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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.

[14 February 2011]

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

Culture of impunity, a threat to human rights work in South Asia

In 2010, Human Rights Defenders (HRDs) continued to be under serious threat due to their work in the South Asian sub-region. The Asian Legal Resource Centre (ALRC) witnessed intensified attacks on HRDs in Sri Lanka, India, Pakistan, Bangladesh and Nepal, including criminal intimidation from state and non-state actors, physical abuse including torture, and the registering of false charges.

The unwillingness of governments in the region to protect, promote and fulfil human rights is illustrated by insecure working environment for HRDs of human rights defenders in these states. The appalling state of justice institutions in the sub-region means these institutions can either be used by the state to restrict human rights work, or that they are failing to provide any form of protection to HRDs.

In extreme cases, HRDs have even been subjected to torture, disappearance or murder by State-agents. In Sri Lanka, the government – notably the President's office - is believed to be involved in the disappearance of journalist and HRD, Mr. Prageeth Ranjan Bandara Eknaligoda, on 24 January 2010. Eknaligoda had been writing and publishing reports about military excesses by the Government of Sri Lanka. He had previously been abducted on 27 August 2009 and subjected to criminal intimidation and psychological torture. Four days after his disappearance, unidentified persons searched the office of the LankaeNews, the online media Eknaligoda worked for. Although the government denied any involvement in the incident, the case is yet to be properly investigated despite international condemnation.

Abduction, criminal intimidation and disappearance of HRDs by the State human rights defenders are not new phenomena in Sri Lanka. The success of the Sri Lankan armed forces in the war against the LTTE has consolidated the position of the current government. The government, particularly the office of the President, have used unbridled powers to amend the constitution to such an extent that no critical comments against the government, members of the cabinet, leaders of the ruling political elite, or their policies is possible in the country anymore. Even senior lawyers defending cases who have dared to openly criticise the government, are accused of being traitors. The Supreme Court of Sri Lanka, where many of these lawyers work, has not been able to do anything to prevent the continuing impasse.

In India, the trial and conviction of Dr. Binayak Sen showcases the extent to which the country's judiciary has fallen prey to the government's policy of silencing dissent. Dr. Sen, who was formerly arrested and later released on bail after a prolonged period of detention, is a nationally recognised medical doctor working in the troubled state of Chhattisgarh. While the prosecution could not prove the case against Dr. Sen, that he was aiding the Naxalites (an armed militia group) by being a communication link between an imprisoned militant suspect and his cadres, the trial court convicted Dr. Sen to rigorous imprisonment. It is thought that this resulted from pressure by the government. Dr. Sen is now in custody pending the appeal against the sentence and conviction before an appellate court, which could take years to conclude.

Delays are but one facet that renders India's criminal justice system ineffectual in cases where human rights defenders are at risk. The country's criminal justice system is plagued by deep-rooted corruption. For example, the former Chief Justice of India and the current Chairperson of the National Human Rights Commission are accused of corruption, and the government has failed to initiate an inquiry into the allegations despite credible proof that the immediate family members of the former Chief Justice have amassed significant wealth by misusing the office of the Chief Justice.

In trouble-hit regions of India such as the north-eastern states, Manipur in particular, and in the state of Jammu and Kashmir, HRDs face serious risks of being killed for conducting their work in favour of victims of abuse. Speaking against torture, extra-judicial executions and brutal forms of custodial violence like rape, can be tantamount to suicide. The State is engaged in the systematic refusal to register complaints concerning human rights violations. Those who persist and try to assist victims are either threatened or accused of being anti-national. Even the Supreme Court of India is no exception, as illustrated by adverse comments made by the Court against HRD Ms. Teesta Setelwad for reporting human rights abuses to entities including the UN.

False cases are frequently filed against HRDs, often concerning alleged threats to national security. This practice is also used by the police across India against human rights activists working on the forced eviction of ethnic communities from their natural habitats. In the states of Orissa and Madhya Pradesh, foreign and domestic private companies - such as mining corporations - sponsor police actions by providing them with vehicles, bribes and even supply them with necessary 'intelligence' against HRDs. It is expected that the above issues will be reflected in the UN Rapporteur's report after her country visit to India in January 2011.

The registering of false cases against HRDs is also widely used in Bangladesh. In the case of Ms. Moshrefa Mishu, a labour union activist, police officers in civilian clothes arrested Mishu on 14 December 2010 from her home. The police took Mishu to a local police station, where she was interrogated and later charged with three fabricated cases and produced before the court. It is believed that Mishu's arrest was at the behest of the government, in order to prevent her continuing her human rights work.

As elsewhere in the sub-region, the incapacity of the justice institutions to protect fundamental human rights in Bangladesh works in favour of the police and other armed forces, notably the Rapid Action Battalion that employs every possible method, including torture, to extract bribes. Widespread corruption pervades the country's justice institutions. Bribes are required in order to obtain any essential service from these institutions, including receiving documents or applying for bail. This hinders human rights work to a great degree. The government of Bangladesh has initiated no credible steps to tackle every-day, endemic corruption.

Contamination of evidence and insurmountable hindrances to due process are two defining characteristics of Bangladesh's criminal justice system. Farcical justice systems demoralise HRDs and the victims they support, preventing them from initiating even the first step in human rights defence, which is to make a complaint. As with other countries in the region, Bangladesh still does not have a functioning legal framework that can prevent human rights abuses. The inability to prosecute and widespread corruption have rendered the recent attempts to de-link the lower judiciary from the executive a useless exercise, as far as defending human rights is concerned.

Serious threats to HRDs are also witnessed in Pakistan. Lawyer Mr. Zaman Marri was abducted on 17 August 2010 from Jinnah Road, Quetta, Balochistan province. Marri was contesting cases in courts for and on behalf of political prisoners and the families of the disappeared. Marri's bullet-ridden body was found on September 5, 2010, at Ghuncha Dhori in Mastung city. Prior to his abduction and murder, Marri used to receive death threats by telephone, pressuring him not to pursue cases of disappearances at the high courts. The Balochistan High Court Bar Association claims that several other lawyers have faced similar threats and that the government is failing to provide them with any protection or to investigate Marri's case.

HRDs are often caught between fundamentalist militants and the armed forces - and its military intelligence service - and face severe threats from all sides. The criminal justice

system is unable to provide any form of protection to lawyers, who form an essential part of the country's justice mechanism. In Pakistan's North Western Frontier Province and the Federally Administrated Tribal Areas, where the presence of the state is hardly felt, working conditions for HRDs are extremely precarious. These two regions are under the control of fundamentalist religious forces. The domestic and international polity of the country, that is often held to ransom by religious groups, and disrupted by external interference in the pursuit of the global war on terror, focuses on providing impunity for religious groups, the armed forces and the military intelligence, ensuring that human rights work is virtually impossible.

The situation for HRDs in Nepal also presents a bleak picture. The country still does not have an institutional and legislative framework that is able to address past and present human rights abuses. The decade-long civil war combined with the utter neglect by former administrations has provided the present administration with a lack of any functional framework to deal with human rights abuses. Human rights defenders dealing with past and current cases face various forms of threat. Lawyers appearing in cases have been bullied and threatened by the political groups that are active in the country.

Cadres from various political parties in Nepal regularly interfere in the justice-delivery process. Cases have repeatedly been reported in which lawyers have been locked up in their offices by these political cadres, or been verbally and physically abused by them for appearing in cases that go against the political parties' interests. Power struggles between the country's political parties have left little time to deal with these issues, and the governments have failed to respond effectively to them.

Nepal's National Human Rights Commission, an institution that has played a very positive role in the past concerning victims and HRDs, has lost its credibility as an independent institution, since it lacks a formal, constitutional mandate due to a continuing impasse within the government. Due to this, amongst other factors, the ongoing presence of the field Office of the High Commissioner for Human Rights in Nepal continues to be of tremendous importance.

Attacks on journalists and human rights defenders are continuing in Nepal and no action has been initiated by the government to prevent the recurrence of such attacks. The proliferation of armed criminal groups in the country's Terai region, and the States inability to ensure the rule of law there, further exposes HRDs to insecurity.

Instances in which State-actors are involved in hampering the work of human rights defenders working to denounce abuses perpetrated by the State also continue to be reported. The police and the army fiercely resist attempts to hold their personnel accountable for human rights violations, including threats to and reprisals against victims seeking justice and those who support them. The absence of comprehensive measures to ensure the protection of HRDs against threats and attacks directly infringes on a number of rights, freedoms and principles, which are necessary components of Nepal's democratisation and peace-building. The failure to protect HRDs contributes to the general climate of impunity in Nepal and denies victims the right to effective remedies. The system of impunity enables the attacks on HRDs, in what is a vicious cycle that greatly undermines any enjoyment of human rights in the country.

States is implementing policies and producing legalisation that restrict the space for non-violent public protest against human rights violations and courts are circumscribing public space, by holding that the freedom of assembly is not an inalienable human right.

Although there is no singular solution to remedy the many different situations mentioned above, which lead to threats, attacks and other obstacles to the work of human rights defenders in the South Asian sub-region, it is evident that the climate of impunity that surrounds such actions against HRDs is a common element that is engendering this

situation. It is therefore vital for the governments in question to begin to give particular attention to any and all threats against HRDs and countering the impunity concerning such cases, as this will have a ripple effect concerning the wider problems of human rights. It is necessary to address the causes for the failures of the administration of justice that allow the culture of impunity that affects both cases concerning HRDs and the wider range of human rights victims. Just as a right without remedy is no right at all, effective and meaningful human rights work is impossible as long as the culture of state-sponsored impunity continues in the sub-region.
