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**Promotion and protection of all human rights, civil,
political, economic, social and cultural rights,
including the right to development**

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.

[14 February 2011]

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

Sri Lanka: Government failing to cooperate with the Human Rights Council and eradicate torture

The Asian Legal Resource Centre (ALRC) is gravely concerned by the widespread and endemic use of torture in Sri Lanka and the lack of any credible action by the government, as shown by its failure to implement the many recommendations made by the United Nations (UN) human rights system, notably the Special Rapporteur on Torture, the Committee Against Torture (CAT) and the Universal Periodic Review (UPR).

The issue of torture is a key indicator of the state of human rights in Sri Lanka. The ALRC strongly urges the members of the Human Rights Council (HRC) to ensure that the Government of Sri Lanka (GOSL) takes credible steps to put an end to the system of torture and impunity that it currently operates. The following statement will examine the key recommendations that the government has failed to implement, starting with those made by the CAT in 2005.¹

A. Adopt a definition of torture that covers all the elements contained in article 1 of the Convention.

The continuing absence of a proper definition continues to affect implementation. In the Republic of Sri Lanka vs. Havahandi Garwin Premalal Silva Case No. 444/2005 in the High Court of Kalutara, the High Court judge wrote, “Even though it appears that when considering the number of injuries, the accused has used some force beyond that which was necessary, that does not prove the charge against the accused in the case.” In other words, the definition of torture is entirely subjective and in the eyes of the judge.

B. Strengthen the Human Rights Commission of Sri Lanka so as to allow it to function effectively and ensure that its recommendations are fully implemented.

The GOSL has instead weakened the HRCSL. The 18th Amendment to the Constitution does away with independent selection processes for key State institutions and means that the country’s executive president can appoint anyone he wishes as commissioners for the HRCSL. The HRCSL no longer complies with the Paris Principles and was degraded from A category to B.

C. Urgently appoint commissioners of the National Police Commission (NPC) and ensure that the public complaints procedure provided for in article 155G (2) of the Constitution is implemented.

The 18th Amendment allows the president to appoint commissioners for the NPC. The NPC alone has power to conduct disciplinary inquiries.

D. Ensure respect for fundamental legal safeguards for persons detained by the police, including the right to habeas corpus, the right to inform a relative, access to a lawyer and a doctor of their own choice, and the right to receive information about their rights.

A study into 880 habeas corpus applications filed before Sri Lankan courts demonstrated that the remedy of habeas corpus is no longer an effective remedy in Sri Lanka. Not a single application succeeded in all cases filed since the late 1980s, with courts giving

¹ The Committee Against Torture considered the second periodic report of Sri Lanka (CAT/C/48/Add.2) on 10 and 11 November 2005.

negative verdicts based on trivial considerations. Habeas corpus hearings take five or more years, negating the very purpose of the remedy. Access to relatives and lawyers in cases under anti terrorism laws and emergency laws was denied in thousands of cases since the 2005 CAT review.

E. Adopt domestic legislation to implement the principle of non-refoulement contained in article 3 of the Convention.

No new legislation has been adopted.

F. Ensure that Sri Lankan law permits the establishment of jurisdiction for acts of torture in accordance with article 5 of the Convention, including provisions to bring criminal proceedings under article 7 against non-Sri Lankan citizens who have committed torture outside Sri Lanka, who are present in the territory of Sri Lanka and who have not been extradited.

No new legislation has been adopted.

G. Allow independent human rights monitors, including the HRCSL, full access to all places of detention, including police barracks, without prior notice, and set up a national system to review and react to findings of the systematic review.

The GOSL has not implemented this recommendation. The HRCSL, which had earlier started visiting detention centres in police stations, abandoned this practice when the Inspector General of Police publicly stated that he could provide protection for human rights officers who visit police stations. A human rights officer conducting a visit has been assaulted by the police. There is currently no mechanism for visiting detainees. Although the law requires the magistrates to visit detention centres under their jurisdiction, such visits no longer take place. Police inspections of places of detention, required under the Department Orders of the Police, do not take place. This enables the routine and widespread use of torture in all Sri Lankan police stations. Thousands of cases have been documented since 2005.

H. (a) Ensure prompt, impartial and exhaustive investigations into all allegations of torture, ill-treatment and disappearances committed by law enforcement officials. Such investigations should not be undertaken by or under the authority of the police, but by an independent body. The accused should be subject to suspension or reassignment during the process of investigation, especially if there is a risk that he or she might impede the investigation;

(b) Try the perpetrators and impose appropriate sentences on those convicted, thus eliminating any idea that might be entertained by perpetrators of torture that there is impunity for this crime.

The GOSL has failed to take any action concerning the above, with the failure to investigate being worse at present than it was during the CAT review in 2005. The defective nature of the investigations and prosecutions guarantees impunity regarding torture:

(a) The Attorney General's Department strategy of referring complaints of torture for investigation by a Special Investigation Unit (SIU) of the Criminal Investigation Division (CID) was abandoned in 2008, resulting in there being no credible investigations into allegations of torture since then. Superior police officers are expected to look into complaints of torture, which is deeply flawed.

(b) The lack of credible investigations means that no new indictments have been filed by the AG's department since 2008. Previously, some 60 indictments were filed due to SIU inquiries. Under Act No. 22 of 1994 the prescribed sentence for charges of torture is a minimum of 7 years rigorous imprisonment and a fine of Rs. 10,000/=. In several cases, High Court judges preferred to give lenient sentences, claiming that the 7-year mandatory period is not binding. The present policy of the Attorney General's Department, which is now under the political control of the executive president, is to discourage prosecutions under the Act.

- I. Ensure that procedures are in place to monitor the behaviour of law enforcement officials and promptly and impartially investigate all allegations of torture and ill-treatment, including sexual violence, with a view to prosecuting those responsible. Ensuring full implementation of the directive concerning the treatment of women in custody, and consider setting up women and children's desks at police stations in conflict areas.**

The GOSL has completely failed to ensure prompt inquiries into allegations of torture, including sexual violence. Particularly since 2008, the policy is to avoid prosecuting cases. In many torture cases there are allegations of sexual violence against both males and females.

- J. Take necessary measures to ensure that justice is not delayed.**

No actions have been taken to reduce delays in the justice delivery system. Ordinary criminal trials can take five years or much more. Delays have increased since jury trials were abandoned, as these used to take place without interruption. Criminal cases before High Courts are now frequently postponed for several months at a time, over several years; several judges may hear the same case, due to transfers. Trial judges no longer hear cases from beginning to the end or see many of the witnesses. Prosecuting lawyers also change every few months. This affects the quality of trials. The time period available to intimidate witnesses often results in them pulling out, which contributes to a success rate in prosecutions of just an estimated 4%. Simply increasing the number of courts or judges is not adequate; the proper allocation of proper funds for the administration of justice, including investigations, prosecutions and the judiciary is required to ensure speedy trials.

- K. Ensure that all persons reporting acts of torture or ill-treatment are protected from intimidation and reprisals for making such reports, in accordance with article 13 of the CAT. The State party should inquire into all reported cases of intimidation of witnesses and set up programmes for witness and victim protection.**

The killing of witnesses, making of death threats and other forms of intimidation, has become a major problem for victims of crime in general and victims of torture and sexual abuse in particular. The assassinations of torture victims Gerard Perera and Sugath Nishanta Fernando, to prevent them from giving evidence in court, are illustrative. Gerard Perera's case is ongoing 6 years after his assassination. Sugath Nishanta Fernando's killing, which took place in 2008, has not even been investigated, despite requests from local and international human rights organisations. Fernando's family has been repeatedly threatened with death and were forced to leave the country. Requests for protection made by the UN Human Rights Committee, inter alia, did not lead to any action by the GOSL.

- L. Establish a reparation programme, including treatment of trauma and other forms of rehabilitation, and provide adequate resources to ensure its effective functioning.**

The GOSL has no programmes to provide trauma counselling or rehabilitation to torture victims and the courts do not take the issue into consideration.

M. Prevent the abduction and military recruitment of children by the Liberation Tigers of Tamil Eelam and to facilitate the reintegration of former child soldiers into society.

The military conflict with the LTTE has come to an end and threats of new abductions no longer exist. However, many problems remain concerning the proper rehabilitation of the alleged abducted children. Militant organisations other than the LTTE have also abducted children for military purposes and many problems remain to be resolved in this area.

N. (a) Consider making the declaration under articles 21 and 22 of the Convention;

(b) Consider becoming party to the Optional Protocol to the Convention;

(c) Consider becoming party to the Rome Statute of the International Criminal Court.

The GOSL has refused to implement these recommendations by the CAT. Concerning (c) the declared position of the GOSL is that becoming a party to the ICC is a threat to national sovereignty.

A similar pattern of non-implementation by the GOSL can be seen concerning the recommendations made by the Special Rapporteur on Torture following a visit to the country from 1 to 8 October 2007.²

Furthermore, the issue of torture featured several times in Sri Lanka's review under the UPR on May 13, 2008. Nearly three years later, the GOSL has failed to take any credible action, however. The Czech Republic called for the GOSL to ensure full implementation of the ICCPR and CAT. Denmark and France called for the implementation of the recommendations made by the Special Rapporteur on Torture. The Islamic Republic of Iran commendably called for the GOSL to increase its efforts to strengthen its legal safeguards for eliminating all forms of ill treatment or torture in the prisons and detention centres.

The GOSL accepted several recommendations. For example, it pledged to address torture and implement safeguards to prevent torture, following a recommendation by Portugal. In response to a recommendation by Brazil for it to ratify the Optional Protocol to CAT, the GOSL claimed to be assessing the feasibility of ratification. It also promised to "continue to strive to ensure full compliance with its human rights obligations." Torture remains endemic. Impunity remains complete. The GOSL has shown itself to be absolutely non-cooperative with the Human Rights Council and its mechanisms, in terms of the substance of human rights, including the Special Procedures, UPR and Treaty Bodies. The ALRC therefore challenges the HRC to find ways to deal with Sri Lanka as a non-cooperative State that disrespects the international system and makes a mockery of its mechanisms.

² See here: <http://daccess-ods.un.org/access.nsf/Get?Open&DS=A/HRC/7/3/Add.6&Lang=E>