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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 organisation with 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.

[18 February 2009]

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

Bangladesh: Criminalisation of torture is a must

The constitutional provision regarding the strict prohibition of torture as a fundamental right seems hollow in Bangladesh as torture is rampant and there are no effective and available legal remedies in reality. Article 35 (5) of the Constitution of Bangladesh reads:

"No person shall be subjected to torture or to cruel, inhuman, or degrading punishment or treatment."

This fundamental provision has been rendered unattainable throughout previous decades of political instability and increasing power of the military and other so-called law-enforcement state agencies.

The use of torture as a tool of extortion and a routine method of interrogating of persons suspected of having committed criminal offences has been documented by the ALRC in numerous cases. Torture is no the exception or the result of a few rogue elements in Bangladesh, but is near-systematic in its use and systematically accompanied by impunity for the perpetrators. Those who attempt to register a complaint of torture not only fail but then face reprisals. The system of impunity further propagates the practice of torture.

Whenever local human rights group attempt to raise the issue of torture and other grave human rights abuses the authorities protect the perpetrators and use suppressive laws and institutions of the rule of law that are dysfunctional to punish the human rights defenders and the victims. In the best of cases, perpetrators may be transferred from one place to another. Such actions, even if they fail to even punish the perpetrators at all (some new positions may even be more lucrative) are deemed to be sufficient by the authorities in addressing the problem.

In very rare cases, the police or the Ministry of Home Affairs may start investigations, usually as a result of pressure from powerful individuals or groups, but these investigations do not result in prosecutions or punishments that are in line with international standards concerning torture. The "actions" against the perpetrators amount at worst to temporary suspensions or the curtailment of benefits for a period. Corruption – which is rife throughout the police – combined with illegal influences from inside and outside of the police and judiciary, plays a key role in ensuring impunity for the perpetrators. In reality, the authorities patronise torture in Bangladesh. In contrast, the victims lose almost everything; physical and psychological capabilities, assets, employment, financial solvency and social dignity.

Given this, the pledges of the government to the international community ring extremely hollow. The problem is that the international community does not deem that the situation in Bangladesh is worth its intervention, if the work of the Human Rights Council is taken as an example. The ALRC hopes that this will change. The nation has been a party to Convention against Torture, Other Cruel, Inhuman or Degrading Punishment and Treatment since 5 October 1998. The nation also acceded to the International Covenant on Civil and Political Rights (ICCPR) on 6 September 2000. The country has international obligations under these to eradicate torture, to criminalise torture under its national legislation and to provide adequate remedies to victims of torture while bringing perpetrators to justice.

Several examples of cases recently documented by the ALRC follow:

Following a petition regarding a theft, the Paikgachha police summoned Mr. Shahidul Islam, a rickshaw puller, to meet Sub Inspector Ayub Ali on November 2, 2008. There was no complaint registered with the police station or the local court regarding this incident. When Shahidul came to the police station he was detained there without any legal basis. At around 8:30pm the police went to the house Shahidul's neighbour, Mr. Monirul Islam Monir. Monir was sleeping at the time. The police kicked the door in and handcuffed Monir and took him on a motorbike to the police station. He was also detained in custody without any legal basis. Both Shahidul and Monir were detained in police custody until the afternoon of November 6, 2008. During detention the police tortured them every day in order to extract money from them. However, the two men could not afford to pay the bribes, leading to their repeated torture. This treatment was witnessed by two human rights defenders, who were also detained in the same place under a fabricated case. Sub-Inspector (SI) Ayub reportedly beat them with bamboo sticks on various parts of the body including the soles of their feet, knees, elbow and backs.

Hearing the news of their treatment, Monir's mother borrowed 2,000.00 Taka (about US\$ 29.) and paid it to the police on November 6, following which, later the same day, SI Ayub produced Monir and Shahidul before the Senior Judicial Magistrate's Court of Paikgachha on 6 November. The police fabricated a case against Munir and Shahidul under Section 34 of the Police Act-1861, which allows the police to arrest people without any prior direction from any magistrate for petty offences such as beating an animal, causing an inconvenience to others, throwing rubbish, etc. The complaint was recorded as a Non-GR (Government Record) Case No. 193/08 on November 6, 2008.

In the complaint, the police falsely claimed that Shahidul and Monir were found shouting in the street nearby the Magistrate's Court during the previous night. Prior to being produced before the Court, the police reportedly instructed both men to confess the offence, if they wanted to get released after paying a fine. Munir and Shafidul's lawyer also suggested they do this, which they did and were released.

In order to pay the bribery money to the police, expenses for lawyers, the fine and medical expenses, Monir's family were forced to sell land. Shahidul's relatives borrowed money at 10 percent interest per month. Both victims are suffering from physical problems as a result of torture, alongside the financial hardship and social stigmatisation.

The practice of torture is, in all cases that have been documented by the ALRC, accompanied by intimidation, bribery, fabrication of charges and/or death threats in Bangladesh. People lose their social dignity after having been subjected to torture.

For example, Mr. Rony, a man living in Syedpur town under Nilphamari district in the northern part of Bangladesh, was arrested, detained and tortured by the armed forces during "Operation Clean Heart" - a military crackdown that took place in late 2002. Rony family had arranged for him to be married, prior to the incident of detention and torture. When he was released after the crackdown was over the bride's family refused to allow their daughter to marry Rony, treating

him like a criminal even though he was neither charged nor convicted in any case before any court in the land.

The Asian Legal Resource Centre (ALRC) urges the Human Rights Council to address the human rights situation in Bangladesh in a credible way, which it has thus far failed to do. The government should invite the Special Rapporteur on Torture to visit the country without any delay. This should be issued as part of a standing invitation to all Special Procedures mandates. Bangladesh must also take all measures required to criminalise torture under national legislation, in conformity with international law and standards.
