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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).

India: Threats to human rights defenders undermine democracy

Mr. Jiten Yumnam is a human rights defender (HRD) and environmental activist working in the Indian state of Manipur. On 14 September 2009, the police arrested Jiten along with seven others in Manipur, in connection with First Information Report 178 (9)/2009 registered at Imphal West Police Station. After arrest the police tortured Jiten by applying electric shock on his genitals.

They produced Jiten in court the next day and requested the court to extend his custody for 20 days, which the court allowed. The court ordered Jiten to be examined by a doctor. The examination confirmed that he was tortured in custody. This did not deter the police as they continued torturing Jiten until he was released on January 7, 2010. At the time of release, the government withdrew all charges against Jiten.

The reason why the police arrested Jiten is that he was one of several leaders of a protest movement in Manipur, demanding independent inquiry into the extrajudicial execution of two persons on 23 July 2009. On that day, officers of the Manipur State Police Commando Unit shot dead the two persons in full public view in the state capital. The incident was photographed and later published in the media.

The UN Special Rapporteur on Extrajudicial Executions has reportedly written to the government requesting an impartial investigation into the incident. The public in Manipur, including Jiten and his colleagues, were demanding the same.

Threats to HRDs are not new or rare phenomena in India. The Special Representative of the Secretary General on the situation of human rights defenders, Ms. Hina Jilani, expressed concern about increasing threats, intimidation and even murders of HRDs, often with impunity, at the hands of the state, in her report E/CN.4/2006/95/Add.5 on India.

The security of HRDs is increasingly becoming a concern in the country. There are no legislative or institutional frameworks providing effective protection to HRDs in India. Should the country's justice system function properly, there would be no need for additional measures to provide protection to HRDs.

For instance, the Criminal Procedure Code, 1973 mandates that a person can be arrested only when the investigating agency has reasonable suspicion that the person has committed an offense. Upon arrest, the state agency cannot resort to torture, and has to inform the detainee and a person of the detainee's choice about the reason for arrest; the place where the person would be detained; and the court in which the person will be produced within 24 hours as mandated in the Code.

In Jiten's case, nobody was informed why he was arrested, where he would be taken and when he would be produced in court. In fact Jiten was produced in court after the expiry of the 24 hour period. Even though Jiten accused the officers of torturing him, the magistrate merely referred him to a doctor and failed to take any action.

Furthermore, Jiten was charged under the provisions of the draconian National Security Act, 1980. This law has wide-ranging implications. For instance, the government may order the arrest of a citizen under this law if it is of the opinion that the person has to be prevented from acting in any manner prejudicial to the defence of the country, its relations with foreign powers, or its security. Demanding investigation in a case of extrajudicial execution is not a threat to the country, but on the contrary, strengthens its security apparatus.

A person arrested under this law is released from custody often upon advice of an Advisory Board constituted under the law. In Jiten's case, the Board repeatedly refused to advise the release. But when he was released on 7 January, not only were the charges under the National Security Law withdrawn but there was no case at all against him at the police station.

The Asian Legal Resource Centre has been informed that the government dropped the charges under instructions from the Home Ministry in New Delhi. A team of civil society activists who visited Manipur after the arrest, met officials in the Ministry upon their return to New Delhi, and expressed concerns about Jiten's arrest, which eventually led to his release. However the ALRC is also aware that the Manipur state government released Jiten only after they had secured a guarantee that the state-wide strike would be called off.

Jiten's case illustrates how a HRD can become the target of the state's arbitrary authority. This is an increasing and widespread pattern, particularly in places where there is acute poverty and indiscriminate state sponsored exploitation of natural resources.

For instance, on October 29, 2009, the Madhya Pradesh state police raided the office of local human rights organisation Narmada Bachao Andolan (NBA). The government reportedly wanted to stop a mass protest organised by the NBA in favour of the evictees of the Narmada Dam Project. The police not only violated all procedural laws concerning search, but assaulted HRDs and registered fabricated cases against them. No action was taken against the police officers in this case, as is typical.

It is common for victims of arbitrary detention and torture to not want to press a case against police officers, due to a fear of reprisals. In the absence of any form of witness protection, independent investigation agencies and a reasonable timeframe within which cases are tried, pursuing cases against perpetrators is often a risk for victims. In addition, concepts like arbitrary detention and torture are not clearly defined in Indian law.

Domestic mechanisms like the national or state Human Rights Commissions also have no effect against the state in cases involving threats to HRDs. While the government frequently ignores recommendations by the Commission, the Commission itself has demonstrated its lacking of seriousness in dealing with human rights cases in recent years.

The deteriorating state of affairs at the Commissions (national and state) is the result of its own working order. To start with, the NHRC has not had a permanent Chairperson for the past one and a half years. Additionally, the Commissions are often construed as a replacement for an investigating/adjudicating agency in lieu of other non-effective state agencies. This creates an enormous workload for the Commissions leading to delays in adjudication, and requires the Commissions to entirely depend upon the same state agencies for their day-to-day functioning.

It is now the practice of the NHRC to dismiss cases entirely depending upon the state governments' report. The ALRC's sister concern, the AHRC, submits on an average 40 to 60 cases to the Commission each year.

In the past year, the NHRC has repeatedly failed to intervene in serious cases of human rights violations, particularly concerning human rights defenders, casting serious doubt upon its capacity and eligibility to be considered as a national institution of any credible standard. In addition, the NHRC has repeatedly proved that it is completely ineffective in dealing with cases involving draconian laws like the Armed Forces (Special Powers) Act, 1958 and cases involving the army.

Threats to HRDs, as has been repeatedly held by experts, violate a series of rights, such as the freedoms of expression, opinion and association. In addition, as HRDs are the spokesperson of victims, silencing a HRD directly affects and demoralises the victim. What

Jiten's case has proven is precisely this. In essence, suppression of human rights work negates democratic norms and vitiates India's treaty obligations.

With the leaders of the protest movement in custody, the government of Manipur temporarily succeeded in silencing the protest. Further, it launched a single-judge inquiry into the July 23 incident. But the conduct of the inquiry, headed by a retired High Court Judge has reduced it into a process where the state government is given an opportunity to find out who took the pictures of the killing and who contacted the media urging them to publish it. Human rights organisations and journalists are of the opinion that the inquiry is to prevent any future reports in the media criticising the government.

These actions have not only demoralised the general public, but have also provided one more excuse for the underground anti-national militant entities operating in the state to lure persons into their fold. In short, the conduct of the government is more likely to promote violence rather than prevent it.

In Manipur and in several other parts of India, the armed militant groups also pose threats to human rights work. In Manipur, the armed insurgent groups have, for decades, reduced themselves to mere extortion gangs. In some other parts of the country, the Naxalite and other extremist leftist organisations are regularly attacking the country's institutions as well as its infrastructure and in the process injure and kill innocent persons.

The government is using the presence of the extremist groups as an excuse to counter human rights work. This is shown by Dr. Binayak Sen's case. He is a medical doctor and HRD who was detained for one year. In regions where active human rights groups are working for tribal rights and the right to food, it has become a practice for the government and state agencies to blame HRDs as the supporters of militant movements and detain them or falsely implicate them in crimes.

This prevents the HRDs from approaching the state with confidence concerning human rights issues. The ALRC has documented cases in the past year where HRDs in India were falsely accused of maligning the government after receiving support from external sources and militant organisations.

In addition, the government also sponsors armed private militias, such as the Salwa Judum and/or the village defence forces, a private armed militia sponsored by state governments in Chhattisgarh, Orissa, Madhya Pradesh and Jharkhand. This private armed militia not only divides society and forces it into a low intensity armed conflict, but also poses a threat to human rights work since its members act on behalf of the state administration. They are also supported by the state police and in most cases trained by them. The activities of the Salwa Judum and the village defence forces have been criticised by domestic as well as international experts on human rights, including the UN mandate holders.

In this context the ALRC request the Council to:

1. Request the government of India to ensure that its agencies will not target HRDs and falsely implicate them in cases;
2. Urge the government to take appropriate action to investigate and punish its agents that tortured Jiten;
3. Find means within the Council to guarantee that governments will not target persons who report human rights concerns to the UN.