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**EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS:
ADAPTION AND STRENGTHENING OF THE UNITED NATIONS MACHINERY FOR
HUMAN RIGHTS**

**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).

What can be done when nothing can be done?

1. The Asian Legal Resource Centre (ALRC) has, in a large number of statements to the sixty-first session of the Commission, expressed deep concern over the extraordinary level of violence currently gripping Nepal. It is a concern shared and expressed by all like-minded members of the international community, in particular, other human rights organisations, the Commission, and the Secretary-General himself.

2. But the question that must now be asked by all these concerned parties is what can be done when nothing can be done? Despite our expressions of concern and important-sounding recommendations accumulating in growing numbers of reports and statements, what effective steps can be taken by both the people in Nepal and the international community to free the country from its nightmare? When we make these reports and statements, we owe it to the affected people to come up with some useful and significant suggestions for change: if we are unable to do this, our efforts are in vain.

3. This is of course a question of significance not only to Nepal. There are many other countries facing similar situations. In Asia alone, we see a number. One over which the ALRC has expressed repeated frustration is Myanmar. The Special Rapporteur on the situation of human rights in Myanmar has done likewise. The ALRC has also voiced deep concern over a number of years with regards to the inability of the international community to affect any radical shift in human rights conditions in parts of India, Indonesia, Pakistan and Sri Lanka, among others. Globally, we are all aware of the scale of chaos and man-made disaster in Iraq and Sudan. Unfortunately, as the years go by, the problems get deeper and the solutions even more difficult to find.

4. In the absence of the rule of law, what kind of domestic intervention is possible to protect human rights? And what can be done from the outside? When it is impossible to investigate and prosecute perpetrators of gross human rights abuses, all other work to protect and uphold human rights is meaningless. International conventions are irrelevant when there is no means by which they may be enforced. Nepal has ratified most; they are at present of little or no significance to people in the country. Cambodia has a constitutional provision to automatically recognise all international human rights treaties, yet the concept of fair trial, as described by the ALRC in a separate statement to the sixty-first session of the Commission, is only beginning to take shape there.

5. A starting point should be made by the international community, which must be spearheaded by the Commission as the leading international human rights agency. In a recent report on Nepal, Amnesty International made two proposals to the international community deserving of consideration here. They are that

a. "The UN must support an effective human rights presence by the OHCHR with a clear mandate to monitor the human rights situation throughout the country and to report publicly on its findings."

b. "The 61st UN Commission on Human Rights should establish a mandate for a Special Rapporteur on the situation of human rights in Nepal."

6. These recommendations could be a useful beginning for committed and persistent work by the Commission on the daily worsening situation in Nepal. Not that they will in themselves resolve any of the problems that Nepal is facing at the moment. But they may serve the purpose of creating an opening through which further rudimentary intervention can be undertaken with a view to establishing more goals for human rights protection.

7. However, the international community and human rights organisations must begin to address the pressing problems we face today by going beyond merely formal recommendations. We must recognise circumstances in which we are completely unable to make effective human rights interventions. If our earlier valid observations and recommendations have not in themselves been sufficient to stop massive extrajudicial killings, torture, massive displacement and the ending of normal life for all citizens, we must make an effort to understand the roots of our incapacity. We must question our own strategies, and try to find new ways to address these problems.

8. This is a key concern of the Asian Legal Resource Centre, which it has expressed to the Commission in one way or another over a number of years. In particular, it has stressed that the time has come for far greater open dialogue and the action needed to overcome these obstacles to the realisation of human rights. We must face up to these problems through well-informed discussion. Reluctance to engage in frank discourse amounts to tacit assistance for the violators of human rights.

9. Accordingly, the Asian Legal Resource Centre hereby makes a special request to the High Commissioner to take the lead and launch initiatives that will bring about a change in the direction of the global human rights debate. The High Commissioner is beholden to ensure that these vital issues are brought up for discussion and action. If the defects in human rights theory and practice can be identified and corrected, human rights may become a meaningful reality for the majority of the world's people, for whom they are today denied, not least of all, the people of Nepal.

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