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**INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER
PERSPECTIVE:
VIOLENCE AGAINST WOMEN**

**Written statement* submitted by the Asian Legal Resource Centre (ALRC),
a non-governmental organisation 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.

[8 February 2005]

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

RAPE AND THE FAILURE TO PROVIDE JUSTICE IN SRI LANKA

1. The incidence of rape against women in Sri Lanka has become incredibly high in recent years. While more women are now lodging complaints against rape than they did in the past, there are still significant numbers of rape cases that go unreported. There are many reasons for this but perhaps the most prevalent is the delay in finding justice in the courts, and thus the reluctance therefore to pursue it. The Asian Legal Resource Centre (ALRC) wishes to demonstrate four cases where delays in rape cases occurred.

Case 1: Jesudasa Rita was allegedly raped at the age of 16 on 12 August 2001. No immediate investigation was carried out. An investigation only came about, after some time, due to the intervention of human rights groups. A case bearing No. 32151 Magistrate's Court, Nuvara Eliya, was filed and evidence was recorded. In October 2002 the case was committed to the High Court for trial and the file was sent to the Attorney General's department. To date, the victim has heard nothing further about the case. The victim has made several complaints regarding this matter to the Attorney General and also the Human Rights Commission of Sri Lanka. However, to her knowledge, no case has yet been filed in the High Court. Generally, after indictments are filed in the High Court, it may take between three to five years before a judgement is given. Then the judgement can be appealed and this itself may take another three to five years. Thus, Jesudasa may have to wait up to twelve years from the date of her alleged rape to the date that she will get a final verdict from the court.

When a young torture victim, such as Jesudasa, has to go through this type of ordeal of prolonged waiting for justice, there are also many other associated problems. For the duration of the waiting period the victim may be subjected to further threats or violence at the hands of the original perpetrators. As a result, the victim is often forced to leave her home and seek shelter elsewhere. This also regularly occurs due to the social stigma attached to persons claiming rape. When a woman becomes aware of the delays in the justice system and the prolonged period of time it will take to see her perpetrators brought before a court of law, then she may feel discouraged to lodge a complaint or involve herself in such a drawn-out process.

Case 2: Yamuna Sandamali was a mere 13 years old at the time of her alleged rape on 2 September 2002. After the police conducted an initial investigation a case was filed in the Magistrate's Court of Kandy bearing No. 25248. This case is still pending before the Magistrate's Court. It is not possible to predict when the Magistrate's Court Non-Summary proceeding will end. However, once it has ended it will be sent to the Attorney General's department for the filing of the indictments. Going by earlier cases, the victim can expect to wait at least three years before the indictment is prepared and sent to the High Court. At the High Court it will possibly take a further three to five years for judgement. If the case is appealed, which is most likely, there can be expected to be a further three to five years before the final judgement. During that time Yamuna may experience the same problems as mentioned above.

Case 3: S.S. Kumary Anushka was allegedly raped on 2 July 2003. Her case bears the number B 40152 at the Magistrate's Court. Having a 'B' number for a case means that the Non Summary Inquiry has not begun yet. Going by earlier cases, a Non Summary Inquiry often takes two to three years to finalise. The victim will then most likely face the same prolonged wait as mentioned above.

Case 4: Inoka Samanthi was 17 when she was allegedly raped on 7 April 2002. The case bears No. B 37112 at the Kandy Magistrate's Court. Again, bearing a 'B' number means that not even Non Summary proceedings have begun. Thus, Inoka can expect to wait many more years to come before any justice can be sought in her case.

2. Evident from these cases is the extreme lack of judicial remedy within the Sri Lankan court system. Though article 14 (3) of the International Covenant on Civil and Political Rights guarantees speedy trial for everyone, the women of these cases and many more rape victims across Sri Lanka have this right violated by the very system that is there to protect them. Women who wish to seek justice must prepare themselves for heightened stress, potential intimidation and even further violence for a period of time that may extend to more than ten years. Through such a flawed system, the state puts the lives and liberty of such victims at risk for the prolonged duration of their trial.

3. The Commission and other UN bodies should examine such levels of failure by the state. The state must be made to pay substantive compensation for the suffering it causes to citizens by way of such extra ordinary delays. The Asian Legal Resource Centre recommends that the Commission directs its Sub-Commission to study the issue of the extra ordinary delays in countries like Sri Lanka and recommend effective means by which these delays can be overcome. To keep a person who has become a victim of torture in a terrified condition for such a prolonged period amounts to a gross violation of that victim's rights. The international community owes an obligation to persons who are exposed to such dangers. The international community and particularly the human rights community should attempt to address this situation immediately. An obligation to address this matter also rests heavily on the Commission itself.
