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**RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF
DISCRIMINATION**

**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.

[29 January 2004]

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

Caste-based discrimination in Nepal

1. The Government of Nepal has repeatedly expressed a strong commitment to eliminate caste-based discrimination from its country. At the World Conference against Racism, it took a bold step by acknowledging that caste is a form of racism. However, the practice of untouchability, rooted in the caste system, continues to stigmatise the 4.5 million Dalits in Nepal as 'polluted' or 'impure'. Despite a constitutional provision outlawing the practice, it remains rampant, and the perpetrators of human rights violations are in most cases not prosecuted. Thus far the State has failed to implement measures that might significantly contribute to ending these practices.

2. In its alternative report to the sixteenth periodic report of Nepal to the Committee on the Elimination of Racial Discrimination, the Asian Legal Resource Centre has pointed out that although a number of institutions exist ostensibly to address caste-based discrimination there, none of them are effective or independent. Among these, the National Committee for the Upliftment of the Depressed, the Oppressed and Dalit Community has been a complete failure. It is a body consisting of political appointees whose sole purpose seems to be to silence opposition to the government within the Dalit community. The National Dalit Commission, which came subsequently, has brought a draft bill on the Upliftment and Protection of the Dalit Community before parliament, but this bill is now stalled as parliament has been suspended. The National Dalit Commission has done little else besides. It does not fully utilise its investigative and lobbying powers. Like the National Committee, it is subject to political influence, as it too is directly under the Ministry for Local Development and is entirely reliant on the minister and his chief staff. It is also not a permanent body: it has a mere two-year tenure after which its continuation is subject to the decision of parliament. The National Human Rights Commission has also been a disappointment for Dalits. None of its members are Dalits. It is not concerned with the needs of the Dalit community, nor is it responsive to their demands. It has no special provisions for persons complaining of caste-based discrimination. It is also subject to political influence. The National Womens' Commission too has failed Dalit women. Rather than take up their cases and advocate on their behalf as would be expected, it simply prefers to direct complainants to the National Dalit Commission.

3. Dalits in Nepal are attacked both by the state authorities—principally the police, secondarily the army—and by non-Dalit members of the public. The forms that physical attacks take include shooting, public lynching, burning alive, beating with hands, boots, sticks and guns, stabbing with knives and swords, force-feeding human faeces and urine, rape and gang-rape, parading naked in public, enforced disappearance, eviction from houses, burning of houses and property, and verbal abuse. Abuses by the police and army have accelerated with the spread of civil war in the country. At times of insecurity, it is inevitable that the least powerful groups face the greatest threats to their physical security. This situation is made worse by the fact the security forces associate most Dalits with the Maoist insurgency. Two recent cases serve to illustrate:

- a) Kumari Damai, a thirteen-year-old Dalit schoolgirl was taken by the army from Bhasriya, in Kailali district, on 24 September 2002. After being detained by soldiers along with six other girls, non-Dalits, she was kept behind when the others were later released. According to her mother, two of them reported that the soldiers kept her with the intention to commit

rape. At a public hearing about her case on 10 December 2003, organised by the National Dalit Commission, Kumari's father remarked that, "The others who were abducted along with my daughter, all non-Dalits, have returned to the village, but Kumari has not... I visited every security post at Dhangadi, Atariya, Teghari... but everywhere I faced disappointment." The Asian Legal Resource Centre has submitted a separate written statement to the Commission on violence against Dalit women in India and Nepal, citing other such cases.

- b) Komalnath Kandel and his family burnt down the house of Manmaya B K, a Dalit woman living in Dhamja, Baglung district, on 13 November 2003 after the latter refused to move away. Although they had been living close together for years, Komalnath became fearful of his neighbours after Manmaya sold some of her land to her brother Ram Bahadur B K, so that he could build a house on it. Komalnath Kandel then began threatening Manmaya to move. Finally, when Manmaya and her children were away the Kandel family burned down the house. Manmaya lodged a complaint with the Baglung District Police Office, demanding compensation for the fire. Balaram Bista, the Sub-Inspector of Police at the office, promised to complete the investigation of the incident within one week. However, thus far the police have reportedly not taken any serious action.

4. An important but often overlooked means of preventing Dalits from uplifting themselves is the systemic use of torture by the police in Nepal. The types of torture include beating with hands and feet, guns and other objects, suffocation, rolling objects on the shins, and beating the soles of the feet with plastic pipes. According to a 2003 report by the Advocacy Forum (Nepal), around 70 per cent of detained persons are tortured. Police do not produce detainees before the courts as required, and only record their arrest after the torture is completed. Inevitably, Dalits are exposed to this practice more than other segments of the society, as the police and other state agents do not fear retribution when they torture a Dalit person. This situation is worsening under the current conditions of civil war, as Dalits are increasingly identified with the Maoist insurgency.

5. Until torture in Nepal is brought to an end, it will be impossible to eliminate caste discrimination. However, the State has failed to introduce effective legal provisions to deal with torture. The Torture Compensation Act (1996) does not define torture as widely as required by the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, which the state has acceded to, nor does it impose a specific punishment. The amount of compensation that may be awarded also is far below international standards.

6. Caste discrimination is referred to as discrimination on the basis of descent and work because each caste is restricted to one kind of work, with the most demeaning, menial, degrading and 'polluting' work done by Dalits. Typically, this work involves the disposal of human excreta, or the bodies of dead animals and corpses. The feudal nature of the caste system also prevents Dalits from leaving their prescribed work. Many are paid nothing at all. Others are given no money, but only a portion of grain or some other payment in kind. When Dalits refuse to perform the allotted tasks, reprisals in the form of one or another physical attacks, such as those described above, often result. On other occasions, upper caste communities have engaged in social and economic boycotts of Dalit communities. In addition to this kind of boycott, Dalits in Nepal are routinely refused entry to public temples and schools, and denied the use of public wells and

taps. They are also refused entry and service in restaurants and hotels, and opportunities for employment. Most importantly, they are also refused the right to marry freely, a practice that ensures the endogamous categories of the caste hierarchy remain intact. Even blind couples have been ostracised and forced apart by their communities when they have attempted to marry across caste divisions. The Government of Nepal has not thus far seriously attempted to introduce or enforce legal provisions to deal with such practices.

7. Although caste-based discrimination is illegal under the Constitution of Nepal, the chances of Dalits getting restitution for their grievances are remote. Very often the victims do not even lodge complaints. The reasons are many. They include that the victims

- a) Are afraid of the consequences if they complain. They may be subjected to threats by the perpetrators, other members of the community, or the police.
- b) Are not aware of their rights.
- c) Have no support and feel isolated.
- d) Have seen other cases where complaints have been made but yielded no result, therefore they think it is pointless to complain. The police may often even be unwilling to record a complaint, and instead inform the perpetrators of the attempt at legal action by the victim.

8. In response, the state interventions have included programmes for poverty alleviation, the training of law enforcement officials, and schooling for the general public. However, the overriding reason for the lack of success of these programmes is that the government has failed to introduce and enforce effective regulations to eliminate caste-based discrimination.

Accordingly, the Asian Legal Resource Centre submits the following:

- a) Caste-based discrimination in Nepal must be treated as a matter requiring the introduction and effective implementation of laws that will hold the perpetrators of abuses responsible for their actions, and ensure adequate compensation for the victims. These laws must supplement and amplify the general provision contained in the Constitution.
- b) Immediate action must be taken to deal with the perpetrators in the above-mentioned cases, as follows:
 - i) Investigate and respond to the allegation that army personnel kidnapped Kumari Damai, and prosecute the perpetrators.
 - ii) Investigate the allegation of Manmaya B K that Komalnath Kandel and family burnt down her house and repeatedly threatened her and her family, and her allegation that the police have failed to act on her complaint.
- c) Existing institutions to prevent caste-based discrimination must be reformed, and new ones developed. In particular, the National Dalit Commission must be made permanent, independent, and be given adequate resources to carry out its tasks. Its role should also be broadened and deepened under new or expanded legislation. Other institutions, notably

the National Human Rights Commission and National Womens' Commission, must be given greater resources and freedom to conduct independent enquiries into violations, with a view to prosecution of perpetrators arising from their findings.

- d) The abuses that come with caste-based discrimination will persist until the use of torture is properly outlawed in Nepal. To this end, the existing legislation on torture must be reviewed with an eye to bringing it into line with the provisions of the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. It will also be necessary to set in place new institutional measures to ensure that such provisions be properly enforced.
