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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 urged to do more to prevent arbitrary detention, the gateway to other grave abuses

The Asian Legal Resource Centre (ALRC) and its sister organisation, the Asian Human Rights Commission (AHRC), have documented numerous arbitrary detentions throughout the Asian region in the year preceding the 13th session of the Human Rights Council. Cases, notably from Bangladesh, Cambodia, India, Indonesia, Nepal, Pakistan, the Philippines, Sri Lanka and Thailand, show a consistent and widespread pattern of abuse of authority by law enforcement agencies concerning illegal and arbitrary detention. Arbitrary detention is not an exceptional measure in many Asian settings, but is endemic, engenders a climate of fear and is a gateway violation that enables a chain of abuses, including torture and forced disappearance, which continue to blight the region.

The prevalence of arbitrary detention in the Asian region is a reflection of failing justice systems. It is an immediate and visible symptom of a suppressive policing system and ineffective justice machineries. Arbitrary detention is directly proportionate to the degree of the absence of democratic space in a particular State. It is augmented by justifications provided by counter-terrorism, but finds its root in weak institutions and the lack of remedies available to victims.

For this reason, dealing with arbitrary detention in the Asian context requires adequate understanding of its root causes, notably corruption associated with law enforcement and impunity.

The unwillingness of States in the region to deal with problems concerning law enforcement agencies have only contributed to the further deterioration of the rule of law in the region and the need for effective and meaningful attention to this problem by the international system, notably the Human Rights Council.

Arbitrary detention is widely utilised by the economic and political elites in most Asian nations, through state agents and institutions, to maintain social control and to retain their dominance within societal power structures. Numerous cases have been communicated by the ALRC to the UN Working Group on Arbitrary Detention requesting intervention. Below are some examples that highlight issues such as corruption, the lack of remedies, negative trends in legislation and counter-terrorism, and the use of arbitrary detention to target migrants, silence political opposition, stifle media freedom and undermine the work of human rights defenders:

In Pakistan, on 26 April 2009, the officers from the Airport Police Station in Rawalpindi (Punjab province), arrested Nadia (19 years old), Shazia Riaz (16) and Nazia (12) from their residence. At the police station, Station House Officer Choudhry Safdar and Assistant Sub-Inspector Basheer, abused and assaulted the three girls. After four days of illegal detention, the police produced the girls before civil judge, Mr. Azmat Ullah, in Rawalpindi. The police accused the girls of helping their brother, Fazal Abbas, to abduct Ms. Kulsoom Baloch, the daughter of a wealthy businessman. In fact, Kulsoom had married Abbas against the wishes of her family. Kulsoom's family was using their influence with the local police to exact revenge on Abbas' family.

Corrupt law enforcement officers enter into pacts with the wealthy and influential and abuse their powers to illegally and arbitrarily detain innocent persons in this way in many Asian countries. Law enforcement agencies also often resort to arbitrary detention as part of criminal investigations, due to the absence of a functioning institutional and legal framework for proper criminal investigation and the lack of proper procedures to check arbitrary uses of power. The victims of arbitrary detention are often poor and therefore

unable to afford legal protection to seek redress and combat impunity concerning excesses of authority by the State.

Mrs. Mulyana (24) from Natar, Indonesia, was arrested by the Jakarta Metropolitan police on 24 July 2009, detained her for six days and tortured her in order to force her husband, Mr. Azwan Effendi, to surrender to the police. He was suspected of involvement in a bank robbery. Despite Effendi having surrendered himself, the police continued to torture Mulyana, including using electric shocks on her stomach in front of her husband to get him to confess to the robbery and to locate the stolen money. The police released Mulyana without registering a case and charged her husband with robbery.

There is a serious lack of legal remedies available to victims of arbitrary detention in Asia. For example, there is no specific law that prevents a police officer from committing arbitrary detention in Nepal and Cambodia. In jurisdictions where there are legislative provisions, such as India, these are rendered void in practice through the inability of the justice delivery system to provide timely remedies and punish perpetrators. This weakness is exploited by governments to use arbitrary detention as a tool to silence political opposition.

There is a trend concerning legislative changes in India, Sri Lanka, Thailand, Indonesia and South Korea that favours extended periods of statutory detention, for which national security is used as an excuse. For instance, a person charged under the Internal Security Act BE 2551 (2008) in Thailand can be detained for a period of 30 days and the arresting authority is given wide-ranging discretionary powers that can infringe the fundamental rights of the detainee. While in most States the 24 hour norm is still the standard under the ordinary criminal procedure, newly drafted statutes provide exceptions to this norm for periods ranging from 30 to 90 days of detention. National security and the concept of preventive detention are being used to justify an increasing number of arbitrary, lengthy detentions.

Arbitrary detention has also become an effective instrument to impart fear among human rights defenders. The state police in the Indian state of Manipur arrested human rights defender and environmental activist, Mr. Jiten Yumnan, on September 14, 2009, along with seven other local political activists to end a state-wide protest against the state government demanding investigation and prompt action against the police officers who had killed two persons in an incident of extrajudicial execution. The detainees were charged under the provisions of a draconian law, the National Security Act, 1980. The police tortured Jiten in custody. After four months, the police released Jiten and withdrew the charges. Even though the victims want to pursue a case against the government and the police officers, they are afraid to do so since the courts in India will take at least a decade to decide the case, an inordinately long period during which the victims have no means to find protection from further persecution. The ALRC is submitting a separate written statement concerning this case in particular to the 13th session of the Human Rights Council.

In a similar case reported from the Republic of Korea, the police arrested two human rights defenders, Mr. Park Lae-gun and Mr. Lee Jong-hoi, on January 11, 2010. Arrest warrants had been issued against Park and Lee for reportedly being instrumental in organising protests concerning forced evictions in Youngsan-Gu, Seoul. Several participants were reportedly killed by the authorities during a crackdown on the protests. The cases registered against Park and Lee and their arbitrary arrests represent serious violations of their rights and of the Republic of Korea's obligations under the International Covenant on Civil and Political Rights (ICCPR).

Arbitrary detention is also used to infringe media freedoms. On April 2, 2009, the AHRC reported the cases in Myanmar of Ms. Ma Eint Khaing Oo working for Ecovision Journal and Mr. Kyaw Kyaw Thant, a freelancer with Weekly Eleven, who were arrested by the

authorities for arranging for victims of cyclone Nargis to meet with officers of the International Committee of the Red Cross (ICRC) and United Nations Development Programme (UNDP) in Rangoon. The authorities accused the journalists of inciting the citizens to stir up trouble and of creating animosity towards the government. Both were sentenced to two years imprisonment with hard labour, but were released in September owing to external interventions.

During the past two years, the government of Sri Lanka has used arbitrary detention as a tool to silence political opposition in the country. Recent events, particularly in connection with the presidential election, reveal shocking use of arbitrary detention as a tool of repression and revenge. The government has openly resorted to arbitrary detention of not only journalists and human rights defenders, but also of its own officials, including military officers, who publicly condemned the government. During the civil war, human rights defenders who condemned breaches of international humanitarian law were either detained without charges for long durations or were charged with offences under the draconian Emergency (Miscellaneous Provisions and Powers) Regulation No 1, as amended vide gazette notification 1132/14.

Arbitrary detention is also used against migrants. For instance, it is widely used for mass arrests of refugees from Myanmar staying in Thailand. The government of Thailand uses arbitrary detention as an instrument to 'clean' the country of unwanted migrants, violating their rights and its obligations under the ICCPR in the process.

Governments in Asia are making use of the fight against terrorism to justify oppression within their States, contributing to the increase of arbitrary detention of persons in undisclosed destinations. The Working Group on Arbitrary Detention has repeatedly requested the states not to resort to arbitrary detention as a tool for combating terrorism. In 2009, the existence of secret detention centres in India was exposed by the media, but the government continues to deny their existence. This is not a surprise, as the government has continuously failed to cooperate with most United Nations human rights mechanisms concerning human rights situations in India; a fact that has been reported by the Working Group on Arbitrary Detention in its report to the Council.

While arbitrary detention is itself a violation of human rights, it is also a gateway to a range of further abuses and should therefore be addressed as an important component in the prevention of grave human rights abuses. Arbitrary detention provides the mechanism through which State authorities can exert control over individuals, allowing for graver abuses to be perpetrated, often in secret locations and with impunity.

The ALRC has noted that except for few jurisdictions like India and the Philippines, the writ of habeas corpus or its legal principles either do not exist in practice or are poorly developed in Asia. For instance, in Thailand, although the writ is possible it is obstructed through a heavy burden of proof being placed on the petitioner. In most cases, State agencies simply deny having missing persons in custody and such writs are dismissed. In other jurisdictions, such as in Sri Lanka, the courts themselves entertain a negative attitude towards the application of the writ. The ALRC has studied 800 such cases dismissed by the Sri Lankan courts during the past two years that lead to this conclusion.

In light of the importance of the practice of arbitrary detention in limiting a range of human rights and enabling further grave abuses, the ALRC urges the Council to:

1. Provide more institutional as well as infrastructural support for the Working Group on Arbitrary Detention, considering its unique status as the only non-treaty-based mechanism whose mandate expressly provides for consideration of individual complaints;

2. Ensure that all States ensure full cooperation with the Working Group on Arbitrary Detention, including concerning individual complaints and appeals as well as by issuing standing invitations for country visits;
 3. Assist the Working Group on Arbitrary Detention in identifying and addressing patterns in different regions, including Asia, of arbitrary arrests and their root causes, including weaknesses in justice institutions, as well as linkages with other rights violations, notably torture and disappearances;
 4. Urge States to prevent violations of their mandatory obligations under the ICCPR under the pretext of national security and counter-terrorism.
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