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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:
TORTURE AND DETENTION**

**Written statement submitted by the Asian Legal Resource Centre (ALRC),
a non-governmental organisation 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.

[26 January 2005]

* 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. Lilabati Chowdhury, seven months pregnant and a mother of two, was brutally beaten by a police patrol party from Beharampore police station, West Bengal, India at midnight on 7 August 2004. Mrs Chowdhury's husband, Chhutka Chowdhury, is a daily wage laborer who catches fish in his spare time. The Chowdhury family belongs to the Dalit – so-called 'untouchable' – community and is very poor. On the night of August 7 while Mr Chowdhury was fishing in a nearby river, the police were searching for him. When they reached the Chowdhury's house, they prodded Mrs Chowdhury awake with their batons. Mrs Chowdhury asked them why her family was being harassed, since no complaint had been made against them. She also protested against the vulgar language used by the police towards her. The police then brutally assaulted her with their batons, seriously injuring her. Mrs Chowdhury was admitted to the Baharampur Block Hospital in a critical condition. Several uniformed policemen went to the hospital late that night and threatened her not to speak to anybody about the incident.

2. India has rejected all calls to ratify the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (CAT) on the ground that the domestic mechanisms available in the country are capable of preventing brutality and inhuman treatment. The incident mentioned above occurred in West Bengal. It was while deciding a similar case from West Bengal that in 1997 that the Supreme Court of India ruled that torture in all forms must be prevented within the country. The Supreme Court directed the government to take all steps necessary to prevent torture in the country. The court also directed the government to instruct its law enforcing agencies to implement the court order forthwith without any default whatsoever.

3. Mr and Mrs Chowdhury were not aware of the decree of the Supreme Court. Neither did they know that the Criminal Procedure Code of India and the Police Act, though centuries old, also mandate that if any house is to be searched, the police must obtain a search warrant from a magistrate. Furthermore, if there are any female occupants in the house, the search must be conducted in the presence of a female police officer. All that Mr and Mrs Chowdhury knew for sure was that had they dared to complain about their ordeal, it would be investigated by the same officers that had attacked Mrs Chowdhury, and that they would be further persecuted and charged with an offence that they did not commit. They would then be most likely thrown in jail, as is common practice in India.

4. Any person who dares to complain about police officers in India, faces the wrath of the law enforcement agency. As with so many others, this was the experience of Mr. Madhusudan Seth, a businessman from Bardhaman district, West Bengal. Mr Seth was taken into custody on a petty charge for which the prescribed punishment is a fine of less than US\$50. However, Mr Seth was detained in custody at Manteswar police lockup for the night where he was allowed to wear only his underwear. The next day morning he was paraded in public semi-naked and then put onto a public bus and taken to Kalna Magistrate's Court. The magistrate did not take any action about the parading and presenting of the detainee in court in only his underwear, despite Mr Seth making a complaint regarding this.

5. The police had detained Mr Seth after he lodged a complaint against a police officer from Chapra police station in Nadia district. Mr Seth complained that the officer had behaved in an inhuman manner and used vile language when Mr Seth had attended the Chapra police station regarding another matter. Mr Seth further lodged a complaint with the National Human Rights Commission, though the Commission is yet to take any action. Mr Seth is perhaps lucky, as many in his position have been killed in retaliation for complaints they have made.

6. Mr Abhijnan Basu, who was serving his prison sentence at the Presidency Jail, West Bengal, was one such person who was not so lucky. Officers at the prison murdered him because he dared to complain about the inhuman conditions and the poor quality of food. Three prison wardens set him ablaze on 12 November 2004. The Jailor, who is duty bound to protect the prisoners, supervised the entire incident.

7. Many officers in the police and law enforcement agencies in India are criminals and murderers in uniform. In its written submission to the Commission for its sixtieth session, the Asian Legal Resource Centre (ALRC) already highlighted that the situation of policing in India had deteriorated to such an extent that serious action must be taken to prevent further decay [E/CN.4/2004/NGO/34].

8. Torture in India is widespread, unaccounted for and rarely prosecuted. It contributes to the state of anarchy and lawlessness in many parts of the country. Torture is used as a cheap and easy method of investigation and also as a tool for oppression. In the hands of the wealthy and influential, Indian law enforcement agencies have also strengthened links with criminal elements. Even the judiciary in India cannot sever this nexus, between police and criminals.

9. The judiciary has tried to address torture in India. However, its involvement has been limited to select cases, and many instances of torture have gone unreported. The government highlights rare cases as examples to assert that there is rule of law in the country, though most torture cases are either not reported due to fear of further persecution or fail to be prosecuted due to a lack of proper laws and corrupt practices. Local courts often deny remedies due to the ignorance of judges and a nexus also between police officers and members of the judiciary.

10. 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 orders are mere recommendations and are often ignored. Where torture is state-sponsored, the recommendations rarely get executed. The Human Rights Act is simply eyewash for the international community; since it cannot be enforced, it is useless.

11. India has signed the 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 inquiries into torture and compensation for victims. Apart from this, the government has implemented new draconian laws like the Prevention of Terrorism Act, which denies the accused any guarantees to a fair trial. Constitutional remedies too are meaningless for most victims. The Constitutional Courts are virtually inaccessible to ordinary people, and even if a victim is successful in getting a case

heard, these usually experience huge delays. The lack of motivated lawyers and legal assistance, and a defective prosecution system, worsen this situation.

12. The Asian Legal Resource Centre therefore recommends the Commission to

- a. Request the Government of India to take immediate steps to prevent custodial torture and deaths by making police at the rank of officers-in-charge of stations and above accountable for every case of violence in custody, and holding them personally liable.
- b. Pressure the Government of India to ratify the CAT immediately. 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 an immediate and consistent attempt from international bodies so that India ratifies the Convention and implements it domestically.
- c. Provide the means and encouragement for India's National Human Rights Commission to conduct independent inquiries into alleged cases of torture and enforce its findings.
