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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, 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.

[22 August 2013]

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

Indonesia: The government must provide remedies for victims of past human rights violations, including those which took place during the DOM period in Papua and Aceh*

1. The Asian Legal Resource Centre (ALRC) and the Commission for the Disappeared and the Victims of Violence (KontraS) wish to bring to the notice of the Human Rights Council (HRC) the transitional justice process in Indonesia, including the issue of gross human rights violations in Papua and Aceh under the zone of the military operation (DOM) period. The ALRC and KontraS are pleased that the issue of truth, justice, reparation and non-recurrence is under the consideration of the Council's 24th session and welcome the work of the Special Rapporteur on this matter.

2. In its joint report with the International Center for Transitional Justice (ICTJ), KontraS examined the transitional justice situation in Indonesia since the fall of Soeharto using the four pillars of transitional justice, comprising of truth seeking, judicial proceedings, reparations and security system reform – in accordance with the Updated Set of Principles for the Protection and Promotion of Human Rights through Action to Combat Impunity.

3. In terms of truth seeking, investigations have been conducted on several human rights abuses that took place within the country. However, the results of these investigations tend to protect powerful figures and institutions. The truth seeking initiative has failed to discover the core elements behind the violations and has suffered from a lack of cooperation from the security sector. Coupled with the pressure and intimidation from the perpetrators as well as the failure to provide funding, protection and engagement with the victims, the truth seeking process has never been genuine.

4. As an example, although there was a major shift in the case of gross human rights violations in East Timor with the Commission of Truth and Friendship (CTF) revealing crimes against humanity attributable to the militia of East Timor as well as the Indonesian military, as of today there is an absence of any meaningful action. The governments of Indonesia and Timor-Leste have accepted the CTF's report which notably declined to recommend amnesty against the perpetrators. Whereas the acceptance from the Indonesian government was remarkable – given the government's initial total denial of responsibility – the lack of any concrete follow up has raised concerns that both governments were using the process as an excuse to protect the perpetrators in the name of reconciliation.

5. Apart from that, there have been no meaningful and genuine attempts from the government to establish truth and reconciliation commissions (TRC) that are in accordance with international human rights law. The law on national TRCs enacted in 2004 was deemed to provide disguised impunity to the perpetrators and was annulled by the Constitutional Court in 2006. As of today, there is no significant indication of the government's plan to create a new law as ordered by the court.

6. The state of judicial proceedings for gross human rights violations in the country is equally unpromising. Following the enactment of the Human Rights Court Law in 2006 which accommodates the establishment of permanent and *ad hoc* human rights courts, only the cases of East Timor, Tanjung Priok and Abepura have been examined which all led to the final result of acquitting the perpetrators. Recommendations from the National Human Rights Commission (Komnas HAM) on prosecution of other gross human rights violations cases, such as the enforced disappearance of activists in 1997–1998, massacres in 1965 and

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

a series of mysterious shootings in the 1960s, are continuously ignored by the Attorney General's Office (AGO), contradicting their legal obligations under the law.

7. Similarly, two other aspects of transitional justice – reparations and security system reform – remained unfulfilled. Whereas Indonesia has enacted several laws providing the legal basis for victims' rights to reparation as well as the establishing of a Witnesses and Victims' Protection Agency (LPSK), many technical obstacles have hindered the victims from accessing such rights. Security system reform which was started genuinely at the initial stage of *reformasi* with the separation of police and the military was eventually stalled so that the military officers involved in human rights abuses continue to enjoy impunity. Therefore, human rights violations are still ongoing up to now, particularly in Papua.

8. The sister organisation of the ALRC, the Asian Human Rights Commission (AHRC) has conducted research which highlights the atrocities perpetrated by the Indonesian military against the Papuans in the Central Highlands during the period from 1977–1978. Whereas there is no official number of the victims in this case, interviews with living witnesses reveal over 4,000 names and details of persons who were killed. It was reported that the Indonesian military conducted indiscriminate shootings against the Papuans, strafed their villages using US-supplied Bronco OV-10 planes and employed explosive materials against the civilians including napalm and mortar bombs. Women were subjected to sexual violence, children were shot and deprived of food and other basic necessities until they died, and the elderly were reported to have been ill-treated.

9. Although the atrocities that took place in the Central Highlands in the 1970s were extraordinary, human rights violations by the Indonesian military are nothing new for the Papuans. Intimidation, enforced disappearance, as well as killings by the Indonesian military have been reported as the 1969 Act of Free Choice was approaching. Resistance by the Papuans on the presence of an American mining company, Freeport, were also responded to by Indonesia with violence that resulted in the deaths of many Papuans. The military's use of violence in a protest against the company in 1972 led to the death of around 50–60 Papuans, whereas in 1977, a similar demonstration was responded to by the Indonesian military by aerial strafing and bombings of several villages.

10. Similarly, several human rights violations took place during the DOM period in Aceh, one of which was the Simpang KKA tragedy which took place in 1999. KontraS reported that on 3 May 1999, military officers opened fire against the residents of Simpang KKA who were conducting a protest against a violent sweeping conducted by the military that resulted in injuries to around 20 people. It was reported that the shooting of the protesting residents of Simpang KKA resulted in the deaths of 39 civilians including a 7-year-old boy, injuries to 156 people and the disappearance of 10 others.

11. On 17 May 2003, the Indonesian military also conducted a sweep at Jambo Keupok village which was alleged to be one of the areas in which a pro-independence organisation, the Free Aceh Movement (GAM), was based. Hundreds of military officers carrying rifles and machine guns interrogated the villagers of Jambo Keupok who were subjected to severe beatings, shootings and kicking that resulted in injuries of five women and deaths of 16 civilians. All the victims that were killed were first tortured before being shot and 12 of them were burned alive by the military. Three houses were burned and the civilians were displaced for over a month, out of fear of further violence. Both cases are merely examples of various human rights abuses during the DOM period in Aceh, which only ended following the signatory of a Memorandum of Understanding between Indonesia and Aceh in 2005.

12. Using the aforementioned four pillars of transitional justice, the ALRC and KontraS are of the opinion that the rights of the victims of human rights abuses in Papua and Aceh

during the DOM period are still being denied. In 1999, an independent commission was established by the then President BJ Habibie to investigate the Simpang KKA case. The commission came up with a report describing the victims and the injuries they suffered, as well as the military officers responsible for the abuse. The commission also provided the government with several recommendations. This report, however, was not followed up with any further legal action, leaving the victims in the state of uncertainty and injustice.

13. A team from Komnas HAM recently made a public statement that the five human rights abuses took place in Aceh during the DOM period, including the Simpang KKA and Jambo Keupok cases constitute gross human rights violations. The statement was based on the investigation the team conducted between May and June this year. However, it was reported that there has been disagreement within the commission itself on the final conclusion as to whether those cases amount to gross human rights violations and it is unlikely that they will be followed up for any legal action. Between 2008 and 2010 Komnas HAM also conducted research into human rights violations in Papua and Aceh during the DOM period, but since they were done not under Komnas HAM's investigative function, the reports cannot be used as a basis for further legal action. Furthermore, the reports have been marked confidential and a request by KontraS to declassify the reports was dismissed by the commission last year.

14. The government's continuous reluctance to take legal measures on cases of human rights violations that took place in Papua and Aceh during the DOM period not only hampers the criminal punishment of those who are responsible but also the rights of the victims to reparation due to the burdensome requirements under the Human Rights Court Law. In contradiction with human rights principles, the law requires the conviction of the perpetrators before reparation can be provided to the victims. Denying the victims from effective access to justice is therefore putting the government in a very 'comfortable' situation as they can avoid the trouble of prosecuting the perpetrators and allows them the legal justification to wash their hands of the obligation to provide reparation.

15. In order to fulfil the victims' right to truth, the government needs to establish local TRCs both in Papua and Aceh. Special Autonomy for the Papua Province Law as well as the Law on the Governing of Aceh also calls for the establishment of such commissions, yet no local TRC has been established either in Aceh or in Papua.

16. The ALRC and KontraS are aware that it is inevitable for the government to deal with the problems that are ongoing at present and to prepare for the future challenges of the country. Neither the ALRC nor KontraS, however, is of the view that the focus on these two aspects should negate the government's obligation to address the unfinished business related to the rights and dignity of individuals within its territory. Instead, both organisations agree that unless the past human rights abuses are adequately addressed and the victims have their rights meaningfully fulfilled, the government's goals in handling the current problems or future challenges could only be superficially achieved at best. The ongoing violent conflict that has been taking place in Papua, for instance, will not cease without any effort from the government to address the grievances of Papuans who have suffered violence or lost family members in the past.

17. Given the above, the ALRC and KontraS call for the intervention of the HRC and the Special Rapporteur on the promotion of truth, justice, reparation and guarantees of non-recurrence to urge the Indonesian government to provide an integral and holistic settlement in dealing with past human rights abuses in Indonesia, based on the four pillars of transitional justice:

- Release and disseminate Komnas HAM's classified research reports on human rights violations, including those which took place in Papua and Aceh to public;

- Establish a national as well as local TRC in Papua and Aceh, as mandated by the domestic laws. The establishment of the TRCs should be in compliance with human rights principles;
 - Bring to justice those who are responsible for gross human rights violations in Indonesia, including those which took place in Papua and Aceh during the DOM period;
 - Provide comprehensive and adequate reparation for the victims and their families. Any legal provisions requiring burdensome conditions for the deliverance of the reparation should be amended;
 - Hold comprehensive security reform that military and police officers engaging in gross human rights violations are prevented from enjoying impunity.
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