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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:
INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE,
IMPUNITY**

**Written statement* submitted by the Asian Legal Resource Centre (ALRC),
a non-governmental organisation 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.

[26 January 2005]

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

FLAWED POLICING, MALADMINISTRATION OF JUSTICE AND FORENSIC SCIENCE IN THAILAND

In a statement to the Commission in its sixtieth session, the Asian Legal Resource Centre (ALRC) asserted that the 2003 'war on drugs' declared by the Government of Thailand, in which at least 2500 people were killed, would result in a dramatic worsening of human rights conditions in the kingdom. It further anticipated a weakening of administrative mechanisms for the protection of human rights. Regrettably, these predictions are now being realised. The ALRC has submitted other statements to the Commission this year on the growth in torture practiced by the police, extrajudicial killings, and disappearances. It has also written to the sixty-first session on violation of the right to food in Thailand, increasing restrictions on freedom of expression, onerous use of outdated criminal defamation laws to silence government critics, and damage to institutions of justice there. This statement concentrates on the corresponding negative effects being felt in the administration of justice in Thailand and the adverse consequences of these on the prospects for an effective human rights regime in the kingdom.

At the sixtieth session of the Commission, the ALRC observed that the primary reason for the endemic impunity and persistent gross violations of human rights in Asia is the region's defective policing systems [E/CN.4/2004/NGO/44]. Thailand is no exception. After coordinating the murders of thousands of people accused of dealing in drugs during 2003, the police there continued to be responsible for gross acts of violence in 2004 – particularly in the south of the country. The Royal Thai Police force also faced increasingly public reports of gross acts of torture, extensive and credible allegations of massive institutionalised corruption at all ranks, and the continued enjoyment of almost absolute impunity for wrongdoing, given the absence of independent mechanisms for the receipt of complaints against errant officers.

A couple of recent examples serve to illustrate the dismal state of policing and administration of justice in Thailand:

Around 3am on 7 July 2004, a team of 50 Crime Suppression Division, anti-narcotics and local police raided a house in Bang Sai district, Ayutthaya province. When the occupants refused them entry, they broke open the door, and alleging that a shot was fired from within the house commenced a barrage of gunfire on the residence that lasted for some 30 minutes. Finally, upon entering the house, the police found only an elderly couple. Miraculously, the two had survived virtually unscathed by sheltering behind their refrigerator, which was punctured by dozens of bullet holes. Nothing illegal was found on the premises, but the officer in charge of the Crime Suppression Division reportedly refused to admit that the police had made a mistake. He did, however, offer to buy the couple a new refrigerator, which they refused.

While the Crime Suppression Division was quick to shoot-up the elderly couple's residence, the ALRC is unaware of any action being taken on its part – despite petitions by citizens – to investigate the killing of a group of schoolchildren in Ratchaburi province that has been linked to a local police officer. The parents of the children killed and injured in an attack on a bus in June 2002 – in which three children were killed and 12 injured – have alleged that a policeman was behind the attack. However, a local forest villager by the name of Jobi – who was subsequently also wrongly accused of being an illegal immigrant – was instead indicted for the crime, and by his account forced to admit to the crime through threats against his family.

Although he has been found innocent, and despite a petition to the Crime Suppression Division by local villagers on 9 August 2004 supporting his claim and blaming the police, the Office of the Attorney General has appealed against his acquittal. This move to pursue the case against an obviously innocent man has been made all the more bizarre in light of the fact that Jobi's poor state of health after being held in atrocious conditions since 2002 attracted the sympathy and patronage of the Queen. On 27 September 2004, the sister organisation of the ALRC, the Asian Human Rights Commission, wrote to the Minister of Justice of Thailand regarding the case, calling for the appeal against Jobi to be dropped, compensation to be paid for wrongful prosecution and imprisonment, and an investigation to be undertaken against the accused police officer. However, to date there is no information available to indicate that any progress has been made in the case.

While incidents such as these attract media attention, it is the day-to-day management of policing that poses one of the greatest obstacles to the protection of human rights in Thailand. As noted, the ALRC has submitted a separate statement to the sixty-first session of the Commission on acts of torture committed by officers of the Royal Thai Police. One aspect of those cases not discussed in that submission is the apparent contempt with which the police involved feel inclined to treat criminal and judicial procedure. The malpractices revealed through investigations into those cases include: failure to conduct line-ups; stacking of records to include the names of many more officers than are actually involved in the inquiries; and sending of false police witnesses to court.

Another procedural difficulty lies in the management of inquiries into crimes. As it stands under the current system, it is very difficult for victims of police abuses – as illustrated by the above-mentioned case in Ratchaburi province – to lodge a case and establish the evidence necessary to prove it in court. There is at present no specialised body for the receipt of criminal complaints against police officers in Thailand. What is more, investigations are entirely in the hands of police officers. That this is a systemic weakness has been recognised both by the Minister of Justice and the Attorney General, who have recently announced welcome reforms to give the Office of Attorney General a joint investigatory function with the police in special cases where deemed in the public interest. While this measure is appreciated – and almost universally recognised as a necessary step to stem criminal activities by the police – still far more is needed to ensure that the police do not engage in gross human rights violations in Thailand.

One area requiring serious consideration by the Commission is the duration over which the Royal Thai Police are capable of holding suspects in custody without charge. At present, they may hold a person for 48 hours before bringing the case to court, and then seek extensions of detention for a period totalling 84 days before charges must be laid. The Government of Thailand has admitted in its 2004 report to the Human Rights Committee that these provisions violate the International Covenant on Civil and Political Rights [CCPR/C/THA/2004/1, para. 3[d]]; however, it insists upon them nonetheless. In fact, in an alarming move at the end of November 2004 the government examined the possibility of introducing a new internal security law that would greatly expand the powers of police to detain persons without charge or appearance in court. The plan was dropped after it was decided that sufficient laws to ensure national security already exist that are perhaps not yet being fully enforced. For proponents of human rights in the country, this was by no means a comforting assessment, although falling short of the worst possible scenario.

The manner in which the present means for extended detention without charge is manipulated by police officers in Thailand is illustrated by a number of torture cases described by the ALRC in its statement on that topic to the Commission. In many cases, victims are held in custody for a longer time so that their injuries can heal, during which time they are denied counsel and access to medical staff. By the time they appear in court, perhaps only a few faded scars are left to attest to their ordeal. As a consequence, if they dare to make allegations against the police these are readily rejected for lack of evidence. In other cases, persons who are due to be released after the statutory period on detention has expired are immediately or shortly thereafter rearrested on new allegations, and yet again subjected to the same miserable conditions.

Another related area that should be of particular concern for the international community is the state of forensic science in Thailand. Most recently, this issue obtained global attention when the government rightly sought outside assistance for the identification of bodies washed up by the tragic Indian Ocean tsunami. However, the important work of forensic experts from abroad in identifying the remains of victims has also had a dangerous effect on the right of citizens to obtain proper independent forensic investigations. This has come about after publicised attempts by the Royal Thai Police to hijack the forensic investigations into the tsunami victims, and exclude a role for the Forensic Science Institute. While the police have ultimately had to negotiate a compromise with the Institute, their attempt to wrest control of these investigations has had a demoralising effect in Thailand.

Although on the surface the dispute has been about the most efficient means by which the very large number of victims from the cataclysm may be properly identified, in reality it is about the power over forensic science in Thailand as a whole. The Forensic Science Institute was established under the 1998 Constitution because of the need for an independent and professional body to identify and assess dead bodies. Despite in-principle recognition of the need for such an agency, the Institute has been obliged to fight for its mandate from its inception, and has operated against the odds and on meagre resources. Its work has inevitably attracted the ire of police. During the widespread street killings of alleged drug dealers in 2003, for instance, the deputy director of the Institute publicised the fact that police were not sending any bodies of these victims for examination, nor were they making autopsy reports from hospitals available. She also noted that invariably evidence appeared to have gone missing or have been deliberately damaged.

It should therefore be a priority to the international community to ensure that while doing the utmost to identify and recover bodies of tsunami victims damage also not be done to the prospects of citizens of Thailand obtaining justice through proper independent forensic science investigations in the future. The ALRC especially calls upon all member states of the Commission with forensic science teams in Thailand since the tsunami to be aware of efforts by officers of the Royal Thai Police to use this tragedy as an opportunity to undermine domestic independent investigators. All these parties should engage in discussions and work closely with the Forensic Science Institute to ensure that its vital role in protecting the fundamental human rights of Thai citizens is further protected and upheld.

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