been articulated and debated for at least three centuries now.

Leaving these considerations aside, however important these may be, I draw your attention to the fact that enactment of harsher laws are one preventive method in controlling crimes and this method has been resorted to, as it were, with gusto.

In terms of recent actions, the **investigative phase** did not seem to have benefited much. Or at least, I am not aware of much recent actions in this phase except that certain medical examination, particularly for rape victims, has become slightly more readily accessible. However, introduction of certain technology or wider use of these technologies such as vehicles for increased mobility, radio-wireless communications, etc., can be seen to have bolstered both preventive and investigative capacities of the police. I imagine that enlisting the services of ‘foreign dogs’ of recent past was another attempt at enhancing investigative credentials of the police.

The recent actions for the **third phase**, trial of crimes, it seems to me, are, or at least potentially, more substantial. Special courts have been set for expedited trials; some laws also have similar aims and goals; the huge World Bank Judicial and Capacity Building Project is primarily focussed at the third phase. Under this Project construction of new court buildings (in 21 districts) and enhancing infrastructural facilities at the Supreme Court, automating certain aspects of court and case management, introduction of information technology, and so forth are underway. Also, enhancement of judicial training facilities is another recent intervention at this third phase. Moreover, the recent

discussions and indications by the Law Minister about creating a permanent prosecution-cadre service, proposed change of the Bangladesh Bar Council Order for streamlining the enrolment process of lawyers are other dimensions of recent activities focussed at this phase.

The *Masdar Hossain* judgement, in this view of the matters and issues, is primarily aimed at the reform of the court by streamlining the judicial personnel of the court, their accountability through a different recruitment process and re-distribution of jurisdiction and responsibilities of judicial officials of various grades and categories are also focussed at the third phase. The recent agitation of lawyers in terms of the independence of the judiciary, at least by implication, also focuses on the reform of this third phase/institution of the system.

As for the **fourth phase**, constructions of new and renovation of old prisons are examples of recent interventions in this phase. The government has also established new ‘safe homes’ for women victims of crime; the capacity of juvenile detention centres has increased with new facilities at Jessore and other places.

PHASE AND PRIORITIES

We, obviously, don't have Aladin's lamp. In other words, resources and possibilities are limited by a good number of factors. Hence, in terms of priorities to make the criminal justice system better, more efficient and most importantly, fairer to the poor and the disadvantaged, fashioning priorities is of utmost importance.

My ‘phases and recent actions’ above, have focussed exclusively on governmental actions. But as the UNDP Report has indicated, there have been important interventions (actions) by the civil society – primarily media and NGOs – in various phases as well. Awareness campaign by the NGOs would fall, broadly, under my first-preventive phase. In the investigative phase, NGO intervention in terms of better and more sensitive handling of certain issues and crimes such as rape, abduction of women, and trafficking had been substantial and sustained. For the third phase, at the courts, NGOs have provided legal aid, supported women and child victims and undertaken other measures. There has been some advocacy for reform of the prison system by some NGOs, i.e., NGOs have begun to intervene in the fourth phase as well, by initiating advocacy for prison

reform, which have received, by and large, sympathetic considerations of the prison authorities.

Needless to say, there are many ways of going about reforms. The construction of my phases and relevant institutions is but one means of focussing attention to reform measures. Crudely put, relatively or comparatively, which of the four phases are least responsive to the concerns of the poor, or more broadly, the most detrimental element. Let me hypothesise – people do not have faith and confidence in the criminal justice system, with the resultant insecurity -- because they perceive that the investigation into any reported crime would not be done properly, would be biased and influenced by the ‘haves’ and would often go against the ‘have nots’. The investigation would be skewed, influenced by money and other external influences, and the chances are that the actual or real culprit would not be brought to books. In other words, if we assume that the second-investigative phase is the root of most failures and evils and injustice, then reform efforts can be directed towards this phase. Broadly, this then would mean directing of resources – both human and infrastructural -- towards the investigating ‘wing’ of the police. More forensic expertise, introduction of modern technologies in terms of finger-printing, database, chemical examination, DNA tests and so forth, with appropriate training of the relevant personnel would then be the centre point of reform efforts. This focus on investigating phase may entail organisational re-structuring as well creating special units for investigation of murders, organised crimes, chandabazi, thereby separating the investigative role of the police from their preventive functions.

If courts are the sites where justice fails, the focus should and would then be on the courts – re-visiting means and methods of functioning of courts, its case management, administration of court affairs, expertise and capabilities of various players in the court (lawyers, prosecutors, summons and services and so forth). It would require more efforts for increasing access to courts, particularly for poor, the disadvantaged and women, leading to more attention to legal aid, awareness about court procedures and so forth. Professional and ethical standards and accountability mechanisms for lawyers and prosecutors would also have to be scrutinised.

Reformed prisons are important not only in technical/efficiency terms of better management, but focus of reform element of punishment would entail re-orientation of the ways the prisons are managed and run.

Lastly, we do not have a policy discourse on criminal justice issue, nor even a rudimentary policy. This issue of discourse and policy is compounded by the fact that there is no academic or policy interest on the part of any institution, or any individual expert, on issues of criminal justice and insecurity. There are, needless to say, plenty of narrow sectoral interests, concerns and actions, e.g., on trafficking, on acid victims, on rape victims, and so forth. Torture and corruption of police is constantly on the agenda, largely due the efforts of the media. Courts, particularly the trial ones, are under constant scrutiny in unflattering terms. In spite of all these, I have not come across any macro study on the issue of insecurity or a critical look/analysis of the functioning of the criminal justice system. Hardly any effort has been undertaken to understand the problem and to prioritise the issues and possible interventions, except sweeping and untested generalisation and hypothesis that every one is corrupt, politicians influence the system, and so forth.

It is time that we begin to look into the issue more dispassionately, going beyond the blame-game, to create a pool of expertise to generate knowledge, backed and supported by information and data. We may, for example, look into the phases and decide which is the most problematic in terms of engendering insecurity and then shape our actions and interventions accordingly. Enactment of harsh laws, or creating a few special courts without an over-all criminal justice policy has been and would continue to be primarily political gimmicks. In the mean time, the poor would continue to suffer on all fronts, including their perpetual insecurity. We need to move beyond the gimmicks, particularly of harsh laws.