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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 (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]

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

Asia: Council's complete inaction concerning torture mandate's recommendations denounced

The Asian Legal Resource Centre (ALRC) and its sister-organisation, the Asian Human Rights Commission (AHRC), document hundreds of cases of torture each year in the Asian region. The eradication of torture must be at the heart of any realistic attempts to improve human rights in any given country, yet, the Special Rapporteur on torture, Manfred Nowak, has noted the Council's failure to act in his study on torture and report to the 13th session of the Council.¹

The ALRC is disappointed to note that despite so many members of the Council ritually repeating the mantra of "cooperation" in the Council, it is clear that States are failing to cooperate in practice with the Special Procedures. The Rapporteur notes in his report concerning communications that "While the majority of Governments replied in one way or another, serious investigations into the allegations of torture and ill-treatment which actually led to sanctions against the officials responsible were only conducted in exceptional cases." Some governments have even completely failed to respond to communications. Similarly, the fact that a significant number of requests for country visits remain pending after many years is an indicator of a failure of cooperation by States with the Council's mechanisms. The ALRC is, for example, particularly concerned that the government of India has still not invited the Special Rapporteur to conduct a country visit, despite a request having been pending since 1993 and re-iterated in the interlude.

Of major concern is the fact that country-specific conclusions and recommendations by the mandate **have never led to any specific resolutions or recommendations by the Human Rights Council**. The members of the Council are all responsible for this serious failure and are urged to move beyond the gamesmanship and empty rhetoric that have been witnessed to date in the work of the Council and to begin to have a tangible impact at the country level concerning human rights. The fight against torture would be an appropriate place to start. The practice of torture is at the crux of most grave human rights abuses. It is a typical means through which the State violently impacts on the individual. Torture forms and essential link in the chain of grave human rights abuses, from arbitrary and incommunicado arrests and detentions, through to forced disappearances or extra-judicial executions. In tackling this practice with the seriousness that it evidently requires, the Council will begin to show that it is relevant and valuable. A failure to do so will convey the opposite message.

The Council clearly needs to move beyond the superficial discussions that have been the hallmark of its work to date and tackle the substance of issues in a tangible and verifiable way. The Council is hiding manipulating excuses, such as the desire to avoid selectivity, in order to avoid taking any action. Instead of freezing in the headlights, the Council should address all allegations of grave human rights violations as and wherever they surface in order to ensure that it cannot be accused of selectivity over time.

The Rapporteur notes that the problem of torture and ill-treatment is global. Victims of torture all need the support of the international system, regardless of their nationality. Addressing torture across the board therefore cannot be deemed selective. Beyond this, the key is not to engage in simply denouncing torture and making use of allegations of abuses for political posturing, but to make constructive and effective use of the information already made available by the Special Rapporteur, which is regrettably being ignored at present, in order to take concrete action to support governments in the eradication of torture.

¹ A/HRC/13/39/Add.5

The ALRC applauds the work of the Special Rapporteur and welcomes his report and study on the phenomenon of torture, which concisely presents many of the issues that the ALRC has also encountered through its work in Asia. As noted in the report, despite torture being amongst the gravest of human rights violations and despite its absolute prohibition, torture and ill-treatment are widespread practices in the majority of the countries on our planet. This is particularly true in Asia, where torture is endemic and practiced systematically, including in fighting ordinary crime, in the majority of the region's nations.

In addition, the ALRC welcomes the efforts made by the Special Procedures as part of the "Joint study on global practices in relation to secret detention in the context of countering terrorism."² The ALRC notes that the report has included a number of examples from in the past in several Asian nations and wishes to highlight one issue that is not contained therein. The ALRC has informed the Council and the Special Procedures on several occasions about its identification of some 52 secret detention and torture centres in Pakistan. Further information concerning these can be found here: <http://www.ahrchk.net/statements/mainfile.php/2008statements/1574/>.

The ALRC urges the relevant Special Procedures and the Council to address this issue as a matter of urgency and take all necessary steps to ensure that the government of Pakistan closes these centres immediately and investigates and renders justice concerning all related allegations of abuse stemming from these centres.

While acknowledging the value of the attention given to the specific issue of torture as part of counter-terrorism, the ALRC recalls the Special Rapporteur's finding that "most victims of torture are not political prisoners or suspected of having committed political "crimes", but ordinary persons suspected of having committed criminal offences. They usually belong to disadvantaged, discriminated and vulnerable groups, above all those suffering from poverty." The ALRC urges the Special Procedures and the Council to find ways to give particular attention to the chronic, endemic and systematic nature of torture, as this aspect of the phenomenon is being overlooked despite it representing the greatest component of the problem of torture.

It is important to take into account that torture is most frequently practiced in the context of investigations concerning petty crimes. The ALRC has documented numerous cases in which torture is used in order to extract money from hapless victims. In Bangladesh, for example, Mr. Abdul Razzak, a law graduate, was arrested without any legitimate reason on October 21, 2008, and detained at a police station in Kartun for several days. He was charged with the abduction of a young girl, a charge which had no basis in fact. Between October 21 and November 12, 2008, Razzak's family had to pay bribes to police officers and others on 16 occasions. This case is indicative of so many in Bangladesh, in which arbitrary arrests and torture are used by officials simply to make money. The ALRC has documented cases showing the nexus between torture and extortion in numerous countries in Asia, including, *inter alia*, India, Myanmar, Pakistan, Sri Lanka and Thailand.

In many Asian States, torture is not even a crime. As an example, the ALRC has also submitted a written submission to the 13th session of the HRC concerning the specific need to criminalize torture in Bangladesh. Even in countries where torture is criminalized, such as in Sri Lanka, which adopted a law by way of Act No. 22 of 1994, or the Philippines, which has recently adopted a law against torture, these laws have not been implemented in practice and torture continues to be practiced endemically and with impunity.

² A/HRC/13/42

The use of torture for gathering information, for extracting confessions, or for intimidating persons is prohibited by the Convention Against Torture. That notwithstanding, torture is being used systematically as the main method of investigation in many Asian nations. The AHRC has documented thousands of such cases of torture in Asia and published a compilation and analysis of 200 cases in Sri Lanka in early 2009.

Importantly, the Rapporteur notes in his report that the criminal justice systems in most countries are not functioning properly and that there is a lack in many country settings of a specific crime of torture in accordance with the definition in article 1 CAT. These factors represent major obstacles to the realisation of the protection against torture. While the ALRC urges all States to ratify the Convention against Torture and its Optional Protocol, ratification devoid of full implementation is of little value in practice. Beyond ratification, there is a need to criminalize torture and to provide adequate political will and resources to ensure the implementation of domestic and international laws and obligations. This is sadly lacking in most Asian nations at present. No will has been shown to eliminate the use of torture by equipping the officers with other methods of investigation, such as better training in interrogation techniques, providing better equipment for investigations and providing forensic and other technologies for use in criminal investigations. The failure to develop a proper methodology for investigations is often a result of the failure by States to invest adequate funds in the administration of justice, including investigation systems, professional prosecution staff and the judiciary.

Membership in the Council should be contingent on verifiable actions by governments to criminalize torture and to reform national justice delivery mechanisms to ensure the law's effective implementation. The lack of procedural safeguards, of complaints mechanisms, of independent bodies for the investigation of torture and obstacles to the right to a remedy and adequate reparation in practice have all been highlighted by the Rapporteur in his report. The ALRC urges the Council to include a technical assessment of all of these issues in States' Universal Periodic Reviews and throughout the body's other work.

The Special Rapporteur has also noted that the fight against impunity is the key battleground. He has stated that "impunity is one of the main reasons why torture is so strongly entrenched...In most States I visited, impunity was close to total, despite an undeniable, sometimes routine, widespread or even systematic practice of torture. In a few countries, the Government was not able to provide me with one single case in which a perpetrator of torture had been held accountable under criminal law and punished with adequate sanctions." The ALRC's experience of the problem of torture in Asia confirms the prevalence of impunity and also mirrors the Special Rapporteur's findings concerning the non-existent or severely limited right to remedy and adequate reparation.

The ALRC therefore urges all United Nations members, notably actual or future members of the Human Rights Council, to ensure that they establish a legal framework that unambiguously prohibits and sanctions torture. The Council should ensure that its members have verifiably implemented the criminalization of torture. The idea that a State can be engaged in any form of effective protection of human rights, let alone to the level required for credible membership within the UN's apex human rights body, without such action, is laughable.

The Council must also ensure the implementation of recommendations by the Special Procedures. The ALRC welcomes the suggested establishment of a "Global Fund for National Human Rights Protection Systems." The abject lack of any action resulting from the recommendations of the Special Rapporteur on torture should act as a wake-up call. The continued failure by the Council to act upon such expert input places the relevance and credibility of the Council under serious risk.

Finally, the Council is urged to ensure that a competent, independent mandate holder is selected to follow in the footsteps of Manfred Nowak when his tenure as Special Rapporteur comes to an end later this year. The Council must make a strong selection, taking into consideration the proposals of non-governmental organisations, to show that it is working to make amends for its inaction concerning torture to date and to continue the tradition of able and competent mandate holders concerning this crucial issue.
