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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.

[17 May 2010]

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

Bangladesh: Should a state responsible for hundreds of extra-judicial killings hold the Human Rights Council presidency?

The Asian Legal Resource Centre (ALRC) is gravely concerned by the ongoing problem of frequent extra-judicial killings attributable to the State in Bangladesh and the continuing silence of the Human Rights Council on this matter. Furthermore, the ALRC has recently been informed that Bangladesh is now seeking to hold the Presidency of the Human Rights Council for the next year, and is deeply troubled by this prospect given the country's human rights record in recent years, including: endemic torture and corruption; the lack of an independent, functioning judiciary; numerous extra-judicial killings and ongoing impunity. These problems continue under the current government, despite claims to the contrary by government officials.

Bangladesh acceded to the International Covenant on Civil and Political Rights (ICCPR) on September 6, 2000, but State-agents continue to perpetrate numerous extra-judicial killings with impunity. By May 12, 2010, at least 190 persons had allegedly been extra-judicially killed since the present government took office on January 6, 2009. Furthermore, according to the ALRC's documentation at least 240 extra-judicial killings were allegedly perpetrated in 2004; 396 in 2005; 355 in 2006; 184 in 2007; 149 in 2008; 154 in 2009; and the ALRC had documented 38 such killings so far during 2010 up until May 12, although information about other cases perpetrated during this period continues to be received.

The ALRC has been giving particular attention to documenting such cases since the creation of the paramilitary Rapid Action Battalion (RAB) in 2004. The RAB has been the lead perpetrator of such killings since its establishment, with the police accounting for many of the remainder.

According to Article 2 and 6 of the ICCPR, Bangladesh has the obligation to ensure the right to life of its people, and ensure prompt and effective reparation where violations occur. It is also obliged to bring legislation into conformity with the ICCPR. Article 32 of the Constitution of Bangladesh protects the fundamental right to life and liberty, stating that: "No person shall be deprived of life or personal liberty, save in accordance with law." Yet this has not been implemented in reality and this most fundamental right is being repeatedly violated with complete impunity.

On February 3, 2009, as part of the Universal Periodic Review of Bangladesh, Foreign Minister Ms. Dipu Moni pledged that "extra-judicial killing will be stopped and all the perpetrators will be brought to justice," also claiming that her government had a "zero tolerance" policy concerning such killings. Beyond this, no details were given as to how the authorities planned to address the systemic failures that are currently guaranteeing impunity, notably the fact that complaints of serious human rights violations attributable to State-agents are not even being registered. How perpetrators can effectively be brought to justice without effective investigations and by a judiciary that lacks independence in practice, remains a mystery.

Of the 190 cases of extra-judicial killings known to have taken place since the current government came to power in early 2009, 180 have occurred since Foreign Minister Moni claimed a "zero tolerance" policy concerning such killings as part of the UPR session.

On March 1, 2010, Bangladesh's Foreign Minister addressed the High-Level Segment of the 13th session of the Human Rights Council, claiming that:

“We are vigilant against application of all extra-judicial methods, including extra-judicial killings. There is no place for such illegal practices in a democratic society.

Our Prime Minister has declared “zero tolerance” for such practices. Yet, the culture developed by the past practices is making our job difficult. The government is determined to bring justice to anybody who is involved in any extra-judicial methods. We are encouraged by the positive trend over the last one year, and shall remain engaged in this area to firmly establish the rule of law in the country, an election pledge of the current government.”

The ALRC has been calling for the dismantling of the culture of impunity and the strengthening of State-institutions that are supposed to ensure the rule of law in Bangladesh for many years. While it is interesting to note that the government now feels it needs to speak to these issues when addressing the Human Rights Council, the ALRC is unaware of any developments that could be considered as constituting the “positive trend” referred to by the Foreign Minister.

Bangladesh's government has, in fact, undermined the country's Supreme Court's suo motto order to stop extra-judicial killings. On November 17, 2009, a Division Bench of the High Court Division of the Supreme Court of Bangladesh ordered the government and RAB officials of the relevant paramilitary forces to explain within 48 hours why the "crossfire" killings of two brothers, Mr. Lutfor Khalishi and Mr. Khairul Khalishi, on November 16, 2009, who were in the custody of the RAB, should not be declared illegal. In response, Home Minister Ms. Sahar Khatun, claimed that there had been no extrajudicial killings in the country.¹ The current government had pledged before the general election that took place on December 29, 2008 that it would put a halt to extra-judicial killings.

The Director General of the Rapid Action Battalion, Mr. Hassan Mahmud Khandkar, 622 persons had been killed by the RAB in so-called “crossfire” incidents between its creation and March 28, 2010. “Crossfire” is the term used by the authorities to justify killings by state agents as encounter killings, although the ALRC has information showing that the majority of such killings are in fact extra-judicial executions. The ALRC is not aware of effective investigations to determine the legality of such killings or that that have led to the successful prosecution of those responsible in any of the hundreds of cases mentioned above. Typically, when a killing takes place, the authorities launch an Executive Inquiry, which is conducted by Executive Magistrates, who are under the direct control of the government. It is no surprise, then, that such inquiries result in reports manipulated to vindicate the actions of the RAB or police responsible for the killings, usually using the pretext of “crossfire” to justify the killings and guarantee impunity. This system is so iron-clad that the term “crossfire” has become a byword for extra-judicial killing and is used as such by State-agents when threatening persons with being summarily executed.

Moreover, in order to silence potential critics, the Ministry of Home Affairs reportedly hosted a meeting with human rights groups on April 15, 2010, to review the "2009 Human Rights Report: Bangladesh" published by the US State Department on March 11, 2010, at which time they called on the human rights groups not to use the terms "crossfire" as "extra-judicial killing" in their work. Rather than exhibiting a policy of zero tolerance concerning such killings, the current government is clearly engaged in cover-up activities, undermining rare attempts by the higher judiciary to address this problem and pressuring civil society to stay silent on the matter. The Council needs to ask itself whether such conduct is in any way compatible with holding the Presidency of the UN's apex human rights body.

¹ Please see here for further details:
<http://www.ahrchk.net/statements/mainfile.php/2009statements/2300/>

Such killings create a climate of fear within the country. Journalists, lawyers, doctors and NGO workers fear speaking out about the problem. The ALRC has documented several cases in which journalists or human rights defenders have been killed for having raised the issue of extra-judicial killings.² The police routinely refuse to register murder cases where State-agents are involved. Victims or their relatives do not have sufficient confidence in the authorities and the judiciary to report cases and seek justice through the court system.

Numerous killings are being carried out extra-judicially; the perpetrators remain above the law; and the victims have no recourse to protection or redress under the law. This represents a violation of Article 31 of the Constitution, which reads:

"To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law."

Beyond impunity, those responsible for such killings are being rewarded for their actions. Firstly, torture and the threat of extra-judicial killing are used by the police and the RAB to extract money from persons that they arrest. Furthermore, the RAB was even awarded the prized Independence Award to the Rapid Action Battalion (RAB) on March 23, 2006, as part of Bangladesh's 35th Independence Day celebrations, for its activities.

The nation requires thorough reforms to its criminal justice system. Complaint mechanisms must be open and free from any kind of refusal, resistance, threats and intimidation. Criminal investigations into allegations of human rights abuses by State-agents must be performed by an independent and efficient agency. There should be an independent, a-political, permanent and accountable prosecutorial authority. The judiciary should be made competent to deliver justice, independently and be rid of the discrimination and corruption that plagues it at present.

Bangladesh has been a member-state of the Human Rights Council for the last four years. As such, not only does it have international obligations to protect its citizens' rights, but it should do so to the highest possible standards. It has singularly failed to do so to date – a fact that should prevent the country and its representatives from being considered for the Presidency of the Council, notably during such an important year that sees the review of the Council take place. The Council needs strong, credible and positive leadership at this point in its development, if it is to have a chance at becoming the effective and relevant body that the ALRC and all those working for human rights around the world desire.

Bangladesh has failed to show the requisite cooperation with the HRC's Special Procedures to justify its membership in the Council, let alone the possibility of the country presiding the body. Only a few mandates have been allowed to conduct country visits, and these have not included the mandates on the independence of judges and lawyers, on extra-judicial killings or on the freedom of expression, all of which have had requests pending for several years.

The ALRC notes that the Council has failed to discuss or take any credible action concerning the wide-ranging human rights violations taking place in Bangladesh. It appears there is a lack of interest and political will to address the country's situation, despite the severity and scale of the violations taking place there. The government's efforts to silence

² <http://www.ahrchk.net/ua/mainfile.php/2009/3303/> ;
<http://www.ahrchk.net/ua/mainfile.php/2008/3058/> ;
<http://www.ahrchk.net/ua/mainfile.php/2008/2713/> ;
<http://www.ahrchk.net/ua/mainfile.php/2007/2668/>

its critics domestically have no doubt contributed to this fact and this will only be accentuated if the Council's passivity is turned into complicity by allowing the country to occupy its Presidency.

The Asian Legal Resource Centre therefore urges the members of the Council to scrutinise the country's record before giving any consideration to its bid for the Presidency. The ALRC urges the Council to use the issues of extra-judicial executions, independence of the judiciary and impunity as yard-sticks for such an evaluation. As part of this, the government of Bangladesh must immediately grant the requested visits by the Special Rapporteurs on extra-judicial, summary or arbitrary executions and on independence of judges and lawyers as a priority, and the findings stemming from these visits should inform the decision by the UN's member-States concerning the country's suitability for the role of President of the Human Rights Council.
