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COMMISSION ON HUMAN RIGHTS  
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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTION OF  
TORTURE AND DETENTION**

**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]

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

### **Custodial deaths and torture in India**

1. On 30 August 2003, police arrested Mr Babu, aged 37 years, of Kallur Village, Mukundapuram Thaluk, Thrissur, Kerala. They took him from his house without telling him why. His wife tried to bail him out, but the bail was refused. On September 2, Babu died. The police claim that he died of cardiac arrest, but the evidence reveals otherwise. Thirteen injuries on his body indicate that he died because of police torture. In spite of his repeated requests for medical attention when he was produced before the court, and visible injuries, he was denied any. His family is too afraid to file a complaint against the police officers.
2. The sort of torture inflicted on Mr Babu is routinely practiced at police stations in India. Unchallenged and unopposed, it has become 'normal' and 'legitimate'. Custodial deaths, disappearances and rape in custody are rampant. Police even torture persons on receipt of bribes. Torture of this kind results in death, as in the above case, as well as permanent disabilities and mental trauma.
3. The police torture not only suspects, but also any person close to a victim who is unfortunate enough to attract their attention. They also torture people in order to fabricate cases. They save influential and wealthy offenders by implicating innocent people and torturing them until a 'confession' is obtained. The Asian Legal Resource Centre is this year making a separate written statement to the Commission on how the Government of India is attempting to introduce reforms that will strengthen the legality of such 'confessions'. It is also submitting written statements on how torture is used as a tool of state-sponsored discrimination against entire communities of people, particularly indigenous people.
4. The communal and caste divide in India is closely linked with torture. The police or other state institutions are directly involved in most of the communally charged violence. The massacre of Muslims in Gujarat in 2002 is one example, on which the Asian Legal Resource Centre has submitted separate written statements this year and last (E/CN.4/2003/NGO/148). In these situations, torture is widespread, unaccounted for and not prosecuted. It contributes to total anarchy and the rule of lawlessness. When police become a party to such violence, it becomes a state-sponsored crime against the people. Therefore, the fight against communalism and caste should start with the fight against torture.
5. The judiciary has tried to address torture in India, however, its involvement is limited to select cases and many instances of torture go unreported. The courts cannot attend to every reported case of torture. Local courts often also deny remedies due to the ignorance of judges. The lack of legislation outlawing torture is another reason. Since there is no specific law preventing torture, and since the law of damages is not often applied in torture cases, even if compensation is awarded it is paltry.
6. The National and the State Human Rights Commissions have no authority to change this situation. There is no independent body to inquire into reported cases of torture. Commission judgements are mere recommendations and are often ignored. Where torture is state-sponsored, the recommendations never get executed, such as in the case of the Gujarat Massacre and government-sponsored atrocities against tribal groups in Kerala. The Human Rights Act is just eyewash for the international community; as it cannot be enforced it is meaningless.

7. India has signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), but not ratified it on the pretext that existing laws have adequate provisions to prevent torture, in addition to constitutional safeguards. But the provisions of the Criminal Procedure Code, Indian Evidence Act and Indian Penal Code are worthless, since there is no procedure for independent inquiry and compensation of victims. In cases of torture where they too may be implicated, magistrates order police to investigate one another, thereby destroying all credibility and public faith in the judicial system. Apart from this, the government has now implemented new draconian laws like the Prevention of Terrorism Act, which literally takes away any guarantees of fair trial for the accused. Constitutional remedies too are meaningless for most victims. The constitutional courts are virtually inaccessible to ordinary folk, and even if a victim is successful in getting a case heard, they usually experience delays. Furthermore, the recent approach of these courts is to disallow any claims for compensation, directing the victim to claim damages through a civil suit. In short, if a victim of torture in India has a strong case and enough will, she may get some limited redress from the courts after 20 years. The lack of motivated lawyers and legal assistance, and a defective prosecution system, do nothing to alleviate this situation. India has not ratified the Optional Protocol to the CAT, thereby preventing its citizens from making individual complaints to the Committee against Torture when they feel they have no effective domestic remedies.

8. As for Babu's widow and her children, all of this is now immaterial. The police tortured her husband to death. Her children may have to leave school and help their mother find some food for the family lest they starve to death. Their father's murderers are still in service, and some are due for promotion. While their case is raised at the Commission, Babu's family will be working in inhuman conditions to get enough food for the day. Not the Constitution of India, existing laws, the courts nor government institutions have come to their rescue.

9. The Asian Legal Resource Centre therefore recommends that the Commission, and in particular the Committee against Torture,

- a) Insist that the Government of India take immediate steps to prevent torture in custody by making police at the rank of officers in charge of stations and above accountable for every case of violence in custody, and hold them personally liable.
- b) Urge the Government of India to inquire into the death of Babu, take steps to punish the perpetrators and compensate the family according to international standards without delay.
- c) Pressure the Government of India to ratify the CAT at once. To date, there have been very few efforts to this end from the international community. Persuasive attempts to ratify a convention have in the past yielded results. In the case of India, there should be more done to see that it fulfils this important international obligation, upon which the Commission must closely monitor compliance to see that the CAT is speedily brought into domestic law. This would amount to the introduction of new legislation and repealing of any provisions contrary to its spirit.

- d) Provide the means and encouragement for India's National Human Rights Commission to conduct independent inquiries in alleged cases of torture, and enforce its findings.
- e) Encourage the Government of India to refrain from using the police as a tool of repression against minorities and political opponents.

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