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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 failing to address situations of widespread forced disappearances

The Asian Legal Resource Centre (ALRC) is gravely concerned by the fact that, despite regularly receiving information concerning widespread and numerous cases of forced disappearance, including many in the Asian region, the Human Rights Council has failed to take effective action to have a tangible impact on the prevention of further abuses on the ground.

The Council's much-vilified predecessor, the Commission on Human Rights, was nevertheless able to take action based on reports of widespread disappearances that lead to their reduction. For example, in establishing an office of the High Commissioner for Human Rights in Nepal, the Commission took action that contributed to a significant reduction in the number of disappearances in the country, which had previously had the highest number of disappearances in the world. Faced with similar situations of mass disappearances in Sri Lanka and Pakistan, where thousands have allegedly been subjected to forced disappearance by the State, the Council has remained wholly ineffectual.

Oversight and monitoring of critical situations remains a key element in preventing disappearances. Those countries in Asia that have forced disappearances have all failed to provide effective systems for witnesses and relatives of victims to register complaints and for effective investigations to be conducted into allegations of disappearances. The investigating authorities, particularly the police, are complicit in routinely refusing to register complaints. The lack of effective investigation engenders impunity concerning this grave human rights violation. Those committing disappearances – frequently the security forces - have been encouraged as a result to ignore standard legal procedures on arrest and investigation and instead arbitrarily detain and disappear individuals that they seek to question or have under their control.

In Sri Lanka, the government has admitted to having “removed” 10,000 internally displaced persons from IDP camps to question them about their links to the LTTE after the conflict concluded in May 2009. The military-run IDP camps have not issued any public records concerning the identities and number of persons being held there. This has provided an open invitation to either the security forces or those working for them to remove persons on the pretext of questioning without a trace. Disappearances have therefore been enabled by systemic lacuna on the part of the State. Custodial interrogations should have been conducted under investigation procedures defined by law. These have been deliberately ignored, and not for the first time in the country. This type of removal and disappearance was common during the JVP suppression campaigns between 1987 and 1991, which officially resulted in 30,000 disappeared persons.

The breakdown of the rule of law, the corruption of law enforcement agencies and the absence of effective protection mechanisms have combined to enable mass disappearances, carried out with impunity in Sri Lanka. Accompanying such practices has been the emerging phenomenon of abductions for ransom. The case of a 6-year-old girl, Varsha Jude Regi, who was abducted in exchange for money in March 2009, illustrates the failure by the government to ensure that its citizens' right to life, security and liberty are protected. Abductions are being perpetrated by 'hooded persons in white vans,' some of whom have been identified as being police officers.

Also in Sri Lanka, child rights defender Mr. Sinnavan Stephen Sunthararaj was abducted and disappeared in May 2009. He had previously evaded an attempted abduction in February 2009 by persons riding in a white van. They were identified as being Special Task Force (STF) officers. Despite complaints, no credible investigation has been conducted in

the case of Pregeeth Ekanaliyagoda, a journalist and political analyst, who was abducted in September 2009, and reportedly detained handcuffed in an unknown location underground before being released. He again went missing on January 24, 2010.

In Pakistan, the government has admitted to the Supreme Court that around 1,600 persons disappeared in 2008 and the Balochistan Provincial Ministry issued a list that contains 992 names of missing persons, on December 10, 2009. The disappeared are thought to include 168 children and 148 women. The police are complicit in these disappearances as police officers typically refuse to register First Information Reports (FIR) regarding cases of disappearances, eliminating the prospect of having such cases investigated, and therefore enabling impunity. The afore-mentioned list issued by the Ministry resulted from it making a public appeal for people to report missing persons. However, despite the Supreme Court and the Ministry now having lists of disappeared persons, there is only a small chance that any of these will be investigated, the victims' whereabouts located or those responsible prosecuted due to police inaction.

The country's notorious Inter Services Intelligence (ISI) has allegedly been involved in orchestrating the disappearance of dozens of persons that they had trained as Jihadis in Pakistani held Kashmir, Azad Kashmir. The ISI reportedly recruits, trains and sends Jihadis into Indian-occupied Kashmir to conduct espionage. Jihadis that return to Pakistan after completing their assignments and that refuse further assignments have reportedly been disappeared. For example, between July 2009 and February 2010, around 15 cases have been reported to the ALRC. The ALRC has documented numerous other cases of forced disappearances allegedly perpetrated by the intelligence agency, which is able to carry out these grave rights violations with impunity due to a lack of civilian oversight, the police's refusal to register complaints, and the lack of a system of accountability for the military and the intelligence agencies. Despite the democratic change of political leadership in the country, the military remains above the law and able to enjoy impunity for past and ongoing human rights abuses.

In Nepal, although cases of disappearance have dropped, as mentioned above, the military interferes in and undermines the investigation of forced disappearances cases. In the case of Maina Sunuwar, a 15-year-old girl who disappeared in February 2004, it took four years for Major Nirajan Basnet of the Nepal Army and his three co-accused to be charged in court for illegally arresting, disappearing, torturing, raping and murdering Maina Sunuwar. The military initially obstructed numerous attempts by the police to investigate the case and to retrieve the victim's body. The Kavre District Court issued an arrest warrant against the alleged main perpetrator, Major Basnet, on February 10, 2008. Despite this, he was allowed to be sent to Chad in September 2009 as part of the United Nations peacekeeping mission. He was finally repatriated on December 12, 2009 to face trial in Nepal, although concerns remain as to whether justice will ultimately be done.

In the Philippines and Thailand, although the police may register complaints of disappearances there are no domestic legal remedies for relatives of victims seeking the prosecution of those responsible as enforced disappearance has yet to be criminalized. Despite evidence often linking the police and the military to the disappearances, such cases are typically not effectively investigated and impunity prevails.

In Thailand, the police only act on reports of forced disappearance 48 hours after the person was reported as missing. In cases of forced disappearance, time is of the essence, so to treat such cases as simple missing person cases, is evidently problematic. In the Philippines, the police also routinely tell those who report disappearances, even before investigating the complaint, that their loved ones may just have eloped with their lover and tell them to just wait until they return home.

Numerous enforced disappearances of human rights and political activists remain unresolved in the Philippines. From January 2001 to December 2009, local human rights organisation KARAPATAN documented 205 cases of forcible abduction and disappearance. In two of these cases, concerning Jonas Burgos, who was abducted and disappeared in April 2007; and James Balao, who disappeared in September 2008, evidence links their disappearances to the security forces.

Despite this, no progress has been made in locating their whereabouts. On January 19, 2009, a court in La Trinidad, Benguet, ordered the government, in approving the writ of amparo Balao's relatives had filed, to "disclose where (Balao) is detained or confined (and) release (him)". Despite the court's findings that the police and military had "failed in conducting effective investigation of (Balao's) abduction," none of those responsible have been held to account. This case illustrates that even if the court reveals the police and the military's failure in carrying out effective investigation concerning cases of disappearance, no punishment is imposed.

Similar problems are encountered in the case of Somchai Neelaphaijit, a prominent human rights lawyer who was forcibly disappeared in March 2004 in Thailand. Despite eyewitness testimony that Police Major Ngern Tongasuk was among the group of persons who abducted Somchai, the Criminal Court in Bangkok on January 12, 2006 only convicted him for coercion. He, however, was later released pending an appeal but then reportedly fled the country. The court's failure to promptly resolve Somchai's disappearance has also exposed witnesses and Somchai's family to continuing threats and intimidation since 2004.

On December 11, 2009, Mr. Abduloh Abukaree, one of the key witnesses in the continuing investigation by the Department of Special Investigation (DSI) into Somchai's case, disappeared while returning from a teashop near his home in Ra-ngae district, Narathiwat Province. Mr Abduloh's disappearance also called the DSI's witness protection program into serious question. Mr Abduloh had been under the program since 2004 but on the day he disappeared his security escorts and protection had been removed.

Asia remains the scene of a significant proportion of the world's cases of forced disappearance and while there is no functioning effective regional human rights mechanism, the onus is on the Human Rights Council to take action to address such serious and widespread human rights violations. The Human Rights Council needs to go beyond cursory examinations of certain crises and show that it can have a tangible impact in protecting human rights, in line with its mandate. If it is to avoid losing all credibility, the Council needs to take action to protect individuals from serious human rights abuses. The root causes that enable serious violations of human rights on a massive scale, such as the patterns of forced disappearances seen in Sri Lanka and Pakistan, for example, need to be understood and addressed.

The ALRC therefore urges the Human Rights Council HRC to study and review the complaints and the investigation mechanisms of all States under review by its Universal Periodic Review. Ratification and implementation of the International Convention for the Protection of All Persons from Enforced Disappearance, including the criminalization of this practice, should be a pre-condition for membership in the Council. All the States mentioned in the above written submission should also be urged to extend standing invitations to the Working Group on Enforced or Involuntary Disappearances and to cooperate fully with this mechanism. Furthermore, all necessary support must be provided to the Working Group on Enforced or Involuntary Disappearances, which continues to play a key role in addressing cases and situations involving forced disappearance, which remains amongst the most serious forms of human rights violation.

Finally, the Council should also develop a mechanism to ensure rapid, independent international investigations into all credible allegations of widespread and numerous disappearances in a particular country.
