



Reflections on torture: Final thoughts

SAIRA RAHMAN KHAN
(...from previous issue)

THE first court of instance for a criminal offence is the Magistrate's Court. As per the Code of Criminal Procedure, an arrested person must be presented before a Magistrate within 24 hours of his arrest. This is the time when the arresting officer/officers makes a prayer to the Magistrate to take the accused into remand for a number of days for further 'questioning'. Given the fact that torture, inhuman and degrading treatment are well known and highly publicised incidents that occur in remand, and that no Magistrate in Bangladesh can now deny this fact, these 'officers of justice' still grant remand which can last up to seven days at a time.

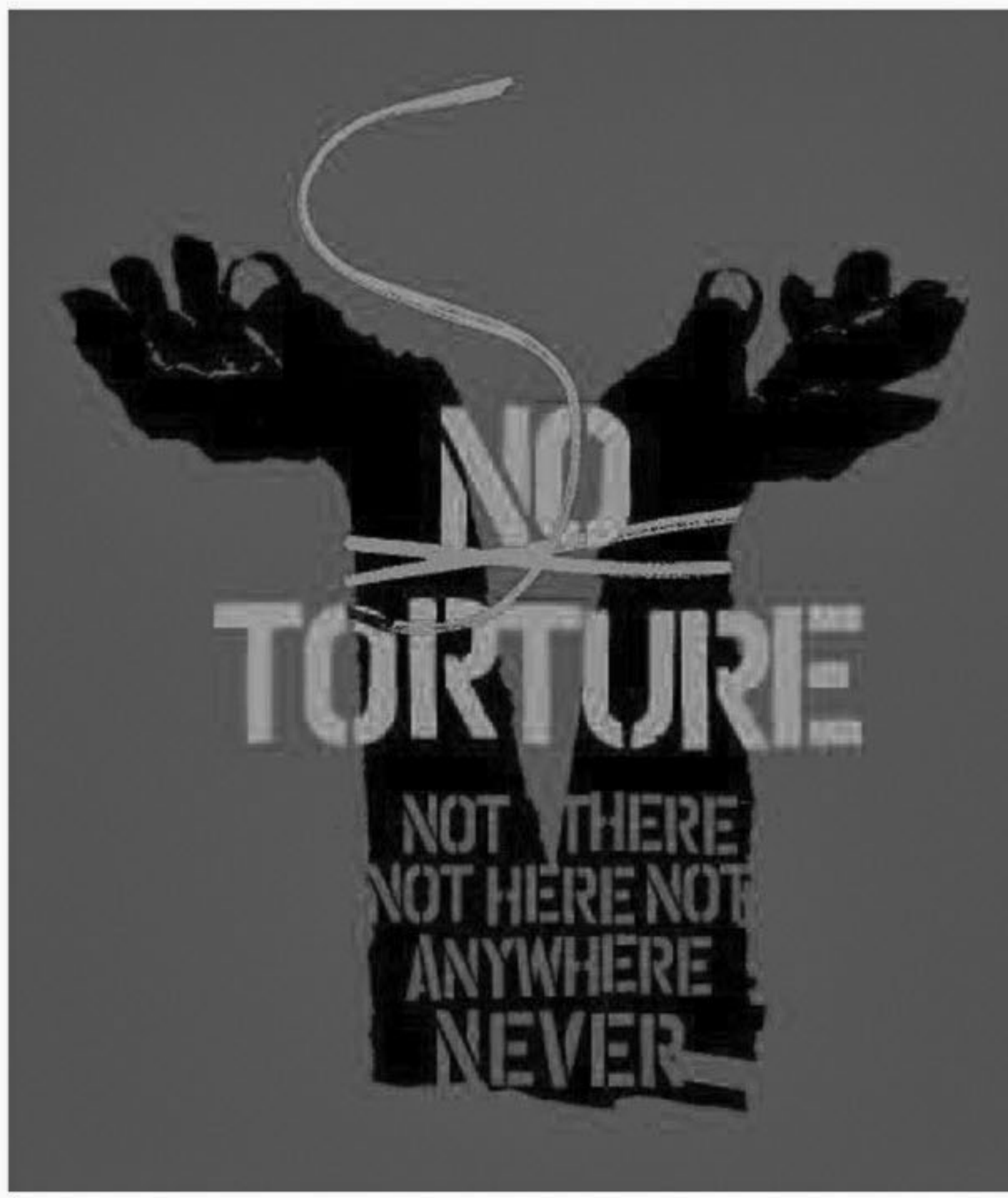
Before recording a confessional statement, as per the Code of Criminal Procedure, a Magistrate has to explain to the person making it that he is not bound to make a confession and that if he does so it may be used as evidence against him.

Furthermore, he must question the person making it and determine whether it was made voluntarily before he records it. At the end of the record, the Magistrate makes a memorandum stating inter alia: "I have explained to (name) that he is not bound to make a confession and that if he does so, any confession he may make may be used as evidence against him and I believe that this confession was voluntarily made. It was taken in my presence and hearing, and was read over to the person making it and admitted by him to be correct, and it contains a full and true account of the statement made by him. (Signed:...)"

The Code of 1898 also provides that a confession 'shall not be made to a police officer' and that 'it must be made to a Magistrate.' It also lays down that 'the Magistrate must

record it in the prescribed format and only when so recorded does it become relevant and admissible in evidence'. The form used to record the confessional statement by the Magistrate contains the rules that should be followed. The form states inter alia: "Magistrates should clearly understand the great importance of giving their closest attention to the procedures to be followed, from first to last, in the recording of confessions. This procedure should be followed without haste, with care and deliberation, it being understood that this duty is not a distasteful and minor appendage or addition to their normal functions, but one which is of consequence to the confessing accused, his co-accused and court responsible for the administration of criminal justice. A confession which is recorded perfunctorily and hastily is a source of embarrassment to the trial court, the prosecution and the defence." If the guidelines are there and if the Magistrate has the power to refuse a confessional statement if he believes that it was not given voluntarily, they why are Magistrates granting remand, knowing full well that the resulting statement will not be a voluntary one? Why are they accepting and recording such statements?

When a Magistrate is granting remand of a member of the opposition political party, or a vocal human rights defender, knowing full well what will occur, he/she is doing so to appease a higher power. This is nothing new in Bangladesh. The police and the judiciary have always been manipulated by the governments of Bangladesh in this manner. Those who have a conscience and refuse to comply are refused benefits and promotions that come with their jobs. Sometimes they are posted to difficult or remote areas as a 'punishment'. Rule of Law in Bangladesh has long been replaced with political favouritism and manipulation. The



Constitution of the People's Republic of Bangladesh requires that there be a separation of powers among the Judiciary, Executive and Legislative branches. In 1999, the Supreme Court of Bangladesh directed the Government to release its direct control over the lower Judiciary and place it under the administration of the Supreme Court, to ensure independence of judiciary. However, such formal separation only took place in 2007. Unfortunately, despite this separation, the judiciary remains, in many ways, pawns in the hands of the Executive.

The necessity for criminalising torture
Given the circumstances that have

made the practice of torture and impunity an almost permanent fixture in the practice of criminal investigation, criminalisation of 'torture' would provide for stronger sanctions against the perpetration of torture, in comparison to what is contained in the criminal laws of Bangladesh to date. It would also strengthen the prosecution of perpetrators of torture, since the international definition of 'torture' covers both physical and mental aspects. The concept and definition of torture and its prohibition is noticeably absent from regulations and operating procedures of many places of detention in Bangladesh, where torture is most likely to occur prisons, juvenile detention centres,

and in police and RAB custody.

Another issue is that mental stress or pain is not recognised as a cruel or degrading form of punishment or ill treatment in the criminal laws of Bangladesh. Psychological torture is hardly ever documented in Bangladesh and is less well known. Psychological torture can be described as the use of non-physical means to cause suffering to a victim and the effects are not as immediately apparent until and unless the behaviour of the victim is changed. As a result, it is easier to conceal. Examples of psychological torture in Bangladesh are mock executions, extended solitary confinement, violation of social norms (stripping the victim, mocking), etc.

One must not forget the victims of torture, or their families. Apart from one or two special criminal laws dealing with the protection of women and children, compensation to a victim of violence is not an issue. The punishments include a sentence and a 'fine', payable to the court. Bangladesh set up a declaration regarding Article 14 of the Convention against Torture, which is a kind of refusal by the State to compensate victims of torture or their families. It is as if by doing so, the State is trying to prove that no torture exists, so there is no need to compensate anyone. Bangladesh does not have a law protecting victims and witnesses of crimes either. A law criminalising torture could make it mandatory that victims of torture and/or their families be judiciously and rightfully compensated, the victim be given rehabilitation and state-covered medical treatment and that a witness be protected before, during and after the trial and sentencing.

Even if Bangladesh did finally decide to criminalize torture, mechanisms and institutions are still dysfunctional. Police stations, places of

detention and correction facilities are manned by personnel who are, for the whole, indifferent to the human rights issues of the detained. Furthermore, article 197 of the Code of Criminal Procedure 1898, which necessitates the seeking of Government permission prior to suing a public servant for an offence committed during his/her course of duty, is, in fact, a doorway to favouritism, corruption and political manipulation. Public servants are not above the law and must be held accountable for violations. In fact, if a public servant does commit a violation, the Government will also be held responsible.

Therefore, in order to stop the practice of torture, the Government must consent to enacting a law or amending the Penal Code of 1860 in order to provide for the criminalising torture in all its forms and manifestations, in line with international laws and standards and strengthen complaint and investigation mechanisms, including the National Human Rights Commission, in order to thoroughly and fairly investigate all allegations of arbitrary arrests and detention, torture and extra-judicial killings and pave the way for the prosecution of those alleged to be responsible in fair trials. What is also necessary is a law for the protection of victims and witnesses so that they can appear and speak freely in a court of law to see that the ends of justice are met. In light of this, the Government should also consider removing its declaration regarding Article 14 of the Convention against torture and, since it so vehemently denies that torture occurs in the country, might also consider showing some good will and ratifying the Optional Protocol to the convention too!

(Ended)

The author is Associate Professor of the School of Law, BRAC University, Dhaka, Bangladesh.



HUMAN RIGHTS WATCH

Broken promises from govt to halt RAB killings

THE Bangladeshi government is failing to keep its commitment to end extrajudicial killings, torture, and other abuses by the Rapid Action Battalion (RAB) and hold those responsible accountable, Human Rights Watch said in a report published in May 10, 2011.

The report, "Crossfire: Continued Human Rights Abuses by Bangladesh's Rapid Action Battalion," in and around Dhaka, the capital, under the current Awami League-led government. Nearly 200 people have been killed in RAB operations since January 6, 2009, when the government assumed office. While in opposition the Awami League promised to end extrajudicial killings, but since it came to office senior government officials have denied that RAB has committed abuses, and some have even justified them.

"After two years in office, the government has had more than enough time to take action to stop the RAB's murderous practices," said Brad Adams, Asia director at Human Rights Watch. "A death squad is roaming the streets of Bangladesh and the government does not appear to be doing anything to stop it. Prime Minister Sheikh Hasina needs to act."

The report builds on the 2006 Human Rights Watch report, "Judge, Jury, and Executioner: Torture and Extrajudicial Killings by Bangladesh's Elite Security

Force." It is based on over 80 interviews with victims, witnesses, human rights defenders, journalists, law enforcement officials, lawyers, and judges.

Although the government has made many commitments to end the killings and to punish perpetrators, no RAB officer or official has ever been prosecuted for a "crossfire" killing or other human rights abuse. "Crossfire" is a blanket term used to justify most of the unit's killings.

The government should either make major steps towards RAB accountability and reform in the next six months or disband it, Human Rights Watch said. Donors such as the US, United Kingdom, and Australia should immediately withdraw all assistance and cooperation until and unless dramatic improvements take place.

RAB was formed in March 2004 as a composite force comprising members from the military - army, air force, and navy - the police, and members of Bangladesh's other law enforcement groups. Members are assigned from their parent organizations, to which they return after serving with the unit. RAB operates under the Ministry of Home Affairs and is commanded by an officer not below the rank of deputy inspector general of the police or the equivalent military rank. The unit is regarded as an elite counterterrorism force and indeed has targeted, apart from criminal suspects, alleged

members of militant Islamist or left-wing groups.

In often standardized press statements, the unit claims that criminals were shot and killed in "crossfire" after they or their accomplices opened fire on RAB. Investigations by

been tortured. Many people who survived periods in the unit's custody have alleged that they were tortured there.

In one recent case, on March 3, RAB personnel in civilian clothes picked up Rasal Ahmed Bhutto while he was minding a

"crossfire." However, on March 10, Gulam Mustafa said, Bhutto was brought to the area where he lived in a vehicle belonging to the unit and was shot and killed. RAB summoned journalists to show the body of an alleged criminal killed in crossfire.

"They brought him and committed cold-blooded murder," Mustafa told Human Rights Watch.

Members of the Awami League were victims of RAB while in opposition, and senior party officials contended that it engaged in politically motivated killings. But the impunity the unit has enjoyed since it was established continues under the Awami League government.

Echoing their predecessors in the BNP-led government, the home minister and other government representatives deny any wrongdoing by the unit and other law enforcement agencies. Instead, they cling to the fiction that all of those killed were shot by authorities acting in self defense.

In March 2009, for example, Law Minister Shafique Ahmed told Human Rights Watch that the government had no intention of investigating allegations of past human rights abuses by security forces, even though the perpetrators remained in the unit's ranks and would be likely to continue their illegal methods. Ahmed said that even though he did not condone "crossfire" killings, it should be remembered that

RAB had only killed "criminals." In May 2010, despite numerous reports by human rights groups, the minister said that, "No more crossfire incidents are taking place in the country."

Home Minister Sahara Khatun, whose ministry supervises the unit, said in January 2011 in response to allegations of rising extrajudicial executions: "Many people are talking and will talk about this. But as the home minister, I am saying that the law enforcers' task is to bring the criminals to the book." When asked about allegations by Human Rights Watch on continuing extrajudicial killings, she said: "What will the law enforcers do - save themselves or die - when criminals open fire on them."

Port and Shipping Minister Shajahan Khan has said that crossfire killings are not human rights violations and that such killings have helped to bring extortion and other crimes under control.

Disappointingly, the government has not renounced any of these comments, Human Rights Watch said. Awami League officials have consistently argued that they do not need to root out abusers because they could exercise effective political control over the battalion, a claim that is belied by the evidence during the government's more than two years in office.

In a worrying development, RAB has recently begun to carry out enforced disappearances. Bangladeshi human

rights groups say that it has started killing people without acknowledging any role in their deaths.

Human Rights Watch said that after seven years of widespread abuses and more than 700 deaths, if the unit's human rights record does not improve dramatically within the next six months and abusers are not prosecuted, the Bangladeshi government should disband it. In its place the government should create a new institution that puts human rights at its core to lead the fight against serious and organized crime and terrorism. Neither RAB nor any new force created should draw its forces from the military, which has a different operating culture than a civilian police force, Human Rights Watch said.

The US, UK, and Australia should insist that the Bangladesh government follow through on its commitments and ensure that there are prompt, impartial, and independent investigations into torture and deaths in the custody of the unit, Human Rights Watch said.

"Instead of an elite law enforcement unit designed to control crime and terrorism, RAB has become a deadly law breaker," said Adams. "It is now fair to ask whether the government has any intention of addressing this scourge."

Source: Human Rights Watch. To see the full report please visit www.hrw.org

Government Should Disband or Radically Reform Rapid Action Battalion



Human Rights Watch and Bangladeshi human rights organizations have found, however, that many victims have been executed while in the unit's custody. Bodies of those killed have often carried marks indicating that they had

friend's shop in Dhaka. Bhutto's brother-in-law, Gulam Mustafa, told Human Rights Watch that one of their relatives in the army was able to contact colleagues in RAB and extract a promise that Bhutto would not be killed in