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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

Written statement* submitted by the Asian Legal Resource Centre, 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 2014]

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

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BANGLADESH: Absence of freedom of expression contributes to the non-existence of the rule of law

1. The Asian Legal Resource Centre (ALRC) wishes to share with the UN Human Rights Council the status of freedom of expression and opinion in Bangladesh.

2. Bangladesh's Constitution guarantees "Freedom of thought and conscience and of speech" in a strange manner. Article 39 of the Constitution reads:

"(1) Freedom of thought and conscience is guaranteed. (2) Subject to any reasonable restrictions imposed by law in the interests of the security of the State, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence– (a) the right of every citizen to freedom of speech and expression; and (b) freedom of the press, are guaranteed."

3. The provision is contradictory. In paragraph (1) "freedom of thoughts and conscience is guaranteed". In paragraph (2) the Constitution imposes conditions that can ultimately deny all rights, as there is no definition of "interests of the security of the State", "friendly relations with foreign states", "decency", "morality", and "public order" in the Constitution, which is described as the "supreme law" of the land. Thus, the right of speech and expression not being absolutely guaranteed restricts the freedom of thought and conscience. One part of the article allows for other parts to be contradicted.

4. Constitutional guarantee appears to be a game of "hide and seek" for rights, as far as the freedom of expression is concerned. The constitutional provision keeps terms undefined so arbitrary power may be used to suppress or uphold the freedom of expression. Thus, the right has not been made absolute.

5. The Bangladesh government has adopted the "National Broadcasting Policy-2014" in the Cabinet on 4 August 2014. This policy prohibits the broadcasting of any reports containing satire of the armed forces, law-enforcement agencies, judiciary, or other public servants. Publishing information criticising a "friendly state", which can hamper the relationship between the states is also prohibited. According to the Policy, the government will establish an "independent broadcasting commission" for effective implementation and observation of the Policy. For now, broadcasters need to acquire a "no-objection certificate" from the Information Ministry, which remains in charge until the Commission is formed.

6. The reality of freedom of speech and expression reflects the nature of the country's constitution to a large extent. Those who flatter the regime in power enjoy freedom of expression. And, those who criticise the regime in power enjoy the vice of the state apparatus.

7. ALRC has documented the follow cases, which reflect on the reality:

Case 1: Mr. Muhammad Ruhul Amin Khandaker, a teacher of the Institute of Information Technology of the Jahangirnagar University, wrote a Facebook post in his personal Facebook wall when he was studying in Australia. He wrote, "The death of the five including Tareque and Mishuk Munier is a result of issuing driving licences without test. Everyone dies, why not Hasina?" This post was published after five people died in a road traffic accident, including a celebrity filmmaker and a journalist, in August 2011. A pro-government newspaper published Khandaker's post. On 18 August 2011, a High Court Division Bench issued a *suo moto* order asking Khandaker to appear before the Bench. The Court termed Khandaker's Facebook post a "derogatory comment". On 12 December, the Court further ordered him to appear on 2 January 2012. Khandakar, being on study leave in Australia, did not appear before the Court when ordered. On 4 January 2012, in his absence, the Court punished him with a six months imprisonment for "disregarding the Court's order". This case stands out because Bangladesh's High Court does not take *suo moto* action against arbitrary deprivation of life while enforced

disappearance is on the rise in the country; however, the same Court takes *suo moto* actions against one individual's opinion on a social networking site.

Case 2: Mr. Hafizur Rahman, is a lecturer in the Mechanical Engineering Department of Bangladesh University of Engineering and Technology (BUET). He updated his Facebook status with the following: "Hey Hyena, you have destroyed the country, now you are trying to destroy our BUET... We the general students are the hunters. We will shoot in your head...and hang your head at the gate of BUET to avoid further aggression of hyenas." In April 2012, two pro-ruling party newspapers published reports on Hafizur's post, interpreting that he wanted to kill Prime Minister Sheikh Hasina. A pro-ruling party man filed a General Dairy Entry with the Shahbagh police in Dhaka. Hafizur was accused under Section 57 of the Information and Communication Technology Act, 2006, and Section 506 of the Penal Code, 1860, although he did not mention any person's name in his Facebook status. On 18 June 2012, investigation officer Eantaj Ali submitted his report to the Metropolitan Sessions Court of Dhaka. On 20 September, the Court charged Hafizur with "publishing fake, obscene or defaming information in electronic form". Subsequently, Metropolitan Sessions Judge Md. Zahirul Haque, on 26 June 2013, convicted Hafizur, in absentia, and sentenced him to 7 years imprisonment.

Case 3: Mr. Sohel Raj Mollah, also known as Sohel Rana, typed in the following in his a Facebook status: "Ilias Ali would have been freed had he been caught by a jungle tiger. But this jungle tiger is Sheikh Hasina. The Premier cannot digest Ilias Ali; and people will attack her for abducting the BNP leader. Vomit Ilias Ali." Mr. M. Ilias Ali was former parliamentarian and an influential leader of the main opposition of the Bangladesh Nationalist Party. He was disappeared on 17 April 2012, allegedly by the Rapid Action Battalion. Sohel posted his comment in his personal Facebook page following Ilias' disappearance. On 17 May 2012, Humayun Kabir, Deputy Registrar of the Jatiyo Kobi Kazi Nazrul Islam University, filed a sedition case against Sohel. A Court of Maymensingh district detained Sohel in prison and placed him in police remand for three days.

Case 4: Mr. A. K. M. Waheduzzaman, a lecturer at the National University of Bangladesh, was arrested for his alleged Facebook status in August 2013. He allegedly made the following sarcastic comments about the education of the son and daughter of Prime Minister Sheikh Hasina:

"The Prime Minister's son has become an IT specialist through several power point presentations after completing his education in the Public Administration. On the other hand, the Prime Minister's daughter has become an expert on Autism rearing her own autistic child. And the mother has one and a half dozens of degrees. The entire family is scientist family."

In October 2013, a complaint was filed with the Magistrate's Court in Dhaka. An arrest warrant was issued against Waheduzzaman, who later surrendered before the Court, following an anticipatory bail granted by a High Court Bench. On 24 November 2013, a Division Bench of the High Court Division of the Supreme Court granted Waheduzzaman 3 months ad-interim bail. A charge of "publishing fake, obscene or defaming information in electronic form" was trumped up against him on February 10, 2014. However, on February 24, Wahiduzzaman was granted one-year interim bail by a Division Bench of the High Court Division of the Supreme Court. The case is being tried at the Court of the Chief Metropolitan Magistrate, Dhaka.

Case 5: Earlier in 2011, the International Crimes Tribunal issued a "contempt of court rule" against Mr. Nurul Kabir, editor of *New Age*; Mr. David Bergman, a British journalist who used to work as Editor - Special Report at *New Age*; and Mr. A. S. M. Shahidullah Khan Badal, publisher of *New Age*. The tribunal issued the contempt rule for publishing a sub-editorial titled 'A crucial period for International Crimes Tribunal' on 2 October 2011, in spite of a court order banning any reporting critical of the Tribunal. The newspaper pleaded not guilty with its argument: "For us, at *New Age*, truth is of utmost importance because journalism per se is about unearthing the truth - even the bitter truth." The journalists and the publisher of the newspaper defended themselves, explaining their roles in the past for the cause of trying the alleged offenders of war crimes. After hearing their arguments, the Tribunal exonerated the two journalists and the publisher of the newspaper, having considered their previous roles in contributing to the establishment of the Tribunal. This is an example of contempt of court proceedings being used as a threat to the freedom of press.

Mr. David Bergmen is currently facing another contempt of court charge for writings on his personal blog, which point out the inconsistencies of the trials in the International Crimes Tribunals. On 18 April 2014, he wrote that “there is almost no evidence that supports the official number, 3 million, of Liberation War martyrs”. On 25 April, the Tribunal commenced the contempt of court proceedings against him. The matter is still under trial.

Case 6: The government’s closure of the *Daily Amardesh*, a vernacular national daily, without any lawful reason is another example of state-sponsored repression and harassment. On 11 April 2013 the police sealed the printing press of the newspaper and arrested its Editor. The daily published reports on Skype about scandals involving the International Crimes Tribunal’s (ICT) presiding judge; in a leaked conversation, a presiding judge of the Tribunal was found asking a non-resident Bangladeshi to write a certain portion of the tribunal’s judgment against the defendants charged with crimes against humanity. Since then, the Editor of the newspaper, Mr. Mahmudur Rahman, has been detained without a trial. He has been implicated in at least 69 criminal cases. Of the 69 cases, around 30 cases are pending before the High Court Division for quashing. The remaining cases are under investigation. The government has brought charges of car-vandalism, arson, and obstructing the law-enforcement agencies from discharging their official duties.

Case 7: The government shut down two television channels, Diganta TV and Islamic TV, early in the morning on 6 May 2013, to punish the channels for broadcasting a crackdown on a pro-Islamic group of demonstrators at Shapla Chattar, in Motijheel, Dhaka, by security forces. Numerous citizens were allegedly killed in that overnight crackdown. The authorities have refused to hold an independent probe despite strident public demands.

8. These cases are a few examples of the state repression in Bangladesh, which denies the right to freedom of expression. Through these ongoing attempts, the government uses all institutions of the state to silence the society. The government has created a condition of extreme fear so that the people are unable to exercise their power against the regime. Meanwhile, pro-government media is allowed to spread hatred against those viewed as pro-opposition when not creating publicity in favour of the ruling regime.

9. Such repression has divided the media community and the civil society, polarised by political allegiance to one of the two major political camps. The majority of civil society and journalists exploit whatever freedom is available in Bangladesh, for their individual gains. The exercise of the freedom of expression for the benefit of the people as a whole is now virtually absent. This is a direct result of the nature of repression in Bangladesh.

10. Demoralisation has set in, amongst those who struggle for freedom of expression as an absolute right,. As a result of this repression and demoralisation, the basic institutions of the criminal justice institutions – already quite weak – have been dealt a telling blow.

11. The ALRC urges the Human Rights Council to gauge the ground reality through its stakeholders in Bangladesh. The situation requires qualitative improvements so that the notion of the rule of law can grow in Bangladesh. The basic institutions need to be reformed thoroughly. And, for this, the freedom of expression and opinion should be placed at the forefront, as an absolute guarantee.