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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.

[22 August 2010]

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

Bangladesh: Death penalty continues despite a flawed criminal justice system

1. The Asian Legal Resource Centre welcomes the discussion by the Human Rights Council during its 15th session concerning the report of the Secretary General on the question of the death penalty. In light of this discussion, the ALRC is hereby submitting information pertaining to the death penalty in Bangladesh. Bangladesh acceded to the International Covenant on Civil and Political Rights (ICCPR) on September 6, 2000, but has not yet ratified the Optional Protocols to the ICCPR and also does not comply with the international law aiming to the abolition of death penalty. The country has not only executed its citizens for decades, but officials, including Ministers, Parliamentarians and Judges also advocate publicly in favour of this practice, which denies people's right to life, often as the result of trials that do not meet the internationally recognized standards of fair trial.

2. The Asian Legal Resource Centre (ALRC) has learned from a reliable Home Ministry source, who requested anonymity, that there are around 407 convicts currently being detained in prisons across the country that face execution in the upcoming periods. Among the convicts, around 107 are being detained in Dhaka Central Jail, with the rest being detained in the country's other main prisons. The high profile cases of execution to have taken place in Bangladesh include the death by hanging of five convicts on 28 January 2010 for the assassination of Bangladesh's founder, President Sheikh Muzibur Rahman, who was killed by members of the Bangladesh Army along with almost all of his family members on 15 August 1975. In another case, six members of militant groups were hanged after being sentenced to death for the killing two judges in suicide bomb attacks in Jhalkathi district in 2005. Since its establishment in 1971 the Bangladeshi State has executed by hanging over 250 convicted criminals.

3. The country's Penal Code-1860 has several provisions that allow for capital punishment: Section 121: waging war against Bangladesh; Section 132: abetment of mutiny, if mutiny is committed; Section 194: giving or fabricating false evidence with intent to procure conviction of capital offence; Section 302: murder; Section 305: abetment of suicide of child or insane person; Section 307: attempted murder by life-convicts; and Section 396: robbery with murder.

4. There are several other laws in Bangladesh that also provide for the death penalty. The draconian Special Powers Act-1974, provides the death penalty for the offences of sabotage under Section 15, counterfeiting currency notes and Government stamps under Section 25A, smuggling under 25B, and adulteration of, or sale of adulterated food, drink, drugs or cosmetics under Section 25C. It is evident from the above that the death penalty is awarded for crimes that do not meet Bangladesh's obligations under the ICCPR's Article 6(2) to ensure that death sentences "may be imposed only for the most serious crimes."

5. The *Nari o' Shishu Nirjaton Daman Ain-2000* [Women and Children Repression (Prevention) Act-2000] further provides for the death penalty to be awarded as punishment for offences or attacks committed using corrosive, combustible or poisonous substances that cause burns or physical damage leading to the death of the victim, under Section 4; for trafficking of women and children, as per Sections 5 and 6 respectively; for ransom, according to Section 8; for sexual assaults resulting in the death of any woman or child who dies consequently, as per Section 9(2); causing death for dowry, in Section 11; and maiming or mutilation of children for begging, under Section 12. The Acid Crime Control Act-2002's Section 5 (KA) also includes the death penalty for acid attacks on women if the victim's eyes, ears, face, chest or sexual organs are fully or partially damaged.

6. The legislative authorities of Bangladesh argue that the death penalty is necessary for maintaining control over serious crimes in the country and to transmit a message to potential offenders that committing murder will ultimately incur the death penalty. Pro-death penalty advocates in the country claim that the death penalty helps the nation to establish peace and justice in its society as part of upholding the rule of law. This alleged deterrent is shown to not be working effectively, as incidents of serious crimes rise each year. For example, according to the statistic contained in the website of the Bangladesh Police, there were 3592 murders during 2005 and 4219 murders in 2009.

7. The ALRC opposes the death penalty under all circumstances as a cruel practice that is shown to be an ineffective deterrent and open to serious abuse. No legal system in the world functions well enough to guarantee that errors in awarding the death penalty can be totally avoided, and in countries with deeply flawed criminal justice systems such as Bangladesh and most others in the Asian region, the use of the death penalty gives rise to serious travesties of justice and arbitrary, unjust and irrevocable violations for the right to life.

8. Bangladesh's criminal justice system has manifold problems:

a. There is an absence of fairness and transparency in its complaint mechanism. The police arbitrarily control the complaint mechanisms, which are subverted by political interference and a chain of command dominated by corruption from the bottom to the top, resulting in abuses of power and injustices in determining who will be charged and for what crime. The fabrication of cases by the police officers for the purpose of extorting money from targeted persons and/or in order to set the real offender free is a common practice. The police deliberately distort facts related to crimes at the time of recording of complaints, which obstructs the already limited avenues available to the victims seeking justice and redress.

b. Criminal investigations are conducted by the police using primitive methods without acceptable levels of professionalism and efficiency. As a corrupt and political subservient entity, the police force is mostly used as hired gunmen of the ruling political and other authorities and elites.

c. The prosecutorial system is politicised, inefficient, disposable by nature, and incapable of assisting the judiciary to establish justice at the end of the trial. Every political party recruits their own activists cum lawyers as prosecutors, based on their loyalty to the ruling authorities rather than their knowledge of the law, jurisprudence and commitment to the rule of law.

d. The judiciary does not enjoy independence as far as the administration of justice is concerned in terms of logistics, manpower, integrity and the adjudication of the cases. Besides, there is a serious lack of judicial competence and commitment to upholding the rule of law among many judicial officers.

e. The country's medico-legal system remains archaic and far off internationally acceptable standards and modern methods required to effectively assist the judicial process in determining rights or wrongs and forensic evidence accurately.

f. The legal profession is degraded and consists mainly of persons hunting cases to make the maximum money for their professional practices, rather than to assist the judicial procedures to ensure justice to both victims and the defendants in trials in the country's courts.

g. The State's entrenched system designed to protect the perpetrators of gross human rights abuses through an extensive culture of impunity, creates serious grievances and a loss of faith in the justice institutions for victims of, for example,

illegal arrests, arbitrary detention, custodial torture, extra-judicial killings and disappearances, as well as for their and the wider public who also live in a climate of fear.

h. The absence of interpersonal respect for each other and adequate cooperation among professionals, including the police that register the complaint, investigators, prosecutors, lawyers, medico-legal experts and supporting staff of the judiciary seriously hamper the effective and timely conduct of trials and administration of justice.

i. Inadequate remuneration and facilities for relevant professional experts as well as their supporting staff, poor infrastructure for maintaining material evidence, and the failure to recruit persons with the required educational, moral and ethical background, or to provide adequate training contributes to the further deterioration of the criminal justice system.

9. The reality regarding the criminal justice system must be understood to evaluate how dangerous the use of the death penalty can be in Bangladesh. Realistic policies followed by prompt actions must be in place in order to reduce the recurrence of crimes that are currently punished by the death penalty instead of continuing with this failed deterrent.

10. Bangladesh's constitution's Article 35 (5) prohibits "torture, cruel, degrading or inhuman punishment or treatment". There can hardly be any debate that the death penalty does not amount to cruel punishment, which is prohibited in the country's supreme law. In fact, such cruel punishment comprises a violation of the Constitution by undermining the natural dignity of human beings.

11. The Asian Legal Resource Centre urges the government of Bangladesh to abolish the death penalty immediately and to ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, and bring its domestic legislation and practices in line with obligations under this instrument. The Bangladeshi authorities should immediately initiate thorough reforms of the country's criminal justice system, in order to establish the rule of law and the enjoyment of rights, justice and peace in its society.
