



General Assembly

Distr.: General
27 August 2014

English only

Human Rights Council

Twenty-seventh session

Agenda item 3

**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.

[25 August 2014]

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



Asia: Arbitrary Detention

1. Arbitrary arrest and detention take place in large numbers in most Asian countries, both under ordinary laws and anti-terrorism laws.
2. In Indonesia, the law allows any person arrested for any crime to be detained for 90 days in police custody without access to a judicial officer. Over the last five years or so, there has been considerable agitation for the abolition of this law and for the enactment of provisions that give a definite period within which suspects should be produced before a court, with a judicial officer thereafter determining the justification of further detention. The previous government encouraged discussion on law reform in order to abolish this law, which is a product of the military regime of General Suharto. However, no measures have been taken to introduce a new law to the Indonesian legislature. As a result, many persons arrested on petty charges have been detained for the entire 90-day period.
3. Human rights organisations have consistently criticized the existing law for many reasons. One reason is that it creates avenues for exploitation of detention by police officers that wish to make corrupt gains. Prolonged detention also creates possibilities for torture and ill-treatment of suspects. During a three-month period, many of the scars from torture disappear. As a result, when a suspect following their detention makes a complaint of torture, the alleged perpetrators have the advantage of the claim that there is hardly any physical evidence to support such an allegation.
4. However, the greatest objection to the law on detention in Indonesia is that the police are placed in a higher position than the courts in deciding matters relating to arrest and detention. The superior position that the police hold within the system is an obstacle to the development of a public justice system based on the principles of the separation of powers and independence of the judiciary. As it is the aspiration of the Indonesian people and government to achieve democratic reforms, establishing the superiority of the judiciary vis-à-vis the police is one of the major issues requiring attention.
5. In many Asian countries, the legal criteria that only justifies arrest on the basis of adequate evidence that allows for reasonable suspicion of the arrestee being involved in a crime, has lost significance. For various reasons, such as the courts being overloaded with work, meticulous examination of the justifiability and legality of an arrest is often neglected. Given the extreme limitations on access to competent lawyers, possibilities of challenging arbitrary arrest and detention is often not within the capacity of litigants, in particular those from the lower income groups. Arrest and detention without proper scrutiny can lead to manipulation of the situation by police officers (who, in developing countries, hold considerable social power) in order to force suspects to plead guilty to crimes they have never committed. Without reforms of the public justice system and the creation of opportunities for suspects to challenge the grounds of their arrest and detention, miscarriages of justice will recur.
6. Of particular importance is the abuse of anti-terrorism laws, which provide for longer than normal periods of detention without trial. There are hardly any mechanisms for the immediate examination of the legality of such arrests and demands of keeping suspects in prolonged detention. Social and psychological factors militate against suspects who are arrested and detained for alleged offences under anti-terrorism laws. However, hardly any Asian countries have the possibility for a quick review of reports filed by the executive with participation from competent lawyers on behalf of the suspects. It is likely that torture and ill-treatment will be used for the purpose of gathering information from suspects. Often, guilt or innocence is measured by the outcome of the use of torture and ill-treatment.
7. The Pakistan Protection Ordinance, which was promulgated in June 2014, needs special mention. This law gives greater powers to law enforcement authorities to enter and search premises without a warrant, and to confiscate property without permission from any lawful authority. Under the Anti-Terrorism Act of 1997, amended since, law enforcement authorities are provided powers to detain suspects for up to three months and to allow conviction on the basis of incriminating text messages, phone calls, and emails. It further grants powers to shoot on sight. And, it allows for telephone and Internet facilities to be tapped and monitored.

8. Due to the political manipulation that surrounds issues relating to arrest and detention, particularly with regard to anti-terrorism, judicial officers often harbor sympathies for those filing charges than rather than the suspects. Even in ordinary cases, when the charges are petty, the court extends sympathy to the government agencies filing charges. In this manner, the primary obligation of courts -- to defend the individual's liberty against the power of the state -- is undermined, as witnessed in recent decades.

9. The Asian Legal Resource Centre respectfully submits that illegal arrest and detention require the attention of the Human Rights Council, and that the Council, with the cooperation of Member States, needs to develop better criteria to ascertain culpability of suspects detained under anti-terrorism or other similar laws.
