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IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251 OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”

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.

[28 February 2007]

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

Sri Lanka - Non-implementation of decisions of the Human Rights Committee and recommendations of other UN bodies

1. The United Nations Human Rights Committee has expressed views in favour of authors in the following communications: July 22, 2002, Communication 916/2000; July 16, 2003, Communication No. 950/2000; July 21, 2004, Communication No. 1033/2001; July 27, 2004, Communication 909/2000; March 31, 2005, Communication 1189/2003; and July 26, 2006 Communication 1250/2004. Although the Human Rights Committee has recommended measures to be taken by Sri Lanka, as a State Party, regarding the violations of the rights of the authors of these communications, none of the authors have received any relief from the State.
2. In communication number 1033/2001, in which the author was Mr. Nallaratnam Singarasa, who had been sentenced to 35 years of imprisonment solely on the basis of a confession, the Human Rights Committee held that the facts disclosed violations of article 14 (1), para 1, 2, 3, (c) and 14, para (g) read together with article 2, para 3, and 7 of the International Covenant on Civil and Political Rights (ICCPR). The Committee recommended the release or retrial of the prisoner, compensation and the amendment of the Prevention of Terrorism Act to make it compatible with the provisions of the ICCPR. However, the State Party submitted to the Human Rights Committee that it was unable to implement the recommendations of the committee in this communication, on the basis that the view of the Committee affects the decision made by the Sri Lankan courts. The implication of the point of view taken by the State Party was that view of the Committee regarding violations of the ICCPR by the courts cannot be binding.
3. The incapacity to implement the views of the Human Rights Committee came to an even more critical point when in the case of Nallaratnam Singarasa vs. the Attorney General (SC Spl LA No. 182/99), the Supreme Court held that the signing of the optional protocol to the ICCPR in 1997 by the president was *ultra vires* and unconstitutional. Despite protests by local and international groups, Sri Lanka, as a State Party to the ICCPR and its optional protocol, had not taken any measures to rectify the legal situation arising from this decision.
4. If the citizens of Sri Lanka are to have the benefit of having recourse to the Human Rights Committee regarding violations of rights for which they are not able to find adequate remedies within the legal framework of the country, it is imperative that the Sri Lankan government enact an enabling law for the implementation of the views of the Human Rights Committee within the country. Given the present judicial interpretation concerning the unconstitutionality and *ultra vires* nature of the signing of the optional protocol, the latter will not be able to have fruitful recourse unless such an enabling law is passed by the Sri Lankan legislature.
5. The Asian Legal Resource Centre (ALRC) urges the Human Rights Council, the UN High Commissioner for Human Rights, all other UN agencies and the other State Parties to the ICCPR to intervene in order to overcome the present obstacle for the implementation of the views of the UN Human Rights Committee as mentioned above.
6. The ALRC also points to Sri Lanka's failure to implement the recommendations of the Human Rights Committee following its periodic reviews. The Human Rights

Committee, in its recommendations on December 1, 2003, highlighted the need to bring the country's Constitution into conformity with the ICCPR, and for the government of Sri Lanka to:

- Recognise the right to life and judicial review;
- Remove the limit of one month for the filing of fundamental rights applications; to remove all laws incompatible with the ICCPR;
- Bring Chapter three of the Constitution (the fundamental rights provisions) into conformity with articles 4 and 15 of the ICCPR;
- Address the issue of torture by improving provisions that ensure prompt investigations and effective prosecution of perpetrators;
- Provide victims with protection and eliminate the climate of fear that plagues the investigation and prosecution process;
- Increase the Human Rights Commission of Sri Lanka's capabilities for investigation and prosecution of torture;
- Regarding disappearances, Sri Lanka was asked to implement article 6, 7, 9 and 10 of the ICCPR and implement the recommendations of the Working Group on Enforced and Involuntary Disappearances;
- Eliminate corporal punishment from schools;
- Ensure legislation to make the Prevention of Torture Act (PTA) compatible with the ICCPR;
- Combat the trafficking of children for exploitative employment and sexual exploitation;
- Reduce the overcrowding of prison institutions and grant sufficient resources for the monitoring of prison conditions;
- Strengthen the independence of the judiciary by providing judicial rather than parliamentary supervision and discipline of judicial conduct;
- Protect media pluralism and to avoid the state monopolization of the media;
- Take steps to prevent the harassment of media personnel and journalists, and investigate their complaints properly;
- Conduct legislative review and reform of all discriminatory laws;
- Bring local legislation against domestic violence and marital rape;
- Publish the Committee's recommendations and submit a report within a year on some of these recommendations.

None of these recommendations have been implemented by the State Party.

7. Sri Lanka has also failed to implement any of the recommendations made by the Committee against Torture on November 23, 2005 (CAT/C LKA /CO/1/CRP.2). The Committee recommended that Sri Lanka:
 - Strengthen the Human Rights Commission of Sri Lanka (HRCSL), appoint the National Police Commission under the Constitution, and also implement a public complaints procedure as required by the Constitution;
 - Take that effective action to ensure the fundamental safeguards for persons detained by the police are respected, including the right to habeas corpus, the right to inform a relative, access to a lawyer and a doctor of their choice, and the provision of information about their rights;
 - Bring domestic legislation to implement the principle of non-refoulement enshrined in article three of the Convention against Torture;
 - Ensure that acts of torture become subject to jurisdiction in Sri Lanka, even

regarding non-Sri Lankan citizens who have committed torture outside Sri Lanka but are present in its territory;

- Allow independent human rights monitors, including the HRCSL, full access to places of detention, including police barracks, without prior notice and set up a national system of review on the basis of such monitors;
- Ensure that procedures are in place to monitor the behaviour of law enforcement officials, particularly the police, and promptly, exhaustively and impartially investigate all allegations of torture and ill-treatment, including sexual violence, as well as disappearances, with a view to prosecuting those responsible;
- Prosecute offenders without impunity;
- Take necessary measures to ensure that justice is not delayed;
- Take effective steps to ensure that all persons reporting acts of torture or ill treatment are protected from intimidation and reprisals in making such reports;
- Provide programmes for witness and victim protection;
- Establish a reparation programme, including treatment of trauma and other forms of rehabilitation;
- Take necessary action in a comprehensive manner and to the extent possible in the circumstances to prevent abduction and military recruitment of children by the LTTE.

None of these recommendations have been implemented by the state party.

8. The failure of Sri Lanka to respect its international obligations and to implement the Human Rights Committee and Committee against Torture's views and recommendations, have placed the citizens in an extremely helpless situation. It is commonly admitted, even by the State authorities, that the rule of law situation is currently at its lowest ebb. Extreme forms of torture, including death in police, military and prison detention are a frequent feature in all parts of the country. In the north and east there are massive acts of violence being perpetrated by State-agents, the LTTE and other militant groups, which the UN High Commissioner for Human Rights and the UN Special Rapporteur on extrajudicial, summary or arbitrary executions, have described as being gross abuses of human rights. What is worse is that there are no effective authorities to ensure that people have access to institutions to make complaints and/or to have them investigated. There is a near-total absence of human rights monitoring. Due to the failure to appoint the Constitutional Council, the commissioners who head several leading monitoring bodies cannot be appointed in conformity with the Constitution. As such, there is almost complete impunity operating in the country, due to a lack of investigations, and this situation encourages further violations of human rights.
