



**Economic and Social  
Council**

Distr.  
GENERAL

E/CN.4/2005/NGO/64  
11 February 2005

ENGLISH ONLY

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COMMISSION ON HUMAN RIGHTS  
Sixty-first session  
Item 11(a) of the provisional agenda

**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.

[26 January 2005]

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

## **TORTURE AND ZERO RULE OF LAW IN NEPAL**

1. In a 124-page report released this January 2005, the Asian Legal Resource Centre (ALRC) and the Kathmandu-based Advocacy Forum have described how the fundamental rights of people in Nepal have been suspended as institutions for the rule of law have ceased to function. In other statements made to the Commission this year, the ALRC has described the zero rule of law in Nepal, and detailed incidents of forced disappearance, extrajudicial killing and violence against women there. In this submission, it concentrates on the widespread practice of torture by the security forces in Nepal, despite the fact that the Government of Nepal is a party to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

2. The practice of torture by the security forces in Nepal is intrinsically connected to other abuses there. Torture victims are invariably killed or disappeared in order to conceal the abuse. Those persons not killed are usually kept in detention until their injuries pass and evidence is lost. Those kept in military barracks for extended periods are then sent to the police, to get an arrest on record. However, most are not released. The police obtain further detention orders under draconian laws such as the Public Security Act and the Terrorists and Disruptive Activities (Control and Punishment) Ordinance, after which victims may be kept under police custody, sent to prison, or handed back to the army.

3. Judicial officers in Nepal are increasingly unwilling to accept and record complaints of torture, even where victims brought forward for 'processing' have clear physical injuries caused by abuse while in custody. Although these officers are duty-bound to make enquiries and keep records on such abuses, they invariably deign to take responsibility. In other cases, judicial officers may be prepared to take complaints, but it is the victim who fails to speak out due to fear of the very real consequences. The immediate result is that a person in dire need of medical attention does not get help. The greater effect is that at every step all basic principles of the rule of law – civilian oversight, judicial review, and constitutional and international norms – are abandoned.

4. Reports of the most brutal forms of torture come from army barracks, where security personnel operate with absolute impunity. The case of Ruk Prasad Bhurtal a 40-year-old civil servant residing in Ravibhawan, Kathmandu, is indicative. On 16 March 2004, Ruk was walking on the road when around eight soldiers in plain clothes forced him into a taxi. He was taken to a barracks, where he was blindfolded and led into a room where around four personnel beat him and kicked him on his legs, back and thighs for about half an hour. On March 21 they repeated the torture, kicking him in turns for a period of one hour. The blows he received on the back of his head caused his nose to bleed. They also hit his back and stamped heavily on his thighs while he lay prone. He fell unconscious and woke the next day to find that the blood pouring from his nose had caused his face to stick to the carpet. A soldier came in and brutally tore his face from the coarse material. Ruk was brought to the Hanumandhoka District Police Office in Kathmandu on 15 April 2004 and produced before the Appeals Court of Lalitpur the next day charged with murder under the Terrorist and Disruptive Activities (Control and Punishment) Ordinance. He was remanded in Nakkhu Prison

after the hearing in his case on May 21. The torture has left scars all over his body, particularly his legs. The constant beatings to his head also mean that he is having trouble remembering everything that happened to him in detention, and even thinking at all.

5. The army is also reported to favour the use of electrocution during torture. Narayan Nepali, a 24-year-old driver from Bhaktapur district, was electrocuted after being arrested by soldiers around 3am on 31 March 2004 while sleeping in a guesthouse in Thamel, Kathmandu. He was taken to the Jagadal Barracks, where the following day he was brought to a dark room, blindfolded him and tortured with electric shocks on his forehead for half an hour. Soldiers then handcuffed his hands behind his back and beat him with plastic pipes over his entire body, and especially on his back, for another half an hour, until he fell unconscious. After four days, two soldiers again beat his entire body with a plastic pipe and a bamboo stick for about half an hour. He was taken to the District Police Office in Kathmandu on April 23, and produced to the District Court of Kathmandu on April 26 on drug charges.

6. Mandhwoj Jimba, a 26-year-old company staff person residing in Balaju was also electrocuted at the Jagadal Barracks after being arrested on 5 June 2004. According to Mandhwoj, he was brought blindfolded to the barracks and kept that way for the roughly 35 days he was illegally detained there. On the first day, he was beaten on his thighs, back, calves and soles of his feet with batons and boots for about two hours. This was followed with a few rounds of electric shocks. The beatings continued routinely for the time he was in the barracks, and he was not fed until the third day. During the beatings he was asked about his involvement in robberies at Chhetrapati and other places. When he denied the charges, he was beaten again. Finally Mandhwoj was transferred to the District Police Office of Hanumandhoka on 9 July 2004 and subsequently produced to the Kathmandu District Court on a charge of robbery.

7. The use, or threat to use, electric torture is not confined to army personnel. A person detained at the Hanumandhoka District Police Office in May 2004, who for security reasons cannot be identified, alleges that while being beaten with plastic pipes he was threatened that if he did not confess he would be electrocuted until he became deranged. Others whose stories also cannot be told publicly have attested to the routine use of electric shocks interchanged with beatings over many days leading to intense physical and psychological damage.

8. One characteristic of these cases is that they involve army personnel seemingly engaged in inquiries over conventional criminal cases – not those of concern to national security. This speaks to the deliberate confusion created over the functions of different agencies in Nepal, described by the ALRC in its statement to the Commission on the zero rule of law in the country. Hyango Lama, the 50-year-old owner of the World Peace Hotel in Thamel, Kathmandu, was another victim of this breakdown in discrete functions and spread of torture to all forms of inquiries. After being arrested at the start of April 2004 he was brought to the Jagadal Barracks on drug trafficking charges. He was blindfolded and kicked all over his body then forced to lie on the floor while his hands and legs were bound. The soldiers again started

beating him on the soles of his feet with a pipe or stick for about half an hour, occasionally crushing his genitals with their boots. The following day, he was taken to a dark room, hung upside down and whipped for about two hours on his legs, chest and back. After getting a confession, the soldiers handed him over to the District Police Office, Hanumandhoka. In total, 24 days had passed. The police produced him in court on April 27 for remand.

9. When a lawyer from Advocacy Forum visited Hyango Lama while in custody he noted that the victim's health condition was critical. Due to the beating on his pelvis and genitals he had not urinated for a week. His left cheek was so swollen that he was unable to open his mouth even to consume medicine. The police took him to Bir Hospital for his medical treatment twice, from where he was referred to the Teaching Hospital. The x-rays conducted there revealed that his left thumb was fractured and he had a renal problem due to the urinary blockage.

10. Ganesh Kshetri, a 44-year-old resident of Kathmandu-16 was the victim of a similarly brutal assault, but by the police rather than military. After being arrested at his house around 7pm on 27 August 2004 he was taken to the Ward Police Office, Balaju. The next morning Sub Inspector Uttam K C started to beat him brutally with a pole, kicking him all over his body without asking anything. Other officers joined in, and he soon fell unconscious. When he was woken up, Ganesh saw his blood around the room and he was still bleeding at the nose. At around 1pm the police called his father to the station to take his son. When the father asked why his son was seriously injured, the police said that he had fainted and fell down because of illness. The police released Ganesh on the condition of a 450-rupee fine saying he was reported to be a drug addict so they wanted to investigate him. They also threatened him and his father not to report anything to the media otherwise they would torture him again in the same way.

11. Ganesh was treated at hospital from August 29 to 31. His nose and ribs were broken and he lost two teeth due to the beatings. The doctor put five stitches in his nose. His face was so swollen that he could not recognise himself. He also had dried blood in his eyes, and is experiencing ongoing severe back pains. According to his relatives, Ganesh is suffering serious mental problems because of the torture. He has strong headaches and sometimes suddenly forgets where he is and what he is doing. He always tries to hide himself because of fear; his face has been so damaged that he tries to avoid seeing himself.

12. Nepal is a state party to the International Covenant on Civil and Political Rights, its optional protocol, and the Convention against Torture. Article 14(4) of its constitution prohibits any form of torture. However, the zero rule of law in the country has meant that none of these commitments have any practical relevance. Similarly, the Torture Compensation Act of 1996 is not implemented, and under any circumstances is a highly flawed piece of legislation as its ostensible purpose is to compensate victims, not punish perpetrators as required by the Convention. However, the amount of compensation provided for under the act is meagre. Nor does it contain any provision for protection of torture victims and witnesses; on the contrary, it allows for the state to provide legal counsel for the accused state agents.

13. In light of the above circumstances, the Asian Legal Resource Centre urges that
- a. The Commission should pay special attention to cases of torture by the security forces in Nepal, in particular through its Special Rapporteur on the question of torture and Committee against Torture, including those identified above.
  - b. The Commission should create an international alert on the human rights situation in Nepal, whereby the situation in the country can be monitored constantly and reported upon to other agencies to permit a rapid response.
  - c. Neighbouring states and key international agencies, such as India and the European Union respectively, should raise the deteriorating security situation in the country as a key issue for discussion at the Security Council and in other relevant gatherings, with a view to active and speedy intervention.
  - d. International humanitarian agencies must reconsider their current activities with a view to keeping abreast of the rapidly worsening conditions in Nepal and concentrating on necessary steps for protection of fundamental rights there.

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