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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF:
TORTURE AND DETENTION

Written statement submitted by the Asian Legal Resource Centre,
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 December 1999]

Torture and detention in Asia

1. Torture and inhuman and degrading punishment remain one of the major violations of human rights in most countries of Asia. While there is quite a lot of evidence of torture in many countries, there are some instances where obtaining direct evidence is difficult due to restrictions on access. Thus, these submissions relate to instances where there is overwhelming evidence related to torture or inhuman and degrading punishment.

2. Many cases have come before the Supreme Court of Sri Lanka by way of fundamental rights applications under section 126 of the Sri Lankan Constitution, complaining of torture. In several of these cases the Court has decided the case in favour of the applicant. Many more cases have come before the Human Rights Commission of Sri Lanka. There are also instances where complaints are made to human rights NGOs locally, regionally and internationally. Sometimes the applications are not pursued owing to pressure from the authorities and to fear of reprisals. The torture cases relate not only to political cases but also ordinary criminal cases. The major cause contributing to the use of torture is the underdeveloped nature of the criminal investigation system in Sri Lanka. The use of forensic methods and scientific investigations into crimes is rarely resorted to. The usual system of collecting evidence is through statements and these statements are often obtained through the use of pressure or force. Though section 27 of the Evidence Ordinance has created safeguards against forced confessions, merely making parts of statements which amount to direct confessions inadmissible does not act as a deterrence against the use of torture, since other corroborative evidence discovered as a result of confessions is admissible. This loophole allows law enforcement agencies to use torture as a means of collecting evidence.

3. The use of torture and other ways of punishment which are inhuman and degrading is also related to corruption. There is a public perception that results cannot be obtained from criminal investigations unless the officers concerned appear to be rough and tough, and prepared to use violence. The Supreme Court of Sri Lanka entertains applications against torture when an applicant is injured or otherwise hurt due to torture, but according to a recent case decided by the Supreme Court, the Court will not entertain cases if the person concerned dies as a result of torture. The explanation is that the aggrieved party himself or herself should make the application to the Supreme Court under section 126 of the Constitution. Since a victim who has died as a result of torture cannot be an aggrieved party before the Court, no application can be filed in such instances. This interpretation given of the "aggrieved party" points to an absurd aspect of the law relating to torture. Though this requires a constitutional amendment the Government has made no attempt to make such an amendment in order to enable the families of the victims who die because of torture to avail themselves of the remedies available under section 126 of the Constitution.

4. Though an act has been passed in Sri Lanka, entitled Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act (Act No. 22 of 1994), no cases have been filed under this act as yet. The reason is that under the Criminal Procedure Code of Sri Lanka criminal investigation is the competence of the police and as the alleged perpetrators of acts of violence are often the police, there is naturally an impediment to filing cases under this act. The prosecution of cases is the responsibility of the Attorney-General, and the Attorney-General must make suitable provision to ensure that all violations of this act are

prosecuted. Thus, while the passing of this act has created a good international impression for Sri Lanka, in actual fact it has not brought any benefit to those who suffer torture and inhuman and degrading punishment. If this act is to fulfil its purpose, special provisions must be made for investigating crimes committed under this act.

5. In Thailand the practice of shackling of prisoners still persists. The prisoners are shackled in heavy chains, like the ones used to tie elephants, even when they are kept in cells which are securely locked while they are waiting to be called before courts. The practice of shackling prisoners in this manner dates from medieval times. Such shackling clearly falls under inhuman and degrading punishment. Such shackling should be declared illegal and more suitable methods must be developed to ensure that prisoners do not escape while in custody.

6. Custodial deaths or “cell murders” remain a common occurrence in India. Complaints related to this matter are constantly being made to the National Human Rights Commission of India and many local and international NGOs who have collected considerable statistics relating to this phenomenon. Cell-murders are clear evidence of use of torture after the arrest of persons. If lawyers are allowed to be present while the statements are recorded from the accused, cell murders and other forms of torture used during detention can be prevented. As a considerable number of victims of torture are from the lower castes, particularly from the Dalits (who were once known as “untouchables”, “scheduled” caste and “Shudras”), the protection from torture should be considered also as a very important step towards the protection of marginalized groups and minorities.

7. Problems relating to torture and inhuman and degrading punishment similar to those in India and Sri Lanka also prevail in Pakistan, Bangladesh and Nepal.

8. In Cambodia, the prosecutors often get complaints relating to torture and inhuman and degrading punishment. Since the 1980s, confessions have been the main evidence used against the accused. Though the 1993 Constitution has imposed restrictions on such use of confessions, this has had very little practical impact. There is no legal forum before which any victim of torture can place his/her complaints. Even the Government openly accuses the courts of corruption and the Minister of Justice suspended two senior judges in December 1999. Torture is used also for the purpose of making illegal profits.

9. A number of cases of political prisoners have brought to light the use of torture, and inhuman and degrading punishment in Malaysia. The assault by the Chief of Police himself on former Deputy Prime Minister Anwar Ibrahim while he was in prison created an uproar in Malaysia and outside. A number of accused in other trials related to political cases also made public complaints about physical assaults and other forms of physical abuse, including the use of electric shocks.

10. Thus, it can be said, the abuse of the right to be free from torture, inhuman and degrading punishment widely prevails in most parts of Asia.
