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Written statement* submitted by the 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.

[24 August 2012]

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

Indonesia: The ALRC calls for intervention by concerned states in light of the Indonesian government's failure to accept key UPR recommendations

The Asian Legal Resource Centre (ALRC) would like to bring the attention of the Human Rights Council (HRC) concerns relating to Indonesia's Universal Periodic Review (UPR) during the 13th session of the Working Group on the UPR, notably with regard to the Indonesian Government's failure to accept key recommendations that, if implemented, could have a positive effect on the protection of human rights in the country. The ALRC is taking this opportunity to urge members of the Working Group that made such recommendations to urge the Indonesian Government to accept these recommendations as part of the UPR's outcome report adoption process during the upcoming 21st session of the HRC in September 2012. The value of the UPR with regard to human rights in Indonesia, and the credibility of the government's approach and levels of cooperation with this mechanism hinge not only on the quantity, but in particular on the quality of recommendations that the government agrees to accept and implement.

While the Indonesian government agreed to a number of 'general' recommendations concerning the enhancement of the protection of minorities, the improvement of the human rights situation in Papua, and the elimination of impunity, its commitment to achieve such goals in reality remains in doubt, given its rejection of a number of more specific and concrete recommendations concerning these issues.

During Indonesia's UPR review on May 23, 2012, as part of the 13th session of the UPR Working Group, various countries highlighted the issue of impunity within the country and recommended that the government take measures to combat this problem. Slovenia, for instance, recommended that the Indonesian government 'ensure all cases of human rights violations are impartially investigated and prosecuted in proportion with the crimes committed.' Similarly, Australia recommended that the government 'ensure fair and proper legal action in relation to those investigated and prosecuted, including impartial trials and reasonable sentences ... that meets international norms,' whereas Germany specifically requested Indonesia to hold accountable officials responsible for human rights violations in the Papuan provinces.

The aforementioned recommendations on impunity, along with similar other ones proposed by Canada and Austria, enjoyed the support of Indonesia. While this is to be welcomed as a first step, the ALRC is concerned by the fact that the government failed to accept the more specific and therefore useful recommendation made by Switzerland, which calls for the government to ensure that cases of human rights abuses against prisoners should be dealt with by civilian courts instead of military courts. The ALRC has raised concerns about the use of military courts in submissions to the HRC in recent sessions, notably given that these lack transparency and do not meet the internationally accepted standards concerning fair trials. Cases of torture against indigenous Papuans by members of the military that the ALRC has documented, for example, have illustrated how even in high profile cases, the perpetrators of serious human rights violations typically either enjoy complete impunity or are handed minor and grossly inadequate sentences as the result of trials by military tribunals.

The ALRC therefore urges the Indonesian Government to show its commitment to taking specific measures that can have a concrete impact on the current problem of impunity, notably by agreeing to accept and implement Switzerland's recommendation, and more widely by ensuring that all allegations of violations of human rights by members of the military against civilians should be tried by civilian courts, with the full cooperation of the

military. In doing so, it should agree as a first step, to revise its current Law No. 31 Year 1997 on Military Courts, which grants authority to military courts to try crimes committed by military officials, even if such crimes do not have any military nature.

This provision within the Indonesian Military Court Law lies in contradiction with international human rights standards which call for the perpetrators of human rights abuses to be tried by independent and impartial courts. The UN Human Rights Committee has repeatedly emphasised that jurisdiction of military tribunals should be limited to military offences committed by military personnel. This standard is also established under the UN Principles Governing the Administration of Justice through Military Tribunals, one of the provisions of which reads: ‘the jurisdiction of military courts should be limited to offences of a strictly military nature committed by military personnel. Military courts may try persons treated as military personnel for infractions strictly related to their military status.’

In addition to the issue of impunity, concerns as to the Indonesian government’s half-hearted commitment to human rights can be seen in the way it deals with recommendations related to the protection of religious minorities in the country. In his statement during the UPR session, Indonesian Foreign Affairs Minister Marty Natalegawa claimed that ‘Indonesia attaches the highest priority to the issue of freedom of religion’ and promised that the government is determined to address religious intolerance cases ‘and ensure followers, such as Ahmadis, were able to practice their faith and belief in a good manner’. Indonesia later supported recommendations concerning freedom of religion made by New Zealand, Norway, Switzerland and Sweden, which made general recommendations concerning the need to review laws and decrees that are not in accordance with international standards concerning the freedom of religion. However, the government’s will to address this problem is cast into doubt by its unwillingness to accept a more specific recommendation made by Denmark, which called for the revision of 1965 Blasphemy Law, the 1969 and 2006 Ministerial Regulations on Building Houses of Worship and Religious Harmony, as well as the 2008 Joint Ministerial Decrees on Ahmadiyah. The ALRC is aware that the Ministerial Regulations and Decrees are exclusively under the authority of the executive branch of government. The revision or repeal of such regulations can therefore be carried out without any delay by the government, should it so decide. Furthermore, laws in Indonesia are produced jointly by the executive and the parliament. The government should therefore take the initiative and urge the parliament to revise the Blasphemy Law in line with international human rights law and standards, or repeal it altogether.

Continuing violations of the freedom of religion following the UPR review do little to convince that the Indonesian government is serious about taking steps to address the problem. In June 2012, an atheist named Alexander Aan was found guilty and sentenced to two and a half years imprisonment for disseminating religious hatred on the internet under an excessively vague provision in the controversial Electronic Information and Transaction Law. In July 2012, Tajul Muluk - a Shia leader in Sampang, East Java - was also sentenced to two years imprisonment for conducting religious blasphemy as prohibited under Article 156a point a of the Indonesian Penal Code. In the same month, the residence area of Ahmadiyah community in Cisalada, Bogor, was attacked by a mob. Several houses were reportedly damaged and four people were injured, yet there have been no legal measures taken by the authorities against the perpetrators of the attack to date.

The ALRC would like to emphasise that Indonesia’s international human rights obligations are binding on all branches of the government. The UN Human Rights Committee in its General Comment No. 31 has established that ‘The executive branch that usually represents the State Party internationally, including before the Committee, may not point to the fact that an action incompatible with the provisions of the Covenant was carried out by another branch of government as a means of seeking to relieve the State Party from responsibility

for the action and consequent incompatibility.’ Therefore, although the legal proceeding of cases related to freedom of religion falls into the scope of the judiciary’s authority, the Indonesian government cannot claim that it is not their responsibility to ensure the prosecution of religious minority groups, especially given the fact that prosecution is conducted by the Attorney General’s Office, which is part of the executive.

The ALRC is also concerned by the Indonesian Government’s rejection of key recommendations related to the improvement of the human rights situation in Papua. The ALRC welcomes the fact that Indonesia accepted several recommendations related to Papua, such as that made by New Zealand concerning the need to conduct training for security officers in Papua, and the recommendation made by France regarding the granting of access for civil society and national journalists in the region.

However, the ALRC is of the view that more comprehensive measures should be adopted by the government if it is seriously determined to address the human rights issues in Papua and West Papua. These should include: granting full access to Papuan provinces to the ICRC, as recommended by Germany; inviting the UN Special Rapporteur on the rights of indigenous peoples to Papua, as urged by Mexico; and to immediately end human rights violations by security officers and impunity in Papua, as recommended by Japan. Indonesia should also support Canada’s recommendation calling for increased protection for human rights defenders in Papua and for respect for freedom of expression in the region. Canada also recommended the review of regulations that can be used to restrict political expression, especially Articles 106 and 110 of the Penal Code, and to release the political prisoners in Papua. The United States similarly called for the halt of prosecutions under Articles 106 and 110 of the Penal Code and the re-evaluation of convictions as well as sentences of individuals charged under such articles. The recommendation made by France regarding full and free access to the Papuan provinces for foreign journalists should also enjoy the support of the Indonesian government.

The ALRC notes with concern that there has been an escalation of violence in Papua after the UPR session last May, despite the government having been criticised for its human rights record in the region. The violent dispersal of a peaceful demonstration by Komite Nasional Papua Barat (West Papua National Committee, KNPB), the shooting of KNPB’s Secretary General, Mako Tabuni, and the persecution of KNPB’s activists are a few examples of human rights abuses took place after the UPR session.

Given the above, the ALRC requests the intervention of the members and observers of the Human Rights Council, notably the governments involved in making the key recommendations cited above during Indonesia’s UPR, to urge the Indonesian Government to:

- Demonstrate its full commitment to combat impunity by supporting the recommendation proposed by Switzerland concerning the need to try members of the military that are accused of abuses against prisoners in civilian courts and therefore by committing to revise Law No. 31 Year 1997 on Military Courts. The revision of the law should ensure that military officers who commit human rights abuses and other crimes which do not have any military characteristics are tried in independent civilian criminal courts.
- Take concrete steps to end the persecution of and discrimination against religious minority groups, notably by accepting and committing to fully implement the recommendation made by Denmark to repeal the 1965 Blasphemy Law as well as to revise the 1969 and 2006 Ministerial Regulations on Building Houses of Worship and Religious Harmony, and the 2008 Joint Ministerial Decrees on Ahmadiyah. The Indonesian Government should also take legal measures to bring those who persecute and discriminate against members of religious minority groups to justice.

- Adopt a set of comprehensive measures to address the issue of human rights violations in Papua, including full access for national and international journalists, the ICRC and the UN Special Procedures to the Papuan provinces. Protection of human rights defenders should be guaranteed and undue prosecutions against them halted. Any regulations that disproportionately restrict freedom of expression such as Articles 106 and 110 of the Penal Code, should be revoked, and convictions and punishments of individuals under these should be re-evaluated.
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