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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF
TORTURE AND DETENTION**

**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.

[29 January 2004]

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

Indonesia's law on torture is fundamentally flawed

1. The Fourth Amendment to the 1945 Constitution of the Republic of Indonesia, introduced in 2002, states in article 28(G)(2) that "Every person shall have the right to be free from torture or inhumane and degrading treatment, and shall have the right to obtain political asylum from another country." This provision is reinforced by article 28(I)(1), which states that,

"The rights to life, freedom from torture, freedom of thought and conscience, freedom of religion, freedom from enslavement, recognition as a person before the law, and the right not to be tried under a law with retrospective effect are all human rights that cannot be limited under any circumstances."

It is further reinforced by article 28(I)(5), which holds that "the implementation of human rights shall be guaranteed, regulated and set forth in laws and regulations".

2. Despite the above provisions, torture continues to be practiced on a large scale with impunity in Indonesia. In Indonesia, the Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (CAT) was brought into domestic law under Act No.5 of 1998. However, as the Asian Legal Resource Centre has already described to the Commission in its written statement on this topic at its fifty-ninth session (E/CN.4/2003/NGO/88), this legislation has not formalised torture as an offence, nor imposed appropriate penalties upon offenders. All cases of torture, therefore, continue to be treated the same as mere civilian assaults. Consequently, the military, police, paramilitary groups and agents of political parties in Indonesia, particularly in areas of conflict such as West Papua and Aceh, continue to use torture widely and with impunity.

3. The impunity enjoyed by torturers in the armed forces was clearly demonstrated in a recent case where soldiers who had admitted to committing torture were nonetheless released. On 10 October 2003, the Lhokseumawe Military Court freed the 12 soldiers, from Batalyon Infantry (Yonif) 301, who had admitted to torturing civilians of West and East Gleumpang Sulu, Dewantara District, North Aceh. The military prosecutor set them free and the judges, lead by Major (Chk) E Trias Komara, acquitted the perpetrators because of lack of evidence, despite the soldiers having confessed in court to torturing villagers in order to get information about a member of the Free Aceh Movement.

4. In its Conclusions and Recommendations to Indonesia of 22 November 2001, the Committee against Torture has clearly spelt out that the state must amend its penal legislation so that torture is treated as an offence under criminal law, in compliance with article 1 of the CAT, with adequate penalties attached. However, the Government of Indonesia has so far failed to comply with this instruction.

5. The Committee also requested the government to establish an effective, reliable and independent complaint system to undertake prompt, impartial and effective investigations into allegations of ill treatment and torture by police and other officials and, where the findings so warrant, to prosecute and punish perpetrators, including senior officials. Likewise, the Government of Indonesia has failed to take steps to comply with this recommendation.

6. The National Human Rights Commission (Komnas-HAM) also failed to address the widespread torture in Indonesia. It lacks the independence and authority necessary to inquire into reported cases and conduct impartial hearings that could culminate in executable orders. Without a certain amount of independence and authority, Komnas-HAM is meaningless. Presumably such authority is not being given because the government is itself afraid of the consequences.

7. In light of the above, the Asian Legal Resource Centre recommends to the Commission, and in particular the Committee Against Torture, that it:

- a) Pressure the Government of Indonesia to take immediate measures so as to ensure that the perpetrators of torture in the country are brought to justice and punished, in compliance with the recommendations of the Committee against Torture.
- b) Again urge the Government of Indonesia to reform the criminal laws to incorporate torture as a crime; provide appropriate punishments and remedies, and bring to an end the impunity that torturers currently enjoy.
- c) Encourage the Government of Indonesia to ensure that Komnas-HAM is effective, authoritative and independent, and provide assistance to that end. In particular, the government needs to define clearly the role of Komnas-HAM regarding its responsibility to conduct impartial investigations into allegations of torture in all areas of the country. These areas must include places of conflict, in particular, Aceh and West Papua. Komnas-HAM must also be given a mandate to pursue the prosecution of torturers and seek compensation for victims.
