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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:
DISAPPEARANCES AND SUMMARY EXECUTIONS

Written statement* submitted by 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.

[3 February 2003]

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

Enforced or involuntary disappearances in Sri Lanka

1. The Asian Legal Resource Centre has brought the issue of massive enforced or involuntary disappearances in Sri Lanka to the attention of the Commission on Human Rights through several written and oral statements in the last few years, most recently at its fifty-eighth session (E/CN.4/2002/NGO/74). In that last statement, the Asian Legal Resource Centre emphasized that to date the Government of Sri Lanka has failed to implement most recommendations made by the Working Group on Enforced or Involuntary Disappearance in its December 1999 report (E/CN.4/2000/64/Add.1).
2. That Sri Lanka today has a staggering number of enforced or involuntary disappearances is now a matter of public record. The report on the visit to Sri Lanka by a member of the Working Group on Enforced or Involuntary Disappearances (E/CN.4/2000/64/Add.1) states that

"Three regional Presidential Commissions of Inquiry into Involuntary Removal of Persons set up in 1994 submitted their reports to the President of the Republic on the 3 September 1997. The Commissions investigated a total of 27,526 complaints and found evidence of disappearances in 16,742 cases. A further 10,135 complaints submitted to the Commissions by relatives and witnesses remained to be investigated by the present (fourth) Presidential Commission of Inquiry."

3. The Final Report of the Commission of Inquiry into Involuntary Removal and Disappearance of Certain Persons (All Island) (Sessional Paper No. I – 2001) dated March 2001 stated that it had been given 10,136 complaints to investigate that with regards to which "no investigations [had] commenced" by earlier Commissions. The Final Report also stated that at least a further 16,305 cases had been brought to the Commission's attention that it was not empowered to investigate (ch. VII, p. 45), making the number of disappearances in Sri Lanka one of the largest in any country in modern times.
4. Yet while this gross violation of human rights has been assessed, to date no measures have been proposed to adequately deal with it, neither by international nor domestic agencies. The lack of genuine initiatives by the authorities to prosecute the perpetrators of enforced and involuntary disappearances has demoralized the families and loved ones of victims. Such reluctance to act according to law and punish the perpetrators has also reinforced the general loss of faith in the rule of law and law enforcement agencies in Sri Lanka, especially the Department of the Attorney-General, which acts as the chief prosecuting authority. Meanwhile, as the Government of Sri Lanka has ignored most recommendations coming from the Working Group and also all of the domestic Presidential Commissions of Inquiry--which even named some of the persons to be investigated further and prosecuted--disappearances have continued; the National Human Rights Commission is investigating new cases.
5. In light of the above, two key issues are now before the Commission on Human Rights.

a. First, if a state party ignores the recommendations of a Working Group, is there any thing more that UN agencies and mechanisms can do, or should the matter be closed? Given the gravity of disappearances, simply closing the matter without a proper solution would go against the UN Charter and all human rights treaties on which the UN stands. However, keeping the matter open without any hope of resolution does not serve much purpose either. This raises many important issues regarding international law on disappearances as well as UN obligations to redress and prevent the repetition of such heinous crimes.

b. Secondly, most disappearances in Sri Lanka occurred before the International Criminal Court (ICC) began operating. Had it been the other way round, the sheer numbers and nature of these disappearances would have necessitated them being dealt with by the ICC. As disclosed by the Presidential Commissions, disappearances often began with arrests by state officers, went on to torture, and eventually the killing and dumping of bodies. The sheer number of people killed like this in Sri Lanka exceeds the number of deaths being dealt with by some of the international tribunals now in operation in other parts of the world. Therefore, the question arises as to what role the ICC or other international bodies of jurisprudence should be expected to play in the case of disappearances in Sri Lanka.

6. The Asian Legal Resource Centre suggests the following.

a. The Working Group on Enforced or Involuntary Disappearances should assess the extent to which its recommendations have been implemented, and report to the state party concerned and the Commission on Human Rights. Given the lack of progress to date, the Working Group and the Commission must also propose specific ways for the Government of Sri Lanka to address the issue of disappearances, and steps to guarantee government cooperation and compliance.

b. The High Commissioner for Human Rights should undertake a special research project on disappearances in Sri Lanka to develop proper understanding of the issue in the Commission and the international community, with a view to preventing such a crime in the future, whether in Sri Lanka or elsewhere. The need for this research stems from the profound internal contradictions in the manner with which the UN system has dealt with disappearances in Sri Lanka. On the one hand the Working Group reports have adequately revealed the magnitude of this gross violation of human rights. On the other hand, very little action has been taken by UN agencies to facilitate redress. As a consequence, UN agencies cannot report on any significant measures taken to address the issue, and nor has the Government of Sri Lanka felt pressured to do anything about it. The consequence of this contradiction is that the issue of disappearances in Sri Lanka may soon disappear from the international agenda. All concerned UN agencies must deal with this internal contradiction before that stage is reached.