

## chapter 8

# UPDATE AND CONCLUSIONS



Since the report “**Human Security in Bangladesh: In Search of Justice and Dignity**” was written in 1998, there have been some pertinent changes in legislation that should be mentioned in order to allow for proper reflection on the report in the current context. This chapter is intended to provide a brief update on the key developments in legislation and to provide some recent statistics with regard to the implementation of human security laws since 1998. Based on these observations and drawing from recommendations in the report, some suggestions are provided for the way forward to improve the human security situation in Bangladesh.

### **A. Key Developments in the Human Security Legislative Framework since 1998**

The full report goes into detail on seven areas related to human security. The first chapter relates specifically to the legislative framework, enumerating the laws and practises relating to human security, and examines their consequences for the poor. The main conclusion of this chapter is that many laws and practises of the criminal justice system in Bangladesh are anti-poor, and a number of recommendations are provided regarding the need to amend or repeal existing laws. Some of the main recommendations include repealing the Special Powers Act (1974); reviewing and amending legislation relating to violence against women; amending provisions of the Criminal Procedure Code relating to bail; reviewing the

out-of-date Vagrancy Act; and introducing clear rules and procedures for police power of arrest and investigations.

Since the writing of the report in 1998, three new Acts have been passed: the Suppression of Violence Against Women and Children Act (2000), the Public Safety (Special Provisions) Act (2000), and the Law and Order Disruption Crimes (Speedy Trial) Act (2002). A brief description of these laws and their implications for human security is outlined below.

**The Suppression of Violence Against Women and Children Act (2000)** (Nari O Shishu Nirjaton Doman) replaced the 1995 Act and covered similar areas, but introduced very severe penalties. So for example, the death penalty is introduced for acid-throwing and illegal trafficking of women and children.<sup>51</sup>

The law was the result of three years of consultations between the Government and women's organisations. This law made some important changes such as expanding the definition of rape and dowry, and introducing new punishable offences of sexual harassment and sexual assault. However, according to some critics, one of the major deficiencies of the law is that, except in the case of dowry-related offences, "it is virtually silent on the issue of violence in the domestic sphere".<sup>52</sup>

The new law also introduced new provisions on "safe custody" of women and girls. However, these provisions have been criticised by

human rights groups on the grounds that they have merely changed the location of where women and children may be detained, from prisons to Government or approved NGO shelters, and have "not changed the basic paternalistic assumption that it was for the state to determine the question of a woman's safety, irrespective of her age."<sup>53</sup> The law also addresses the issue of rape in police custody. The 2000 Act also provides provisions to protect the identity of victims.

Although some of the provisions of the Bill have been controversial, and as UNICEF has remarked, "the law is not fully in accord with the CRC (Convention on the Rights of the Child) and other international human rights instrument which the Government of Bangladesh has ratified,"<sup>54</sup> it is nonetheless important to recognize that the law does go further than the previous law in attempting to curb violence against women and children, and in this respect is welcome.

**The Public Safety (Special Provisions) Act (2000)** was passed on 15 February 2000 in order to deal with crimes of extortion, kidnapping, snatching, collection of ransom, damaging public property, obstruction of traffic movement and damaging vehicles, manipulating tenders and other such offences. The Act was debatable from its very inception, and was subject to criticism on the grounds that it could be easily misused as an instrument of political victimization. A writ petition was filed at the end of 2000 challenging the validity of the

<sup>51</sup> The death penalty features in 13 out of 28 provisions, ASK (2001), "Human Rights in Bangladesh" p 122

<sup>52</sup> Ibid. p 121

<sup>53</sup> Ibid. p 131

<sup>54</sup> UNICEF (2001) "Background Paper on Good Practices and Priorities to Combat Sexual Abuse and Exploitation of Children in Bangladesh"

Public Safety Act. In July 2001, the High Court issued a ‘split verdict’—one judge ruled the PSA as unconstitutional and another ruled that only parts of the Act were unconstitutional.<sup>55</sup> Before a third judge was able to give a definitive ruling, this Act was repealed by the Government. Table U.1 provides data on the numbers of detainees that were held under this Act in February 2000.

The **Law and Order Disruption Crimes (Speedy Trial) Act, 2002**, was passed on 9 April 2002. This Act introduces provisions for the speedy trial of certain offences under a special court, in periods of 30 to 60 days and the punishment envisaged is rigorous imprisonment from two to five years. Offences under the law include hindering normal air, rail, road and river traffic

**Table U.1**  
**Public Safety Act (Statistics of Cases - February 2000)**

Sl. No.	Name of Unit	Total 15/2/00	No. of Accused in FIR <sup>1</sup>	No. of Arrested	No. of Not Arrested	Charge Sheet		Final Report <sup>2</sup>	Pending Investigation	Pending Trial	Disposal		No. of Acquitted	No. of Writ Cases	Released during Investigation
						No. of Cases	No. of Persons				No. of Cases	Persons			
1	Dhaka Metropolitan	1161	6073	3222	2076	897	3966	147	117	751	63	118	83	331	775
2	Chittagong Metropolitan	430	1321	552	759	300	1089	88	42	228	65	113	7	18	10
3	Khulna Metropolitan	85	387	126	261	69	258	3	13	13	51	157	5	7	-
4	Rajshahi Metropolitan	108	1188	185	1003	60	467	44	4	39	7	13	14	6	-
5	Dhaka Range	645	5791	1314	3256	463	3784	163	19	299	69	206	95	48	1221
6	Chittagong Range	361	3922	1278	2644	299	3496	48	14	252	18	74	29	57	-
7	Rajshahi Range	562	5985	1219	2746	271	2692	258	33	190	34	158	47	52	2020
8	Khulna Range	167	1668	481	1187	143	1464	16	8	91	52	86	123	21	-
9	Sylhet Range	262	2205	414	881	172	1032	62	28	85	60	167	27	37	910
10	Barisal Range	488	4854	227	4627	143	1161	302	43	85	23	70	35	40	-
11	Railway Range	20	415	38	72	14	109	2	0	14	3	5	1	0	305
<b>Grand Total</b>		<b>4289</b>	<b>33809</b>	<b>9056</b>	<b>19512</b>	<b>2831</b>	<b>19518</b>	<b>1133</b>	<b>321</b>	<b>2047</b>	<b>445</b>	<b>1167</b>	<b>466</b>	<b>617</b>	<b>5241</b>

<sup>1</sup> FIR = First Information Report

<sup>2</sup> FRT = Final Report True - Case could not be substantiated during investigation

Source: Police Headquarters

<sup>55</sup> US State Department (2002) “Country Reports on Human Rights Practices”

movement, vandalism to transport, causing damage to private or public property, extortion, terrorism in public places, obstructing tender proceedings, and obstructing the work of public officials. According to the law, if the accused is detained immediately, the police will produce the offenders before the court within 24 hours, arrest and press charges within the next seven days, and the process of the trial is to be completed within 30 days. If the accused is not detained immediately, the trial is to be completed within 60 days. The law also allows for trial of the accused in absentia. As for the PSA, this law has come under criticism from various sources and Writ petitions challenging the validity of this Act are currently pending with the High Court.

In addition to the introduction of these new acts, it should be mentioned that some laws discussed in the report that have been proven to be open to abuse in the past, are still in

existence today – namely Section 54 of the Code of Criminal Procedure which allows the police to arrest a person without warrant on grounds of suspicion, and the Special Powers Act (1974) which allows the Government or a district magistrate to detain a person for 30 days, to prevent the commission of an act, “likely to prejudice the security of the country”.

According to reports of the human rights NGO ASK, a total of 10,582 persons were arrested under Section 54 in 2000, of which 3,915 were subsequently charged with criminal offences. And according to a study by a Parliamentary Sub-Committee published on 7 September 2000, as many as 69,010 persons have been detained under the Special Powers Act since its enactment in 1974, and of these, 68,195 were released on orders from the High Court.<sup>56</sup> Table U.2 provides a detailed breakdown of detainees held under the SPA during the period 1996-2000.

**Table U.2**  
**Statistics of Special Powers Act of 1974 (1996-2000)**

Year	No of Cases				Disposal				Total Case Disposal
	Previous balance	Current year	Total	Within 30 days	120 days	6 months	1 year	Beyond 1 year	
1996	1135	4919	6054	520	2732	1228	459	115	5054
1997	1000	3584	4584	174	2243	728	372	47	3564
1998	1020	3230	4250	309	2101	841	165	19	3435
1999	815	4087	4902	409	2527	717	137	35	3906
2000	996	3276	4272	249	2313	695	166	48	3471

Source: Police Headquarters

<sup>56</sup> ASK (2001) p.59-60.

## B. Recent Trends in Criminal Investigations, Efficiency of the Police and Judicial System, and Prison Conditions

In addition to examining developments in legislation since the writing of the report, it is also important to take a long-term retrospective look at what has been achieved so far and examine recent trends in ensuring the protection of human security of citizens. Table U.3 below provides statistics on the comparative performance of police and courts in the execution of warrants, submission of charge-sheets and the disposal of cases between 1931 and 2001. From this data a number of observations can be made.

Firstly, the figures indicate a remarkable increase in the numbers of arrests made during the last 10 years or so. This may not necessarily indicate a rising crime rate but could reflect rising population rates and/or be explained by increased awareness of the need to register arrests. However, the data on the

number of charge sheets submitted and the percentages of cases pending do provide a clear picture of the continuing problems of inefficiency and delays in investigations, prosecution, and trial procedures. Although there has been a steady decline in the percentage of investigations and trails pending since 1990, there are still extremely large numbers pending. So in 2001, whereas 378,396 arrest warrants had been received, just under one-third, 116,612 were still pending execution. Similar findings were revealed with regard to the efficiency of the courts, with 114,191 cases received in 2001, and 35,860 or 31.4% pending disposal.

Table U.4 on the prison population also reveals that the problem of over-crowding outlined the report remains a serious challenge. Figures of the registered capacity of the prisons compared to the actual population in 2001 revealed that prisons were holding nearly three times the number of prisoners allowed (62,486 persons were detained whereas the actual registered

**Table U.3**  
**Comparative performance of police and courts in execution of warrants of arrest, submission of charge sheets to courts, and disposal of GR (general register) and CR (complaint register) Cases, 1931-2001**

Activities	1931	%	1986	%	1990	%	1996	%	2001	%
<b>Execution of Arrest Warrants:</b>										
Received	81,962		81,500		82,997		292,801		378,396	
Pending Execution	4,055	4.9	29,852	36.6	33,332	40.2	85,086	29.0	116,612	30.8
<b>Charge sheets submitted:</b>										
Charge-sheeted	18,050		87,225		88,152		48,189		65,598	
Pending Investigation	2,417	13.4	38,344	43.9	52,758	59.8	27,312	56.7	20,161	30.7
<b>Disposal of GR and CR cases:</b>										
Received in Courts	107,681		191,270		191,635		102,086		114,191	
Pending Disposal	5,981	5.6	72,735	38.0	141,649	73.9	51,095	50.0	35,860	31.4

Please note that this table is an updated version of Table 1.4 in Chapter 1.  
Source: Police Headquarters

capacity was 24,517). The large number of ‘under trial’ prisoners—representing over two-thirds of all detainees—is testimony to the continuing problem of backlog of judicial cases.

As mentioned above, the continued use of successive repressive laws—Section 54 of the Criminal Procedure Code, the Anti Terrorist Act, the Public Safety Act, the Special Powers Act and the Law and Order Disruption Crimes (Speedy Trials) Act - are open to abuse and have often been misused by powerful sections of society. However, recent events, such as the establishment of Metropolitan Courts and the strengthening of the judiciary have had some positive effects in providing greater protection to citizens. The protection provided by the Supreme Court, in particular through *habeus corpus* petitions, has exercised a degree of deterrence against arbitrary arrest and detention. These developments require continuous momentum, alongside legislative reform. The multi-faceted nature of human security requires a multidisciplinary approach.

In recent years there have been increasing numbers of media reports of incidents of

violence against women, children and vulnerable groups, which have succeeded in raising awareness on this issue. Many of these cases would have gone unnoticed in the past, had the press and general public—especially women—ceased to keep up the pressure to achieve results. The efforts of civil society organisations and the media in shedding light on human security incidents are commendable and should be further encouraged.

Recent efforts to create awareness amongst the population and national institutions on issues of human security and the violation of human rights, and programmes to increase the capacity and improve the efficiency of law enforcement agencies, the judicial system, traditional dispute resolution forums and community policing are extremely welcome. The interventions of donors providing human rights training programmes for the police and judiciary are also a positive development. It is hoped that these initiatives will not only create a greater sense of awareness of human security issues and laws, but also help to instil a culture of respect for human rights and increase professionalism within concerned agencies.

**Table U.4**  
**Prison population, 1993-2001**

Year	Registered Capacity	Actual population	Under trial	Convicts	Detainees
1993	20,980	41,618	25,737	15,058	823
1997	21,581	45,443	31,020	13,078	1,345
2001	24,517	62,486	44,407	16,603	1,476

Please note that this table is an updated version of Table 5.1 in Chapter 5.  
Source: Ministry of Home Affairs

### C. The Way Forward - Addressing the “Implementation Gap”

The surveys carried out in this report, along with the recent data provided above paint a picture of the enormous challenges that lie ahead to improve the human security situation for the poor in Bangladesh. According to interviews with the poor, 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. This may seem like a very gloomy picture for some, 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. Citizens themselves are also becoming more aware of their rights and the obligations of national authorities in protecting them from insecurity, through the media and awareness-raising campaigns of NGOs. So, through the dark gloomy clouds, it is possible to glimpse some bright rays of sunlight trying to push through.

Successive Governments are aware of the problems and have pledged to amend or remove laws that are open to abuse and to introduce reforms to improve the efficiency and accountability of law enforcement bodies and the judiciary to improve the human security situation. At the last Bangladesh Development Forum, in March 2002, restoring law and order and improving governance were the key stated priorities of the Government. A Law and Order

Monitoring Committee has been established composed of senior Government officials and cabinet members to monitor the law and order situation weekly and to make appropriate recommendations, and similar committees have been formed at the District and Upazilla levels. The Government also declared its intention to establish a National Human Rights Commission by the end of 2002, and to appoint an Ombudsman. Legal instruments are being prepared to ensure the separation of the judiciary from the Executive, and measures to strengthen the judiciary are being implemented. An independent Anti-Corruption Commission is to be established, and a high-level inter-ministerial task force has been formed to determine an effective strategy to fight corruption.

Some commendable efforts are also being undertaken by civil society organisations and development partners in support of the Government’s efforts to improve the human security situation, to enable citizens to safely pursue development opportunities in their daily lives. Improving road and transport systems so that people can get to work, improving the professionalism of the police and introducing community policing so that the police are acting as ‘service-providers’ to citizens, training prison and court officials and improving facilities to deal with women and children offenders.

It is in this context of the need to strengthen and sustain current efforts that specific and detailed recommendations are made in this report. As mentioned in the report, one of the main deficiencies in securing human security

for the poor is the lack of implementation of existing laws. Therefore, the main thrust of the recommendations is on implementation - *the mechanisms, processes, and implementers* - to improve the human security situation in Bangladesh. It is necessary for political leaders and the elite to take a hard look at implementation issues, and assume responsibility for devising appropriate measures and to ensure monitoring of the entirety of the criminal justice system.

Providing adequate human security in a stable governance system is the *raison d'être* of all political systems, more so in democratic systems. In the words of this report, "*The main burden for providing and maintaining human security for all citizens falls mainly on the political sector, including leaders and workers. It is (our) abiding hope...that our political leaders and workers in both governing and opposition parties will meet this challenge*".