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## Human Rights Council

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Agenda item 3

**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 (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.

[15 February 2010]

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

## **Bangladesh: Council urged to ensure Bangladesh passes pending bill criminalizing torture**

The Asian Legal Resource Centre (ALRC) has on several occasions submitted written and oral information to the Human Rights Council concerning a broad range of human rights violations taking place in Bangladesh. The country recently underwent a nearly two-year state of emergency under which gross and widespread human rights abuses were perpetrated, including the suspension of fundamental rights, severe curtailment of the freedom of the press, mass arbitrary arrests and detentions, most frequently accompanied by ill-treatment and/or torture, as well as hundreds of extra-judicial executions. Following the lifting of the emergency and the holding of elections, the human rights climate has improved to a certain extent, but impunity for past and ongoing violations, notably ill-treatment, torture and extra-judicial killings make the protection of human rights, notably the protection from torture, impossible in practice.

The ALRC has been welcomed the framing of a Bill to criminalize torture in Bangladesh, and believes that this is a key step to combating torture and the impunity that currently accompanies it. However, this Bill is currently being held up in Parliament, which the political will to pass this significant measure apparently lacking at present. The Human Rights Council and its members can play a crucial role at present concerning this, by communicating the need for Bangladesh to criminalize torture. Constructive action at this juncture could partially compensate for the Council's unfortunate silence concerning human rights in Bangladesh since the body's establishment.

Torture is a widespread, endemic and chronic problem in Bangladesh and has been accompanied by systematic impunity for the perpetrators and without any form of legal redress for the victims. The country's law-enforcement agencies, notably the police and military and paramilitary security forces use torture as a key tool for maintaining order.

Any person targeted or suspected by any member of the police or other agencies, can be illegally arrested, arbitrarily detained and experience torture in custody, which often leads to the death of the person. For example, a Rapid Action Battalion (RAB) team comprising three plain clothed members – Mr. Anowar, Mr. Babul and Mr. Bishawnath – went to the house of Mr. Abdul Mazid in Pallabi, Dhaka on 24 January, and force Mazid to have his son return home. After Arif's arrival the paramilitary force members arrested him took him to the office of the RAB-4, without. Giving any specific reason why they were doing so to him or his family members. The officers also warned Mazid not to communicate with anyone else about the incident.

Arif was detained in the custody of RAB-4 from 8AM of 24 January to 8PM of January 25, or 36 hours, which is in violation of Article 33 (2) of the Constitution of Bangladesh and Section 61 of the Code of Criminal Procedure-1898. He was tortured in custody and at his home, where 10 RAB officers had taken him to conduct a search of his home, as they suspected him of possession of weapons. At 8 pm on 25 January, the RAB handed him over to the Pallabi police, who did not allow his family access to him and also allegedly tortured him throughout the night. On 26 January afternoon, the police sent Arif to the Chief Metropolitan Judicial Magistrate's Court of Dhaka. Instead of producing Arif before the court, the police detained him in a cell there. His relatives were able to see Arif there and saw that his eyes and legs were swollen and he was unable to stand or walk. Arif told them that the police officers had stood on his chest and beat his legs causing fractures. The police claimed that Arif was arrested as a suspected robber in a robbery case. The police informed the Court that at the time arrest by the RAB the detainee received some injuries regarding which a medical certificate was attached. The Magistrate ordered Arif be sent to Dhaka Central Jail without hearing him or checking his physical condition.

On 28 and 31 January the prison authorities sent Arif to Dhaka Medical College Hospital (DMCH) for treatment due to worsening health, but his family members were not allowed to visit him there. On 3 February, the prison authorities sent Arif's body to the DMCH where doctors recorded him as being dead on arrival. On 4 February, Executive Magistrate Mokbul Hossain, prepared an inquest report, which clearly mentioned that the dead body had several injury marks, including a fractured leg, and bruised and swollen feet and eyes. The doctors of the Forensic Medicine Department of the DMCH conducted a post-mortem of Arif's dead body. However, the report of the post-mortem has not yet been available to the family of the victim.

Before Arif's burial his neighbours held a demonstration in the Pallabi area demanding the punishment of the alleged perpetrators from the RAB and the police. In response, the Pallabi police have registered a case against 40 persons including his neighbours and relatives and the police and the RAB have been repeatedly threatening the relatives of Arif over telephone and in person to silence them. The families are understandably scared and unlikely to even attempt to seek redress concerning Asif's death. As with many other cases of this type - carried out in police stations, military garrisons, the intelligence agencies' torture cells, and paramilitary forces camps such as those of the RAB - impunity prevails.

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 provision regarding the prohibition of torture has not been implemented in practice, mainly because of the lack of a law criminalizing torture. There is no culture of protecting human rights in the country, particularly victims who suffer ill-treatment and torture at the hands of the law-enforcement agencies. According to the Rule 75 (3) of the Criminal Rules and Orders-2009, which reads:

*"Whenever a person is arrested and brought before the Magistrate, the Magistrate should be satisfied that there has been no unauthorised detention beyond 24 hours as provided in Section 61 of the Code [of Criminal Procedure-1898] and if there be any complaint to the that effect against the police, he shall make an enquiry into the matter and take such actions as may be deemed necessary."*

In the afore-mentioned case, the victim was detained for more than 50 hours by the RAB and the police. The Magistrate, as per records of the Court, did not ask the police to bring the person before him in person to hear whether Arif had any complaint against the police. There is no functioning institution or mechanism at present to hold the Magistrates, the police and the RAB accountable for their lawless actions.

The country does not have an independent and credible medico-legal system that is able to establish and report the findings of their examinations of victims of torture. Lawyers do not often offer to provide legal assistance to victims of torture, out of fear. In fact there are many instances where the senior members of the bar have suggested that victims of torture not file any case against the authorities concerning torture. Even if a case is registered with a Magistrate's Court, the police by default refuse to record a case of torture against police officers or other state agents such as the armed forces or paramilitary forces. In the rare case that an investigation is carried out by the police, it typically justifies or exonerates the accused.

Rarely, if a case reaches a Sessions Court a public prosecutor, who by default belongs to the ruling political party, and therefore seeks to protect the establishment, typically upholds the distorted police investigation report. Moreover, complainants and witnesses routinely face intimidation and threats of extra-judicial killing unless the case is withdrawn.

Bangladesh is 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 both of these instruments to criminalize torture.

A member of the Parliament of Bangladesh, Mr. Saber Hossain Chowdhury, tabled a Bill titled "Torture and Custodial Death (Prohibition) Bill-2009", as a Private Member's Bill, in the house on 10 September 2009 seeking to place the country into compliance with its international obligations. Unfortunately, the Bill has been pending before the Parliament for around six months without enactment despite the fact that the incumbent government has a three fourths majority in the house. If the government had the level of commitment concerning upholding human rights that its claims to have in its pledges as part of its election bid to the Human Rights Council or are repeatedly claimed by its representatives to this body, this Bill would have been passed by now.

The Asian Legal Resource Centre urges the Human Rights Council to take all necessary measures to ensure that the Bangladeshi authorities comply with their international obligations, notably those under the Convention Against Torture, including by criminalizing torture. The tabled "Torture and Custodial Death (Prohibition) Bill-2009" presents a ready-to-go solution for this and the Parliament is urged to consider this Bill without further delay. Bangladesh should also be urged to initiate necessary reforms to ensure a functioning complaints mechanism that is accessible to all victims of torture without any fear of reprisal, and for an independent investigation unit to be established that is separated from the regular police force.

The prosecution and attorney service should be made independent from the ruling political party's control and effective measures should be put in place to verifiably combat practices of discrimination and corruption in the judiciary.

Finally, Bangladesh should issue a standing invitation to the Special Rapporteur on Torture in order to begin to address its lack of cooperation with the international community and human rights system concerning the issue of torture and human rights more widely.

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