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**ADVISORY SERVICES AND TECHNICAL COOPERATION IN
THE FIELD OF HUMAN RIGHTS**

**Written statement* submitted by the Asian Indigenous and Tribal Peoples Network
(AITPN), 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.

[30 December 2004]

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

25 reasons for a country resolution on Nepal

In order to scuttle growing international criticisms and a country resolution at the 60th session of the Commission on Human Rights, on 26 March 2004 the government of Nepal announced 25 points commitment on human rights (<http://www.gorkhapatra.org.np/pageloader.php?file=2004/03/27/topstories/main1>). At the 60th session, the Chairperson's statement on "Human Rights Assistance to Nepal" was adopted under agenda item 9. In 2004, Nepal failed to sign the Memorandum of Understanding with the Office of the High Commissioner for Human Rights pursuant to the Chairperson's Statement. Prior to the 61st session, Nepal may as well sign the MOU just to bluff the international community.

Human rights situations remain precarious in Nepal. For all practical purposes, there are two insurgent groups in Nepal who have been equally responsible for gross, widespread and flagrant human rights violations – the Royal Nepal Army (RNA) and the Maoists. The fact there is difference between the security forces and the Maoists is extremely worrisome as people are forced to take law into their own hands.

An analysis of the 25 points commitment shows as to why a country resolution on the situation of human right sin Nepal should be adopted under item 9 of the 61st session of the CHR.

1. The Maoists conflict is intensive in the areas inhabited by indigenous peoples. Consequently, persons belonging to the indigenous and Dalit communities have been disproportionate victims of violations by the security forces and the Maoists.
2. The armed forces have been responsible for gross violations of the right to life. According to Informal Sector Service, as of 26 December 2004, 10,884 persons were reportedly killed out of which 7,111 persons were killed by the security forces.
3. Arbitrary detentions with or without law are rampant and unaccounted for in Nepal.
4. Disappearances continue unabated. The NHRC of Nepal received reports of 707 cases of "disappearance" within one year after the collapse of the cease-fire on 27 August 2003.
5. No information is provided to the arrested persons. In its response to a petition in the Supreme Court about the arrest and detention of two Maoist leaders Matrika Yadav and Suresh Ale Magar, the Ministry of Defence on 1 November 2004 stated that Yadav was under preventive detention but did not mention under which Act Yadav had been detained. The authorities also did not mention anything on Ale Magar's whereabouts. His name did not even feature in the reply.
6. The detainees are not kept in recognized detention centres. The UN Working Group on Enforced Disappearances after its visit to Nepal in December 2004 stated it received "reports of so-called "preventative detention" by plain clothes security forces, and subsequent detention in Army barracks, often with no legal order for detention, and no access to a judge, lawyer or family, came from all parts of the country".

7. Even habeas corpus petitions are not respected. On 27 October 2004, the Defence Ministry in a reply to the Supreme Court of Nepal denied the arrest of Megh Raj Shrestha, Shanta Gurung, Pawan Bahadur Pun and Top Bahadur Ale Magar by the RNA personnel. This despite that the RNA earlier claimed that Top Bahadur Ale Magar died in at Bhairav Nath Battalion camps on 21 October 2004 due to heart attack.

8. Torture is rampant. According to NGOs almost 60 percent of the people detained by the state have been physically tortured, inflicting a serious psychological blow on them besides causing them physical damage.

9. The security forces continue to re-arrest after persons were found innocent by the courts and released. Seventeen-year-old Raju Sharma Dhakal, S/o of Bal Krishna Sharma Dakal, resident of Chitwan district in Central Nepal was released from Bharatpur district prison on 3 November 2004, but was immediately re-arrested by security forces at the prison gates.

10. The government failed to ensure the RNA's compliance with judiciary. Having no other option, on 25 November 2004, Chief Justice of Nepal Govinda Bahadur Shrestha and other senior judges of the Supreme Court summoned the Chief of Army Staff General Pyar Jung Thapa to the Supreme Court and asked him to respect the rule of law and human rights by obeying court orders.

11. Many persons have been charged with more than one case on the same crime.

12. The army personnel continue to restrict the freedom of travel. The programme for about 200,000 internally displaced persons in Nepal has been described as discriminatory, lacking direction, insufficient and sometimes non-existent. Prime Minister Sher Bahadur Deuba's commitment appears to have ended with formation of Task Force on Relief to Internally Displaced Persons to formulate a package and action programme to provide assistance and relief.

13. In October-November 2004, the RNA imposed 'sanctions' upon the supply of food items to the districts of Taplejung, Panchthar, Ilam, Sangkhuwasabha, Terhathum, Bhojpur, Dhankuta, Okhaldhunga, Khotang and Solukhumbu reportedly to reduce the Maoist influence in the region.

14. Barely seventeen days after the commitment by His Majesty's Government to recognise the educational institutions as peace zones, four people including a teacher and a 14-year old children were killed in aerial bombing by the security forces at a cultural programme organised by the Maoists at Bidya Mandir Higher Secondary School at Binayek, Accham in Nepalganj district of Nepal on 12 April 2004. At least a dozen school children were injured in the bombing.

15. The freedom of expression is severely under threat. On 24 December 2004, the army released journalist Raj Kumar Budhathoki, a correspondent of weekly "Sanjeevani Patra", after holding him for 24 days in secret detention. The soldiers holding him had threatened to retaliate if he made any statements about his detention in the Shivapuri barracks in Kathmandu.

16. The government continues to use violent means to stop demonstrations of the political parties.

17. Women and children have little protection. As many as 164 children lost their lives at the hands of the security forces and 136 children died at the hands of the Maoists during the period from 13 February 1996 to 26 December 2004. Of these, 50 children died in the 2004 alone. Rape of women and girls has been widely reported.

18. A few human rights defenders had to flee Nepal in December 2004 to escape from being targeted. While addressing a function on 10th December 2004, Prime Minister Deuba asked, "Why don't the human rights defenders question the Maoists? Why are arrests reported, but releases ignored?"

19. The government has failed to sign the MOU with the OHCHR to train its security forces.

20. On 13 October 2004, the government re-promulgated the Terrorist and Disruptive Activities Prevention Ordinance and increased the period of detention from three months to one year under section 9 of the ordinance.

21. In June 2004, the Government constituted an Investigation Commission headed by Joint Secretary for Home Ministry Narayan Gopal Malego to probe the cases of disappearances at the hands of the security forces. This was ostensibly to undermine the work of the NHRC on disappearances. The NHRC Chairman Nayan Bahadur Khatri stated, "Such trend will further worsen the situation."

22. As the army keeps on changing barracks, the places of preventive detention, International Committee of the Red Cross is effectively denied access to all places of detention.

23. The officials and representatives of the NHRC were often denied access to detention centers and cannot visit the army barracks without prior sanction. Commenting on the sweeping powers of the Royal Nepalese Army, NHRC Chairman Justice Khatri stated "RNA acts as if it is the government. It organises press conferences and sometimes tries to order the Commission."

24. There is complete impunity to the security forces. The Human Rights Cells in the Army are meant for scuttling accountability. The government has failed to take any effective measures to combat impunity.

25. The Maoists have been equally responsible for violations of international humanitarian laws by resorting to abduction, hostage taking, torture and inhuman treatment and killings of suspected police informers and their relatives. There have been reports of recruitment of child soldiers and willful destruction of the infrastructures. According to a report by INSEC, during the period from 1 January to 26 December 2004 the Maoists killed 897 persons. On 25 November 2004, NHRC members-Sushil Pyakhurel and Dr.Gauri Shankar Lal Das, who were on a visit to Khalanga for enquiring into killings, stated that the killing

of three ordinary villagers, including a child, for not obeying their diktat and forcing people to flee their villages were examples of extreme atrocities committed by the rebels.

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