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

**Written statement* submitted by the Asian Legal Resource Center (ALRC),
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.

[13 February 2006]

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

WIDESPREAD ARBITRARY DETENTION AND SYSTEMATIC TORTURE CONTINUE UNABATED IN NEPAL

1. In a statement to the Commission in 2005 the Asian Legal Resource Centre spoke of the endemic torture and zero rule of law in Nepal (E/CN.4/2005/NGO/64). Following a visit in September 2005 the Special Rapporteur on the question of torture said that torture is systematic in Nepal. He identified a "prevailing culture of impunity" on torture, and received "repeated and disturbingly frank admissions by senior police and military officials that torture was acceptable in some instances, and was indeed systematically practiced".

2. The enabling factors for the routine use of torture in Nepal include: the fact that torture has not been criminalised in accordance with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); continued zero rule of law in the country and totally defunct state institutions; the lack of effective civilian control over the military; rampant impunity; and, a complete lack of avenues for victims to obtain redress.

3. The armed conflict between the army and its Maoist opponents continues to be used by the Government of Nepal as justification for the litany of abuses perpetrated by the police and armed forces, including the widespread use of arbitrary detention and torture. Between January 15 and the start of February 2006 alone widespread peaceful demonstrations by opposition political parties have resulted in shutdowns of basic communications and bans on public assembly, with hundreds routinely being arrested and kept without charge under 90-day "preventive detention" orders. None are brought before the courts. Many risk serious ill-treatment and torture while in custody.

4. Since November 2001, the Government of Nepal has imposed anti-terrorist legislation that gives greater latitude to the security forces to arrest and detain people. Currently in force is the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO), the successor to the Terrorist and Disruptive Activities (Control and Punishment) Act (TADA). Section 9 of the TADO provides that if there are grounds to believe that a person might commit terrorist activities then he or she can be detained for a maximum period of one year without judicial scrutiny.

5. Most persons taken into detention in Nepal are held without access to lawyers, medical services and family members. Of around 5000 detainees interviewed by ALRC sources, some 80 per cent have stated that they were not brought before a court within the 24-hour period prescribed by the Constitution of Nepal. A similar proportion reports having been subjected to torture and ill-treatment while in custody, including: lengthy blindfolding and handcuffing; beatings, including of the genitals; whipping with sticks and pipes on the soles of the feet, legs and back; strangulation; death threats, including placing a gun to the head; electrocution, in particular via the ears; and hanging upside down and repeatedly being dunked under water. The torture is severe to the point that many victims repeatedly lose consciousness.

6. In every recorded case of arrest and detention by the army the interviewed victims have claimed to have been tortured severely. Although the army has no express constitutional right to arrest and detain civilians it has continued to do so with absolute impunity and its officers have openly lied to the courts, including the Supreme Court, that they are not holding persons whose cases are the subject of habeas corpus writs. The army also operates with the police, with persons being arrested by the police being handed over to army barracks for detention and torture, after which they may be returned to the police. And while military courts claim to be investigating allegations of torture of civilians by the armed forces the lack of transparency and uncertain results of such investigations continue to foster impunity in Nepal. Detainees who are released from army barracks are routinely kept under surveillance. In most cases they are threatened with further arrest, torture or even death if they lodge a complaint about what happened to them in the courts or elsewhere.

7. The use of torture is also endemic and systematic within police detention facilities. In a number of recorded cases, police have reportedly taken bribes to release criminals, after which they torture substitutes to extract false confessions. Most victims are poor and unrepresented. They are detained illegally and incommunicado until the physical traces of torture have receded or disappeared, after which they are charged on the basis of the confessions extracted under torture. Meanwhile, the police falsify records to show that the detainees were brought into custody within only 24 hours prior to coming before the courts, which turn a blind eye in order to maintain the semblance of due process.

8. The systematic, widespread use of torture in Nepal is due in large part to the lack of credible recordkeeping on arrests and detention. The same applies regarding medical records that could be used in courts to prove physical and psychological injuries suffered while in custody. Medical practitioners refuse to give medical assistance and also to provide records of medical treatment, since they are also under the threat of being falsely accused of helping anti-national activities. To illustrate, Maiya Tamang was arrested at her house on 7 November 2004 and detained at the Boudha police station for two days, where she was severely beaten by police officers using plastic pipes on her thighs and calves. She was subsequently transferred to Kalimati police station, where she was held for another two days. Here she was also beaten for around half an hour with plastic pipes. Maiya was then transferred to the district police office in Hanumandhoka. On November 11, she was presented before court. Human rights monitors were finally able to gain access to her in the district police office on November 16, where they noted contusions and blue scars on her thighs and calves. An application for her to receive a medical examination was filed in the district court in Kathmandu. On December 27, a compensation case was filed in the same court. On 14 April 2005 the court decided that as the police report showed that she was arrested only on November 11 then there was no proof that she was in detention during the time that she claims to have been tortured. The case was then closed. Many other cases have been treated similarly.

9. The Torture Compensation Act of 1996 has also failed to address torture in Nepal in any significant way. Despite the Constitution of Nepal having prohibited torture and the government having ascribed to the Convention against Torture, the Torture Compensation Act falls far short of these standards. It does not define torture as a crime. The liability cast upon the perpetrator is limited to providing damages. In the absence of any other law to punish the perpetrators of

torture, they enjoy absolute impunity. Victims are bereft of avenues for firm legal action against alleged perpetrators. Other limitations, such as requiring that a complaint be lodged within 35 days of an act of torture, further impede the prospects for complainants under the law. The amount of compensation envisaged by the act and manner of its realisation is also grossly inadequate. A recently promulgated ordinance on 'communication' provides for a higher fine to be levied against editors and publishers found to be violating that act by criticising government agents or agencies than the amount levied against a perpetrator of torture.

10. The Asian Legal Resource Centre urges the Commission to convey to the Government of Nepal in the strongest possible terms a message that its widespread, systematic and intentional use of arbitrary detention and torture can no longer be tolerated. The government must without delay

- a. Denounce, in unambiguous and public language, the use of torture.
- b. Establish a public and countrywide register of persons in detention.
- c. Enact a law criminalising torture and providing for proper compensation and rehabilitation of victims.
- d. Enable the re-establishment of multiparty democracy.
- e. Comply with the recommendations made by various United Nations special procedures and treaty bodies.
