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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, 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.

[30 May 2016]

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

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BANGLADESH: Justice mechanisms require re-engineering

The United Nations Human Rights Council is now ten years of age. Since its inception a decade ago, the Asian Legal Resource Centre (ALRC) has participated in the Council, with special focus on the independence of the judges and lawyers in many Asian countries like Bangladesh. The ALRC has reiterated the need for comprehensive understanding into the realities of justice mechanisms in Bangladesh. It has also highlighted the necessity of effective contribution from the Special Procedures of the UN Human Rights mechanisms and the international community.

The day-to-day actions of the State in the country prove that the Bangladesh justice mechanisms facilitate the process of gross human rights abuse. The justice mechanisms allow the ruling government to encroach upon the human rights of citizens. The current situation has come to a head, with the Chief Justice of Bangladesh publicly stating that the "Executive is trying to snatch away all the powers of the Judiciary"¹.

Take the example of the case of the schoolteacher and his son, who are detained in prison for the past six months. Mr. Saleh Ahmed, a teacher of a primary school at Pallabi in Dhaka was arrested while at work in school at around 8:45 a.m. on 10 December 2015, Human Rights Day. His son, Saidul Islam, a college student, was picked up from their home beforehand. Both were detained to the Pallabi Police Station, where they were allegedly tortured for the day. The police demanded a large amount of bribes that the detainees were unable to meet. By the evening, the police fabricated two cases against them.

The first case (*No. 28 of Pallabi Police, dated 10 December 2015*) was registered under the Special Powers Act, 1974, under Section 15 (3) for committing "sabotage". The second case (*Number 29 of Pallabi Police dated 10 December 2015*) was registered under Sections 4, 5, and 6 of the Explosive Substances Act, 1908, for "attempting to cause explosive or making or keeping explosive with intent to endanger life or property" and "abetting" to commit crimes under the Act. The Magistrate Court rubber-stamped the fabricated police petition. The police asked permission for "remand" for two days in each of the cases. As a result of this mockery of a judicial process, the detainees were kept in police remand for four days. The police allegedly tortured them further in remand.

The Magistrate Court and the Sessions Court rejected their bail petitions although the police failed to produce any substantive evidence in relation to either case. On 13 April 2016, a High Court Bench granted bail to the detainees; however, they were still not released, because, two "Advocates On Record" engaged by the Office of the Attorney General, sent "certificates" in relation to the two cases, stating that the Government wished to appeal against the High Court Bail Order in a higher Court. Subsequently, Prison officials entertained the "certificates" and kept the detainees in Kashimpur Jail without releasing them.

In the first case, the State filed an appeal seeking a "stay" against the High Court bail order; the Appellate Division judge in turn passed "no order", which implies that the detainees be released as per the High Court Order. In the second case, the Government has yet to file any "appeal". At the time of making this submission, the two persons remain in Kashimpur Jail. The Kafkaesque predicament of these two citizens of Bangladesh is consistent with the experience of many others; the Office of the Attorney General, engages such "Advocates On Record" to prevent the release of detainees as a default practice, upholding a chain of corruption across the judicial institutions. Fictionalised nightmares of pre-war Europe are daily realities in present day Bangladesh.

In any functional democracy, where independent justice mechanisms exist, it is virtually impossible for such incidents to occur; in Bangladesh, this is way the system functions. Police fabricating criminal cases against the citizens would be scrutinised by the Magistrate Court or the Courts of First Instance in a functional system, and just remedies would be affordable for victims where fair trial standards are upheld.

¹ Asian Human Rights Commission's Statement titled: *Chief Justice speaks out against the Executive usurping the power of the Judiciary*

In Bangladesh, due to a long history of the Judiciary being under the thumb of the Executive and the timely reminders that are made available for compliance with the corrupt and slavish practices, the basic notion of “independence” has not been cultivated within the Judiciary. The grooming of judges and lawyers is such that the judicial officers see themselves as servants of the government in power and thus complying with the wishes of the Executive's is “normal”. The idea “upholding” and “administering” “justice” does not exist. Instead, what is manifest is an entrenched practice of conniving with the Executive to maintain the status quo. In practical terms, the justice mechanism and the law-enforcement systems are merged in Bangladesh, and rather than the “upholding of justice” the following actions are more visible:

- a. Illegal arrests leading to arbitrary detentions in fabricated cases by law-enforcement agencies;
- b. Entertainment of ineligible remand petitions and granting remand to the police at the Magistrates Courts to allow the police to torture detainees and extort bribes;
- c. Rejection of bail by the Magistrate and Sessions Courts, amidst snail-paced investigation or non-investigation of cases, leading to prolonged detentions in prisons, bursting to the seams with under-trials at least three-times the capacity;
- d. Compelling detainees and their relatives to seek “bail” from the Supreme Court at the costs of inordinate and unaffordable sums of money;
- e. Endless efforts of defendants working through any and every political and bureaucratic alliance they can work to get rid of the trumped up criminal cases, expending most of the family assets and incomes.

The Bangladesh law-enforcement system contributes to the process of fabrication of criminal cases to overburden the country's Judiciary, which is already stretched to the limit and incapable of administering justice. The fabrication spree, on one hand, socially scandalises those who fall prey, while on the other hand, it contributes to the political process, benefitting the ruling party of the day, whose sole interest is to strangle the opposition into extinction. It also contributes to an unaccounted for and unseen economy of extortion, involving the lowest level cop to the highest courts judges, prosecutors, defence-lawyers, bench officers and clerks to bureaucrats and politicians of all levels in the loop.

The procedures and precedence of recruiting judges in the highest judiciary, in the Office of the Attorney General, and in prosecutorial service, suggest that the ability to become slaves to the political masters of the day is more important than professional merit and efficiency. When the justice institutions are engulfed with base political games, ethical standards in a dependent legal profession cannot be expected. This is so in terms of the status of training and placement of judges in the subordinate judiciary too, where maintaining judicial norms and standards is not possible. Mere human rights training at home or in foreign lands does not create any possibility of bringing about changes as far as upholding justice is concerned.

The discourse on independence of the judiciary, the prosecution, and the legal profession, should incorporate the discussions on the law-enforcement system, which is related to the process of administering justice. The law-enforcement system is utterly coercive, lacking any system of checks and balances, and coupled with impunity, existing solely for the purpose of perpetuating the power of those at the helm in the ruling parties.

The police are gatekeepers in terms of access to the complaint mechanism. The fate of the registration of a complaint depends on the unlawful whims of the police; even though complaints can be lodged with Magistrate Courts, as such Courts do not have any intention of upholding the principles of fair trial, they let the police to play games with the complaints. As it is the same police that possess statutory authority over the process of crime investigation, the system is torturous, coercive, and having an in built chain of corruption from top to bottom. Incorporating modern scientific technologies and well-equipped forensic medicine system, such as DNA profiling infrastructures that are easily accessible, into crime investigation has been deliberately made a low priority in successive governments in Bangladesh.

Keeping the policing system coercive and torturous, and the Judiciary incompetent has continued to benefit rulers and their allies, maintain authoritarian and non-democratic governance. A coercive and torturous policing system is effective in driving away opposition and beating down independent voices. Staying in power keeps all doors open for the ruling political and bureaucratic elites to acquire undeserved wealth.

An incompetent and subjugated Judiciary abdicates its power to hold the ruling elite accountable, as the judges are also recruited, positioned, and elevated by political mercies instead of professional merits. At the end of the day, the judicial system connives with executive authorities, the political masters of the day.

The Special Procedures of the UN Human Rights Council can verify the authenticity of this analysis if the Special Rapporteur on Independence of Judges and Lawyers and other important mandates are allowed to make country visits to Bangladesh. As a matter of fact, Bangladesh has not responded to the reminder of the Special Rapporteur on Independence of Judges and Lawyers that was sent in 2007.

The Mandate should send further reminders to Bangladesh for an invitation to visit the country. The UN Human Rights Council and its rights mechanism should initiate effective programmes to re-engineer the justice mechanisms in countries like Bangladesh for the purpose of making justice accessible and affordable for ordinary citizens.
