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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:  
TORTURE AND DETENTION**

**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.

[10 February 2006]

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

### **CONTINUED GROWTH OF TORTURE AND IMPUNITY IN THAILAND**

1. In a series of written statements to the sixty-first session of the Commission, the Asian Legal Resource Centre (ALRC) raised concerns over torture in Thailand and its effects on the country with reference to impunity, disappearances and extrajudicial killings there (E/CN.4/2005/NGO/34, 44, 62, 112). The ALRC also in March 2005 submitted a 98-page report to the Human Rights Committee speaking to the same concerns, in advance of the Committee's assessment of Thailand's compliance with the International Covenant on Civil and Political Rights (ICCPR).

2. In its concluding observations of July 2005 (CCPR/CO/84/THA), the Committee pointed to some key areas for the Government of Thailand to address in order for the national human rights situation to be improved. These included the prevalence of torture and custodial abuses, and attendant impunity enjoyed by the security forces there.

3. In paragraph 15 the Committee wrote that

"The Committee is concerned about the persistent allegations of excessive use of force by law enforcement officials, as well as ill-treatment at the time of arrest and during police custody. The Committee is also concerned about reports on the widespread use of torture and cruel, inhuman or degrading treatment of detainees by law enforcement officials, including in the so-called 'safe houses'. It is also concerned at the impunity flowing from the fact that only a few of the investigations into cases of ill-treatment have resulted in prosecution, and if any, in conviction, and that adequate compensation to victims has not been provided (arts. 2, 7, 9). The State party should guarantee in practice unimpeded access to legal counsel and doctors immediately after arrest and during detention. The arrested person should have an opportunity immediately to inform the family about the arrest and the place of detention. Provision should be made for a medical examination at the beginning and end of the detention period. Provision should also be made for prompt and effective remedies to allow detainees to challenge the legality of their detention. Anyone arrested or detained on a criminal charge must be brought promptly before a judge. The State party should ensure that all alleged cases of torture, ill-treatment, disproportionate use of force by police and death in custody are fully and promptly investigated, that those found responsible are brought to justice, and that compensation is provided to the victims or their families." [Paragraph 15]

4. Although torture victims in Thailand may survive to tell their stories, the obstacles to their obtaining justice are not just formidable: at present they are literally insurmountable. Thailand has not ratified the U.N. Convention against Torture and Cruel, Inhuman or Degrading Treatment or Punishment, and nor it has introduced a domestic law on torture. This is despite repeated statements to the effect that it would do so, and as well as despite torture being prohibited both under the ICCPR and Thailand's own 1997 Constitution. However, in Thailand there is no legal avenue that enables victims of abuse to appeal to the courts on the grounds of a constitutional violation. Therefore, the prohibition of torture under the constitution remains unenforceable in the absence of an enabling law.

5. The lack of a law criminalising torture encourages Thai police to persist with extremely primitive policing methods. Investigations are directed almost exclusively towards

extracting confessions from suspects. Forensic science and other modern techniques of investigation are treated with skepticism, or are otherwise unknown to the investigating officers, as discussed in a separate statement to the Commission by the ALRC on forensic science in Thailand.

6. Not only is there little if any prospect of a torture victim securing a criminal charge against a perpetrator in Thailand, but there is also little expectation that any justice or compensation can be obtained through a civil suit. One of the most blatant cases of torture to obtain public attention during 2004 was the subhuman genital electrocution of Ekkawat Srimanta by police in Ayutthaya. Ekkawat's injuries were documented for the world to see, and he went on to speak about his ordeal at public forums. Yet, despite claims by the government that the perpetrators were punished for their crimes, there is no evidence that anything was done other than to temporarily suspend and transfer a handful of officers. This November 2005 Ekkawat dropped his civil claim against the perpetrators, after apparently reaching the same point that Urai Srineh had come to much earlier. Urai was also subjected to horrendous genital torture, allegedly at the Chonburi Provincial Police Station, in June this year. After his ordeal, he was visited in hospital by the police. He took what they offered him, and moved to another province. With the prospects of being able to lay criminal charges next to none, the prospects of obtaining compensation slim and a long way off, and the prospects of getting adequate and immediate protection also dim and little known, the average victim of torture in Thailand has few choices, as discussed further in an ALRC statement to the Commission on witness protection in Thailand. Inevitably, the withdrawal of cases under coercion and offers of money is a common occurrence. Similarly, few lawyers are prepared to take on such cases, averse to the risks taken by those who do, such as Somchai Neelaphaijit. The lawyers appointed to represent clients who have allegedly been tortured are known to collude with the police and deny having seen or heard any evidence of abuse.

7. There is a culture of deliberate and consistent falsification of police records in Thailand. When there is no such thing as a reliable record, the possibilities of identifying perpetrators of alleged crimes, including torture, become far lower. In the case of Anek Yingnuek and friends, who also alleged that they were brutally tortured by the police in Ayutthaya during September 2004, it was revealed in court during July 2005 that the officer named on official documents as the investigator did not do the investigation. Another officer who was not named on the documents, the alleged ringleader of the torture, did the investigation. Also common is the inclusion of names in investigations where the officers have played no actual role. In the hearings against five police in connection with the abduction of human rights lawyer Somchai Neelaphaijit, police denied in open court that they were involved in investigations where the suspects have alleged that they were tortured, although their names have been on the lists of investigators. One pointed out that in a high-profile case virtually his entire division was listed as having been involved, although the true number of investigators was small.

8. Under normal circumstances, once the police in Thailand have someone in their custody, they are able to hold them without charge through successive extensions for up to 84 days. This system of extended detention permits the police to hold victims of torture until

evidence is lost. The initial period of detention before going to the court is 48 hours; however, the taking of detainees for extension of detention periods is routine and judges not sensitised to make inquiries into the treatment of detainees. Nor is there any special procedure for raising questions about possible abuse committed by the police. When a person goes into prison too the routine examination then is unlikely to uncover any evidence of torture. At a recent court hearing observed by staff of the Asian Legal Resource Centre, a prison nurse testified before the court that the main purposes of the prison medical inspection are to identify if the detainee is carrying anything illegal in his or her body, and to check for any fresh injuries. He would not record evidence of older injuries, he said, adding that he takes around three minutes for an examination. Hence the correct emphasis by the Human Rights Committee on detainees having access to doctors at the earliest possible point, with the express purpose of checking for signs of abuse.

9. Many of the conditions inside prisons in Thailand also amount to cruel and inhuman treatment and punishment, a point noted by the Human Rights Committee in paragraph 16 of its report. The Asian Legal Resource Centre, while under no illusions about the conditions in these facilities, was recently alarmed to hear of a case where a young man in an ordinary criminal case who had dared to complain of police abuse, since convicted, has been kept in shackles and solitary confinement, in blatant violation of the country's international obligations under the ICCPR. The wardens are reported to have said that the shackling and confinement was routine, despite the fact that others convicted along with the man who had not complained were not treated similarly. For reasons of the inmate's personal safety it has not been possible to publicise the case; however, the ALRC is of the opinion that it is by no means isolated.

10. In conclusion, in its open letter on Thailand to the High Commissioner for Human Rights to mark International Human Rights Day 2005, the sister organisation of the ALRC, the Asian Human Rights Commission, wrote that

"As you may know, the Government of Thailand has frequently said that it will join the Convention against Torture. The AHRC is aware from contact with staff in various ministries that they are familiar with the Convention and are prepared to put it into domestic law. Accordingly, the Asian Human Rights Commission urges you to make it your personal objective to ensure that the Government of Thailand ratifies the Convention against Torture in 2006. Becoming a party to the convention would do much to enhance Thailand's international reputation and would be an important first step in openly addressing the practice of torture there."

11. The Asian Legal Resource Centre reiterates this call, and trusts that the Government of Thailand will likewise treat it with due seriousness and no longer delay this important step.

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