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

**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]

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

ENFORCED DISAPPEARANCES AND ZERO RULE OF LAW IN NEPAL

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 extrajudicial killing, torture, and violence against women and children there. In this submission, it concentrates on the persistent practice of committing forced disappearances by the security forces in Nepal.

In the last few years, the most commonly used method for disposal of unwanted persons by the security forces in Nepal has been through disappearance. Although in recent times as more attention has been directed towards the massive number of missing (presumed dead) in Nepal the security forces have turned increasingly to extrajudicial killings, forced disappearances persist, and as yet there has been no effective accounting for those lost through this practice.

Whereas in official reports disappearances number in the thousands, in reality these are only those cases where relatives of the missing had the courage to report their loss and found some avenue through which to register a complaint. There is at present no way to assess the true number of victims. However, the Working Group on enforced and involuntary disappearances recently described Nepal as among the worst countries for human security in the world at present. In response the Government of Nepal made some symbolic gestures, uncovering the whereabouts of a few hundred people, without any action to hold the perpetrators accountable and uphold the rule of law.

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, extrajudicial killing and other gross abuses, described by the ALRC in accompanying statements 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.

The torture and disappearance of 15-year-old Maina Sunuwar speaks to how the Nepalese security forces apply these principles without compromise. On 17 February 2004 about 15 soldiers of the Royal Nepalese Army came to the house of Devi Sunuwar, Maina's mother, who had witnessed the gang rape and killing of villagers by security personnel during the same month. When they discovered that Devi was not there, they arrested Maina instead. Although her father begged the men not to arrest his daughter, they ordered him to bring his wife to the Lamidada Barracks if he wanted his daughter back. He immediately went to get his wife, and reported the incident to other relatives and also teachers at Maina's school.

The next day, February 18, Maina's parents went to Lamidada Barracks together with the school principal, the Village Development Committee chairman, and about 25 other people from the same village. However, the officers there denied having Maina. When they went to the Dhulikhel Police Office and Shanti Gate barracks on February 20, all also denied the arrest and detention of Maina. However, people near the army camp alleged that two girls had been brought into the camp on the morning of February 17 in a vehicle driven by a Captain Niranjan. When pressed, the military at the camp denied this.

However, independent enquiries found that the second girl seen in the car was Bimala B K, from the same village. Bimala is now in prison, where a lawyer from Advocacy Forum was able to meet with her. She stated that she was asked by the soldiers to show Maina Sunuwar's house, after which they were both taken to the barracks, where they were blindfolded, tied to trees and beaten for hours before being separated.

On 21 April 2004 a national weekly published a letter reportedly signed by some soldiers to the effect that Maina was tortured and killed as a result of electric shocks applied to her breasts. Embassies and international organisations based in Kathmandu were informed about the case and made their own enquiries, to which the Royal Nepalese Army is reported to have replied that Maina was killed while trying to escape custody. The reply also claimed that the police had done a post mortem and the body had been handed over to the family. Despite these claims, there has been no evidence of a post mortem being done, and nor has the family has received the body or any information about Maina.

Meanwhile, Devi Sunuwar continues to face serious threats. She has received news that the security forces have been searching for her, and the family has had to leave their village out of fears for her safety. She has been appealing for protection for herself and her family, and to be told of what has happened to her daughter.

Although Maina's disappearance occurred because of attempts by the army to conceal gross abuses witnessed by her mother, in a climate of total impunity many persons vanish for trivial reasons. Likha Ram Tharu, 21, was the victim of a petty act of revenge by an army officer. On 12 July 2002, he went to the Pritana Headquarters for a physical fitness checkup prior to recruitment. At the time he was a grade 9 student in Bardiya. As he was standing in queue, a Captain Ramesh, in whose house at Nepalgunj he had worked previously, pulled him out. According to Likha Ram's father, he had quit working for Captain Ramesh because the officer used to come back home drunk and abuse him. The captain then drove Likha Ram to a barracks in Chisapani, where he was kept in detention.

When Likha Ram's father made enquiries at the barracks, Captain Ramesh denied having his son. However, another young man released from custody on August 3 reported having been brutally tortured, restrained and held together with Likha Ram for three days. He stated that Captain Ramesh was also torturing Likha Ram, who had pleaded that his family be told of what was happening to him.

A habeas corpus writ petition was filed in the Appeals Court, Nepalgunj, for Likha Ram Tharu, but the court rejected it in an order issued by a bench consisting of Justices Dhruba Nath Upadhaya and Komal Nath Sharma on 3 June 2003. Since then, Likha Ram's whereabouts have remained unknown. No action has been taken against Captain Ramesh.

As noted in other statements to the Commission, the grim equation upon which the killings and disappearances in Nepal are premised is that as the Maoists do so must the military, as the only means to eliminate insurgency. This equation is not derived from law or any standards of civility. It is the mathematics of barbarity. The state cannot abdicate its obligations to its citizens simply because it is engaged in a fight with a formidable enemy who is not fight according to the civilised rules. There is no legitimacy to the tenet that if the state's opponent engages in casual killings and bloodshed, the state is likewise free to do the same. Even when fighting an insurgency the role of the state is to protect the rights and interests of its citizens. In Nepal, however, all parts of the state apparatus--the king, parliament, judiciary, police and army--have abandoned this latter principle in favour of the former illegitimate one. In so doing the state in Nepal too has ceased to have any legitimacy.

The Asian Legal Resource Centre has stressed that under the circumstances it is very difficult to come up with immediate effective recommendations to deal with the situation in Nepal as it stands at present. In a separate submission to the sixty-first session of the

Commission, the ALRC has expressed its deep concerns over the possibility of making meaningful suggestions to the international community when a country has reached the point of zero rule of law. Nepal today is a glaring example of this problem. So it is with this caveat that the Asian Legal Resource Centre urges that

- a. The Commission should pay continued attention to the persistent and unresolved practice of mass forced disappearances committed by the security forces in Nepal, in particular through its Working Group on enforced and involuntary disappearances.
- 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.
