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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

**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.

[7 February 2005]

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

FORCIBLE TAKE-OVER OF LAND IN SRI LANKA

1. A plan by the Government of Sri Lanka to forcibly acquire land in the south of the country for the purpose of building an expressway is of grave concern to the Asian Legal Resource Centre (ALRC). The proposed Southern Expressway would see over a thousand homeowners uprooted from their land without appropriate replacement measures having been devised and 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 (ICCPR). The expressway is also set to go ahead despite a lack of feasibility studies having been conducted or proper environmental approval having been sought.

2. This matter is of great urgency as the government has said that all the land will be taken over and the people displaced by 28 February 2005. There has been little opportunity for comment or protest by those who will be displaced by the project. With exception to a brief hearing before the Court of Appeal and the Supreme Court, the homeowners' right to due process and freedom from forced resettlement, as stated in General Comments Numbers 4 & 7 of the Committee on Economic, Social and Cultural Rights has not only been denied, but almost entirely ignored. The Government of Sri Lanka has not provided replacement homes or the means to acquire them to those being displaced. The proposed sites for their new housing have no usable plots, roads, electricity or water. People cannot be expected to live in such conditions. Furthermore, the little compensation given to people after relocation is not sufficient to replace their homes.

3. The original design for the expressway was on a trace called the Original Trace (OT), which was later changed to the Combined Trace (CT). The CT was chosen as it reduced considerably the number of homes to be destroyed and was closer to traffic sources, thus making the project viable. It also reduced the environmental impact and economic cost.

4. The Central Environmental Authority (CEA) approved the expressway on the CT subject to a number of conditions, including particularly one condition as a result of which it was recommended that the expressway be reverted to the OT to avoid a major wetland recreational area. Despite this, the CEA and the Road Development Authority (RDA) moved the trace to a completely new route called the Final Trace (FT) as a result of which the following will occur:

- a. The FT will run through a large number of properties resulting in greater human cost;
- b. The FT will affect five religious sites, whereas the CT would have affected none; and
- c. The FT will result in substantial environmental damage to wetlands situated in the area.

5. In response, the homeowners first appealed to the National Human Rights Commission of Sri Lanka and later when they were unable to stop the RDA moving ahead with notices under the Land Acquisition Act (LAA), they went to the Court of Appeal challenging the use of the FT. The Court appointed a committee of retired justices of the Supreme Court to investigate the matter, visit the sites of the three traces and determine their feasibility. The committee of justices unequivocally stated that the alterations proposed in the FT deviations were in fact 'alterations of a substantial character, nature and extent. They need to be approved afresh'. Despite this finding, the Court of Appeal delivered judgement on 30 May 2003 dismissing the homeowners concerns. The homeowners then appealed to the Supreme Court. The Supreme Court ordered compensation for the owners after acknowledging that their rights to natural justice and notice

before their lands had been affected by the changed trace had been violated. However, the Court did not go so far as to stop the expressway or direct its reversion back to the old route. This demonstrates the lack of effective remedies available domestically, which is in violation of article 2 of the ICCPR.

6. Such a situation with regard to relocation is not unusual in Sri Lanka, as well as many other Asian countries. Little consideration is given to international principles of eviction and relocation or the fundamental rights of the people whose land is being taken over. The Asian Legal Resource Centre thus requests the Commission, and in particular the Special Rapporteur on adequate housing, to pressure the Government of Sri Lanka to:

- a. Take immediate measures to ensure that the rights of those being displaced are protected as under General Comments Numbers 4 & 7 of the Committee on Economic, Social and Cultural Rights. These measures must include the provision of adequate compensation and rehabilitation to all the victims, as well as effective legal remedies.
- b. Conduct adequate studies of the social and environmental impact of the proposed expressway.
- c. Prevent all future instances of forced evictions that violate the fundamental human rights of its citizens.
