



# General Assembly

Distr.: General  
24 February 2011

English only

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## Human Rights Council

Sixteenth session

Agenda item 3

**Promotion and protection of all human rights, civil,  
political, economic, social and cultural rights,  
including the right to development**

### **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.

[14 February 2011]

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

## **Nepal: The failure to investigate custodial deaths engenders impunity for torture**

The Asian Legal Resources Centre (ALRC) wishes to draw the Human Rights Council's attention to the persisting lack of investigations into allegations of torture in Nepal, notably when the torture has resulted in death in custody. The absence of independent investigations being held into all the cases of death occurring in custody provides impunity to the perpetrators and encourages further abuses. Without investigations, it is evidently highly unlikely that cases in which torture is the cause of death either come to light or lead to appropriate sanctions.

Independent investigation must be held in every case of custodial death in order to ensure a torture-free police system. This has been acknowledged in the UN Body of Principles for the protection of all persons under any form of detention or imprisonment, which establishes in principle 34 that "Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority".

Nevertheless, in Nepal, as in a number of Asian countries, custodial deaths, even in cases when there are strong allegations that they were caused by torture at the hands of the police, do not result in an impartial investigation, contributing significantly to the creation of a system of impunity.

In 2010, the Asian Legal Resource Centre, in cooperation with its local partners, documented five cases of custodial death, including the death of a 16-year-old. Although in each case there were strong and reasonable grounds to believe that the deaths resulted from torture by the police, none of them has led to a proper investigation or the prosecution of the alleged perpetrators.

These cases show clearly how the lack of an impartial investigation system guarantees impunity for the perpetrators concerning all allegations of torture, notably those that result in custodial deaths. Impunity for acts of torture has been identified by the Special Rapporteur on Torture and other cruel, inhuman or degrading treatment or punishment as one of the main causes of the persistence of the use of torture. In 2005, the Committee Against Torture recommended that Nepal should "consider adopting legislative and administrative measures for witness protection, ensuring that all persons who report acts of torture or ill-treatment are adequately protected." The Torture Compensation Act, 1996, the only act related to torture in Nepal, still does not contain any provisions related to the protection of witnesses and victims. Six years after the CAT's recommendations having been made, the absence of such a mechanism continues to expose torture victims and their families to high risks if they seek legal remedies concerning the abuses. This absence allows the alleged perpetrators to threaten and pressure victims and witnesses in order to cover-up the allegations of torture.

In 2010, attempts by the police to cover-up allegations of torture in cases of custodial deaths have included: co-detainees being forced to sign statements that the victim had not been tortured; families and witnesses being forced to sign papers exonerating the police officers without being informed of their contents; families being forced to agree to settle cases; and the arrest of innocent persons on charges of homicide. For instance, in the case of S.S., a 46 year old Dalit man who was tortured to death in Kathmandu in May, 2010, the perpetrators unlawfully arrested the man who had made the complaint leading to the initial arrest of the victim and charged him with murder, after having had the deceased's wife sign a paper without allowing her to see its content. This was an FIR charging this man with the crime.

In the case of S.B.B., who died on September 22, 2010, while in the custody of the Ratnanagar Area Police Office, the victim's co-detainee was asked to sign a paper in which he states that S.B.B. had not been tortured, even though he was not aware of whether he had been tortured or not. The man who had initially brought the victim to the police office was asked to come back to the police station to sign a letter without being informed of its content.

Attempts by the police to protect police officers involved in acts of torture to death were seen in the case of D.G.M. and B.G.M., a father and son who died in police custody in Prangbung Police Post in Panchtar District, in February 2010, after having been beaten up by the police and the public after being accused of a theft. After D.G.M.'s death the victim's family-members were forced to accept a three-point agreement while inside the District Police Office. This established that the victim's family will receive compensation, that the two sons of the deceased will be provided with government jobs, and that legal action would be taken against the perpetrators. However, when an FIR was prepared by the family of the victims, the police and the public pressured them so that the names of three police constables were withdrawn from the report. The police's investigation resulted in a weak report that damaged the victims' case and proved insufficient to prosecute the perpetrators. On October 8, 2010, the Panchtar District Court, decided that the grounds for the plaintiff's claim were insufficient.

The absence of any impartial body to conduct investigation into allegations of torture and the circumstances of custodial deaths, results in such investigation being conducted by police officers who even sometimes come from the same police station as the alleged perpetrators. This raises obvious questions about the independence and effectiveness of such investigations. Even in cases, as cited above, in which police officers who conduct the investigations are not from the same police station, there are still attempts to ensure that those responsible are not held responsible. This concern has repeatedly been voiced by local and international NGOs and experts. On August 10, 2010, Manfred Nowak, the former Special Rapporteur on Torture, wrote : "A further concern is the fact that the authorities entrusted with investigating allegations of torture and ill-treatment are frequently the same authorities who are accused of committing such acts (i.e. the police), as is the case in [...] Nepal".<sup>1</sup>

The case of 16-year-old D.B., who died while in custody of the Khajuriya Police Post, in Rupendehi District, on July 4, 2010. An investigation team set up under the leadership of the District Administration Office following repeated pressure from the civil society and the victim's family, was composed exclusively of policemen under the leadership of a government official. It reportedly failed to show due diligence in interviewing the police officers that had been on duty at the time of the custodial death, and was negligent in considering the evidence and as a result concluded that there were insufficient grounds to establish that the cause of death was torture by the police. This conclusion was based on the postmortem report, which mentions the cause of death as being "unknown" but failed to take into account the details of the injury records, which mentioned "a small contusion over left front head and right shoulder, an abrasion in the central part of his left palm and some redness over the right sole." The failure to consider key evidence that pointed to torture led to this unsatisfactory outcome to the investigation.

The Home Ministry also formed an investigation team to look into the incident, which concluded that carelessness by the police was the cause of the death. It recommended departmental action against the policemen and provided NRS 150,000 Compensation (around US\$ 2000) to the family, who refused to receive it. On January 26, 2011, the

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<sup>1</sup> <http://www2.ohchr.org/english/issues/torture/rapporteur/docs/A.65.273.pdf>

Appellate Court in Butwal issued an order to the District Police Office to immediately proceed with the investigation of the death. No sanctions or disciplinary action have been taken in the case to date, however.

During Nepal's UPR review on January 25, 2011, the delegations of Denmark and the United Kingdom suggested that an independent oversight mechanism should be established to investigate cases of human rights abuses by security forces, and the government of Nepal indicated that it would examine this recommendation and further respond on it. However, Nepal refused in total the recommendation made by the Czech Republic concerning extra-judicial killings, which included the need to "b) Establish external oversight mechanisms, such as an independent police complaints commission or special investigative unit to investigate and prosecute crimes allegedly committed by state actors; c) adopt measures to support and protect witnesses as well as victims and their family members.

In most cases, the investigation committees limit themselves to denouncing police "carelessness" and non-respect of procedures, and to recommend limited departmental sanctions against the perpetrators and compensation to the victims' families. Such offers of compensation are designed to force the families to abandon further efforts at achieving justice and full reparation, as they are often not in a position to refuse the money. Moreover, in the rare cases where some actions have been taken against perpetrators, they were limited to disciplinary or departmental sanctions, with the perpetrators facing temporary suspension or departmental warnings. In most of the cases, the sanctions limit themselves to targeting junior police officers, with senior officers not being affected. In the case of S.S. for instance, although the National Human Rights Commission conducted an investigation into the case and recommended legal action be taken against the perpetrators, only three junior police officers were suspended from the police department and no further measures were taken. Ignoring the recommendations for prosecutions made by the NHRC is not a new feature in Nepal. According to the NHRC's records, out of 30 recommendations it has made to the government in the last decade related to cases of torture, only one was fully implemented, three were partially implemented and 26 were ignored by the government.

Furthermore, the fact that no law provides criminal penalties for torture, in spite of a constitutional provision which establishes that torture is a criminal offence, further contributes to the impunity enjoyed by perpetrators for acts of torture. Under the Torture Compensation Act of 1996, victims of torture can claim compensation from the state but not from the perpetrators for the torture they have faced. Nevertheless, Nepal indicated that it supported the recommendations to criminalize torture, in line with international standards, as part of reforms to the penal code and the penal procedure code.

The lack of investigations concerning custodial deaths speaks to the systemic failures that are preventing accountability and justice concerning grave human rights, including torture, in Nepal. Give this, the Asian Legal Resource Centre wishes to recommend that the Human Rights Council:

1. Urge the Government of Nepal to implement in full and without delay the many recommendations concerning torture made by the Special Rapporteur on Torture, the Committee Against Torture, and by States during the UPR review, with special attention to the need to ensure the systematic and independent investigation of all deaths in custody, to ensure that deaths due to torture cannot be covered-up;

2. Continue to encourage the government of Nepal to adopt legislation criminalizing torture and affix punishments that are proportional to the serious nature of this crime, in line with international law and standards as well as UPR recommendations in this regard.

3. Urge the government of Nepal to dismantle the ongoing system of impunity that operates in the country, and engenders endemic torture, notably by fully implementing all the 30 recommendations made by the National Human Rights Commission in torture cases.

4. Remind the government of Nepal of the urgent need to adopt legal provisions guaranteeing the security of witnesses and victims that are seeking justice and reparation.

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