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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:
DISAPPEARANCES AND SUMMARY EXECUTIONS**

**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).

MASS ABDUCTIONS AND KILLING SPREE CONTINUE UNABATED IN NEPAL

1. Nepal is now globally unrivalled as having the worst record for forced disappearances. Despite international condemnation, damning reports and a long list of specific recommendations on the part of the United Nations special procedures, notably the Working Group on involuntary or enforced disappearances, no credible action has been taken by the Government of Nepal to address this tragedy.

2. To succeed in a policy of mass disappearances of persons requires the like disappearance of records. Documents are destroyed, or not written in the first place. The Asian Legal Resource Centre (ALRC) can state unequivocally that this is what is happening in Nepal today, in order to get rid of alleged Maoists or persons "having links with Maoists". Whereas official reports number disappearances in the thousands, in reality these are only those cases where relatives of the missing have had the courage to report their loss and seek some avenue through which to register complaints. Most cases are never documented and the true number remains a mystery. Many human rights defenders who had been documenting those few cases earlier have themselves been forced into hiding or have fled the country altogether.

3. After visiting Nepal in December 2004 the Working Group on enforced or involuntary disappearances noted that:

"The phenomenon of disappearance in Nepal today is widespread; its use by both the Maoist insurgents and the Nepalese security forces is arbitrary. Perpetrators are shielded by political and legal impunity. Detailed reports that were received from many rural areas suggest that the phenomenon of disappearances is under-acknowledged. We heard consistently from across the country that a culture of silence has sprung up, with villagers too fearful to report disappearances for fear of reprisal from the security forces or the Maoist insurgents. In many cases, relatives who go to army barracks to enquire into the fate of their family members later find themselves caught up in harsh interrogations. Many families have seen multiple disappearances."

4. In response, the Government of Nepal has made some symbolic gestures such as uncovering the whereabouts of a few hundred people, without any intention of holding the perpetrators accountable. Meanwhile, it persists in permitting casual killings to go on after casual inquiries and casual arrests, which the Nepalese security forces now contrive to employ daily.

5. It is also clear from international experience that a policy to allow mass disappearances is accompanied by tacit approval at the highest levels of state for the use of massive torture, as is the case in Nepal and on which the ALRC has submitted a separate statement to the Commission. With planned widespread disappearances, new rules apply in all areas of business. In many instances, disappearances are a necessary consequence after torture. Either the person dies during torture or the wounds caused will incriminate the perpetrators if the person is released. Persons arrested by mistake cannot be released for fear of compromising some aspect of a security operation. They will not return home.

6. The imposition of anti-terrorist legislation, entitled the Terrorist and Disruptive Activities (Control and Punishment) Ordinance (TADO), has allowed the authorities to detain people for a period of one year without judicial scrutiny, if there are grounds to believe that the person might commit terrorist activities if not prevented from doing so. Lengthy incommunicado detention is a breeding ground for forced disappearance and extrajudicial killing. The failure of the judicial

system, notably concerning writs of habeas corpus, is another. In Nepal, the courts are incapable of dealing with cases of disappearances: writs of habeas corpus are routinely quashed because it cannot be proved that the subjects of the writs are in custody.

7. There is no specific provision in the Nepalese Penal Code making enforced or involuntary disappearance a crime. This enables the practice to be perpetrated without hindrance. There are no legal remedies for forced disappearance and therefore there is little that human rights organisations, lawyers or others seeking justice and redress can do to assist a victim or family. There is a complete lack of effective, thorough and impartial investigations into cases of forced disappearance, despite the international pressure on Nepal to tackle this problem.

8. Extrajudicial executions are also continuing with impunity in Nepal. The ongoing conflict is used as a pretext for the summary killing of many innocent persons. Such cases are rarely investigated and the perpetrators are not brought to justice. As is the case with forced disappearance, there is no protection for witnesses or the family members of the victims, which proves to be a significant barrier in seeking justice of any kind.

9. The murder of 15-year-old Maina Sunuwar is illustrative. Maina was arrested by a group of around 15 Royal Nepalese Army personnel at her home in Kharelthok, Kavre, on 17 February 2004. The soldiers were looking for Maina's mother, Devi Sunuwar, who had reportedly witnessed the gang rape and killing of her niece by security personnel earlier the same month. Maina's family members attempted to establish her whereabouts, and visited the Lamidada army barracks, the Dhulikhel Police Office and Shanti Gate army barracks, but officials repeatedly denied that she was being detained therein. Witnesses, however, alleged that two girls had been brought into the Shanti Gate army camp on the morning of February 17, in a vehicle reportedly driven by an officer named Captain Niranjan. Reports indicate that inside the camp Maina was blindfolded, tied to trees and beaten for hours. On 21 April 2004 a national weekly published a letter, allegedly signed by members of the army, in which it is claimed that Maina was tortured and killed by electric shocks applied to her breasts. The army has officially claimed that Maina was killed while trying to escape custody. The police also claim to have conducted a postmortem examination and then handed Maina's body over to her family. But Maina's family has not received her body and there is absolutely no evidence that a postmortem examination was conducted. Her family members have been forced into hiding due to threats to their lives, as the army continues to search for her mother, Devi Sunuwar, in particular.

10. In Maina's case, the security forces made numerous conflicting claims as to her whereabouts and personal integrity, ranging from denying her detention outright to her having been killed in an "encounter" with security personnel. In October 2005 the army stated publicly that Maina had been found dead in an unspecified army barracks and that three officers--Colonel Babi Khatri, Captain Amit Pun and Captain Sunil Adhikary--had been brought before a military court martial, found guilty of improper conduct in relation to her killing, and sentenced to between six months and two years in detention. The question of improper conduct reportedly related to the fact that the officers did not conduct a postmortem examination or hand the body over to the victim's family as earlier stated. However, in cases of custodial deaths, the burden of proof is on the authorities to show that the death was not related to abuses on the part of state agents. In this case, the cause and the responsibility for Maina's death have not been addressed. International and local pressure for a full investigation to be launched and a complaint to be lodged over Maina's death has so far been unsuccessful. The police have reportedly refused to record a complaint. The local chief district officer is said to have offered to help Maina's mother to get

compensation while warning against making further complaints as this would risk retaliation by the security forces. This, unfortunately, is but one case in many.

11. The Asian Legal Resource Centre calls upon the Commission to denounce in the strongest possible terms the continuing forced disappearances and extrajudicial killings in Nepal. In its opinion, the actions of the Government of Nepal and the King of Nepal at this time constitute crimes against humanity. It urges that all possible measures be commenced without delay through all available United Nations mechanisms to address the disaster that is continuing to unfold in Nepal.

12. In this respect, the ALRC voices support for the representation of the Office of the High Commissioner on Human Rights in Nepal, notably concerning its accessing of places of detention. At the same time, it urges the office in Nepal to fulfill its mandate by ensuring that it not only documents violations of human rights but also uses the material it has gathered to push for judicial enquiries and trials in order to bring some alleged perpetrators to account and thereby begin to put the breaks on the unremitting abduction and killing spree to which the people of Nepal are being made victim.
