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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF
STATES OF EMERGENCY**

**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).

National security laws in Asia

1. National security laws and regulations in Asia violate the basic non-derogable rights and freedoms of citizens. In a written statement to the fifty-ninth session of the Commission (E/CN.4/2003/NGO/150), the Asian Legal Resource Centre pointed out how the "global war on terrorism" has become the latest pretext for elite groups in Asia seeking to introduce laws to prevent criticism and stifle democratic opposition. Such laws provide an excuse for the abuse of state power and arbitrary punishment of opponents, be they real or merely perceived. These laws have a devastating effect on the absolute prohibition on torture, an independent judiciary and the rule of law, as they are used to bypass due process. The Asian Legal Resource Centre has this year submitted many written statements to the Commission on these and other relevant issues, across Asia and within specific countries.

2. The governments of many countries in Asia, including Malaysia, Korea, Nepal, India, Indonesia and Burma continue to use and strengthen national security laws. Notably, in Korea, the Prevention of Terrorism Act is soon to be passed, adding to the raft of already existing national security legislation recently used to indict Professor Song Du-Yul because of political activism. In Hong Kong, while unprecedented public protest forced the territory government to abandon proposed national security legislation, local human rights organisations are already warning that the provisions are likely to be reintroduced in parcels over a period of time. These and other proposals to enhance national security procedures must be rejected, for they endanger justice systems and the fundamental rights of people throughout Asia.

3. A big problem with these laws is that they are written vaguely so as to not distinguish between a government critic and a "terrorist". In India, the 2002 Prevention of Terrorism Act (POTA) names a terrorist as anyone with "intent to threaten the unity and integrity of India or to strike terror in any part of the people". Not only does India have no need for this law, but it is also used to discriminate against political critics and minorities throughout the country. For example, in the state of Jharkhand, most of those arrested under POTA have been farmers, students and daily-wage earners, particularly from indigenous or 'outcaste' communities. The Asian Legal Resource Centre has this year submitted a separate written statement on the use of law enforcement officials and torture to oppress such populations. One state official from Ranchi, Jharkhand, even admitted to the *Times of India* that "anyone caught with a copy of the Communist Manifesto or (Mao's) Red Book becomes a suspicious character. We watch his actions for some time. Most often, police have gathered clinching evidence which would help us in the POTA courts." Many "terrorists" in this region are also over 60 years old, and there are even 10 young children in custody under the POTA, further demonstrating the total illegitimacy of these targeted attacks on specific vulnerable groups within the society.

4. As national security laws are "emergency" regulations, they deny the detained basic rights under domestic and international law. These include rights to legal counsel and a fair trial. In Myanmar, under the State Protection Law of 1975, a political prisoner can be held incommunicado for up to 90 days, and then can be held for up to 5 years without trial. In Malaysia, under the Internal Security Act of 1960, a prisoner is held incommunicado for a mandatory period of 60 days, and this detention without trial can be extended for renewable periods of 2 years. These provisions of "preventative detention" violate international standards of fair representation, and usually involve cruel or inhuman treatment or punishment in violation of

the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, among other international covenants.

5. Another serious problem with the strengthening of national security laws is how they are exercised to control and limit press freedom in Asia. In Malaysia, the government has proposed amending the Penal Code to target all those who "help" terrorists, including journalists who will not reveal their sources. Furthermore, it has filed a case against the online newspaper Malaysiakini, for publishing a letter to the editor on 9 January 2003 criticising government policies favouring ethnic Malays. The recent conviction of Irene Fernandez under the 1984 Printing and Press Act also illustrates the risks posed to persons who publicly voice their opinions in Malaysia. The Asian Legal Resource Centre has this year submitted a separate written statement on freedom of expression in Asia.

6. Most national security laws in Asia violate the basic tenets of the rule of law and undermine institutions to uphold the rule of law, including the defense and the judiciary. The "Terrorist Bill" of Indonesia gives "judicial power to non-judicial bodies", thus allowing for state control over the judiciary. The Asian Legal Resource Centre has previously observed to the Commission that without access to a client and fair trial, a lawyer will either succumb to plea bargaining instead of legitimately attempting to prove the client's innocence, or become cynical and give up hope for the system altogether. The lack of an independent judiciary together with the dismal role of the defense lawyer helps perpetuate corrupt practices whereby the state controls the legal system and destroys any chance for criminal justice.

7. As the Asian Legal Resource Centre has repeatedly stressed to the Commission in many written submissions over a number of years, when criminal justice is undermined, torture becomes common. The Centre has this year submitted a statement on the hundreds of prisoners who have died in custody in Malaysia during 2002 and 2003, a great many of which can be attributed to torture or cruel and inhuman treatment and punishment, including the deaths of petty criminals. If a thief is liable to be tortured to death in a Malaysian prison, it is not difficult to imagine what fate awaits a prisoner under the Internal Security Act.

8. The protection of rights presupposes the existence of an institutional framework adequate and credible enough to ensure them. The expanding national security legislation across Asia has the express purpose and effect of further undermining the already weak institutional framework in the region. This situation poses a challenge to both the international community and Asian societies. All groups involved in the protection of human rights need to develop ways to counteract the spread of these noxious laws. In particular, United Nations agencies must play a far greater role and develop the means for effective intervention to prevent such laws from being enacted or exercised. The Commission must take many more steps to assist human rights organisations in developing local initiatives to recognise the dangers early, and act swiftly to encourage the kind of widespread criticism of national security laws needed to ensure change.
