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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: FREEDOM  
OF EXPRESSION**

**Written statement\* submitted by the Asian Legal Resource Centre (ALRC),  
a non-governmental organisation 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.

[26 January 2005]

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

## FREEDOM OF EXPRESSION IN ASIA

Discussion on freedom of expression usually centres on violations such as censorship, self-censorship, attacks on journalists, attacks on publications and the like. Little attention is paid to the suppression of freedom of expression through the legal process itself. This is because in developed democracies the legal system guarantees freedom of expression and offers various avenues for persons or groups who feel that their rights relating to freedom of expression have been violated to find redress. However, this is not the situation in most countries in Asia, where the legal system itself creates many obstacles for freedom of expression. Furthermore, defects in the legal system, when manipulated unscrupulously – either by the executive or the judiciary – can also create huge obstacles to freedom of expression and cause silence and submission among the people. In this statement, the Asian Legal Resource Centre (ALRC) wishes to examine a few of these obstacles.

Diminishment or curtailment of the freedom of lawyers to carry out their functions can virtually paralyse the freedom of expression in a society. When freedom of expression is violated lawyers have to canvas the matter before the courts. When matters are raised before courts, all violators are put on notice that their violations are under legal scrutiny. Once the lawyers raise questions after professional research and establishing the real grounds on which they go to court, their pleadings also provide good material for the media to take up the same issues. Thus, serious debate on all matters relating to freedom of expression in the courts takes place through the mediation of lawyers. If by direct or indirect means lawyers are prevented from playing their roles in the most effective and sophisticated manner, freedom of expression will be undermined.

There are many modes by which legal actions for the protection of freedom of expression can be curtailed by tampering with the rights of lawyers. One is to limit the remedies available in the law so that the capacity of lawyers to handle such matters is likewise limited. There are many countries in which the role of the lawyer is confined to minor criminal or civil matters, such as property or commercial disputes, and there is no room for public law. There are other countries where this role does exist but only marginally. This is the case in most former European colonies. Even though there may be constitutional expansion for legal canvassing against freedom of expression through bills of rights or other provisions introduced through the constitution, the actual capacity that exists for canvassing such matters is limited and is often also circumscribed by procedural limitations and habits in courts that were established through long years of practices under more limited legal remedies.

Worse still are the deliberate attempts to intimidate lawyers. Such intimidation can take many forms. The pretext of dealing with the workload of courts speedily may be intended to create an impression of professional lawyering as an obstruction to the speedy administration of justice. Lawyers are pressured to limit their interventions and surrender some of their basic professional freedoms on the pretext of court efficiency. If this pressure continues for long enough, as has happened in several countries in Asia, many lawyers also become demoralised. Opportunism may also grow in the legal profession itself, causing some lawyers to exploit the situation and unscrupulously subvert the basic practices of their profession and cause its degeneration.

Another way of silencing lawyers is to take legal action against them so that they are unable to practice either for a short time or indefinitely. While rules against unprofessional practice are essential to the functioning of any profession, such regulations must be applied only according to the best traditions of the profession itself. If the rules are used against lawyers on flimsy grounds over an arbitrary manner, this will have a chilling effect on the

profession as a whole. When a lawyer feels that her dignity as a professional lawyer has been diminished and that she can get into serious problems if she practices her profession in the manner required normally, then she may withdraw from performing her duties and accept a lesser role. For example, if the rules against lawyers are issued with ease, then a lawyer can only assume that she might be the next target. In these circumstances the whole profession is affected psychologically. What remains thereafter as a profession is only the external façade but not the profession as it should be.

This same effect can also be brought about by the easy use of contempt of court proceedings. Such proceedings can become an instrument for intimidation when one or two persons are punished without due process and all the requirements of law. The message is passed to the entire profession that it is a dangerous thing to be a good lawyer. Then lawyers stop taking controversial cases and do not advocate unpopular causes. Many will cease to take a brave position even in normal cases.

By these and other means lawyers can be silenced. They may still remain vociferous and complain of the indignities they suffer within private circles. However, in the courts, the real arena in which they are expected to play their role, they will humbly submit themselves to an oppressive ethos. They thereby only lend support to a process that has partly or completely lost legitimacy. The very professionals that have the legal capacity to expose the hypocrisies through which various crimes and gross violations of rights take place become silent partners to the death of freedom of expression. This tremendously important means for suppressing freedom of expression needs to be documented and opposed, not primarily for the sake of lawyers, but for the sake of preserving the people's freedom of expression.

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