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## Human Rights Council

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Agenda item 3

**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]

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

## **Asia: Council urged to act to protect rights by protecting human rights defenders**

Members of the Human Rights Council (HRC) have on numerous occasions lauded the contributions of non-governmental organizations and their importance for the Council's work, yet the Council has been light on action to back up these words in response to situations in which human rights defenders (HRDs) are being targeted. In the Asian region, defenders face harassment, surveillance, reprisals, arbitrary detention, torture, forced disappearance and even summary execution. In even highly prominent cases brought to the attention of the Council by NGOs and the Special Procedures, the Council has, in general, failed to take effective action.

The Asian Legal Resource Centre (ALRC) welcomes the resolution adopted in the Council's 12th session entitled "Cooperation with the United Nations, its representatives and mechanisms in the field of human rights" (A/HRC/RES/12/2) that seeks to address cases of obstacles and reprisals against those human rights defenders that are cooperating with the UN system, and hopes that this will lead to concrete actionable outcomes that produce a credible and effective deterrent against abuses. It is important for the Council to go even further and take action when it is alerted to serious human rights violations against human rights defenders, as these are frequently indicators of a worsening human rights crisis in a given country. In light of this, the ALRC commends the Special Rapporteur on the situation of human rights defenders for the theme and content of her report to the 13th session of the HRC, which focuses on security and protection of HRDs.

During the 5th Dublin Platform on Human Rights Defenders held in February 2010, High Commissioner Navi Pillay recalled that States must protect human rights defenders in compliance with human rights standards and with the Human Rights Council resolution on cooperation with the UN, its representatives and mechanisms in the field of human rights adopted in October 2009. She added that, "States also bear the primary responsibility to ensure that acts of intimidation and violence against human rights advocates and victims are punished. To that end, States must investigate violations and prosecute perpetrators irrespective of their affiliation. In order to do so States may need to carry out necessary reforms to improve access to justice for victims and their defenders, apply the rule of law and ensure the independence of judges and lawyers."

A key obstacle to the work and survival of the human rights defender in Asia remains the routine denial of their right to complaint and redress, when violations occur. The Special Rapporteur correctly points to the "paucity of practical initiatives to physically protect human rights defenders effectively" in her report. Acts against that are either attributable to the State or to non-State actors are being persistently and openly sanctioned. Given that human rights defenders function as the voice of the many voiceless victims, obstacles to their work has a significant impact on the wider enjoyment of human rights.

In the Philippines, hundreds of left-leaning activists have been subjected to extra-judicial killings attributable to the State since 2001. Many of these have been targeted as a result of their work in favour of the poor and human rights. Only around five such cases have made it to the courts.

The Thai National Human Rights Commission claims that 32 environmental rights defenders have been killed during the decade since its formation; of these one has gone to court and no prosecutions have been made.

In many countries in Asia the process of impunity starts at the police station, where officers act, whether as a result of power, money or a misguided sense of fraternity, as little more than an arm of the perpetrator. It took Bangladeshi victim Shahin Sultana Santa three years

in court and an order from a chief judicial magistrate before police filed a First Information Report (FIR) regarding the severe injuries that she sustained, while diabetic and pregnant, during a police assault; she had also lost the child she was carrying. In October 2009, crime journalist F.M. Masum was severely tortured and remanded after he intervened in the beating of a woman by plain-clothed members of the notorious Rapid Action Battalion (RAB) security force. The RAB member planted and then filmed illegal drugs in his apartment before laying a confused series of charges against him, which did not hold. Although the RAB headquarters released a statement promising the prompt response of a special inquiry team, no report has surfaced and police would not turn his complaint into a FIR, which is necessary for a criminal investigation to be launched.

In Pakistan last November police did file an the FIR for the murder of land rights defender Mr. Nisar Baloch, however they refused to log the names of his suspected killers, who belong to the province's ruling political party, the Muttahida Quami Movement (MQM). Mr. Baloch had publicly and correctly predicted the day of his death and named his likely assailants, much in the manner of Sri Lankan newspaper editor Lasantha Wickremantunga before his own assassination in January. Neither inquiry has been transparent or efficient, and neither has seen a single perpetrator identified, let alone held to account.

As would be expected from the cases above, the rates of successful prosecutions related to crimes against human rights defenders remains extremely low. The complaint of a defender in Asia is less likely to be entertained – and his or her death less likely to be investigated by the authorities – than that of a normal civilian. Under an adequate rule of law system it should not be possible for this distinction to be made.

Human rights activists in Asia are hindered physically, legally and financially by the freedom of police and the military to concoct charges against them. Baseless charges continue to pass by magistrates unchallenged, and they leave a defender vulnerable to a litany of other violations, from arbitrary detention and torture, to extortion and the ruin of that individual's professional and personal reputation. In Bangladesh, F. M. A. Razzak, a journalist and director of the Human Rights Development Centre (HRDC), was accused of abducting a teenage girl. The girl had run away from home and did not know him, but by the time she had returned to clear his name, Mr. Razzak had been tortured, had paid Rs51650 (US\$750) in bribes, and had suffered personal and professional discredit.

In the Philippines fabricated cases are extremely common under the guise of national security or counter terrorism, particularly in the southern provinces. In November 2009, three members of a local peasant rights group, Charity Diño, 29; Billy Batrina, 29; and Sonny Rogelio, 26, were arrested without a warrant by unidentified, plain-clothed military personnel while they worked on a community outreach programme for the urban poor. After two days of interrogation and abuse – a bid by police to force a confession of terrorism – they were all charged with illegal possession of firearms and explosives, and Dino also faced a drug possession charge. There was no evidence concerning the charges and criminal procedure was flouted, yet the three were in military custody for seventeen days and are still in remand prison today. Were the appropriate legal safeguards in place, this tool of repression would not be available.

Even in countries that benefit from some safeguards, emergency rules have been used to justify arbitrary detention, and the discourse of nationalism is being liberally used to sway public opinion against those working in the human rights field. The cells and detention centres of the Criminal Investigation Division and the Terrorism Investigation Division (TID) in Sri Lanka contain scores of lawyers, humanitarians and journalists remanded under this guise, including well known humanitarian Shantha Fernando, who was secretary for justice and peace in the National Christian Council of Sri Lanka. Fernando was detained at Colombo's international airport on route to a meeting on refugee issues in India. He has recently been granted bail and released, but has a case pending against him in court, that

continues to threaten his freedom and ability to carry out his work in favour of human rights.

Poorly framed, often contradictory charges afflict the majority of cases taken against human rights defenders in Myanmar, and many of these also come with a side charge of terrorism, which is magnified by state mouthpieces. This is the case most recently for democracy activist and American resident Kyaw Zaw Lwin, who was lambasted in the state press for his involvement in a bomb plot, while facing charges in closed court for a variety of small, concocted offences relating to his identity card and foreign exchange.

Human rights defenders in Thailand face frequent accusations of anti-statism in the media. In February the offices of the Working Group for Justice and Peace, which documents and reports systematic abuses in the south of the country, were raided by special task force soldiers. Though nothing was taken and no one was arrested, the raid, which was conducted under martial law, took place two days after the Internal Security Operations Command (ISOC) warned in the Bangkok Post Newspaper (7 February 2009) that "southern militants may take the opportunity to disguise themselves as rights activists, in order to incite hatred against officials or distort information to create misunderstanding about security operations among locals". The report essentially invited security forces in southern Thailand to target human rights defenders as suspected terrorists – an accurate reflection of the climate that they work in.

The Council must urge governments to halt attacks on the reputations of human rights defenders, which is marginalizing them in their communities. In a number of countries this extends to the law profession. In Sri Lanka human rights lawyers commonly face discrimination, persecution and threats to their security from the authorities directly or through State-run media or government-backed thugs. Those charged by the TID in Sri Lanka face extreme difficulties in finding a lawyer willing to represent them. This has been ensured by the State's 'with or against us' rhetoric, and government pressure for lawyers not to represent persons suspected of terrorism. In cases of attacks against lawyers, little is being done by the State to protect them or persecute the perpetrators.

The abject failure of the government to protect human rights defenders is particularly marked in Pakistan. In August 2009, religious radicals took out a large newspaper advertisement declaring a fatwa on lawyer Rao Zafar Iqbal for his defense of persons accused under the draconian blasphemy law, and he was shot at a number of times. His requests for protection were repeatedly and strongly rejected by the police and he remains in fear for his life. In Pakistan, local governments are regularly linked to the incitement of violence against minorities, such as Ahmadis, Christians and Hindus, and this has extended to lawyers and other defenders linked to those issues. In the case of young Pakistani human rights defender Mr. Tariq Mehmood, 24, he was actually charged with terrorism after he helped to organize a campaign against organized violence being waged against Christians in Punjab last summer, in which a number of people were burned alive.

In light of the afore-mentioned range of obstacles and violations faced by human rights defenders, the Human Rights Council is ensure that States implement without fail the recommendations made by the Special Rapporteur concerning the establishment of protection mechanisms defined by law, the investigation of abuses, and integrate an evaluation of this implementation in States' Universal Periodic Review process.