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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.

[14 February 2011]

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

Bangladesh: Government continues to dither instead of criminalizing torture

The Asian Legal Resource Centre (ALRC) is writing to the 16th session of the Human Rights Council to recall the urgent need for the government of Bangladesh to ensure the criminalization of torture. Torture remains an endemic problem that is deeply entrenched in law-enforcement practices and investigation methodologies. The UN Human Rights Council must have the capacity to address such issues, notably concerning long-standing member-States, as is the case here. Bangladesh currently operates a system of impunity concerning this egregious human rights violation, protecting perpetrators of deeply cruel and inhuman, violent acts while denying their victims any hope of seeking justice and reparation.

Torture and law-enforcement are synonymous in Bangladesh, as this practice is at the heart of ordinary police work. It is also used as a tool to repress the government's political opposition through the law-enforcement agencies, who act as hired gunmen for whichever party is in power, regardless of whether it is an elected or unelected technocrat civilian government, or a military dictatorship at the time.

The police are the main agency responsible for the endemic use of torture. They make use of torture for all manner of situation and operations, particularly at the time of arrest and during arbitrary detention of criminal suspects. Torture is used to extract confessional statements during investigations into routine criminal cases. The police, who lack professionalism and training, often disregard the laws of land and procedures for arrest and detention. They use torture and ill-treatment at the time of arrest, which are frequently not made with a proper warrant issued by a competent court. They detain suspected criminals for days and weeks without any publicly-available record being available regarding their arrests and detention. Under such circumstances, they torture the detainees, mostly to extort money from them or their relatives, and in order to force them to make confessional statements that incriminate themselves or others, as desired by the police. Failure to provide the required amount in bribes to the police results in brutal forms of torture being used and fabricated criminal cases being lodged against detainees. The police have turned all of their police stations, barracks, interrogation cells - such as the Task Force for Investigation's (TFI) cells - and other departments, such as the Criminal Investigation Department (CID), Detective Branch (DB) and Special Branch, into an industry that uses torture to generate wealth. This also generates large numbers of victims, who then face stigmatisation, social exclusion, medical problems and injustice for the rest of their lives.

Beside the police, the Rapid Action Battalion (RAB), a paramilitary force comprising members of the armed forces, border guards and the police, which is regarded by the authorities as an "elite force", is notorious for being a force of "licensed killers" due to its record of extra-judicial killings and torture. It maintains specialised torture cells with sophisticated equipment used to torture detainees. The armed forces and intelligence agencies operate their own secret torture cells, where detainees are kept for indefinite periods, without any access to the outside world. There is also a specialised team called the Joint Interrogation Cell (JIC), who are specialised in using torture as part of investigations.

Torture causes many deaths and severe physical disabilities in a large number of persons every year in Bangladesh. No authority keeps any records or statistics concerning the numbers of victims or level of physical, social and economic losses that result from this prevalent practice. Survivors of torture are also denied access to adequate medical treatment for their injuries due to harassment by State-agents, not only to the victims and their families, but also to medical doctors and health professionals.

Torture continues unabated, as complaint mechanisms, which are mostly controlled by the police, do not allow survivors to register formal complaints at police stations. Most victims cannot afford to hire a lawyer to file a complaint with the Magistrate's Courts. Anyway, these typically lack the judicial mindsets required to ensure justice for victims of torture and human rights abuses, instead paving the way for perpetrators to walk free, as the police control both the investigation and the prosecution at the Magistrate's Courts.

Prosecutors are appointed by the ruling political parties after every new regime assumes office. These prosecutors maintain close affinities with the ruling party and with the police, to cover up the crimes of the state-agents. This practice denies the right to justice and judicial remedies for the survivors of torture and other gross abuses of human rights in Bangladesh.

With the afore-mentioned practical hurdles entrenched within the systems of the criminal justice of the country, torture is not defined in domestic legislation even though the Constitution of Bangladesh prohibits torture and ill-treatment under Article 35 (5), which reads:

"No person shall be subjected to torture, cruel or inhuman or degrading punishment or treatment".

As a State-party to the ICCPR and CAT, Bangladesh has the obligation to protect its citizens from torture and it must ensure justice and reparation for victims of torture. It has been more than twelve years since the nation ratified the CAT. However, the country has still not criminalized torture in its domestic legislation, although a draft law titled "Torture and Custodial Death (Prohibition) Bill-2009" remains pending since 10 September 2010 before its national parliament. The ruling political party alone has more than 250 seats out of a 345-seat parliament, and is capable of legislating an anti-torture law by itself, to prove its commitment to begin to put and end to this heinous rights violation. However, the government led by the Bangladesh Awami League continues to fail to fulfil its election pledge to stop human rights abuses as a priority.

The government's prolonged silence regarding the pending bill demonstrates its lack of political will concerning the need to criminalize torture and to tackle impunity for this grave abuse. This barrier to victims seeking redress is also a violation of Article 31 of the Constitution, which reads:

"To enjoy the protection of the law, and to be treated in accordance with law, and only in accordance with law, is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Bangladesh, and in particular no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law."

But neither the government nor the judiciary visibly cares about this constitutional provision. People's rights to life, liberty and security are flouted by State-agents without any fear of them being held accountable. Entrenched impunity enables the repeated recurrence of gross human rights abuses. It is a vicious cycle and one that can be broken if the government wills it, but this will continues to be lacking.

Bangladesh urgently requires the criminalisation of torture and thorough reforms to its criminal justice system. Complaint mechanisms must be open and free from any kind of refusal, resistance, threats and intimidation. Criminal investigations into allegations of human rights abuses by State-agents must be performed by an independent and efficient agency. There should be an independent, a-political, permanent and accountable prosecutorial authority. The country's judiciary should be made competent to deliver justice independently, and be rid of the discrimination and corruption that plagues it at present.

Bangladesh has been a member-state of the Human Rights Council for more than four years now. As such, not only does it have international obligations to protect its citizens' rights, but it should do so to the highest possible standards. The nation has absolutely failed to comply with its international obligations concerning torture and impunity during this period.

Bangladesh has repeatedly failed to ensure the requisite cooperation with the HRC's Special Procedures to justify its membership in the Council. Only a few mandates have been allowed to conduct country visits, and these have not included the mandates on the independence of judges and lawyers, on extra-judicial killings or on the freedom of expression, all of which have had requests pending for several years.

The Asian Legal Resource Centre therefore urges the Council to ensure that the government of Bangladesh criminalize torture without further delay and investigate and prosecute all allegations of this crime without fail. The government should invite the Special Rapporteurs on torture and other cruel, inhuman or degrading treatment or punishment, as well as other independent experts, particularly the Special Rapporteurs on extra-judicial, summary or arbitrary executions and on independence of judges and lawyers, to visit the country as a priority. Bangladesh's future membership of the Human Rights Council should be conditional on these actions, *inter alia*.
