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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.

[10 February 2006]

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

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### **Indonesia's ineffective and deficient legal system**

1. The Indonesian legal system does not regard torture, disappearances or other grave human rights abuses as illegal since they are not considered crimes punishable by law. This is due to the inability of the country's police, prosecution and judiciary, to protect and promote the rule of law.

2. Torture continues despite Indonesia's ratification of the Convention against Torture and Other Cruel and Inhuman or Degrading Treatment or Punishment in 1998. Law No. 26. of 2000 of the Human Rights Court Act considers torture a crime against humanity; however, the penal code does not offer a definition for the offence or provisions on how to prosecute those who engage in such acts. At present, torture is treated the same way as ordinary maltreatment between citizens. Furthermore, there are no provisions for the compensation of victims and no complaint mechanisms through which abuses can be reported.

3. Apart from torture, Indonesia has no laws that deal with disappearances or other grave human rights abuses, which has led to many past abuses not being addressed. The 1965-66 massacres that saw half a million to a million unarmed civilians killed are yet to be dealt with by the Government of Indonesia. These atrocities also involved the torture and imprisonment of hundreds of thousands of civilians. The families of these victims were subjected to a program of institutional ostracism that denied them the opportunity to engage in normal economic and social life. They have been imprisoned, dismissed from jobs, denied access to education and have had the term *ex-tapol* (*ex-political prisoner*) put on their identification documents. This situation continues today.

4. In 2004, the government passed a Truth and Reconciliation Commission Bill that omits any definition of who is a perpetrator and further forces a victim to forgive the transgressor if they want compensation. Without provisions for genuine justice, the Commission will remain a tool to whitewash the massacre, rather than an attempt at reconciliation.

5. In 2005, the Government of Indonesia also ratified both the International Covenant on Civil and Political Rights (ICCPR) as well as the International Covenant on Economic, Social and Cultural Rights (ICESCR). However, it has failed to ratify the ICCPR's two optional protocols on the death penalty and individual complaints.

6. The police continue to use militaristic methods in their work, while the military still plays a significant role in civilian affairs. For instance, army officers in Jakarta arrested 51-year old Bagus Hariyanto on 15 October 2005 for stealing the bicycle of an officer. According to eyewitnesses, Bagus was forced to strip, run, do push ups, and was tied to a pillar. When Bagus was released the next day--after his family paid roughly USD 27 for the bicycle--he had numerous grave injuries. On October 17, Bagus died. An autopsy found that a hard object had hit the victim on his head and broken his bones.

7. The Indonesian police employ similarly barbaric methods in forcing confessions in order to 'solve' crimes. For example, on 12 September 2005, 28-year-old Sanep was arbitrarily detained and tortured by the Resort Police of Belitung Timur, in an attempt to force him to confess to a theft. Sanep was later released when the officers realized that they had the wrong person. These officers have also not been held responsible.

8. The Indonesian prosecution system has many problems of its own. Prosecutors take little initiative to investigate cases of human rights abuses and other crimes, instead waiting for political motivation. The Attorney General has done nothing to deliver redress to the victims and survivors of the May 1998 riots and the Trisakti and Semanggi killings. Ineffective investigations by the prosecution agency have led other groups to conduct their own investigations in these cases. The National Human Rights Commission submitted its findings, but these were ignored by the Office of the Attorney General, supposedly for technical reasons. Justice has still not been served by way of investigation of the Trisakti and Semanggi killings, or prosecution of any perpetrators.

9. The Indonesian judiciary is similarly weak and ineffective. The last few years have seen numerous human rights courts established, yet these have little authority. For instance, nearly all the military and police officers charged with committing human rights violations in East Timor, in the Tanjung Priok case and in Abepura were acquitted either in the human rights courts or during appeals to the superior courts. These acquittals have been due to ineffective investigations and prosecutions, as well as a lack of qualified judges and judicial officers versed in international law and human rights principles.

10. As noted, Indonesia's domestic legal system also calls for gross human rights violations to be investigated by the National Human Rights Commission. Although the commission has investigated certain cases, there has been no progress in many, such as the 1989 Talangsari case, where several hundred people were attacked and shot at by the military. In other instances the commission's inquiries are not made public, particularly when senior military officials are involved, such as the 1998 disappearances of students. Its mandate is limited and does not include the investigation of isolated abuses. Furthermore, even when the Commission conducts investigations and makes relevant recommendations its findings are usually ignored.

11. Discrimination and violence against civilians and minority groups continues to be widespread in Indonesia due to a lack of action by law enforcement agencies. There has recently been an increase in the killing of civilians in Poso, as well as attacks on religious minorities, including Christians and Ahmadiyyahs (a minority Muslim group). As a result, the state intelligence and military agencies are attempting to revive a system of infiltration within the villages, a regressive step that is only bound to exacerbate the problems.

12. The Asian Legal Resource Centre (ALRC) urges the Commission to work closely and consistently with the Government of Indonesia to reform its justice system, beginning with an amendment to its torture legislation to bring it into line with the Convention against Torture. The ALRC also advocates for the Commission to call on the Government of Indonesia to abide in full by its obligations under the ICCPR and the ICESCR and to insure that its laws and institutions protect the rights of its people and provide effective redress as envisaged by common article 2. Finally, the ALRC urges the Commission to persuade the Government of Indonesia to expand the mandate of the National Human Rights Commission, in order that it better promote international laws and mechanisms and encourage state agencies to work in line with these.