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REF: A. STATE 45319; B. 74 DACCA 2097; C. 75 DACCA A-35
SUMMARY. Bangladesh is presently in a State of Emergency and under Martial Law. The Government possesses extraordinary powers, and there are no effective legal guarantees for the protection of human rights. However, the Martial Law Administration (MLA) officially considers itself a temporary regime whose role is to restore stability, law and order, and equal justice to the country as a prelude to the restoration of representative government. On this basis, the MLA justifies the continued ban on political activities and on criticism of its actions. The MLA does not encourage or condone torture or inhuman or degrading treatment or punishment although there continue to be occasional reports of rough interrogative techniques, thus raising doubts that all levels of government are sufficiently sensitive to this issue. Regarding prolonged

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detention without charges, both the previous government of Moshtaque Ahmed and the MLA have together released about 2000 political prisoners jailed in the era of Sheikh Mujibur Rahman. However, the MLA itself has used vague charges of "prejudicial activities" to jail some political figures, none of whom has as yet been brought to trial and whose detention may prove to be prolonged. On balance, the MLA's use of its vast powers has been limited. But the very existence of Emergency and Martial Laws and the lack of adequate legal recourse against their abuse has meant that the citizens of Bangladesh are treading warily and few give the MLA cause to invoke its powers. END SUMMARY.

INTRODUCTION

1. The citizens of Bangladesh lost virtually all guarantee of their fundamental rights in a series of government actions which were described in detail in references B and C. Briefly, these actions were:

- (A) A Special Powers Act (SPA) which makes most criticisms of the government liable to interpretation as ~~E~~ "prejudicial acts" against the state and which gives the government extensive powers of arrest and detention;
- (B) A State of Emergency which suspends fundamental rights and subsequent Emergency Powers Rules (EPR) which remove most checks on the powers of arrest and detention;

(C) A constitutional amendment which established a one-party state under a strongly authoritarian president and removed from the Supreme Court its jurisdiction over the protection of fundamental rights.

All of these restrictive acts are still in effect; added to them is Martial Law declared by Moshtaque Ahmed after the August 1975 coup against Sheikh Mujibur Rahman and continued and expanded by President and Chief Martial Law Administrator A.S.M. Sayem following the coup and countercoup of the following November. The Martial Law Regulations (MLR) reiterate many of the repressive features of the Special Powers Act (SPA) and the Emergency Power Rules (EPR) and add some further restrictions on the human rights of Bangladeshis.

ORDINARY LEGAL GUARANTEES.

2. Bangladesh is currently both in a State of Emergency and under Martial Law. The State of Emergency was declared on the basis of Article 141 A of the Constitution which states that the President may issue a proclamation of Emergency "if he is satisfied that a grave emergency exists in which the security or economic life of Bangladesh...is threatened by war or external aggression or internal disturbance." There is no constitutional justification for a state of Martial Law. Some local lawyers, however, have remarked that there is a judicial

precedent from the Pakistan era for the acceptance of the legitimacy of a de facto martial law regime. To the SPA and the EPR, Martial Law Regulations (MLR) have added these further restrictions on ordinary legal guarantees;

- No MLR or any action taken by the MLA can be called into question or declared illegal or void by any court, tribunal or authority;
- Most decisions of the Special and Summary Martial Law courts cannot be appealed;
- Review of Martial Law Court decisions rests with the Deputy Chief Martial Law Administrators, not with the judiciary (the president, however, must approve death sentences);
- In the Martial Law Courts, lawyers cannot ~~XXXXXXX~~ function as advocates and plead cases; they may serve only as advisors to the defendants.

THE MLA AND HUMAN RIGHTS

3. Despite its sweeping powers, the government does not think its citizens are without basic rights. President Sayem (the former Chief Justice) emphasizes due process of law, the efforts of the MLA to restore the independence and integrity of the judiciary and the civil service, and the need to return to representative government. Sayem's special assistant, retired Justice Abdus Sattar, moreover, has publicly said that "The rule of law that has been

enshrined in our constitution guarantees the fundamental rights as have been enumerated in most of the thirty articles of the Declaration of Human Rights." There is little question that, as a government, the MLA recognizes most of these human rights. Nevertheless, constitutional provisions and government intentions notwithstanding, the continuing state of Emergency and the Martial Law place the following restrictions on human rights:

- Political organizations and activities remain banned;
- Any criticism of any kind of the Martial Law, its administrators and its actions are forbidden;
- Any citizen can be arrested and detained, without warrant, for various prejudicial or anti-state acts or any other of the various offenses enumerated in the SPA, the EPR, and the MLR;
- Citizens are subject to some ex post facto laws and in a few instances to double jeopardy;
- The death penalty can be applied to such crimes as ~~ie~~ illegal arms possession, abuse of power, smuggling, destroying jute stocks, impersonating military or policemen, and causing disaffection among, mutiny in or hatred toward the armed forces.

THE MLA AND THE ADMINISTRATION OF JUSTICE

4. Although public reporting on the hearings is limited, the Special and Summary Martial Law Courts appear to be

rendering verdicts based upon the evidence presented. There have been acquittals not only of minor figures but also of some prominent politicians, and we have heard no one criticize the summary court proceedings for partiality. Overzealousness can perhaps be attributed to the prosecution but not to the courts. The Draconian punishments permitted by the MLR have not been applied often; one ex-Minister, Abdus Samad, was sentenced to life imprisonment as an "exemplary" measure because he was convicted of abusing his high position to gain property. The only death sentence publicly announced was against two men for embezzlement of large amounts of cotton yarn during a period when there ^{was} ~~was~~ a severe cloth shortage in the country. Moreover, the regular courts have heard appeals filed against the government for illegal detention, and several of the accused were either granted bail or released entirely. Lawyers for Gazi Golam Mostaffa, former Red Cross Chief, attempted to raise the issue of double jeopardy. The government had brought before a Martial Law Court what was generally considered a weak case against Gazi for abuse of power and corruption; before the verdict was announced the MLA filed two more cases against him on the same charge. His lawyers who argued to the Supreme Court that Gazi could be tried only once on the charge apparently lost their appeal because Gazi was subsequently

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convicted in two of the cases and acquitted in one, but the appeal postponed the proceedings for more than a month.

5. The MLA has made some gestures toward the restoration of equal justice. It repealed the Collaborators Act by which thousands of citizens were incarcerated and deprived of certain civil rights for alleged collaboration with the Pakistani army in 1971. It has also restored to civil servants the right of appeal in dismissal cases. It has restored citizenship to a number of Bangalees from whom it was arbitrarily removed and has announced that citizenship henceforth is to be determined only by law. It has also repealed the Abandoned Property Act and begun restoring property to Bangladeshis who lost it principally for political reasons.

DETENTION

6. Both post-August governments have released political prisoners. In October, the government decided to release "unconditionally" all purely political prisoners and set up a review board to study the cases of political leaders and workers against whom specific charges were lodged. Under the "unconditional" category, Moshtaque released one thousand prisoners. The MLA has continued this policy and to date has released another 958 people following review of their cases, although there are complaints from

the radical left that the process is too slow and all anti-Mujib detenus should be released. The Martial Law Courts have also begun clearing the backlog of cases against defendants who have been in detention, some since 1972, on various charges such as illegal arms holding and smuggling.

7. The MLA's record regarding detention, however, is not spotless because it shares the anxiety of its predecessor regimes about the issues of national security and what constitutes permissible political activity. The MLA has itself been arresting political figures, using not only the MLR but also the SPA and the EPR as justification. The first to be arrested were the Jatiyo Samajtantrik Dal (JSD) leaders for anti-state activity in November after they had taken credit for the sepoy mutiny and were seen to be stirring up more ~~XX~~ trouble. In the following month, in apparent dragnets to recover illegal arms, more than a hundred political workers of the JSD and some from Mujib's Awami League were arrested. Since then there have been the announced arrests for prejudicial activities of more than a dozen politicians of the Awami League, NAP/Muzaffar, the CPB, and the JSD. Prosecutions against the major Awami League politicians arrested in August have been moving slowly, in large part we hear because the MLA has been having difficulty

collecting evidence that will stand up in court. Since the MLA is only five months old and has been using its powers in a limited fashion, it is not possible to determine to what extent it will use prolonged detention to control political activities it considers threatening. However, its preoccupation with security is so similar to that of Mujib's and Moshtaque's governments and the arrests it has made to date of somewhat the same pattern that we would expect that prolonged detention may result and the MLA will risk bringing cases to court only when it believes it has sufficient evidence for convictions.

~~XXXX~~ PUNISHMENT

8. There is no evidence that the MLA either encourages or condones torture, degrading treatment or killing. As we noted in reference C, however, rough handling is not an unusual interrogative technique in the subcontinent. One still hears the occasional story of police or military attempting to dispose of the remains of a detenu who succumbed to questioning. While there is no record of any security personnel being sentenced to jail for ill treating prisoners, one of the main concerns of the MLA is restoring discipline to and upgrading the calibre of the police force which has been both demoralized and corrupted since independence. In recognition that a problem exists,

[the MLA passed a regulation making it a crime to coerce or intimidate citizens through abuse of police powers. The courts also may be taking a harsher attitude toward such abuses; one defendant was released because the judge ruled that the police had obtained evidence through unjustified use of force.

DIPLOMATIC EFFORTS

9. The MLA considers that its extraordinary powers are temporary and necessary to the restoration of stability, law and order, and respect for law. It prides itself upon an even-handed application of justice. We have found the most effective way to convey our concerns regarding human rights is to repeatedly raise with members of government and others of influence the issues of renewed political activity and the restoration of representative government, the validity of criminal charges brought against politicians, the grounds upon which others are detained for prolonged periods, and the fairness of the Martial Law Courts and the citizen's right of appeal to higher authority.

CONCLUSION

10. The Martial Law Administration presents itself as a non-political and neutral interim government which eschews favoritism and uses its extraordinary powers with restraint to correct past abuses and instill a respect for law.

Nevertheless, the human rights of Bangladeshis are pro-

tected only by the largesse of the government, not by enforceable legal guarantees. Should the MLA choose to use its extensive repressive powers, there are no legal impediments. So far, the MLA has managed to avoid the accusation of unequal application of justice with one exception -- the exercise of political rights. Inevitably perhaps, adherents of the regime of Sheikh Mujibur Rahman and of the JSD which challenged the authority of the army appear to have less scope for political expression than that permitted other groups. Once again, the issue comes down to one man's freedom of expression being another man's sedition. Attempts at expressing unpopular views, however, have been limited. Bangladeshis are fully aware of the powers of the MLA and are treading warily. Few give the government cause to invoke its repressive measures.

BOSTER

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