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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:
DISAPPEARANCES AND SUMMARY EXECUTIONS**

**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).

MASS EXTRAJUDICIAL KILLINGS AND IMPUNITY IN THAILAND

1. 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. Regrettably, that prediction has been realised all too soon. Not least of all, it has resulted in continued large-scale killings by security forces. The ALRC has submitted other statements to the Commission this year on the growth in torture practiced by the police and enforced 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 and damage to institutions of justice there. This statement concentrates on two mass killings in the south of the country that, despite obtaining international media and diplomatic attention, have already virtually been assigned to the annals of history.

2. While the south of Thailand has most recently been the subject of international attention after the devastating Indian Ocean tsunami, the region was punctuated with violence throughout 2004, primarily as a result of increasingly aggressive policies to suppress regionalist aspirations among local people. In the late 1990s, the Bangkok administration had achieved a measure of success in obtaining greater mutual understanding with people in the south through negotiations and compromise. Regrettably, the last two years have seen a return to increasingly confrontational means for dealing with a small number of local insurgents. As a consequence, violent incidents grew sharply in 2004.

3. The first mass killing occurred on April 28. It was spread across provinces where hundreds of lightly-armed young men attacked police and army outposts, but was centred on the Krue Se mosque, where the largest number were holed up. In total at least 107 were killed in the name of "self-defence" by the security forces. However, within a short time many questions arose regarding the ruthless nature of the killings and extremely high death toll. Indications were that the security forces were anticipating the attacks, mostly by groups of teenage boys and young men wielding machetes. Yet rather than do something to avert bloodshed, the security forces lay in wait for their prey. Most of their victims were gunned down well short of their targets. At the Krue Se mosque, 32 – who by that time were posing no threat – were killed after a standoff that lasted for around nine hours. The prime minister quickly endorsed the killings, and even suggested that the police and soldiers involved would be awarded for their service, thereby guaranteeing further bloodshed.

4. Although an independent and public judicial inquiry into the April 28 killings was imperative, the government opted for a low-key fact-finding commission into the events at the mosque alone. Its findings have never been made public: a short summary was released to the media on August 3. The summary alone made undeniable the fact that the killing of those inside the mosque was unjustified, and resulted directly from the army commander in charge ignoring orders to negotiate, instead attacking with heavy weapons and ammunitions.

5. Interestingly, while recommending compensation payments and the preparation of contingency plans to prevent future similar incidents, the fact-finding commission also observed that, "Investigations should be pursued through the appropriate organs within the judicial system for those officials involved claiming their actions were in fulfillment of their duties." Notwithstanding, the government chose to ignore this recommendation. No such

investigations have ever been undertaken. The perpetrators of the killings have never been subjected to proper scrutiny for their actions in accordance with the both international and domestic law.

6. The inevitable result of the wrongdoing in April was the further escalation of violence, with security forces increasingly portrayed as under siege from unseen radicals. It was hardly surprising but no less shocking when in November a much larger and more horrific mass killing shook the south.

7. On October 25, at least 85 persons were killed in Narathiwat province, 78 of them while under army custody, after a protest over the detention of six persons at the Tak Bai police station. The true number of those killed and disappeared to this day remains a mystery. Video footage showing security forces attacking protesters with a relentless barrage of gunfire makes it hard to believe official assertions that only six or seven were killed at the site of the protest itself. More recently, the government has tried to suppress distribution of video footage through threats of criminal prosecution on the spurious ground of national stability.

8. On October 28, as the news was breaking after intervention by the deputy director of the Forensic Science Institute, the ALRC wrote to the High Commissioner calling for her immediate intervention. Along with the appeal it sent the names of known victims – including killed, injured and disappeared – and those of over two hundred persons out of some 1200 at that time held incommunicado in army camps. The ALRC pointed out to the High Commissioner that many questions were arising over the deaths, particularly the 78 in custody, reportedly due to suffocation when the victims were packed like sardines into army trucks. Early statements by Thai government officials that troops had not shot at protesters, and that protesters had been under the influence of drugs, it added, were also proven unfounded. The High Commissioner expressed concern over the incident in the course of the same day.

9. As in the case of the Krue Se killings, the response of the government was to establish a fact-finding commission into the deaths. The outcome of the commission was virtually a facsimile of the Krue Se inquiry. Despite government promises, the full report has not been made public. To the extent that its contents are known, they lay the blame at a small number of military, police and administrative officials directly involved in handling the protest. For its part, the government has treated the findings in the same manner as previously: setting them aside as a "lesson" to avoid further incidents. At the same time, a series of other inquiries, including one conducted by the National Human Rights Commission and another by a senate inquiry commission, have reached far more damning conclusions than those made known from the government-appointed body. However, the latter inquiries, while serving the purpose of raising public discussion, have no legal weight.

10. For its part, the ALRC has persisted in demanding that full judicial inquiries be commenced without delay and without regards to other factors. From the start, the ALRC expressed concern that the government-appointed inquiry was being used as a device to sidetrack possible judicial proceedings. In a letter to the Minister of Justice in early November, the sister organisation of the ALRC, the Asian Human Rights Commission (AHRC), inquired as to the role of the Attorney General in investigating the Narathiwat

killings, and questioned the apparently uneven application of criminal law in the country. It pointed out that the numerous inconsistencies and gaps in various stories regarding the events of October 25 spoke to the important role of the Attorney General in investigating and prosecuting persons responsible for such killings. In particular, it urged that the Attorney General should at once begin criminal proceedings against the alleged perpetrators of the 78 custodial deaths.

11. When a death in custody occurs, a state agent must be held criminally responsible. Arguments to suggest that the deaths were accidental, were caused by poorly trained personnel, or were due to other extenuating circumstances are totally unacceptable, and in light of the International Covenant on Civil and Political Rights, to which Thailand is a party, utterly irrelevant. The ALRC opines that the actions of the Government of Thailand in this instance have violated its obligations under the International Covenant on Civil and Political Rights, by exceeding its provisions beyond "the extent strictly required by the exigencies of the situation", as provided in article 4. Without regard to other factors, once the victims were in custody of the Royal Thai Army, its personnel had a duty of responsibility and care for them. The basic rights of the people taken into custody – not least of all the right to life – stand above martial law, and the families of these victims and wider public have a right to be satisfied that such drastic actions as were taken in this instance were necessary and unavoidable.

12. Article 2 of the Covenant stipulates the necessity for victims of rights violations to have access to effective judicial remedies. The ALRC reiterates, therefore, that at no point has there ever been the need to postpone criminal proceedings until other politically appointed inquiries are completed. In fact, it has been negligent to do so, as it has afforded time for the perpetrators of these abuses to conceal the extent of their crimes. The ALRC therefore urges the Commission to take up this matter as a subject of grave concern with the Government of Thailand in order that the victims of this atrocity and their families at last be offered the prospect of a modicum of justice.

13. The ALRC has also consistently argued that given the scale and nature of the killings the Government of Thailand should admit a role for international bodies in uncovering the truth and finding a way forward. Unfortunately, a welcome offer to pay a visit by the Special Rapporteur on extrajudicial, arbitrary or summary executions was publicly rebuffed by the Prime Minister. The AHRC subsequently wrote to the government urging it to reconsider the offer, and has received a letter from the Minister of Justice to the effect that he has transmitted its concerns to the Prime Minister. The Asian Legal Resource Centre accordingly again calls upon the Government of Thailand to admit a role for the Special Rapporteur and other special mechanisms of the Commission in addressing the implications of these unfortunate killings for the state of human rights in Thailand.

14. The tragic deaths and destruction brought on by the tsunami of December have rightly attracted global sympathy and, since its passing, a significant part of media and government attention both within the affected countries and abroad. However, the tsunami should not be allowed to wash away deep domestic and international concern over the large number of deaths in Thailand during 2004 that occurred at the hands of fellow humans, rather than natural forces. The deaths of such large numbers of persons in this manner – particularly but not exclusively in the two mass killings addressed in this statement – raise

very serious questions over the failure of the Government of Thailand to exercise its obligations under the International Covenant on Civil and Political Rights.

15. Sadly, the Government of Thailand appears bent on accelerating rather than counteracting the growth in extrajudicial killings under its jurisdiction. Its arguments that citizens can be killed en masse in the name of self-defence or by way of an accident can in no way be justified under any of the international human rights treaties to which it is a party. In fact, self-defence is at its lowest ebb in Thailand for many years, as citizens are quickly losing their basic defences to the rights of life and liberty. Large-scale extrajudicial killings do nothing to create a sense of security; by contrast, they do much to instill widespread fear. The ALRC therefore urges the Commission and all international human rights mechanisms to engage vigorously with the Government of Thailand in order that every necessary step be taken to avert this trend and thereby avoid any further man-made disasters.
