



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2006/NGO/175
6 March 2006

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Sixty-second session
Item 11 (d) of the provisional agenda

**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:
INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE,
IMPUNITY**

**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.

[14 February 2006]

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

**SRI LANKA FAILS TO IMPLEMENT RECOMMENDATIONS OF THE HUMAN RIGHTS
COMMITTEE UNDER ICCPR AND ITS OPTIONAL PROTOCOL**

1. In a written statement to the sixty-first session of the Commission, the Asian Legal Resource Centre (ALRC) raised concerns regarding the failure of Sri Lanka to implement recommendations and decisions of the Human Rights Committee, and thus its failure to implement the First Optional Protocol of the International Covenant on Civil and Political Rights (ICCPR) (E/CN.4/2005/NGO/53). Regrettably, during the past year the government has only persisted with its blatant rejection of international law.

2. On 1 December 2003, the Human Rights Committee released concluding recommendations on Sri Lanka (CCPR/CO/79/LKA), including the following:

a. The Committee recommended that the Constitution of Sri Lanka be altered to include the right to life and the right of universal recognition before the law, to remove laws wholly incompatible with constitutional provisions relating to fundamental rights, to create a mechanism to challenge incompatible legislation (in accordance with arts. 2 and 26 of the ICCPR), to alter the limitation for challenging the validity or legality of an "administrative or executive action", and to bring it into conformity with articles 4 and 15 of the Covenant.

Sri Lanka has failed to implement any of the recommendations outlined in article 7 and there is no evidence that any attempts were made to do the same. Thus, there is no likelihood that recommendations will be implemented in the near future.

b. The Committee expressed concern about "persistent reports of torture and cruel, inhuman or degrading treatment or punishment of detainees by law enforcement officials and members of the armed forces, and that the restrictive definition of torture in the 1994 Convention against Torture Act continues to raise problems in the light of article 7 of the Covenant". It recommended that Sri Lanka adopt legislative provisions and other measures to prevent such violations, to ensure prompt investigations and effective prosecution of perpetrators, and that the National Police Commission (NPC) complaint procedure should be implemented. It also recommended that authorities act diligently to enquire into all cases of suspected intimidation of witnesses and establish a witness protection program in order to put an end to a climate of fear, and to strengthen the powers of the National Human Rights Commission (NHRC) to investigate and prosecute alleged human rights violations.

There has been no significant action taken by Sri Lanka in this regard. In fact, the NPC is at present not functioning due to the absence of commissioners, the Special Investigation Unit under the Office of the Attorney General has proceeded with fewer cases, disciplinary inquiries have been transferred to internal authorities who are biased towards perpetrators, and the NHRC has been severely undermined by a recent arson attack for which no persons have as yet been held responsible.

c. The Committee urged Sri Lanka to implement articles 6, 7, 9 and 10 of the ICCPR and give effect to the relevant recommendations made by the Working Group on enforced or involuntary disappearances and by the Presidential Commissions for Investigation into Enforced or Involuntary Disappearances. It was also recommended that the capacity of the NHRC to monitor the investigation and prosecution of all cases of disappearances should be increased.

Sri Lanka has failed to act to implement the above recommendations. Sri Lanka has misled the international community regarding the enormous number of disappearances by promising to take various measures but failing to actually implement any of these measures.

d. The Committee recommended that Sri Lanka legally abolish, and take measures to ensure abolition of, all forms of corporal punishment in prisons and primary and secondary schools.

All reports indicate that corporal punishment continues in prisons and that violence remains the method of control. There is also no indication that the prevalence of corporal punishment has been decreased in schools. A law has been passed by the legislature but there have been no serious efforts towards implementation.

e. The Committee recommended that all legislation, including the Prevention of Terrorism Act (PTA), be compatible with the provisions of the ICCPR.

Since the ceasefire agreement of February 2002, the use of the PTA has become minimal. However, the establishment of emergency rule in the aftermath of the December 2004 tsunami has placed restrictions on freedom of assembly and protest. Periods of detention have also been extended on the pretext of crime prevention.

f. The Committee called for Sri Lanka to strengthen the independence of the judiciary, other than parliamentary supervision and discipline of judicial conduct.

This recommendation has not been followed. The Supreme Court is widely viewed as politically controlled. The Chief Justice has been criticized in particular for having allegiances to the former and present presidents.

g. The Committee recommended that Sri Lanka take appropriate steps to protect media pluralism, avoid state monopolization of the media, and ensure the impartiality of the Press Complaints Commission. Sri Lanka was also urged to take appropriate steps to prevent harassment of media personnel and journalists, and to investigate and prosecute such actions promptly, thoroughly and impartially.

The state media is still used as a government propaganda tool, particularly during elections. Impartial and objective journalists working in the state media have been removed from editorial positions. There has not been a single instance reported of inquiries being completed into the murder of a journalist.

h. The Committee instructed Sri Lanka to disseminate the concluding observations of the Committee widely and respond to the recommendations within one year, in accordance with rule 70, paragraph 5, of the rules of procedure.

No attempts have been made to publish or disseminate the concluding observations. In fact, the observations were not even officially presented to the parliament, the judiciary or other governmental bodies. There is also nothing to indicate that the government has provided any more information to the Committee though more than one year has passed.

3. In addition to the failure of Sri Lanka to act on the recommendations of the Committee, it has also blatantly ignored its decisions in the following cases, amounting to a breach of obligations under the Optional Protocol to the ICCPR.

a. In the case of Tony Fernando, No. 1189/2003, the Committee held on 31 March 2005 that the State party had violated article 9, paragraph 1 of the ICCPR and that in accordance with article 2, paragraph 3(a) of the Covenant, the State party was under an obligation to provide the author with an adequate remedy, including compensation, and to make such legislative changes as necessary to avoid similar violations in the future. The State Party replied on 1 August 2005 that

"The government of Sri Lanka is unable to consider the payment of compensation to any person on the basis of a conviction and sentence passed by a competent court in Sri Lanka. In the present case, the author was convicted by the Supreme Court, which is the apex court in Sri Lanka and sentenced by the said court. As such, payment of compensation on the basis of the conviction and sentence tantamount to an undermining of the authority of such court and would be construed as an interference with the independence of the judiciary.

"The Government of Sri Lanka is unable to prevent similar judgments of this nature as it has no control over future decisions or judgments of court, nor can it give directions to the Supreme Court in relation to any future judgement."

b. In the case of Nallaratnam Singarasa, No. 1033/2001, the Committee held on 21 July 2004 that the author's rights under article 14 paragraph 1, 2, 3, (c), and 14, paragraph (g) together with articles 2, paragraph 3 and 7 of the ICCPR had been violated. On 2 February 2005 the State party informed the Committee that it "does not have the legal authority to execute decisions of the Human Rights Committee to release the convict or grant a retrial". The author of the communication subsequently sought for the Supreme Court to compel the government to comply with the decision of the Committee. On 5 December 2005 the attorney general was reported as saying that to call for alteration of "a ruling by the Supreme Court is an intervention on the independence of the judiciary". In fact this position violates Sri Lanka's international obligations under the ICCPR, which require all branches of the government to respect the rights it enshrines.

c. In the case of Lalith Rajapakse, No. 1250/2004, the Committee held on 8 March 2005 that the author had suffered an unreasonable and prolonged delay in court cases as per article 5, paragraph 2 (b) of the Optional Protocol. The Committee also overruled the objection by the government to the admissibility of the communication of alleged violations of articles 7 and 10 of the ICCPR. The Committee stated that the State party should submit a written explanation or statement clarifying the matter and indicating what measures have been taken, if any, within six months. One year later, the State party has not yet responded or taken any action regarding this case.

d. In the case of Jayalath Jayawardene, No. 916/2000, the Committee held on 22 July 2002 that the author's rights under article 4, paragraph 4 of the Optional Protocol and article 9, paragraph 1 of the ICCPR had been violated. However, the author of the communication, who is also a member of parliament, has since repeatedly complained that the Committee's recommendations have not been complied with.

e. In the case of Victor Ivan, No. 909/2000, the Committee held on 27 July 2004 that article 14, paragraph 3 (c) and article 19, read with article 2 (3) of the ICCPR had been violated by the State

party. However, the ALRC is unaware of any compensation paid or anything done by the State party to implement this decision.

4. By its non-implementation of recommendations of the Human Rights Committee under the ICCPR and its Optional Protocol, the Government of Sri Lanka has made ratification pointless. It has indicated that it treats the views expressed by the Committee as legally not binding. In practical terms, Sri Lankan citizens have nothing to gain from taking a case to the Human Rights Committee or raising a complaint in accordance with the provisions of the ICCPR. Thus the State party is discouraging its citizens from seeking recourse to the Committee while at the same time maintaining the appearance of international respectability by being a party to the Covenant and its Optional Protocol.

6. The Asian Legal Resource Centre urges the Commission to review the stated commitment of the Government of Sri Lanka to the protection and promotion of human rights in terms of the ICCPR and its Optional Protocol. It is beholden on the Commission to take firm steps to address the open flouting of international laws by State parties, lest they inadvertently become devices for the further demoralisation of peoples rather than the upholding of human rights.
