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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

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).

Evictions in Sri Lanka and the Philippines

1. The Asian Legal Resource Centre draws the attention of the Commission on Human Rights to two eviction cases: in Sri Lanka and the Philippines. Both cases involve poorer sections of society evicted in violation of article 11(1) of the International Covenant on Economic Social and Cultural Rights (ICESCR) and article 17(1) of the International Covenant on Civil and Political Rights.
2. In a report to the fifty-eighth session of the Commission (E/CN.4/2002/59), the Special Rapporteur on adequate housing referred to General Comment No. 4 of the Committee on Economic, Social and Cultural Rights, which mentioned that in determining "adequacy" of housing there should be "legal security of tenure including legal protection against forced evictions". In the same report the Special Rapporteur noted a 2001 workshop for judges on the justiciability of economic, social and cultural rights in South Asia organized by the Office of the High Commissioner and the International Commission on Jurists, where participants affirmed the justifiability of housing rights and stressed that the "question of enforceability and adequate remedies is also crucial to the realization of housing rights". The participants went on to say that forced evictions should under no circumstances be conducted, "except in exceptional cases on satisfying certain mandatory conditions, such as consultation with the persons who would be affected, reasonable notice, hearings prior to eviction, opportunity for legal redress, and provision of the right to adequate housing in an alternative location". Despite the weight of international legal opinion opposing evictions, they continue to occur, bringing physical and psychological misery to their victims.
3. At Oliyamulla, in the Wattala Electorate of Sri Lanka, 168 families have suffered violations of their right to adequate housing since July 2002, along with acts of cruel, inhuman and degrading treatment perpetrated by the police. On July 11 the Urban Development Authority, along with Urban Council officials and the police, evicted these 168 families from their residences close to Negombo Road. Bulldozers reportedly demolished the 108 houses where these families were living, after giving them only three hours to vacate. As most of the inhabitants were at that time away at work, and their children were attending school, all of their belongings were wantonly destroyed.
4. The 168 families had been living near Negombo Road for two years before the eviction, paying tax to the local authorities and getting electricity and water supplied to their houses. Although the land belongs to the Urban Council, a local member of the Parliament gave it to these families and the administration allowed them to build houses. Following a change of government in December 2001, their residence there was questioned and they were eventually asked--and then threatened--to leave in June 2002, as the land had been earmarked for the construction of a playground by a business magnate.
5. Following their eviction, the 168 families lived on the side of the main highway running from Colombo to the airport for ten days. While living there, on July 14, police of Wattala Police Station arrested and detained two of the group, Ajith and

Rita Vanderstaten. During custody, the police reportedly burnt Rita's hand with a cigarette and made lewd suggestions to her. Some Buddhist and Christian religious leaders intervened on their behalf before the National Human Rights Commission (NHRC), which later ordered that the 168 families be allowed to go back to Oliyamulla and rebuild their houses. However, the police came back and evicted them a second time on July 24–5. When the NHRC decision was communicated to the officer in charge of Wattala Police Station, he reportedly refused to comply and stated that he had orders from "higher places".

6. After their second eviction, the families returned to the main highway and then stayed for a period of two weeks at the Sudarmaramaya Temple in Telengapatha, Wattala. Some people with relatives elsewhere moved in with them. With the help of a lawyer and the support of Buddhist and Christian groups, they filed a Fundamental Rights Application with the Supreme Court against the police and the Urban Development Authority. On 2 September 2002, the families tried to re-enter the land with the permission of the NHRC, but the police intervened, dispersed them and threatened to arrest anyone entering the area.
7. On September 3, state officials promised alternative land to families who would move to Kerawalapitiya. That land allocated to them is marshland, where they are living in temporary sheds with no access to safe drinking water and no school. On the September 5, the Divisional Secretary visited the premises and promised to look into their situation and to provide them with water. Government officials also promised to fill the swamp in order to make it habitable. However, these promises were not implemented and nor were alternative arrangements made. When the lack of action was discussed further with the authorities, it was made clear that resolution of the issue is dependent on the families withdrawing the case they filed against the police and the Urban Development Authority in the Supreme Court. So far, the families have refused to do so and continue, therefore, to live in destitute conditions in Kerawalapitiya. As they are very poor, most of them being casual workers, they cannot afford alternative housing and have no choice but to remain where they are.
8. In Barangay Talomo, Sto. Tomas, Davao del Norte of the Philippines, seventeen impoverished farmers were evicted from their lands on 8 August 2002. Prior to these farmers' taking up the land, they say the area was a forested and uncultivated. They entered and took up the land between 1972 and 1986. The farmers struggle to survive, and must often borrow from traders outside of harvest season or even during harvest season if their crops fail. Each of the seventeen farmers, generally supporting a number of children, cultivated land ranging from a fraction of a hectare up to two hectares, planted with banana, coconut, mango, and jackfruit, as well as rice.
9. In 1987, some persons arrived and introduced themselves as the heirs of the owner of the land, Paulino Lopez, although they told the farmers they could keep cultivating. However, the legitimacy of their claim was under dispute for many years. In 1995 they won a civil case in the Regional Trial Court, affirmed by the Court of Appeal in 2001. On 5 July 2002, the farmers received a notice to vacate from the Sheriff of Panabo City. On August 8, a convoy of around 200 people, including police, private security guards, and members of the military, not in

uniform, reportedly arrived to demolish the farms. Some attempts at negotiation were ended when the sheriff had the farmers sprayed with tear gas. In the early afternoon, the municipal mayor arrived, and there was a new round of negotiations, which gave the farmers fifteen days to relocate. During these next fifteen days, about ten security guards of the supposed landowner were placed in the area, armed with rifles and shotguns. On August 24, after the 15 days expired, some hired workers accompanied by the security guards reportedly used chainsaws to destroy the farmers' crops and trees. On August 26, some hired workers fenced the entrance gate of the farmers' houses compound, and the farmers were driven out.

10. Task Force Detainees of the Philippines has informed the Asian Legal Resource Centre that Paulino Lopez and his heirs had purchased the land by fraud. At the time that Paulino Lopez was supposed to be residing on the land, he was said to be residing in Davao City, far from the contested site. He also made a misrepresentation in his application for the land, saying that he had built a house and had cultivated the area. But according to witnesses who were living in the place for quite some time, neither Paulino Lopez nor his heirs had done this. There was no cultivation before the farmers came. The titleholder and his transferees have therefore never complied with the minimum requirements of residence and cultivation under the Public Land Act. Meanwhile, today the farmers who had been living on this land and supporting their families for decades have been chased out. Their livelihoods and their very lives are at risk.
11. Given the above two cases, the Asian Legal Resource Centre urges the Commission, and in particular the Special Rapporteur on adequate housing, to
 - a. Urge the governments of Sri Lanka and the Philippines to take immediate measures to ensure that the rights of the victims in these cases are protected and upheld, especially their right to adequate housing, as well as their right to be protected from any cruel, inhuman or degrading treatment or punishment, in conformity with the ICESCR, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and General Comments Nos 4 & 7 of the Committee on Economic, Social and Cultural Rights. These measures must include the provision of adequate compensation, reparation and rehabilitation to all the victims, and the making of appropriate public apologies.
 - b. Request the governments of Sri Lanka and the Philippines take all appropriate steps to guarantee an immediate investigation into these events, identify those responsible, bring them before a competent and impartial tribunal, and apply all the penal, civil and administrative sanctions provided by law.
 - c. Seek assurances from the governments of Sri Lanka and the Philippines that they will take necessary steps to prevent the forced displacement of people from their homes in the future..