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**CIVIL AND POLITICAL RIGHTS:
TORTURE AND DETENTION**

**Written statement* submitted by the South Asia Human Rights Documentation Centre
(SAHRDC), a non-governmental organization in special consultative status**

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 January 2004]

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

Detention and torture in Nepal

Arbitrary detention, illegal detention and torture in the Kingdom of Nepal are practices that, in light of their widespread occurrence, amount to a systematic tool of state policy.

Detention

Both the Constitution of Nepal and the International Covenant on Civil and Political Rights (ICCPR), to which Nepal acceded on 14 August 1991, grant Nepalese citizens extensive rights against arbitrary and illegal detention. In practice, the Nepalese state apparatuses abuse these rights systematically and furthermore, do not provide for redress.

Relevant legislation includes the Public Security Act 1989 (PSA) and the Terrorist and Destructive Activities (Control and Punishment) Act 2002 (TADA). TADA replaced the Terrorist and Destructive Activities Ordinance (TADO). Both PSA and TADA allow Chief District Officers (CDOs) to order arrests and extended detention on imprecisely worded grounds of national security. This allows preventive detention on the basis of exceptional individual discretion – something that the UN Working Group on Arbitrary Detention described as conferring “an arbitrary character by reason of its exclusively administrative nature”.¹

Though unjustifiably draconian, both PSA and TADA do impose some checks upon the detention process. These include time limits on detention, some qualifications upon a CDO’s discretion and obligations to inform detainees of the reasons for their detention. However, even these scant protections are routinely ignored in practice.

It is difficult to state confidently the number of people currently detained arbitrarily or illegally in Nepal as the Government does not release official records of such detentions. However, there is no question that the practice is widespread and systematic.

Government figures cited by Amnesty International show that more than 5000 people were arrested in the two months after the enactment of TADO. Of those, about half were later released, leaving approximately 1200 in preventive detention and approximately 1000 being held for “terrorist and disruptive crimes”.²

¹ ‘Question of All Persons Subjected to Any Form of Detention or Imprisonment’, November 1996. Report of the UN Working Group on Arbitrary Detention on its visit to Nepal. UN Document E/CN.4/1997/4/Add.2 at paragraph 35(k). The Group was referring to the *Public Offence Act*, which granted similar detention powers to CDOs. See also ‘Nepal: A deepening Human Rights crisis: Time for international action’ (19 December 2002). *Amnesty International Report*. URL: <http://web.amnesty.org/library/Index/ENGASA310722002?open&of=ENG-NPL>

² ‘Nepal: Widespread “disappearances” in the context of armed conflict’ (16 October 2003).

Amnesty International Report. URL:

<http://web.amnesty.org/library/Index/ENGASA310452003?open&of=ENG-NPL>

Widespread detentions have continued to occur under TADA. Many suspects are held much longer than the legislation allows.³ Detention is often secret and incommunicado, without access to relatives or legal advice.⁴ Home Ministry figures show that, by July 2003, approximately 1000 people had been detained under TADA, of whom 400 had been released – and that none of those detained had been presented to a court.⁵ The International Commission of Jurists (ICJ) conducted a fact-finding mission to Nepal in early 2003. In the “great majority” of detention cases that it reviewed, “no warrant for arrest had been produced, and no reason had been given to detainees or their families for the arrest”.⁶ There are widespread reports of CDOs unlawfully handing blank signed detention authorisations to police.⁷

There are many reported cases of extended secret detention by the Army. This is despite the Army Act providing that the Army may only detain a person in the course of military engagement and must transfer any detainee to civilian authority within 24 hours.⁸

Secret detentions continue. In January 2004, the Human Rights Committee of the Nepal Bar Association reported that at least 254 people had disappeared in the past four months.⁹ Their whereabouts – and indeed their fate – remains unknown.

³ ‘Nepal’ (31 March 2003). *United States Department of State Country Report on Human Rights Practices – 2002*. Bureau of Democracy, Human Rights, and Labor. URL: <http://www.state.gov/g/drl/rls/hrrpt/2002/18313.htm>

⁴ ‘Nepal: Widespread “disappearances” in the context of armed conflict’ (16 October 2003). *Amnesty International Report*. URL: <http://web.amnesty.org/library/Index/ENGASA310452003?open&of=ENG-NPL>

⁵ ‘Nepal: Widespread “disappearances” in the context of armed conflict’ (16 October 2003). *Amnesty International Report*. URL: <http://web.amnesty.org/library/Index/ENGASA310452003?open&of=ENG-NPL>

⁶ ‘Human Rights and Administration of Justice: Obligations Unfulfilled’. (June 2003). *International Commission of Jurists, Centre for the Independence of Judges and Lawyers* (Fact-Finding Mission to Nepal). URL: http://www.icj.org/news.php3?id_article=2950&lang=en

⁷ ‘Nepal: A deepening Human Rights crisis: Time for international action’ (19 December 2002). *Amnesty International Report*. URL: <http://web.amnesty.org/library/Index/ENGASA310722002?open&of=ENG-NPL>. Also, see

‘Human Rights and Administration of Justice: Obligations Unfulfilled’. (June 2003). *International Commission of Jurists, Centre for the Independence of Judges and Lawyers* (Fact-Finding Mission to Nepal). URL: http://www.icj.org/news.php3?id_article=2950&lang=en

⁸ ‘Nepal: Widespread “disappearances” in the context of armed conflict’ (16 October 2003). *Amnesty International Report*. URL: <http://web.amnesty.org/library/Index/ENGASA310452003?open&of=ENG-NPL> and ‘Human Rights and Administration of Justice: Obligations Unfulfilled’. (June 2003). *International Commission of Jurists, Centre for the Independence of Judges and Lawyers* (Fact-Finding Mission to Nepal). URL: http://www.icj.org/news.php3?id_article=2950&lang=en

⁹ ‘254 people disappeared in last four months: Nepal Bar Association’ (23 January 2004). *National Human Rights Commission, Nepal* (e-bulletin). URL: <http://www.nhrc-nepal.org/?ID=229&AFD=0>

The right to have detention reviewed is enshrined in both the ICCPR and the Constitution of Nepal. For example, Article 14(6) of the Constitution guarantees that every person arrested and detained must be produced before “judicial authority” within 24 hours (excluding travel time).

In practice, rights of review are denied almost absolutely. If and when detainees are brought before a court, it is unusual for judges to enquire into the period or nature of detention.¹⁰ Police are reported to falsify official dates of arrest for the sake of the 24-hour requirement.¹¹

Habeas corpus proceedings do not provide adequate judicial review. Neither the police nor the army appears to maintain any comprehensive register of detainees, so authorities often cannot accurately testify whether or not they detain somebody.¹² Additionally, authorities can lie to as to whether they hold a particular person – a problem encouraged by the absence of any crime of perjury.¹³ Even where *habeas corpus* relief is granted, court orders are routinely ignored – either by releasing and immediately re-arresting the detainee, or by refusing compliance outright.¹⁴

The problems are compounded by section 20 of TADA, which provides immunity for any action under the Act that is performed with *bona fide* motives (a nebulous and undefined concept). This forms legislative authorisation for officers to continue the systematic practice of arbitrary and illegal detention.

Torture

Torture is prohibited by the Constitution of Nepal (Article 14(4)), and by the Convention Against Torture (CAT), to which Nepal acceded on 13 June 1991.

Torture is widespread in Nepal. It often involves rape, electric shocks, beatings or boxing on the ears.¹⁵ The National Human Rights Commission of Nepal (NHRC) cites the following

¹⁰ ‘Human Rights and Administration of Justice: Obligations Unfulfilled’. (June 2003).

International Commission of Jurists, Centre for the Independence of Judges and Lawyers (Fact-Finding Mission to Nepal). URL: http://www.icj.org/news.php3?id_article=2950&lang=en

¹¹ ‘Human Rights and Administration of Justice: Obligations Unfulfilled’. (June 2003).

International Commission of Jurists, Centre for the Independence of Judges and Lawyers (Fact-Finding Mission to Nepal). URL: http://www.icj.org/news.php3?id_article=2950&lang=en

¹² ‘Human Rights and Administration of Justice: Obligations Unfulfilled’. (June 2003).

International Commission of Jurists, Centre for the Independence of Judges and Lawyers (Fact-Finding Mission to Nepal). URL: http://www.icj.org/news.php3?id_article=2950&lang=en

¹³ ‘Nepal: A deepening Human Rights crisis: Time for international action’ (19 December 2002). *Amnesty International Report*. URL:

<http://web.amnesty.org/library/Index/ENGASA310722002?open&of=ENG-NPL>

¹⁴ ‘Human Rights and Administration of Justice: Obligations Unfulfilled’. (June 2003).

International Commission of Jurists, Centre for the Independence of Judges and Lawyers (Fact-Finding Mission to Nepal). URL: http://www.icj.org/news.php3?id_article=2950&lang=en

¹⁵ ‘Nepal: Make torture a crime’ (1 March 2001). *Amnesty International Report*. URL:

<http://web.amnesty.org/library/Index/ENGASA310022001?open&of=ENG-NPL>

statistics from the Informal Sector Service Centre (INSEC), a prominent human rights NGO in Nepal, showing reported incidences of custodial torture¹⁶:

<i>Year</i>	Number of people arrested and tortured by State authorities
1997	1568
1998	2665
1999	1139
2000	1035
2001	2195
2002	3430

The NHRC further cites a 2001 study by the Centre for Victims of Torture, Nepal (CVICT). The study surveyed 95 percent of prisoners throughout all Nepalese prisons, and concluded that “of the people arrested by the State authorities, nearly 70 percent are likely to be tortured”.¹⁷

Torturers enjoy almost complete impunity in Nepal. Contrary to the requirement of CAT (Article 4), Nepalese law does not comprehensively proscribe torture (though the Civil Code does outlaw some torturous acts).¹⁸ In 1996, Nepal passed the Torture Compensation Act. Notionally, this Act was to respond to the problem of torture. In truth, it is almost entirely ineffective. There are a number of reasons for this:

- The Act’s definition of torture is narrower than that in CAT.¹⁹
- Complaints under the Act are of a civil nature, so it is entirely at the discretion of a victim whether or not to proceed.²⁰ This contravenes the principle that torture is a criminal act – sufficiently serious to attract the sanctions and the prosecution of the state.

¹⁶ ‘Human Rights in Nepal: A Status Report: 2003’. (June 2003). National Human Rights Commission of Nepal, Kathmandu. See also ‘Human Rights Yearbook 2003’. (April 2003). Informal Sector Service Centre (INSEC), Kathmandu.

¹⁷ ‘Human Rights in Nepal: A Status Report: 2003’. (June 2003). National Human Rights Commission of Nepal, Kathmandu at p.35. Also see Van Ommeren M et al. (2001) Addressing Human Rights Violations: A Public Mental Health Perspective on Helping Torture Survivors in Nepal. CVICT, Kathmandu.

¹⁸ ‘Nepal: Make torture a crime’ (1 March 2001). *Amnesty International Report*. URL: <http://web.amnesty.org/library/Index/ENGASA310022001?open&of=ENG-NPL>

¹⁹ ‘Nepal: Make torture a crime’ (1 March 2001). *Amnesty International Report*. URL: <http://web.amnesty.org/library/Index/ENGASA310022001?open&of=ENG-NPL>

²⁰ ‘Nepal: Make torture a crime’ (1 March 2001). *Amnesty International Report*. URL: <http://web.amnesty.org/library/Index/ENGASA310022001?open&of=ENG-NPL>

- There are reports of victims being arrested for having lodged complaints under the Act.²¹ Indeed, there exists no provision for the protection of victims or witnesses.²²
- The Act allows a Court to direct a relevant government authority to take disciplinary action against a torturer, but the Court cannot impose any direct penalty itself. There is no requirement or formal mechanism for any government authority to report back as to whether that action has been taken.²³
- Awards of compensation are rare and minimal.²⁴
- Even if compensation is awarded, the liability is owed by the State, not by the torturer in person.²⁵ In effect, the State indemnifies officers for the acts of torture that they commit.

Nepalese law does not merely turn a blind eye to the problem of torture – its operation provides strong incentives for the practice to exist. The Evidence Act 1974 provides that confessions obtained by force should be inadmissible. However, it is estimated that 60 percent of convictions are obtained on the basis of a confession alone – and that about half of such statements are made against the detainee’s free will.²⁶

Police and other public authorities are generally unwilling to investigate and pursue serious allegations of torture. For example, the Deputy Superintendent of Police, Bikram Singh Thapa was awarded “Policeman of the Year” in 2002, despite facing serious allegations that directly implicated him in the torture and death of prominent journalist Krishna Sen.²⁷

The Government has proven stubbornly uncooperative in its international torture reporting obligations.²⁸ Nepal submitted its first report to the Committee Against Torture in 1993.²⁹ The Committee described the report as “scant on detail”³⁰ and requested further information within

²¹ ‘Nepal: Make torture a crime’ (1 March 2001). *Amnesty International Report*. URL: <http://web.amnesty.org/library/Index/ENGASA310022001?open&of=ENG-NPL>

²² ‘Human Rights in Nepal: A Status Report: 2003’. (June 2003). National Human Rights Commission of Nepal, Kathmandu.

²³ ‘Nepal: Make torture a crime’ (1 March 2001). *Amnesty International Report*. URL: <http://web.amnesty.org/library/Index/ENGASA310022001?open&of=ENG-NPL>

²⁴ ‘Nepal: Make torture a crime’ (1 March 2001). *Amnesty International Report*. URL: <http://web.amnesty.org/library/Index/ENGASA310022001?open&of=ENG-NPL>

²⁵ ‘Human Rights in Nepal: A Status Report: 2003’. (June 2003). National Human Rights Commission of Nepal, Kathmandu.

²⁶ ‘Human Rights and Administration of Justice: Obligations Unfulfilled’. (June 2003). *International Commission of Jurists, Centre for the Independence of Judges and Lawyers* (Fact-Finding Mission to Nepal). URL: http://www.icj.org/news.php3?id_article=2950&lang=en

²⁷ ‘Nepal: A deepening Human Rights crisis: Time for international action’ (19 December 2002). *Amnesty International Report*. URL: <http://web.amnesty.org/library/Index/ENGASA310722002?open&of=ENG-NPL>

²⁸ See the Convention Against Torture, Article 19.

²⁹ ‘Human Rights in Nepal: A Status Report: 2003’. (June 2003). National Human Rights Commission of Nepal, Kathmandu.

³⁰ Concluding observations of the Committee against Torture: Nepal, 12/06/94. UN document A/49/44, paras. 138-147.

12 months. Nepal did not provide that information, and is yet to submit its second report (which was due in 1996).

Conclusion

SAHRDC makes the following recommendations:

- Nepal must repeal TADA and PSA, and must criminally proscribe all forms of torture.
- The Government must ensure full compliance of the Nepalese State with the laws of Nepal, including the Constitution of Nepal, Acts of Parliament and court orders.
- The Government must meet its UN reporting obligations, and extend standing invitations to all the UN Special Mechanisms to visit Nepal.

Torture and arbitrary and illegal detentions are serious problems in Nepal. They exist despite stated Government policy, the Constitution of Nepal and international covenants to which Nepal has acceded. However, the problems exist as persistent tools of state policy – perpetrated throughout executive agencies and encouraged by an official tolerance that amounts to complicity. If Nepal is serious about upholding its commitments to human rights and the rule of law, it must act immediately to end these practices.
