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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 (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.

[10 May 2013]

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

Indonesia: Justice denied due to the absence of independent mechanism to examine summary execution allegations*

1. The Asian Legal Resource Centre (ALRC) and the Commission for the Disappeared and Victims of Violence (KontraS) wishes to bring the attention of the Human Rights Council (HRC) to the issue of summary executions perpetrated by police and military officers in Indonesia. The ALRC and KontraS are concerned not only with the fact that such practice exist within the country but also that there is no independent mechanism available to investigate the allegations on such abuse thus hindering justice for the victims.

2. The ALRC and KontraS have recently reported a case regarding the shooting of four detainees at Cebongan Correctional Facility in Sleman, a city close to Yogyakarta. It was reported that at 00.30am on 23 March 2013, around 17 masked men carrying assault rifles forcibly got into the correctional facility after one of them provided the prison guards with a letter from Yogyakarta Regional Police. The armed men were looking for four detainees who were suspects in the murder case of First Sergeant Heru Santoso, a member of the Indonesian Military's Special Force (Kopassus) which took place a couple of days earlier. The armed men beat eight prison guards who were in duty at that time in order to obtain the number of cell in which the four individuals they were looking for were detained. After doing so, the armed men proceed to Block A cell number 5 where one of them shot the four victims to death in front of the other detainees. It was reported that the armed men also forcibly took away CCTV recordings on what had happened.

3. The Indonesian National Police had initially started an investigation on the shooting yet it later decided to transfer the case to the Indonesian Military for further legal actions. This decision was based on the provision under the Law No. 31 Year 1997 which grants the Military Court the authority to try criminal cases perpetrated by members of the military. Whereas there is no question on the legality of the trial of military members by the Military Court, the ALRC and KontraS wishes to emphasise that such practice is not in accordance with the principle on the impartiality of judiciary which is essential in guaranteeing the protection of human rights. In its previous submission¹ to the Council, the ALRC has highlighted that according to the UN Principles Governing the Administration of Justice through Military Tribunals the jurisdiction of the Military Court should be limited only to try offences of a strictly military nature. Such view is shared both by the ALRC and KontraS, mainly for the reason that the partial legal proceeding has always come hand in hand with non-transparency and disproportionate punishment for the perpetrators.

4. The issues on summary execution and the absence of independent mechanism to examine allegations on such abuse are also found within the Indonesian National Police. KontraS reported that on 30 April – 1 May 2013 shootings against civilians by police along with military officers took place in Sorong, Papua, which resulted in the death of Apner Malagawak and Thomas Blesia, both are 22 year old Papuans. The civilians in Sorong were peacefully commemorating the 50th anniversary of Indonesia's annexation on Papua when the police came and released warning shots, which provoked the crowd's anger instead of their dispersal. Some of the civilians attempted to attack the police's cars to express their anger yet they were welcome by indiscriminate shootings by the police which lasted for approximately 20 minutes. It was reported that on the next day 1 May 2013, shootings by

* The Commission for the Disappeared and Victims of Violence (KontraS), Indonesia, an NGO without consultative status, also shares the views expressed in this statement.

¹ See A/HRC/21/NGO/85

joint force of the police and military against the civilians also took place in Biak which led to the injury of two individuals.

5. KontraS reported that on 29 April 2013 four civilians were shot to death by officers from Musi Rawas District Police in a demonstration held at Musi Rawas, South Sumatera. The demonstration was being held peacefully until the police officers present at that time attempted to disperse the protesters who were blocking the main road. However, instead of using persuasive and other more lenient means, the police opened fire against the protesters. Based on KontraS's observation, shot wounds were found on vital parts of the victims including head and stomach. Following the incident, South Sumatera's Head of Public Relations Djarod Padakova claims that the shooting was conducted in accordance with the police's standard operational procedures.

6. Earlier towards the end of last year, a pro-independence activist in Papua Hubertus Mabel was also shot and stabbed on his chest by officers from Papua Regional Police, likely to be attached to the police's counter terrorism unit Densus 88. Following Hubertus's death, spokesperson of the regional police told the media that the activist 'angrily tried to attack and rob the firearms carried by the personnel so that a scuffle developed and the firearms almost got taken. One of the special members then shot him in the foot in order to immobilise him'. The spokesperson also claimed that Hubertus's death was due to 'lost of a lot of blood' without providing any explanation on the stabbed wound found on the activist's chest. Similarly, on explaining the death of the West Papua National Committee's Secretary General Mako Tabuni in the middle of last year, the police made a false claim that Mako was attempting to take away the officers' guns that shooting him to death was inevitable. The police's claim, however, was in contradiction with the witnesses' testimonies which reveal that Mako was unarmed and did not pose any harm as suggested by the police.

7. The case of shooting of protesters at Musi Rawas as well as those on Hubertus Mabel and Mako Tabuni are unfortunately nothing unique in Indonesia. Despite the executions they had perpetrated, the police have always been successful in getting away with their false and unilateral claims. The current criminal justice setting in the country which provides the police with the exclusive authority to investigate most of criminal cases has made it impossible for such claims to be challenged by anybody. Relatives of individuals who were executed may file a complaint to the internal monitoring unit of the police yet the investigation conducted by the unit is one with an administrative nature that, even in cases where the perpetrators are found to be guilty, they were only handed down an administrative sanction. Alternatively, relatives of the victims may submit a complaint to the criminal unit of the police. However, cases documented both by the ALRC and KontraS in the past show the rarity of an impartial and effective investigation conducted by the police in following up a complaint against their own members.

8. The ALRC and KontraS recognise that there may be circumstances in which executions by law enforcement officials are inevitable and necessary. However, those circumstances should be exceptional in the sense that it has to meet two essential tests set by international human rights standards, that is, the tests of necessity and proportionality. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions have repeatedly emphasised in his reports that the necessity test requires law enforcement officials to resort to lethal measures 'only when less extreme means are insufficient' to achieve the expected legitimate aim -i.e. protection of life of others- whereas the proportionality test requires the use of lethal force must be 'in proportion to the seriousness of the offence and the legitimate objectives to be achieved.'² These two principles are also

² See A/61/311, paras. 41-42.

stipulated under various regulations issued by the Chief of the Indonesian National Police, including those on The Use of Force (Perkap No. 1 Year 2009) as well as on The Implementation of Human Rights Principles and Standards in the Discharge of Duties of the Indonesian National Police (Perkap No. 8 Year 2009). However, the ALRC and KontraS hardly witness the implementation of these principles in practice.

9. In accordance with international human rights standards, the authority to assess such necessity and proportionality tests should not be granted exclusively to law enforcement officials who performed the lethal measures. Instead, an independent mechanism should be available and be given the task to assess whether the two essential tests have been met. This is in accordance with Principle No. 22 of the UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials that in the cases where use of force and firearms resulted in the injury and death of individuals, 'Governments and law enforcement agencies shall ensure that an effective review process is available and that independent administrative or prosecutorial authorities are in a position to exercise jurisdiction in appropriate circumstances'.

10. Considering these above, the ALRC and KontraS request the intervention of the members of the Human Rights Council as well as the relevant Special Procedures, notably the Special Rapporteur on extrajudicial, summary or arbitrary executions to urge the Indonesian government to:

- Comply with its international obligations, particularly under the International Covenant on Civil and Political Rights (ICCPR) by revising the Law No. 31 Year 1997 on Military Court in accordance with international human rights law that the jurisdiction of the court is limited to try cases with a strictly military nature. Military officials engaged in the practice of crime shall be tried by a civilian criminal court thus the independence of the proceeding is guaranteed;
- Ensure the effective implementation of the necessity and proportionality in the using of force and firearms by law enforcement officials. In doing so, the Indonesian government should refer to various international human rights documents including the UN Basic Principles on the Use of Force and Firearms which calls for the decrease of weapons use, inter alia, by equipping law enforcement officials with appropriate and adequate self-defence equipments;
- Establish an independent mechanism to review the use of force and firearms by the Indonesian National Police;
- Ensure full cooperation with the Human Rights Council's Special Procedures, including by inviting the Special Rapporteur on extrajudicial, summary or arbitrary executions to conduct a country visit and assess the situation within the country.