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**HUMAN RIGHTS SITUATIONS THAT REQUIRE
THE COUNCIL'S ATTENTION**

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

[18 February 2009]

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

Sri Lanka: Prevention of impunity requires clear leadership from the government

The Asian Legal Resource Centre welcomes the statement made by ten UN experts¹ on the 9th February, 2009, expressing deep concern at the suppression of criticism and unabated impunity in Sri Lanka.

In the first paragraph of the statement, the ten UN experts express special concern about:

- The shrinking space for critical voices
- The fear of reprisals against victims and witnesses
- A lack of effective investigations and prosecutions

The experts state that these factors have lead to unabated impunity for human rights violations.

Shrinking space for critical voices

Attacks on the media and anyone who expresses dissent have been recorded in hundreds of reports, not only in Sri Lanka but also internationally. From January 24, 2007 up to January 8, 2009, 11 journalists have been killed and 27 assaulted according to a report published by the Sunday Leader on February 8, 2009. In addition 11 journalists have left the country. There have been numerous attacks on reporters and media institutions. The attacks on the premises of the Sunday Leader press and Sirasa TV are the two best known example, and have been condemned by numerous global media organisations.

However, the position of Gotabaya Rajapakse, the Secretary to the Ministry of Defense expressed in a televised interview, was that at this time, when the country is at war, dissent amounts to treason. Earlier, six former United States Ambassadors to Sri Lanka² wrote to draw attention to the attacks on the media, following the assassination of Lasantha Wickrematunge.

The observations of the ten UN experts are well founded and should have deserved a serious response from the government of Sri Lanka. What the government should have indicated was the measures that they would take in order to guarantee media freedom and take all steps to bring the culprits of the earlier attacks to justice.

Instead, the government has withdrawn the charges against Minister Mervyn Silva, who was earlier charged in the High Court for the alleged assault on a Sirasa TV cameraman on August 6, 2008. The assault allegedly took place when a cameraman from the MTV channel (Sirasa TV) attended the ceremonial opening of an event to which the channel was invited by the government. The indictment against the minister was filed on the order of the Supreme Court. However, the Attorney General has used his powers of *Nolle prosequi* (Not to pursue). While the Attorney General has the power of *Nolle prosequi*, it is used most rarely and not for political

¹ <http://www.ahrchk.net/statements/mainfile.php/2009statements/1875/>

² <http://www.ahrchk.net/statements/mainfile.php/2009statements/1854/>

purposes. The use of such power in a case of a physical attack on a journalist can hardly be justified on any legitimate basis. The clear message of such action is to strengthen impunity.

The fear of reprisals against victims and witnesses

The ten UN experts state that: “A climate of fear and intimidation reigns over those defending human rights, specially over journalists and lawyers.” The safety of defenders has worsened considerably over the past year, most significantly following denunciations of human rights abuses committed by parties to the conflict, of corruption by state officials and of impunity.

The climate of fear spreads to everyone who dares to complain about any state authorities. The most glaring examples of the absence of protection to witnesses are the cases of Sugath Nishanta Fernando and his family and Gerard Perera. Both were witnesses in cases before high courts against police officers. Before they could give their testimonies they were both killed.

The case of Nishanta Fernando and his family demonstrates the highly organised manner in which reprisals against witnesses are carried out, not only by individual officers but also with the patronage of the whole policing system. Nishanta Fernando, after receiving death threats to withdraw a petition filed in the Supreme Court against 12 police officers from Negombo for severe assault on his wife, two children and himself within 24 hours, complained to the Inspector General of Police and other Sri Lankan authorities, requesting protection. He received no protection and was assassinated on September 20, 2008. Then the lives of his wife and two children came under threat and they stated to the Magistrate's Court of Negombo that they suspected the police officers who were respondents in the Supreme Court case as the possible suspects in Nishanta's murder. The family requested protection from the court and the police. The family insisted that they do not believe that the officers of the same police station would provide protection for them but instead would aggravate their problem. They requested special protection, preferably from the Criminal Investigation Division (CID). A lawyer appearing before the Supreme Court on the fundamental rights petition mentioned above on November 10, 2008 requested the intervention of the court.

The Supreme Court then gave directions to the Deputy Inspector General of Police of the Western Province, North, to afford special police protection. However, no action was taken to afford this protection. Instead, the Criminal Investigation Division branch at Peliyagoda, Colombo requested the petitioner make a statement to the effect that since any police officers, knowing where she is hiding, may endanger her security that she is declining to accept police protection. As the widow refused and made her position clear by way of an affidavit stating that while she does not trust the officers of the Negombo police, some of whom she suspects were responsible for her husband's murder, she would prefer a special arrangement such as protection by the Criminal Investigation Division. On December 31, 2008, the Inspector General of Police submitted a letter stating that the petitioner has not cooperated in the matter of affording security to her and her family and that the petitioner is now seeking that the security be provided by the CID which the IGP considered was not possible, considering the distribution of work in the police force. On the basis of the IGP's letter the Supreme Court ordered, “That in the circumstances no further action needs to be taken by the police on the basis of order dated 10.11.2008”.

The IGP's letter dated December 31, 2008 was a distortion of the position taken up by the widow and on the basis of this distortion the police have abdicated their responsibility to provide protection.

There has not been a single instance where the police have provided any form of effective protection for some many who have sought protection. The Asian Legal Resource Centre is aware that there are many living in hiding, trying to protect themselves from state officers against whom they are witnesses in court cases. They are left to themselves to find protection. In this same case the lawyer for the widow and the human rights organisation which assisted her also received several death threats. On January 30, 2009, the office of the lawyer was burned down after he had been threatened with death two days earlier, by a police officer, in the presence of many others, at the Negombo police station.

The observations by the ten UN experts on the protection of lawyers, journalists and witnesses is most timely. However, the government has not made any positive response to these observations. There is nothing to indicate that the government is making any attempt to change the course of denial of protection to witnesses. The witness protection law which was introduced under severe local and international pressure has been virtually buried. There is no indication that legislative, judicial and administrative measures required under Article 2 of the ICCPR will be taken in the near future.

A lack of effective investigations and prosecutions

The ten experts refer to the lack of effective investigations and prosecutions. The six former ambassadors also state

We urge you to take steps to reestablish accountability and the rule of law in Sri Lanka. Investigations have been promised before but have been futile. At times government officials have not appeared diligent, as happened in the investigation of the killing of NGO workers assisted by the International Eminent Persons Group.

The Sri Lankan parliament, in 2001, when discussing the 17th Amendment to the Constitution, with a rare occurrence of unanimity, was of the opinion that all of the public institutions in Sri Lanka have been politicised and therefore are unable to perform their functions as required by the law. Among the public institutions discussed was the Sri Lankan police. What is meant by politicisation is the direct interference by the government or by politicians into the workings of the public institution so as to deprive these institutions of their independence and their capacity to control themselves from within in terms of the norms and standards that they are supposed to uphold. The failure of the police to investigate crimes is a result of this politicisation. We started with the adoption of the 1978 Constitution which replaced governance on the basis of separation of powers with an executive presidential system which placed absolute power in a single individual without checks and balances. Prior to this period the Criminal Investigation Divisions in Sri Lanka functioned in an adequate manner even in sensitive political cases. The assassination of the Prime Minister, SWRD Bandaranaike and the attempted coup of 1962 by several leading persons in the armed forces and many cases involving powerful persons and

politicians were successfully prosecuted on the basis of competent and impartial investigations conducted by the Sri Lankan police.

This tradition of investigations into crimes was disturbed by the politicisation as mentioned above. Therefore, any attempt to reform must have, as its key component, the removal of the politicisation that has spread into these institutions.

The UN experts have also highlighted the fact that thorough reforms of the general system of governance are needed to prevent the recurrence of further serious human rights violations. Such reforms are essential if it is to be made clear to the members of the security forces that discipline will be enforced and the violators will be brought to justice as pointed out by the six former US ambassadors. However, carrying that message meaningfully requires visible attempts to depoliticize public institutions and particularly the criminal investigation divisions of the police. The six former ambassadors have, in their letter addressed to the president stated that, "Only you can provide the leadership and clear direction that will make this happen." Particularly within the framework of the 1978 Constitution only the executive president can ensure such leadership and clear direction.

Sometimes the government spokesmen take the view that the government does not have adequate capacity to investigate and to prosecute. However, experience from the time of independence up to about 1978 demonstrates that the Sri Lankan policing system has had the capacity to investigate serious crimes adequately and satisfactorily.

It cannot be reasonably argued that the murder of Sugath Nishanta Fernando, the grenade attack on the house of lawyer, JC Weliamuna, who is involved in human rights and anti graft advocacy, the attack on Keith Noyahr, the assassination of Lasantha Wickrematunge and even the serious attack on Upali Tennakoon have not been successfully investigated due to the incapacity of the Sri Lankan police investigators. In the same manner the withdrawal of the indictment against Minister Mervyn Silva regarding the alleged attack on a cameraman is not due to the incapacity of the Attorney General's Department to prosecute.

The statement of the ten UN experts as well as the six US ambassadors on the issues of the rule of law and the investigation and prosecution of crimes requires a serious response from the government which should spell out a clear message that the country's leadership wants to bring to an end the existing dangerous trend of impunity.
