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COMMISSION ON HUMAN RIGHTS  
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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]

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

### **Deaths in custody in Malaysia**

1. Tharma Rajen was a healthy 20-year-old until he was taken into police custody in April 2002 under the Emergency Ordinance laws of Malaysia. He died two months later. In the post-mortem report his death is recorded as due to tuberculosis; in the death certificate, pneumonia. Officials prevented his body from being photographed. His family claims he was beaten and abused while in custody, and they last saw him alive handcuffed to his bed. Whether the police killed Tharma Rajen deliberately, or whether he died due to negligence and systematic abuse, in either case they were responsible for his death.
2. On average, every day to day and a half a detainee in Malaysia dies under similar circumstances. The Home Ministry of Malaysia admits that hundreds of detainees die annually, but neglects to mention the circumstances or causes of their deaths. In fact, some die of torture, some are denied access to medicine for chronic illnesses, some due to sheer neglect and unsanitary conditions, as the following stories illustrate:
  - a) M Rugapathy was 22 years old when arrested in July 2002. Several years earlier, he had had heart surgery, and required a regular medical supplement to survive. Under detention, he began to complain of extreme chest pain and was unable to sleep, but the police refused him medical attention, even though from the eight-inch scar on his chest they could see he was not lying. Only when he began vomiting did he receive scant care from an attendant (not a doctor) at a clinic, but he died on July 28 of congestive heart failure. His family was never informed of his condition while in custody.
  - b) In November 2002, Sundara Raju, aged 32, was found unconscious while in custody, allegedly having been beaten by fellow inmates. He died three days later. In dozens of cases like his, the only information available is that the victim was already found wounded or dead, and no efforts are made by the authorities to reveal what actually happened to the inmate.
  - c) After his arrest on 1 August 2002, Vivashanu Pillai, aged 24, was found dead in a rubbish trap. He was so mutilated that even his mother could not identify him, when she was informed on August 6 that he had escaped prison and been found dead a couple of days before. It was only a fellow detainee who could recognize him from injuries sustained while in police custody. The police claimed he had escaped three days earlier, but certain facts suggest otherwise. First, he was handcuffed while in custody. Secondly, the police never initiated any proper procedures to recapture an escapee. They did not give chase, publish photographs, search the homes of family members, or set up roadblocks. When the body was recovered, they prohibited photographs from being taken. Nor did the police even attempt to dispel allegations of a cover-up during a press conference held five days after the body was found.
3. The numbers of deaths in custody reported in Malaysia are increasing rapidly. This may be attributed both to an increase in the number of actual abuses and more reliable reporting of deaths. In response to the efforts of human rights defenders, the government has stepped up its restrictions on freedom of expression. In October 2003, detainee advocate Irene Fernandez was convicted for publishing information concerning torture and death in

immigration camps. The Asian Legal Resource Centre has this year submitted a separate written statement on freedom of expression in Asia that makes reference to this case. The online newspaper Malaysiakini has also been taken to court for criticizing government policies against ethnic minorities.

4. People die in custody in Malaysia because of its malfunctioning police force, defense system and judiciary. Police in Malaysia operate with impunity, are corrupt and complacent. They understand that violence is the only legitimate way to deal with inmates. Defense lawyers work within a corrupt legal system that forces them to plea bargain instead of truly fighting for a client's innocence. Under these circumstances, reducing a 30-year sentence to a 20-year one becomes a success, and the lawyers are unwilling to challenge the national institutions that are all managed by the executive. The lack of an independent judiciary means that there is no fair trial, and government authority goes unchecked. In practical terms, this means that when a prisoner is killed, those responsible are free to wash their hands of responsibility, as there is no third agency demanding accountability.
5. Accordingly, the Asian Legal Resource Center urges the Commission to:
  - a) Demand that the Government of Malaysia establish the means for prompt inquiries into all deaths in custody, and take steps to punish fully those responsible, including the cases referred to in this statement.
  - b) Assist the Government of Malaysia to set up and reinforce institutions to receive, investigate and act on reports of deaths and torture in custody. In particular, a complaint hotline ought to be established under the National Human Rights Commission (Suhakam), or, given the limitations of that organisation, independently.
  - c) Pressure the Government of Malaysia to ratify the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, make torture a crime under domestic law accordingly, and ensure that the institutions exist to investigate, prosecute and convict perpetrators, as many deaths in custody begin with torture.
  - d) Advise the Government of Malaysia on reforming its legal system and institutions to ensure that fair and speedy trials in fact occur, and that detainees be given access to legal counsel, medical professionals and whatever other reasonable needs they may have while in detention.

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