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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<sup>\*</sup> submitted by 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.

[20 February 2008]

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

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## **INDONESIA: Failure to pass appropriate legislation concerning torture, as required by the Convention Against Torture**

### **The failure to criminalize torture**

Indonesia is failing to implement one of the key recommendations of the Committee Against Torture, which monitors compliance with the Convention Against Torture (CAT), without which the fight against torture is rendered toothless in the country.

In its Concluding Observations on November 1, 2002 (A/57/44, paras.36-46) the CAT Committee urged the Indonesian authorities to:

“(a) Amend the penal legislation so that torture and other cruel, inhuman or degrading treatment or punishments are offences strictly prohibited under criminal law, in terms fully consistent with the definition contained in Article 1 of the Convention. Adequate penalties, reflecting the seriousness of the crime, should be adopted.”

A revision of the Indonesian Penal Code, albeit without a time frame, has been discussed in the House of Representatives for over twenty years. In the revised Penal Code, the definition of torture falls short of that which is stipulated in the Convention. Maltreatment or assault amongst civilians is confused with torture, thus overlooking the gravity of torture.

In its last report to the CAT Committee, Indonesia mentioned that it “...has also completed several other legislative measures in prohibiting torture. Among others are the amendments of the 1945. Constitution (Article 28 I); promulgation of Law No. 39/1999 on Human Rights (Articles 33, 34, 67, 69, 71, 72, 74, 101, and 104); Law No. 26/2000 on Human Rights Courts; Law No. 3/1997 on Juvenile Justice, and Law No. 23/2004 on Domestic Violence.”

It seems that Indonesia is unable to differentiate between rights, obligations, and prohibition. The aforementioned laws are concerned with the rights and obligations of the citizens and the State. There is no law that stipulates that torture (in general circumstances, not as a way of crimes against humanity) is punishable under existing Indonesian laws.

Despite repeated calls by the CAT Committee and members of the local and international community, Indonesia has, to date, adamantly refused to comply with the need to criminalize torture. The deliberate refusal by the State to pass domestic legislation that meets with the exigencies of the CAT has had the direct effect of denying justice to victims of torture, whilst granting impunity to the perpetrators of this practice.

### **The lack of effective avenues for victims to make complaints and seek redress**

Over the years the Asian Legal Resource Centre (ALRC) and its sister-organization the Asian Human Rights Commission (AHRC), have documented on numerous cases of torture inflicted both by members of the military and the police. Information concerning these cases has been sent to the Attorney General and the National Human Rights Commission of

Indonesia (Komnas HAM) for immediate intervention. However, in none of these cases has any redress been provided to the victims.

The lack of State mechanisms to provide avenues for torture victims to obtain redress, and the accompanying impunity currently being enjoyed by the perpetrators of these acts, has discouraged many victims from reporting cases, thereby allowing the practice to continue unabated. On June 14, 2007, Hendrik Sikumbang and Rizal Tanjung were followed and cornered by uniformed police from the Rekanbaru Police Office, and were ordered to get inside a police car. When an arrest warrant was demanded, Sikumbang was pushed into the car and beaten with a gun. As a result, Sikumbang suffered severe bruises and scars on his head, face and neck. Moreover, Sikumbang's ear was bleeding so profusely that according to Dr. Yan Edward, the membrane in Sikumbang's ear had cracked and would cause him hearing loss. To date, the medical report on this case is still in process. On 15 June 2007, Sikumbang filed a formal complaint to the West Sumatera Regional Police office and to date, no action has been taken.

Similarly, on May 3, 2007, whilst riding on his bicycle, Mr. Kurniawan mistakenly touched another woman believing it was his girlfriend. When the woman began to yell, two policemen arrived and took him to the Tagal police headquarters. At the headquarters, the police officers kicked his chest and placed both his feet under the legs of a table whilst the policemen sat on top of the table. This was done to extract a confession and to charge him with the crimes of obscenity and assault against the chastity of a woman. After obtaining his confession, the police detained him.

Mr. Kurniawan's family has not filed a formal complaint with Komnas Ham (the National Human Rights Commission) or with the police fearing further negative repercussions from the authorities.

The CAT Committee also make recommendations concerning mechanism for redress with regard to torture, which stated that the authorities must:

“Establish an effective, reliable and independent complaint system to undertake prompt, impartial and effective investigations into allegations of ill-treatment and torture by police and other officials and, where the findings so warrant, to prosecute and punish perpetrators, including senior officials”

Despite this recommendation in 2002, to date there is still no specific effective, reliable and independent complaint system to investigate allegations of torture by the police. In collaboration with lawyers in Jakarta, the Asian Legal Resource Centre conducted research on torture. When participants were questioned about over their awareness of the availability of a mechanism for redress in cases of torture, some of the lawyers in the country referred to PROPAM. In the internal system of the police there is PROPAM, a mechanism for reporting various kinds of abuses committed by members of the police. Cases can range from bribery to torture. An individual who wants to complain about such abuses can file a complaint to the PROPAM division, which exists in most police offices. The PROPAM mechanism that is currently available is neither preventive nor remedial and is not specific to each case of torture. Furthermore, it is not specifically aimed at addressing complaints of torture and only hands out administrative disciplinary actions, and therefore cannot be considered an adequate system to deal with the gravity of the crime of torture.

Even though there are provisions for compensation, restitution and rehabilitation for victims of gross human rights violations under Government Regulation No. 3 of 2002, it does not apply to individual cases of torture. Individual cases of torture as defined under Law No.26/2000, do not fall into the “gross human rights violations” category. On the other hand, if the use of torture can be proven to be widespread and systematic, Law No. 26/2000 may be applied. This possibility is, however, vitiated by the absence of a mechanism that records and follows up on cases, from which emerging patterns can be traced.

The recommendations made by CAT Committee required that the National Human Rights Commission (Komnas-HAM), in addition to taking immediate measures to strengthen its independence, objectivity, effectiveness and public accountability, ensures that its reports to the Attorney-General are published in a timely fashion.

The ALRC notes that under the Human Rights Court Law No. 36 of 2000, the time frame for Komnas-HAM to submit its reports to the Attorney General (AG) was indicated. However, even in cases where timely reports of inquiries were submitted, the Attorney General failed to act on them, thus making the prosecution of cases falter. Furthermore, the mandate of Komnas-HAM regarding individual cases of torture remains vague and noncommittal.

### **The need to reduce the length of pre-trial detention**

Another recommendation made by the CAT Committee was to “reduce the length of pre-trial detention, ensure adequate protection for witnesses and victims of torture and exclude any statement made under torture from consideration in any legal proceedings, except against the torturer.”

The ALRC agrees that this is crucial, as long periods of detention have lead to the severe abuse of torture. The existing law allows a person to be detained for 20 days with the possibility of a further 40 days. This lengthy period permits all forms of abuses, including torture and time for bribes to be extracted. This period is long enough to allow many marks caused by torture at the beginning of the detention to have disappeared. The ALRC has received reports of victims trying to commit suicide while in such detention due to the unbearable repeated torture to which they are being subjected.

This is evident in the case of Mr. Mas Udin, who was detained at the Cengkareng Police Precinct (Kepolisian RI, Sektor Cengkareng, Resort Jakarta Barat) since his arrest on May 28, 2007. The staff of the Jakarta Legal Aid Institute attempted to visit him on several occasions in his cell but they were repeatedly denied entry by the police for various reasons.

### **The need for functioning witness and victim protection laws**

Even though the Law on Victim and Witness Protection was passed in 2006, its implementation has yet to be carried out. Without witness protection, any prosecutions of perpetrators of torture will likely fail.

## **Medical reports**

There are no regulations concerning medical reports: no rights and no obligations. Thus there is no person specially assigned or a specific procedure to deal with granting medical certificates in the case of torture, except in cases of suspicious deaths in detention. In the case of the latter, a post mortem is requested by the police. Such reports can be used as evidence in litigation.

In cases where family members of the victims would like to provide the victims with a medical doctor, it is simply not possible, as access to places of detention is severely restricted. Restrictions applied to places of detention prevent the possibility of having an accurate picture of how widespread the practice of torture is, which underlines the need for greater monitoring of these places. Indonesia is therefore urged to ratify the Optional Protocol to the Convention Against Torture, which will facilitate international monitoring of places of detention in Indonesia, thus showing the government's commitment to improve the current system.

It has also been reported that in most of the cases of torture, when medical practitioners are approached for medical reports, there is a reluctance to produce accurate medical reports. Alternatively, the issuing of the medical reports is delayed, as is evident in the aforementioned case of Mr. Hendrik Sikumbang, who was allegedly illegally arrested and tortured by Yusril, a former member of West Sumatera Police Regional office, who is currently stationed at Pekanbaru police office.

## **Recommendations:**

The Asian Legal Resource Centre urges the Human rights Council to take all necessary measures to ensure that the Indonesian government:

1. Complies with all recommendations made by the Committee Against Torture and the Special Rapporteur on Torture, in order to bring the use of this practice to an end, compensate all victims of this practice and bring those responsible to justice;
2. Enacts without delay domestic legislation comprising an appropriate definition of torture, and establishing a mechanism for redress, adequate punishment and compensation for victims, in line with its international obligations;
3. Ensures the creation of a special mechanism to deal with complaints of torture.
4. Reduces the period of pre-trial detention, bringing in a period that is in line with international norms and standard;
5. Grants detainees access to lawyers, doctors, family members and members of recognized NGOs;
6. Ensures that Komnas-HAM Commissioners are authorized to visit all places of detention, both in order to record cases of torture and as a preventive measure;
7. Ensures that medical examinations are conducted in places of detention without the presence of the authorities and, in cases of torture, ensure that medical treatment is provided by the authorities;
8. Ratifies the Optional Protocol to the Convention Against Torture without delay.

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