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**PROMOTION AND PROTECTION OF HUMAN RIGHTS:
STATUS OF THE INTERNATIONAL COVENANTS ON HUMAN RIGHTS**

**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).

Implementation of the First Optional Protocol of the International Covenant on Civil and Political Rights in Sri Lanka

1. Sri Lanka acceded to the First Optional Protocol of the International Covenant on Civil and Political Rights (ICCPR) on 3 October 1997. As a result, Sri Lankan citizens aggrieved by violations of their rights may complain to the Human Rights Committee within the framework of the Optional Protocol. In fact, several citizens have gone before the Committee and some have been successful. Several other communications are still pending.

2. Some of the communications are over violations under article 9 (1) of the ICCPR relating to the right of personal security. In other communications dealing with issues such as torture, some of the authors who are alleged torture victims have also sought interim orders guaranteeing them and their families personal security while their applications are pending. On one occasion, in the communication filed by Mr Michael Anthony (Tony) Fernando, interim orders were issued to guarantee personal security to him, as he feared for his life. Several others have also sought similar interim orders.

3. However, subsequent complaints by such persons show that despite the Human Rights Committee's issuance of such orders, adequate protection has not been provided to the complainants. In one instance, after agreeing to provide protection by way of a written undertaking to the Committee, the Government of Sri Lanka reduced protection significantly within a very short time, without any reason given by the executive.

4. In the case of Tony Fernando, the Human Rights Committee issued interim measures on 9 January 2004 [KF 1189/2003], to be provided by the State party. These were

- a. To adopt all measures to protect the life, safety and personal integrity of the author and his family members, so as to avoid irreparable damage to them.
- b. To inform the Committee on the measures taken by the State party in compliance with the decision within 30 days from the date of the Note Verbale, that is no later than 9 February 2004.

5. However, on 2 February 2004, there was an attempted kidnapping of the complainant, which he narrowly escaped. Until then the state party had not taken any steps to protect him, despite the interim measures issued by the committee. While Mr. Fernando was being treated at hospital, the police provided security to him, although only following a huge outcry from the media. However, when about a week later he was discharged, the protection was withdrawn. Thereafter, he stayed for months in hiding and later fled the country due to the fear of being assassinated. Now, he is a legally recognised refugee living in Canada.

6. In another case, Dr. Jayalath Jayawardena, who is a former cabinet minister and presently a member of parliament, submitted a communication (No. 916/2000) alleging, among other things, that a public statement made by the president labelling him a spy of the Liberation Tigers of Tamil Eelam, endangered his life and that of his family members. The Human Rights Committee held that the statement violated the rights of Dr. Jayawardena. On 9 September 2004, the Permanent Mission of the Democratic Socialist Republic of Sri Lanka to the United Nations Office gave an undertaking to the effect that the government had agreed to provide additional protection to Dr. Jayawardena if and when it became necessary. Consequently, Dr. Jayawardena

was provided additional security. However, in December 2004 by an order of the Minister of Public Security, Law and Order, Dr. Jayawardena's security was significantly reduced without any prior consultation with him or without any change of circumstances.

7. In yet another case, the Human Rights Committee found in favour of a Mr Nallaratnam Singarasa, stating that the government had violated Article 14, paragraphs 1, 2 and 3 and paragraph 14 (g) read together with Article 2, paragraphs 3 and 7 of the Covenant. In the Singarasa communication the Committee recommended appropriate remedies including release or retrial and compensation to the violations. Further, the Committee recommended that Sri Lanka should ensure that the Sections of the Prevention of Terrorism Act are made compatible with provisions of the ICCPR. The Committee also requested information about the measures taken to give effect to its views. More than 90 days have now passed since the Commission's recommendations were made, yet there has been no response or effective action taken by the Attorney General to date.

8. In all three instances relating to the Human Rights Committee and others where Special Rapporteurs make interventions regarding the security of a person by way of urgent appeals and other interventions, the issue that arises relates to the measures that the state should take to honour such treaty obligations. In fact there is no mechanism by which such orders or measures are implemented. Thus, a citizen may take all the trouble to avail himself of the legal redress made available through the First Optional Protocol but end up without any real redress, despite UN intervention. Thus, the protection received by way of the Human Rights Committee order or measure may fall far short of what is actually required.

9. Therefore, if citizens are to receive redress under the First Optional Protocol it is necessary to have an effective mechanism to have such measures implemented and reviewed. The obligation should lie with the state to provide the mechanism, involving the Attorney General and the Inspector General of Police, particularly on the issue of violations under article 9 (1) of the ICCPR. This is the situation that requires urgent attention to which the Asian Legal Resource Centre calls upon all concerned parties to pay particular and immediate regards.
