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## Human Rights Council

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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.

[17 August 2017]

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

GE.17-15059(E)



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## INDONESIA: Arbitrary detention occurs widely and repeatedly without serious consequences

The Asian Legal Resource Centre (ALRC) wishes to draw the attention of the UN Human Rights Council to the problem of arbitrary arrest and detention in Indonesia, which occurs widely and frequently. Despite Indonesia being a State party to the International Covenant on Civil and Political Rights (ICCPR), the needed redesigning of the justice institutions, to reduce arbitrary arrest and detention, has yet to be done.

Despite former dictator Suharto having stepped down over 18 years ago, and the country having seen some law and institutional reform, the practice of arbitrary arrest and detention continues, due to failures of the criminal justice system. This is also related to the fact that the drafting committee of the House of Representatives (DPR RI) has been working on the revision of the new Penal Code Bill (RKUHP) for the last decade.

Since the independence of the Republic of Indonesia from the Dutch 72 years ago, the government continues to apply the old penal code from colonial times. The Indonesian government also continues to apply the Indonesian Criminal Procedure (KUHAP) No. 8 of 1981, under which there is a pretrial detention mechanism. This mechanism allows for the police to detain suspects for 60 days, the public prosecutor (JPU) for 50 days, district court for 90 days, high court for 90 days and the Supreme Court for 110 days detention, prior to any binding sentences issued by the Supreme Court.

Such provisions allow the police to continue to abuse their power. In many cases, the police arrest and detain accused persons without an arrest warrant, taking shelter behind these provisions. Such arbitrary detention results in torture and ill treatment conducted by the police.

Take, for example, the case of arbitrary arrest and torture which occurred on 7 April 2017, committed by police officers in Jakarta Metropolitan police office (Polda Metro Jaya), documented by the ALRC's sister organization, the Asian Human Rights Commission (AHRC). Mr. Herianto, Mr. Aris Winata and Mr. Bihin Charles were illegally arrested and detained; they were examined without the presence of legal counsel and tortured to confess to stealing a motorcycle.

Despite the South Jakarta district court deciding that the arrest and detention committed by the Jakarta Metropolitan Police is illegal, and hence releasing the three suspects, up until now, there is no punishment for the responsible police officers. The court also did not order any adequate remedy for the three victims. Impunity is a serious problem in Indonesia, particularly with regard to law enforcement officials who abuse their power. It is also very rare that a pretrial court will accept the petition submitted by suspects, who face the key issue of burden of proof; the victims have to prove that the arrest and detention is illegal.

The AHRC has documented numerous cases of arbitrary detention in Indonesia. Victims include children, poor people, vulnerable groups, and members of indigenous communities. The case of Fiki Arfindo, a 13-year-old boy, is a notable example; police officers of the Widang Police Sector, Tuban Regency, East Java Province, illegally arrested, detained, and tortured Arfindo. The boy was stripped naked, kicked, and beaten in custody. The officers threatened him with a gun. He was forced to confess to having stolen a motorbike.

Another AHRC documented case is that of the arbitrary detention that occurred in Papua recently. Three indigenous Papuans in Nabire, members of **the National Committee for West Papua (KNPB), a Papuan organization fighting for freedom and justice**, were illegally arrested and detained by the police officers of Nabire Police Office (Polres Nabire). They were illegally detained after distributing printed statements in Nabire, Papua on 30 June 2017. As a state party to the ICCPR, and by the enactment of Law Number 12 of 2005, the Indonesian government is obligated to respect and obey the Covenant. Article 9, paragraph 2 states: "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him." Furthermore, Article 19, paragraph 2 requires that "Everyone shall have the right to freedom of expression."

Despite the wide and repeated occurrence of arbitrary arrest and detention, Indonesian law makers have increased the detention period of terrorist suspects in the new draft anti-terrorism law from seven to 23 days.

Long detention periods potentially cause torture and other forms of abuse of power. In the case of Mr. Siyono for instance, the anti-terror unit arrested him on 10 March 2016, using excessive force and without any arrest warrant from his house in Pogung village, Cawas sub district, klaten Regency, Central Java province. The house also functions as a kindergarten, and the search and arrest frightened the children who were studying there. During his detention, Mr. Siyono was repeatedly tortured, and according to the autopsy of the Kramat Jati Hospital in Jakarta, Mr. Siyono died from bleeding in the brain due to being hit by a hard object. Unfortunately, up until present the police are still reluctant to properly investigate the case.

Allowing for 23 days of detention, the new bill potentially legitimizes incommunicado detention, which will only increase the number of arbitrary arrests. Moreover, the new bill also specifically legitimizes the detention of accused persons in unknown places.

Therefore, the ALRC respectfully calls upon the UN Human Rights Council to urge the Government of Indonesia to avoid enactment of the new bill in favour of arbitrary detention. Instead, the government should strengthen due process of law, and adopt fair trial principles at all stages of the judicial process.

Furthermore, the parliament must be urged to urgently complete the revision of the Penal Code and revision of the Indonesian Criminal Procedure Code, to stop or reduce the practice of arbitrary arrest and detention. We also request the Council to ensure that the government of Indonesia is willing to invite the Working Group on Arbitrary Detention to visit Indonesia, as a commitment to strengthen human rights protection in the country.

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