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### **HUMAN RIGHTS SITUATIONS THAT REQUIRE THE COUNCIL'S ATTENTION**

**Written statement\* submitted by the Asian Legal Resource Centre (ALRC),  
a non-governmental organization in general consultative status**

The Secretary-General has received the following written statement which is  
circulated in accordance with Economic and Social Council resolution 1996/31.

[25 August 2008]

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\* This written statement is issued, unedited, in the language(s) received from the  
submitting non-governmental organization(s).

## **INDIA: The Border Security Force -- India's killing machine**

15-year-old Shilajit Mondal was neither an illegal Bangladeshi immigrant trying to cross the Indo-Bangladesh border at night or a cross-border smuggler. Shilajit was the son of Mr. Golok Mondal, a farmer, who lives near the Indo-Bangladesh border. Yet Shilajit was shot at close range by the Border Security Force (BSF) officer Mr. Islam on July 23, 2008. Islam is a BSF officer stationed at Ranjanagar Border Out Post Camp in Murshidabad district of West Bengal State in India.

Islam and his colleagues were reportedly chasing a group of cross-border smugglers when they spotted Shilajit sitting in front of his hut. Islam approached Shilajit and asked whether he had seen any persons running away from the direction the BSF officers came. The officer was speaking in Hindi, a language Shilajit did not understand. Shilajit could not reply. The officer shouted filth at Shilajit, pulled him up and started assaulting him. When Shilajit cried out loud due to pain and fear, local villagers rushed to the scene asking the officer to leave the boy alone. The officer pushed Shilajit to the ground, walked a few steps away, lifted his rifle and shot Shilajit dead.

The Asian Legal Resource Centre (ALRC), and its sister-organisation the Asian Human Rights Commission (AHRC), have documented at least two dozen similar cases of murder committed by the BSF from Murshidabad district alone in the past two years.

In addition to the cases that are brought to the attention of the AHRC and ALRC through local organisations like MASUM, there is reasonable suspicion that there are many other cases that go unreported because of the fear the BSF have instilled in the area. If a complaint is made, the victim or the victim's family members are usually threatened by the BSF to either withdraw the complaint or to remain silent.

Such was the experience in Mr. Dwijen Mondal's case. Dwijen, the son of Mr. Hridoy Mondal, was allegedly murdered by the BSF on May 3, 2008. Dwijen was arrested for questioning by the BSF and taken to the BSF Out-Post No.3. There the officers assaulted and tortured Dwijen, who died the next day. Local villagers protested violently, however, the case was silenced by the BSF officers, who threatened the victim's family into withdrawing their complaint.

The BSF is a notoriously violent paramilitary unit and is stationed in areas that the government of India considers to be sensitive and where the local police require additional help. It is accused of committing crimes including rape, torture and murder wherever they are posted in India, notably in North-Eastern states like Manipur and in West Bengal.

The BSF is stationed along the Indo-Bangladesh border in West Bengal to prevent cross-border smuggling, infiltration of insurgents, illegal migration and other illegal activities along the international border between India and Bangladesh. The BSF is also required to assist the local police in maintaining law and order.

In practice however, the BSF with the connivance of the representatives of the Communist Party of India (Marxist) (CPI-M) and the local police is engaged in cross-border smuggling. The CPI-M is ruling the West Bengal state for the past three decades. The local police, particularly police officers the posted at border police stations like the Jalangi Police

Station are notorious for aiding the BSF in cross border smuggling. Yet the West Bengal state government declared the Jalangi Police Station as one of the best police stations in the state in February 2008. This allegation of corruption is however not limited to officers stationed at Jalangi Police Station.

On February 15, 2008 Mr. Mohammad Aptarul Hossain was shot on his leg by a BSF constable Mr. Birendra Kumar Singh. When Hossain lodged a complaint at the Gaighata Police Station, the police accused Hossain that he is an illegal Bangladeshi immigrant and registered a false case against Hossain.

The records at the police station says that Hossain is charged under Sections 186 (obstructing public servant in discharge of public functions), 307 (attempt to murder), 353 (assault of criminal force to deter public servant from discharge of his duty) of the Indian Penal Code, 1860 (IPC) and Section 14 of the Foreigners Act, 1946 at the behest of the BSF.

Hossain is an Indian, born on May 12, 1993 and his parents hold Indian identity cards issued by the Election Commission of India bearing numbers WB/14/097/279442 and WB/14/097/279426.

The AHRC, the ALRC and the AHRC's local partner the MASUM have been bringing these cases to the notice of the West Bengal state administration as well as the government of India. However, thus far the state as well as the government of India have taken no action against the BSF officers in any case.

The courts in India are also taking an adverse stance against suspected Bangladeshi immigrants. Two recent judgements delivered by the Indian courts, first by the Assam High Court and the Delhi High Court speaks this language. Both courts in judgements delivered in July and August, 2008 have said that illegal Bangladeshi immigrants are a threat to India. This opinion expressed by the courts serves as a blessing in disguise for the BSF. For the BSF every person murdered or tortured is an illegal Bangladeshi immigrant. By declaring so, the BSF escapes all liabilities under the Indian law for these criminal acts.

The domestic law that regulates the operation of the BSF is the Border Security Force Act, 1968 and its associated Rules, 1969. These laws however do not provide adequate procedures for any remedy for a civilian who has a complaint against a BSF officer. On the contrary, the above laws provide impunity to the BSF officers.

Section 47 of the Border Security Force Act, 1968 says: '*[a] person subject to this Act who commits an offence of murder or of culpable homicide not amounting to murder against, or rape in relation to, a person not subject to this Act shall not be deemed to be guilty of an offence against this Act and shall not be tried by a Security Force Court unless he commits any of the said offence, - (a) while on active duty*'.

The rider attached to this Section "while on active duty" stands in way of the possibility of a case to be taken up against the BSF officer in a civilian court. In all cases involving the BSF, which amounts to more than two dozen cases each year since 2003, the ALRC's experience shows that the BSF after a murder or torture of a civilian immediately approaching the local police and filing a false case against the victim. In most cases the

BSF accuses the victim, whether the victim is dead or alive, that the victim when approached by the BSF officers in 'active duty' tried to either prevent the officers from carrying out their duty.

The engagement of the BSF and their power to arrest, detain and question civilians in non-war situations is governed by the Criminal Procedure Code of India, 1973 (Cr.PC). This law that regulates the operation of law enforcement officers, including paramilitary units like the BSF in a civilian settings, is practically useless to take actions against a BSF officer. For the BSF officer to avoid any actions against him for breaching the provisions of the Cr.PC, it is enough that the officer allege that he engaged the civilian when the civilian prevented the officer from discharging his duty.

The case of Mr. Bishnupada Roy, aged 32-years, who was murdered between 9 and 9:30 pm on December 10, 2007 is an example. According to the BSF officer Mr. Narayan Khatri who shot Roy with his special issue assault rifle, Roy tried to attack Narayan with a pocket knife. The local police refused to take any action against Narayan, but registered a case against Roy, accusing him of obstructing a BSF officer from discharging his duty.

The atrocities committed by the BSF in India has thus far been left unaccounted for. The officers enjoy complete impunity against any acts of crime these officers regularly commit against innocent civilians. As of now there are no practical means available in India by which the BSF officers could be brought to justice and punished for the crimes they commit against innocent villagers. The BSF Act and Rules and the provisions therein, circumvents the Cr.PC.

Moreover, the Security Forces Court to be constituted by the BSF in an action against a BSF officer is not an open court where the accused as well as the witnesses could expect equal and impartial proceedings. The Security Forces Court is a military court where the victim or the witnesses in a crime against a BSF officer has no role to play. The prosecution, defence and adjudication is all carried out by the BSF officers.

The operation of the BSF with such impunity also contradicts the Constitutional guarantees of an Indian, particularly Article 21 that guarantees the right to life. The impunity enjoyed by the BSF in India also violates Article 6 (1) of the ICCPR that India has ratified. To make matters worse India has been refusing the requests for invitation by the UN Special Rapporteur on extrajudicial, summary or arbitrary executions since 2000. India has also not honoured the request for invitation by the UN Rapporteur on Torture.

As early as in 1997, the issue of impunity and the arbitrary use of force by the BSF has been noticed by the UN agencies. The Human Rights Committee in its concluding observations (CCPR/C/76/Add.6) dated April, 4, 1997 has expressed concern by stating “... *however, that all measures adopted [in the border areas by India] must be in conformity with the State party's obligations under the Covenant [ICCPR]*”.

While this is the reality, India in its voluntary pledge to the Human Rights Council has reiterated that it is taking all possible measures to guarantee to the citizen not only the 'covenant rights' but also to ensure that a violation of any such rights have the possibility of appropriate domestic remedies.

Being a state that has ratified the ICCPR and a member of the Human Rights Council, India has not only the legal obligation to abide by the covenant obligations, but also a moral duty to ensure that such obligations are fulfilled at the domestic level.

Under these circumstances the ALRC request the Council to:

1. Urge India to ensure that the deployment, operation and daily engagement of the BSF in India meets India's legal obligations under the ICCPR and to review the operational procedures of the BSF;
2. Encourage the India to ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to come up with necessary national legislations to implement the Convention at the domestic level;
3. Strongly suggest to the government of India to immediately look into the complaints filed by human rights groups in specific instances of human rights violations committed by the BSF;

AND

4. Encourage the government of India to accept the request for invitations by the mandate holders of the UN Special procedure mechanism, particularly the UN Special Rapporteurs on extra-judicial, summary or arbitrary executions and on Torture.

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