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**EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS:
NATIONAL INSTITUTIONS AND REGIONAL ARRANGEMENTS**

**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.

[29 January 2004]

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

National Human Rights Commission of Sri Lanka in serious need of reform

1. In its concluding observations of the periodic report of Sri Lanka dated November 2003, the Human Rights Committee stated that, "The capacity of the National Human Rights Commission to investigate and prosecute alleged human rights violations should be strengthened" (CCPR/CO/79/LKA [Future]).
2. The National Human Rights Commission of Sri Lanka (NHRC) has a mandate to investigate human rights violations. However, it has been criticised for some time over its failure to develop an effective complaint and investigation procedure. The lack of a procedure has resulted in its officers acting arbitrarily. This became apparent in November 2003 after an Area Coordinator submitted a report on a torture case where a 17-year-old boy suffered serious injury as a result of being hung from a beam and assaulted by the police. This child was a part of a team representing the World Organization against Torture (OMCT) and Asian Legal Resource Centre at proceedings before the Human Rights Committee during its hearing of Sri Lanka's periodic report. When questioned by the Committee about this case, the Sri Lankan delegation claimed that the story was false. The delegation based its claim on a report by the NHRC Area Coordinator for Kandy. The report was made without interviewing the victim, his family, or the doctors who had examined him. A complaint was subsequently lodged with the NHRC Chairperson, who reopened the case and also announced an inquiry into the conduct of the Area Coordinator. This inquiry, which was announced on 6 November 2003, has continued up to the end of December.
3. An internal study into 708 complaints of torture received by the NHRC during 2000 and 2001 identified a range of defects in the handling of cases, including most of the following:
 - a) Advising complainant torture victims to pursue their cases in the courts by themselves. Senior lawyer, J C Weliamuna, has remarked that, "It takes months and sometimes years before a human rights case has been taken up by the Commission for action. The case being so the Commission very often informs the victims to take his or her case before the Supreme Courts, which puts the poor victims in a tight corner against the perpetrators" (*Daily News*, 12 December 2003).
 - b) Lack of investigation into cases where the victim has died in police custody allegedly as a result of torture. There is not a single case of successful inquiry into the many custodial deaths that have taken place, including the most recent ones. A case in point is the case of Kottabadu Durage Sriyani Silva, of Pettawatta, Gomarakanda, Paiyagala (SC No. 471/2000 [FR]). The NHRC rejected the complaint brought before it by the victim's family, claiming that it has no mandate to investigate.
 - c) Calling for further particulars and then abandoning the inquiry. In many cases, there has been no follow-up of the requests for further information, and no further action taken.
 - d) Conducting investigations at police stations. Victims complaining of torture have been asked to come back to the same police station where he or she has allegedly been tortured, for further inquiries.
 - e) Intimating to the perpetrators that a complaint has been made against them, and giving the particulars of the victim. This has been done without providing any protection to the victim.
 - f) Conducting inquiries in such a manner that victims have no option but to agree to a settlement. Victims already traumatised due to torture are pressured into talking with the perpetrators to arrive at a deal. In these cases, the settlements have amounted to as little as 1000 rupees (US\$10). This is even though the officers involved know that there is no way to enforce payment, as the NHRC has no capacity to legally impose and enforce financial settlements.

- g) Stopping of investigations due to interventions on behalf of alleged perpetrators by affluent or powerful persons.

4. In a press release of 1 December 2003, the Chairperson of the NHRC attributed many of the problems to a shortage of staff. She stated that there has been a rapid increase in complaints, but the number of inquiry officers is insufficient. She added that she hoped to improve on this by March 2004. However, in a subsequent letter to the Chairperson, the Asian Human Rights Commission, the sister organisation of the Asian Legal Resource Centre, pointed out that the problems relate more to the lack of an effective investigation procedure, rather than a shortage of resources.

5. The Asian Legal Resource Centre proposes that the work of the NHRC could be rapidly improved by:

- a) Giving priority to investigations into torture, deaths in custody, intimidation of victims and other serious cases.
- b) Eliminating bad staff to speedily boost the morale of others so that they will properly attend to their mandate.
- c) Punishing corrupt staff and collaborators with alleged perpetrators.
- d) Seeking volunteers from among human rights groups and other concerned persons to record statements and assist with other preliminary steps in an investigation. There are many persons who will volunteer if asked to help.
- e) Establishing a mobile unit from among these volunteers to help in quick interventions, such as visits to police stations and similar activities, and giving the necessary authorization to a group of selected persons for this purpose.
- f) Putting in writing the basic investigation procedure.
- g) Making contact with the Attorney General, and arrangements to refer serious cases of torture and similar violations to the Special Investigation Unit working under the Prosecution of Torture Perpetrators Unit.
- h) Ensuring that victims will be protected. The Asian Legal Resource Centre has submitted a separate written statement on this matter to the Commission.
- i) Implementing an emergency plan to deal with temporary shortfalls in funds and gaps in policy. This plan should include calls for special assistance from the government, international funding agencies and others, and calls for resources from local human rights groups, by way of personnel and materials.

6. Were the attention of all members of the NHRC directed unreservedly to the above concerns, many of them could be resolved within a matter of months, and in compliance with the recommendations of the Human Rights Committee. The Committee has required the Government of Sri Lanka to report back to it on this matter, and several others, within a year. The Asian Legal Resource Centre sincerely hopes that the NHRC will make every effort to bolster its abilities to investigate and prosecute alleged human rights violators within this time.