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PROMOTION AND PROTECTION OF HUMAN RIGHTS:
HUMAN RIGHTS DEFENDERS

Written statement* submitted by South Asia Human Rights Documentation Centre,
a non-governmental organizations in special consultative status

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

[15 January 2002]

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

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In defence of Human Rights Defenders

The South Asia Human Rights Documentation Centre (SAHRDC) has perused the report (A/56/341) of the Special Representative of the Secretary General on Human Rights Defenders presented to the 56th Session of the General Assembly. SAHRDC is aware that Special Rapporteurs/Special Representatives are not obliged to provide specific information about the violations cited in their reports. However, many Rapporteurs/Representatives do, and SAHRDC believes that the report of the Special Representative on Human Rights Defenders could have been more informative – and effective – had it been more explicit. The General Assembly and the world community at large must know the identities of human rights defenders who are under attack as well as the States or State agencies that have failed to take action against such attacks.

Human rights defenders continue to face repression across Asia.

The Government of India, for example, has been seeking to replace the draconian Foreign Contribution (Regulation) Act, 1976 with an even harsher Foreign Contribution (Management and Control) Bill. The Bill is aimed ostensibly at curtailing terrorist and religious conversion activity by regulating the acceptance and utilisation of foreign contributions or foreign hospitality by individuals, associations or companies.

Government guidelines require NGOs to register themselves and submit to regular audits. While the Government has a legitimate interest in holding NGOs accountable for financial or other wrongdoing, normal regulatory and criminal justice procedures provide sufficient institutional resources to accomplish this task. The Foreign Contribution (Management and Control) Bill however places NGOs under the control of the Intelligence machinery of the Ministry of Home Affairs rather than the Ministry of Finance.

The Bill also reportedly provides for the Central Government's supervision of NGOs apart from state and district-level oversight – a move that is widely expected to result in the targeting of organisations and institutions working on issues related to religious and linguistic minorities.

The proposed law's deliberately vague wording further raises the chances of arbitrary denial of registration to NGOs.

Furthermore, it can be deduced from the official figures on the receipt of foreign contributions that the Government's supporting argument for the proposed Bill – that foreign contributions benefit mainly religious groups engaged in aggressive proselytisation activity and militant insurgent outfits – does not hold. The figures for 1998-99 show that the southern states received the largest part of the contributions – more than double the amount received by the Northern states, well more than triple the western states' share, and five-and-a-half times the total of the eastern and central states' receipts. Projects on health and family welfare, rural development and help for the poor, aged and destitute, rather than those on proselytisation or conversion, attracted the largest share of the incoming contributions. Insurgent organisations, as the Government of India is only too well aware, do not use formal banking channels.

Such politicisation of the law and the law-making process must be condemned. By denying access to foreign contributions and funding to human rights NGOs, India finds itself in violation of Article 13 of the Declaration on Human Rights Defenders. While the need for government supervision of NGO

activity readily furnishes grounds for legal regulation and facilitation of NGOs' operations, legislation regarding NGOs must not become a pretext for intimidation and harassment.

India's hostile treatment of NGOs however is subtle in comparison to the manifestly physical nature of State attacks on human rights activists in Bangladesh.

Shahriar Kabir – a Bangladeshi journalist, writer, documentary film maker and minority rights advocate – was arrested under Section 54 of the Code of Criminal Procedure and taken into Special Branch police custody on 22 November 2001 on his return to Dhaka from West Bengal, India. Mr Kabir is the Bangladesh representative of the International Institute of Social History and acting president of the South Asian Coalition against Fundamentalism. He had gone to India to investigate the condition of Bangladeshi refugees who had fled to India to escape the violence that followed the 1 October 2001 national elections in Bangladesh. He was charged with treason, allowed to see his lawyers only in the presence of intelligence agents and denied medical treatment for severe chest pain despite court orders. The police seized his passport, five video cassettes, 13 audio cassettes, three CDs, a film and a camera. Mr Kabir's detention was justified by the government of Bangladesh on the grounds of a later finding "that the videos contain objectionable and misleading statements that are detrimental to communal harmony and subversive of the state."

On 25 November 2001, Mr Kabir was detained for one month on informal charges of 'anti-state activities on the basis of intelligence reports and at the instruction of higher authorities' under the Special Powers Act (SPA) of 1974. No formal charges were filed. Subsequently, the arrest was extended and bail was refused. On 1 December 2001, an argument for the legality of Mr Kabir's detention was sought from the government by the Bangladesh High Court. Mr Kabir alleged that he had been tortured in custody. The SPA, frequently utilised against political opponents and human rights advocates, allows for preventive detention and for the abridgement of the right to freedom of expression. The High Court recently ruled Mr Kabir's detention illegal but said it did not have the power to grant bail. Mr Kabir's case constitutes a clear violation of Articles 3 and 6 (a) and (b) of the Human Rights Defenders Declaration.

Since the 26 November 2001 declaration of a nationwide emergency and the deployment of the army in Nepal, dozens of people, including lawyers, students and teachers, have been arrested throughout the country on suspicion of being members or sympathisers of the Communist Party of Nepal (Maoist). Fundamental rights guaranteed in the Constitution have been suspended. While the right of habeas corpus has not been suspended, there are reports that lawyers are reluctant to exercise this right for fear of arrest under the Ordinance on charges of supporting "terrorism."

Kush Raj Shahi from Kalikot district and Bishnu Pokhrel of Sankhuwasabha district, who report for the Human Rights Yearbook of the Informal Sector Service Centre (INSEC) based in Kathmandu, were threatened by security personnel while collecting information on human rights abuses. Mr Pokhrel was also arrested and severely beaten on 9 January 2002, a day after he had collected information and photographs on the arbitrary arrest and torture of four persons by the Nepalese army at an army camp in the Khandbari municipality of Eastern Nepal.

Further afield in South East Asia, the transition from one- to multi-party rule appears to have made little difference to the treatment of human rights defenders.

In August 2001, the Chairman of the Commission for Missing Persons and Victims of Violence (Kontras) in Indonesia, Munir, narrowly escaped a bomb blast directed at him. The attack was

reportedly intended to dissuade him from pursuing his work on cases of impunity in the wake of explosions in Jakarta and other cities.

Professor Teungku Dawood, Director of the Syiah Kuala University, Aceh, was shot dead in his car by two unidentified men on a motorbike on 7 September 2001. Professor Dawood was an activist working for peace and reconciliation in Aceh. He was also chairman of the Golkar Party and head of the Aceh branch of Muhammadiyah, the country's second-largest Muslim organisation. Exercising his rights under Article 8 (2) of the Human Rights Defenders Declaration, he had proposed a greater role for the Syiah Kuala University in conflict resolution measures involving Indonesian forces and pro-independence guerillas of the Free Aceh Movement.

Theys Hiyo Eluay, Chairman of the Papuan Presidium Council, was abducted, mistreated and assassinated on 10 November 2001. His driver, a witness to the crime, disappeared, allegedly kidnapped by security forces. The Papuan Presidium Council, under Chairman Theys' leadership, had issued a statement on 20 October 2001 rejecting the special autonomy law for Papua and calling for dialogue with the Indonesian government. It was alleged that Mr Theys' murder was meant to provoke conflict along the lines of the political upheaval in Aceh.

These cases from across Asia are merely illustrative of the general political climate that is not merely unfriendly towards human rights defenders and their work but greatly increases the personal risk faced by them. It is a climate in which their human rights, and their rights as human rights defenders in particular, are violated almost as a matter of course. Human rights defenders are not enemies of the state – they must not be permanently suspected or treated as such.

The distinction between the preacher and the preached has become blurred.
