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

**Written statement* submitted by the Asian Legal Resource Center (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.

[13 February 2006]

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

FLAGRANT CONTEMPT FOR INTERNATIONAL RECOMMENDATIONS PERPETUATES TORTURE IN SRI LANKA

1. As pointed out by the Human Rights Committee (CCPR/CO/79/LKA) and the Committee against Torture (CAT/C/LKA/CO/1/CRP2), torture remains a major problem in Sri Lanka. The chairperson of the Human Rights Commission (HRC) of Sri Lanka has gone on record as saying that torture is endemic and that numbers of complaints are multiplying rapidly.

2. There is now consensus among human rights groups that the main cause of endemic torture in Sri Lanka is the country's policing system, which relies on torture as the main instrument of criminal investigation. It is also established that victims of torture are almost always poor. This deeply flawed policing system, when coupled with extreme delays in the adjudication process in the country's courts--including the High Courts, which have the power to hear trials on serious crimes--makes the fight to eliminate torture an almost impossible task. Although Act No. 22 of 1994 incorporated provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) into Sri Lankan law, this law alone has fallen far short of what is needed to implement the provisions of the CAT.

3. Sri Lanka's public institutions are collapsing. Constitutional bodies are falling to the wayside one after the other because their members are not appointed for political reasons. Safeguards against police abuses are being further eroded. The National Police Commission stopped functioning in late 2005 and the police have as a result been free from any effective disciplinary oversight.

4. There are far more acquittals under the Act No. 22 of 1994 than convictions. Only two perpetrators have been convicted since 1994: a large number of those being prosecuted are now being acquitted. In fact, the general conviction rate in criminal cases is between 2 and 4 per cent. The primary reason for this is that as trials are delayed, victims and witnesses are placed under severe pressure. As a result, victims often abandon their cases, having lost any hope of justice being obtained through the courts. Many simply have no idea of when they will be heard.

5. The case of Lalith Rajapakse is a case in point. Lalith was arrested on 18 April 2002 and was severely beaten at the Kandana Police station. He was found unconscious at the police station on April 20 by his grandfather, and remained unconscious for 15 days at the National Hospital in Colombo. Due to interventions by the Special Rapporteur on the question of torture and others, indictments were finally filed at the Negombo High Court in July 2003, more than a year after the incident occurred. Since then, the case has been pending before the court and the hearing has now been postponed to May 2006. Lalith also filed a fundamental rights application in the Supreme Court on 20 May 2002. While the Constitution of Sri Lanka requires the prompt handling of fundamental rights applications, Lalith's will only be taken up after the high court case is adjudicated. This case could go on for the next two or three years; the last hearing was on 28 November 2005. The next will be after another six months. Since making his complaint Lalith has been living away from his home, in the care of a human rights group, due to fear of reprisals.

6. Over the past year there has been a drastic reduction in the number of fundamental rights cases lodged in the Supreme Court, and the few complainants who have won cases have been

awarded paltry compensation. As this trend runs counter to the continued incidence of torture in Sri Lanka it can be explained only by the lack of seriousness with which torture is treated by the government, as well as its apparent contempt for the recommendations of United Nations bodies.

7. The Government of Sri Lanka has failed to discharge its obligations to address torture under the CAT and International Covenant on Civil and Political Rights (ICCPR) because there is no authority with the ultimate responsibility to ensure that the law prohibiting torture is properly enforced. Although Sri Lanka has signed or ratified many conventions, there is no command responsibility for effective implementation in accordance with article 2, even after a law is made. Act No. 22 of 1994 is exemplary. It does not contain a binding obligation on the inspector-general of police to ensure that all complaints of torture are investigated in the same manner as other crimes.

8. For example, a murder complaint is investigated strictly in accordance with the Criminal Procedure Code. Investigations begin immediately on the making of the complaint; a report is filed in the shortest possible time at the relevant court, and the suspect is produced if the complaint exhibits prima facie credibility. Thereafter, all investigations are reported to court by reports made at frequent intervals. If the alleged crime is to be tried before a high court--as should be the case where allegations of torture are concerned--the file is sent from the court to the Department of Attorney General, which is obliged to inquire into the matter and, if the evidence submitted is sufficient to lead to a conviction, file the case forthwith.

9. However, a Special Investigation Unit (SIU) established in 2002 under the Department of Attorney General to deal specifically with cases of police torture and abuse does not usually follow this procedure. SIU inquiries usually start only when the government or Department of Attorney General forwards a complaint that has been received from an international agency, such as the Special Rapporteur on the question of torture. These selective inquiries violate the basic principle of criminal law that all complaints must be investigated and prosecuted. They violate the basic principle of equality before the law and instead treat criminal investigations in relative rather than absolute terms, allowing for political considerations to play an important part in decision-making on how many cases are prosecuted and against whom.

10. In this respect, the Sri Lankan experience has been that the decision to prosecute, and how many to prosecute, is based on possible repercussions such as "low morale" in the police service: i.e. that the police service may be discouraged if the law relating to torture is strictly enforced. The Government of Sri Lanka, police and attorney general all seem in agreement that only some selected prosecutions of low-ranking officers can be allowed under Act No. 22 of 1994.

11. It should be recognised that despite the selective investigation approach taken by the SIU its work is a step forwards. However, the Government of Sri Lanka appears intent to undermine even this little progress by isolating and ignoring the SIU. At present, fewer cases are being referred to this unit and more are being investigated by local police or senior officers. This is why the National Police Commission, Human Rights Commission and other external agencies have been receiving more torture complaints while the SIU has been receiving less: from 95 cases referred to it in 2002 to just 33 in 2005. By-passing the SIU allows for greater possibility of inefficient and ineffective inquiries. No one has been arrested

for the 19 October 2005 torture death of Lalantha Fernando, for instance, because the superior officer of the alleged perpetrators is conducting the investigation rather than the SIU.

12. It is obvious to any interested observer that the Government of Sri Lanka does not feel obliged by the recommendations of either the Committee against Torture or the Human Rights Committee. In fact, it sees nothing wrong in ignoring the recommendations of international human rights mechanisms to which it had early agreed to be bound. This attitude has not changed despite the Human Rights Committee placing the government under a special procedure requesting a report on a few of its key recommendations within a year of its findings of November 2003. To the knowledge of the ALRC no such report has ever been submitted. A similar request by the Committee against Torture in 2005 is equally unlikely to be satisfied.

13. The Asian Legal Resource Centre urges the Commission and its special procedures, along with the Human Rights Committee, the Committee against Torture and all other relevant agencies to consider the implications when a State party to international treaties blatantly ignores their recommendations and fails to comply with its international obligations. The Commission must adopt effective strategies to circumvent such non-cooperation, as exhibited in the case of Sri Lanka. The international human rights movement faces a grave danger that without comprehensive steps to counter such inaction by State parties its ideals will become the subject of farce. This situation must be avoided at all costs if public trust and confidence in the role of the international community in human rights discourse is to be maintained. These considerations need to be given top priority in all discussions on reform of United Nations human rights mechanisms.
