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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:
INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE,
IMPUNITY**

**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).

ZERO RULE OF LAW IN NEPAL

1. Although land-locked Nepal escaped the destruction of the tragic Indian Ocean tsunami this December 2004, the country has instead been hit by a man-made tsunami that has caused at least as much damage. Yet, whereas the international community has commendably sprung into action to address the needs of the millions affected by the natural disaster, it has all but ignored this man-made crisis. The latter is not only causing death and mayhem but also ruining all the basic institutions for the functioning of a country: its courts, law-enforcement agencies, and bureaucracy.
2. 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 detailed incidents of torture, forced disappearance, extrajudicial killing and violence against women in Nepal. In this submission, it concentrates on the zero rule of law there as the cause of these gross violations of human rights.
3. A regime for human rights protection in Nepal no longer exists because the legal system has ceased to function. In terms of basic human rights protection, the practice of law in Nepal today is futile. This is due mostly to the deliberate withdrawal of cooperation by the Royal Nepalese Army and other security agencies, and concomitant threats directed towards legal personnel alongside demonstrated disdain for the institution as a whole.
4. At the same time, the Government of Nepal has introduced draconian legislation, most recently the Terrorist and Disruptive Activities (Control and Punishment) Ordinance 2061, which effectively surrenders its authority to the security forces, and gives a green signal to continue with arbitrary detention, torture, disappearances, and extrajudicial and summary executions.
5. The state security forces committing most abuses are under the Joint Command of the Royal Nepalese Army, which includes the Armed Police Force and regular police. As the police are now organised along military lines, they have ceased to engage in ordinary law and order functions in accordance with instructions from the courts and instead operate according to the directives of the military.
6. The case of Jhurri Teli, a 16-year-old resident of Banke district arrested by plain clothes security forces at about 7am on 9 September 2004 speaks to how the police and administration in Nepal now work on behalf of the army. After being beaten and interrogated, Jhurri was taken to the Western Pritana Army Headquarters, where he was illegally detained for seven days while kept blindfolded and restrained. He was then delivered to the District Police Office, Banke where police forced him to sign a statement that he was not allowed to read. At 10am on September 16, he was taken to the Banke Prison and on the same day received a preventive detention order signed by the Deputy of the District Administration Office under the Public Security Act.

7. Jhurri's family filed a writ of habeas corpus at the Appeals Court, Nepalgunj on September 23. On November 28, the Appeals Court found that Jhurri's detention was illegal and issued a release order. The family went to the prison along with lawyers and human rights defenders on November 29, but a team of policemen came in a van and rearrested him as he was released; at time of writing his whereabouts remain unknown.

8. The irony that lies in this contempt for the courts on the part of the security forces is that it was the king of Nepal who precipitated the rot in the system in order to ensure that these same agencies enjoy impunity for their actions. The effect was both to destroy the possibility that institutions of justice may operate effectively, and guarantee continued insurgency. By dissolving parliament, he further removed literally all the checks and balances built into the constitution, in accordance with international law, intended to protect the rights of citizens.

9. The net result is that citizens of Nepal have been rendered powerless to stop abuses committed against them. For their part, the courts have all but given up trying to demonstrate a degree of authority. The non-attempt to exercise authority epitomises the collapse of the country's judiciary. No greater admission of failure can be made than to not even put on a show of legitimacy. While lawyers doggedly take cases to the courts on behalf of desperate family members, seeking some way, any way, to protect their loved ones, courts are either unwilling or incapable of acting on their behalf.

10. When a habeas corpus writ for a disappeared person reaches a high court in Nepal, it calls for records of arrest. In most cases the authorities reply that the records do not exist. The conclusion is that the person was not arrested. The court dismisses the application on the ground that there is no evidence the person is in custody. But even where the lawyers and family of the missing person make heroic efforts to prove that the person is in detention, the court does nothing to protect the evidence, the victim, the lawyer representing them or the family members. The unflagging efforts of some lawyers and rights groups to help their clients put them and others in grave peril before a system that has completely surrendered its independence by refusing to entertain any matter relating to the security forces and their operations. In the end, the courts' reluctance to entertain habeas corpus writs for disappeared persons speaks to the wider policy approving of forced disappearances and concomitant gross human rights abuses. Where court orders are issued they are invariably ignored or otherwise violated by the security forces.

11. The case of Jivan Shrestha, a 38-year-old arrested at his Kathmandu shop on 15 September 2004 by army personnel, is indicative. Jivan and a friend were kept at Singhnath Barracks for six days before being produced before the Chief District Officer, Bhaktapur, who ordered him detained under the Terrorist and Disruptive Activities (Control and Punishment) Ordinance 2001. Jivan was subsequently sent to the Central Jail, Kathmandu. There he told lawyers from Advocacy Forum that he had been tortured and forced to confess to being a Maoist. A habeas corpus writ was filed on his behalf on October 7. On November 16, the Supreme Court ordered that he be released. The same afternoon the jail authorities freed him, but only after his wife had signed a document that his lawyer was not permitted to see. The police immediately rearrested him, reportedly on army orders. He was subsequently transferred back to the Singhnath Barracks.

12. On November 18, another writ of habeas corpus was filed, and Jivan was released on November 24 on condition of the army that he must report to the barracks on December 15. He dutifully went and was taken back into custody. When his wife came repeatedly to beg for his release, she was threatened, and blamed for filing habeas corpus writs and telling human rights groups about what had happened to her husband. Finally, Jivan was again released, but only on the condition that he again report to the barracks, this time with written proof that the writs issued against the authorities had been withdrawn.

13. In a similar case, soldiers arrested Jimdar Kewat, a 16-year-old resident of Banke district and his 50-year-old father Keshu Ram Kewat on 15 April 2004. At the Fultekra Barracks they were kept blindfolded for four days and were beaten on their backs and soles of their feet for about 10 minutes each day. Army personnel also poured water down their noses and told them to provide information related to the Maoists, about which they did not know anything. For one-and-a-half months they were kept in illegal detention there. On May 31, the army handed the two over to the District Police Office, Banke and they were given a three-month preventive detention order under the Public Security Act, signed by the Chief District Officer, on the same day. They were then taken to the Central Prison, Banke.

14. On July 1, a writ of habeas corpus was filed and on September 19 the court ordered Jimdar and Keshu Ram released. However, the prison authorities refused to release them, saying that they had not received the court order. When lawyers and family came back the next day, they learned that the two had been taken out of the prison and immediately rearrested by a team of security forces. On September 20, lawyers from Advocacy Forum found the two in Wada Police Office, Nepalgunj. When they tried to intervene, another preventive detention order was issued to keep them in detention. At time of writing, they have not been released.

15. The non-functioning of agencies intended to uphold the rule of law and basic human rights is no accident. In Nepal it has been achieved through deliberate steps taken by the government to allow security forces a free hand in pursuing counter-insurgency objectives. The weakening of controls over the army and police will result in far greater atrocities than anything envisaged by the government, and far beyond its control.

16. While the United Nations and international community are now alerted to what is happening in Nepal, there is as yet little understanding of the nature and scale of the unfolding crisis. Powerful neighbours, particularly India, lack clear strategies to address the daily worsening events. Nor do they appear to be taking steps to develop any. Without a quick awakening, it is quite likely that the world will watch another tragedy of Cambodian proportions unfold in Nepal in the not too distant future.

17. All persons of goodwill within Nepal and outside have a legitimate right to intervene in any way possible and demand that the gross violations of human rights by the security forces there come to an end. International organisations, and particularly strong neighbours like India, must bring all their influence towards ending the extreme violence enveloping the country. It is neither in the interests of the people of Nepal nor the international community that the United Nations and concerned governments should maintain a disinterested silence and expect that things will sort themselves out.

18. Nepal is rare among countries in Asia in that it is a party to most of the important international human rights conventions and their attendant bodies. Yet the number and intensity of violations within its borders now outstrip virtually all other territories in the region. Ironically, very few individual complaints are ever brought from Nepal to the United Nations bodies to which it is answerable.

19. The Government of Nepal must be made to understand that it has no option other than to bring its security forces under control. The blanket of impunity covering the army and police must be removed without delay. However, it cannot be presumed that the government of Nepal is capable of making the necessary decisions to do this of its own accord: every piece of evidence suggests the opposite. International intervention must therefore amount to more than the posting of some advisers to the government.

20. Accordingly, the Asian Legal Resource Centre urges the Commission to take serious initiatives directed towards ending the practices of large-scale disappearances, killings and torture in Nepal, and ensuring thorough investigations of those atrocities that have already been committed. Treaty bodies in particular cannot afford to sit idly by drafting finely worded statements. In the face of overwhelming chaos in Nepal, the ALRC urges all mechanisms of the Commission to put their means for effective monitoring and intervention to the test.
