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## Human Rights Council

Seventeenth session

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **Written statement\* submitted by the Asian Legal Resource Centre (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.

[16 May 2011]

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

## Nepal: Authorities failing to address extra-judicial killings

1. The Asian Legal Resource Centre (ALRC), is gravely concerned by ongoing reports of extra-judicial killings in Nepal, and the authorities' apparent unwillingness to put a halt to the system of impunity that accompanies them, including its unwillingness to cooperate effectively with the Office of the High Commissioner or the Human Rights Council, through its' Universal Periodic Review mechanism, concerning this issue of grave concern.

2. The ALRC has for several years repeatedly informed the HRC of the political stasis that is besetting Nepal and preventing any effective action to be taken concerning past and current human rights violations, which remain widespread. This stasis has been brought about by political blockages in the process of drafting a new Constitution for the country following the popular uprising that overthrew the monarchy and brought to an end a decade-long conflict in the country. The lack of political motion forwards is resulting in a lack of action by the institutions of the rule of law, notably the police, in investigating and prosecuting perpetrators of the wide range of violations that continue to blight the country. Where cases against the military, for example, are prosecuted successfully and the judiciary issues rulings, the perpetrators typically remain beyond the reach of the law, as the police and military continue to collude to uphold their impunity.

3. This general trend of impunity is clearly seen where allegations of extra-judicial killings is concerned. Of particular concern is the number of such killings reportedly being perpetrated in Nepal's Terai (plains) region. The region has seen a significant increase in violence and proliferation of armed groups, since the end of the conflict and the signing of the Comprehensive Peace Agreement in November 2006. While the ALRC acknowledges the government of Nepal's duty to ensure the security and physical safety of its citizens, it is concerned by reports that the security forces are committing violations of human rights, notably by carrying out extra-judicial killings, as part of operations ostensibly designed to improve security. Ensuring the rule of law and combating crime must be conducted in line with domestic and international law. By violating human rights and the law, the authorities will only increase insecurity and ensure a climate of impunity.

4. The OHCHR's office in Nepal released a significant report in July 2010, entitled "Investigating Allegations of Extra-Judicial Killings in the Terai - OHCHR-Nepal Summary of Concerns (July 2010)"<sup>1</sup> in which it detailed a worrying incidence of extra-judicial killings attributable to the State in the Terai. The OHCHR report notes that although the government's Special Security Plan, launched in 2009, appears to be reducing criminal activity, "credible allegations of unlawful killings have continued to surface, most of which, according to information received by OHCHR, have gone uninvestigated." This is the case even though the Plan incorporates a commitment to protect human rights.

5. The ALRC is gravely concerned by the government's apparent unwillingness to cooperate with the OHCHR, notably its refusal to implement the report's core recommendations and its rejection of entirety of the report's findings. Nepal's failure to cooperate with the OHCHR concerning the extra-judicial killings in the Teria is clearly shown by its refusal of the recommendation made by the Czech government during Nepal's Universal Periodic Review, in January 2011, which read:

Implement the recommendations contained in 2010 OHCHR's report on "Investigating Allegations of extra-judicial killings in the Terai", *inter alia*: a) fully investigate all

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<sup>1</sup> <http://nepal.ohchr.org/en/resources/publications/Investigating%20Allegations%20of%20Extra-Judicial%20Killings%20in%20the%20Terai.pdf>

allegations of the use of extra-judicial killings in the context of the current Special Security Plan, as well as past and future security operations; b) establish external oversight mechanisms, such as an independent police complaints commission or special investigative unit to investigate and prosecute crimes allegedly committed by state actors; c) adopt measures to support and protect witnesses as well as victims and their family members.<sup>2</sup>

6. It is believed that the government rejected the above recommendation outright, as it was based on documented facts and would require the government to take very specific action that could have the effect of challenging the impunity that currently prevails concerning such killings. The government did, however, accept other recommendations that included the issue of extra-judicial killings in a more general way. The ALRC hopes that the government has done so in good faith and is already taking steps to implement these recommendations. The government claimed that it would examine the recommendations following recommendations and respond at the latest during the 17<sup>th</sup> session of the HRC:

- Denmark: Investigate credible allegations of extra-judicial killings and introduce an independent complaint mechanism on the conduct of the security forces.
- Italy: Impartially investigate all allegations of extra-judicial killings and arbitrary executions, to prosecute those responsible, and accept the requests for a visit by the Special Rapporteur on extrajudicial, summary or arbitrary execution, and the Working Group on Enforced or Involuntary Disappearances.

7. Furthermore, the government accepted the following recommendations and claimed that it had already been implementing it as of January 2011:

- Japan: Take necessary measures for the prevention of such deeds as reported warrantless arrests, torture, extra-judicial killings and other misconduct and ensure swift and fair investigations on alleged misconduct by law enforcement authorities.
- Hungary: Investigate all cases of ill treatment and abuse, such as enforced disappearances, cases of torture, arrests without warrants and extrajudicial killings by the police as well as the national army and ensure the delivery of justice regarding these serious human rights violations.

8. The government of Nepal is clearly sending mixed and confused messages concerning this issue. On one hand it claims to already be investigating all cases of extra-judicial killings and ensuring the delivery of justice concerning these. The ALRC has seen no evidence to support this claim. The government then claims that it is considering recommendations concerning the investigation of all allegations of extra-judicial killings, the establishment of an independent complaint mechanism and accepting a visit by the relevant Special Procedures. But is also has rejected the recommendations by the OHCHR for the investigation of all cases of extra-judicial killings, the establishment of an independent complaint and investigation mechanism, and the adoption of measures to support and protect witnesses, victims and their family members.

9. The ALRC calls on the government of Nepal to make a clear commitment to address all allegations of extra-judicial killings, through effective investigation and prosecution of cases, including the protection of witnesses. It also calls on the Human Rights Council and its Special Procedures to pay particular attention to Nepal's performance in this regard.

10. At present, the cases documented by the ALRC and its sister-organisation, the Asian Human Rights Commission, show that such killings continue to be perpetrated and that,

<sup>2</sup> [http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/NP/Nepal-A\\_HRC\\_WG.6\\_10\\_L.3-eng.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session10/NP/Nepal-A_HRC_WG.6_10_L.3-eng.pdf)

contrary to claims made by the government during the UPR, these are typically not even investigated, which continues to ensure impunity for the perpetrators of these acts. For example, 25 year-old Omkar Gosain was reportedly killed by Nepali police officers in an alleged encounter on December 28, 2010, in Banke district's Mataiya Village Development Committee, on suspicion of being a member of the Jwala Singh Group, an armed resistance group. As with many other cases, there is no evidence to prove that this was a legitimate encounter killing. The burden of proof remains with the authorities concerning any alleged encounter killing, yet no investigation has been conducted into this case and the perpetrators continue to enjoy complete impunity for this allegedly extra-judicial killing.

11. This case is typical of many killings in the Terai, concerning which the authorities use the pretext of “encounter killings” to do away with investigations and due process to cover up extra-judicial killings. The police typically claim that the persons in question opened fire upon them first and that they were then killed by the authorities in self-defence. However, in all of these cases, the ALRC is not aware of any State-agents ever being injured. In addition, eye-witness accounts often contradict the encounter killing claim, including frequent allegations that ammunition and weapons have been planted on the victims. The lack of investigations into these killings prevents the truth from being exposed, and witnesses and victims families are routinely threatened into remaining silent.

12. In another example, Abdul Mojib Dewan was killed in broad daylight in his village in Rupendehi district in July 2009. Despite a tireless fight by his father to shed light upon the circumstances of the killing, and an injunction by the District Court for the police to conduct an investigation into the case, no action has been taken so far. The police claim that the victim was killed during an encounter and that ammunition was recovered from his body. His father has faced repeated threats by the police for him to drop the case. One person who has been providing assistance to the father has been arrested on fabricated charges and detained for nine months without a trial. The police have used this person's detention to threaten the father, reportedly stating that “either you drop the case, or he will remain in our custody.”

13. Extra-judicial killings and accompanying impunity are not restricted to the government's fight against armed groups. For example, two Dalit women and one girl child were killed by army personnel and forest guards in the Bardia National Park in March 2010. Several commissions of inquiry formed by different governmental entities and non-government organizations, including the National Human Rights Commission (NHRC), found that the authorities had used unlawful and excessive force. However, the military has claimed that the victims were poachers who had been killed in an encounter. Investigations have also found that the perpetrators had tampered with the evidence and tried to influence the police into supporting their version of events. Although the NHRC recommended the prosecution of the alleged perpetrators, no such action has been taken by the authorities. The military has reportedly taken advantage of the family members of the victims' poverty and convinced them to accept monetary compensation in return for them dropping the case. One year later, however, this compensation has still reportedly not been provided to the victims' families.

14. During the Universal Periodic Review, Nepal's delegation claimed that there was a “zero tolerance to impunity” policy towards “isolated” human rights violations committed by the security agencies, and even supported recommendations made by France and the United Kingdom calling for all decisions issued by the judiciary to be fully respected by all State institutions, particularly by the army. Yet impunity still prevails.

15. The ALRC therefore calls on the Human Rights Council to hold the government of Nepal accountable for its promises and for the government of Nepal to: halt all extra-judicial killings; investigate all alleged killings; protect witnesses and victims' family-

members, thereby enabling effective prosecutions of perpetrators;, and immediately invite the Special Rapporteur on extra-judicial killings to conduct a country visit.

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