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HUMAN RIGHTS COUNCIL

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**Written statement submitted by the Asian Legal Resource Centre (ALRC), a
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**Sri Lanka - Failure to comply with article 2 of the ICCPR to provide adequate
remedies for violations of rights**

1. Article 2 (3) of the ICCPR requires that the State Party to the ICCPR shall ensure that any person whose rights and freedoms are violated shall have an effective remedy, and that such a person shall have his or her right determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided by the legal system of the state, and that the State is to develop the possibilities of judicial remedy. It further stipulates that the State Party should ensure that the competent authorities shall enforce such remedies when granted.
2. The Asian Legal Resource Centre (ALRC) observes that Sri Lanka, as a State Party, has prevented the possibilities of having an adequate remedy for several violations of rights either due to the absence of laws for this purpose or by procedural defects through which the basic violations are left without an adequate and effective remedy.
- 3.a Basic to the protection of the right to life is the prevention of murder and effective prosecution of murder when such incidents take place. There are large numbers of cases in Sri Lanka where murders have taken place and the victims and their families have not been provided with adequate remedy by way of proper investigations or by successful prosecutions. The success rate of prosecutions in Sri Lanka in serious criminal cases is only four percent. This four percent refers only to the cases that actually reach court after investigations. However, many cases do not even get to court due to failures in the investigations. Such failures refer not only to cases perceived as sensitive and complex allegedly politically related murders, but also to ordinary cases of murder among civilians or at the police stations.
- 3.b The case of the murder of Police Inspector Douglas Nimal and his wife in April 2006 is an example. This murder resulted in public outcry, as it was alleged that they were murdered due to their attempts to investigate drug related crimes that reportedly involved high ranking police officers. The investigation into the murders is still being prevented by some police officers. Despite the reopening of the inquiry after a new Inspector General of Police took office, no prosecutions have been brought in this case.
- 3.c The defects of the investigation machinery into crimes has been acknowledged by the police department itself. However, no remedial action has been taken to improve the situation. The Sri Lankan parliament acknowledged that one of the

reasons for such failures in investigation mechanisms is the high politicization of the policing system, meaning political interference into such investigations. As an attempt at a solution, the parliament passed the 17th Amendment to the Constitution, which among other things provides for a National Police Commission (NPC). In order to ensure the integrity of this commission, the constitutional amendment provided that appointments to the NPC should be made by a Constitutional Council. However, the members of the Constitutional Council have not been appointed even though the tenure of the earlier councilors has expired. As such, there is no serious move to remedy the seriously defective nature of the policing system in general and the criminal investigation system in particular.

- 3.d Although failed investigations are numerous, no senior officer with supervisory responsibilities over criminal investigations has been taken to task and no disciplinary action of any sort has been taken against the high ranking officers for their failure to discharge their command responsibilities regarding investigations into serious crimes, including murder.
4. The changes that have taken place in recent years in the administration of justice at the High Courts, which are the highest trial courts relating to serious crimes, also result in the prevention of the realization of an adequate remedy, including for matters such as murder. The High Courts have abandoned the practice of hearing murder trials on a day-to-day basis. Now, once a case is called on a particular day, it can be postponed for further hearings on other days and this can go on for many years. In communication No. 1250/2004, the United Nations Human Rights Committee held the Sri Lankan government to have violated the rights of the author by, among other things, the delays in the High Court trial relating to an allegation of the use of torture on the author, where the case was postponed over and over again for several years.
 5. As a result of such postponements it is common that up to ten cases are fixed for trial at High Courts on the same date. This implies that there would be further postponements of some of these cases even without any hearings taking place on a particular day. Even when hearings take place, the duration of the hearing can, in some cases, be as short as 15 minutes. Thus, the parties to the case have to come to court many times, often over a period of several years.
 6. The fixing of many trials for a single day creates serious problems for the prosecutors, who have to prepare for all the cases that have been fixed every time. Preparing for ten or so serious cases each day can be difficult and such difficulties act contrary to the interests of justice.
 7. The ALRC recommends that clear guidelines must be laid down for the resumption of day-to-day hearings and for the speedy disposal of trial cases. Long delays act against the interests of justice and prevent the realization of an adequate remedy due to extraneous factors, such as the death or departure from the country of witnesses, the intimidation of witnesses and other unforeseeable circumstances.
 8. The lack of an adequate remedy for serious crimes such as murder, rape and the like, erodes the confidence of the people in the effectiveness of the criminal justice system in the country. On the other hand such ineffectiveness acts as an incentive to the perpetrators of serious crimes.
 9. The lack of proper laws relating to matters such as contempt of court and cases dealing with actions against lawyers for their removal from the list of

registered lawyers also amount to denial of an adequate remedy for persons affected thereby. In United Nations Human Rights Committee (HRC) communication No. 1189/2003, the author complained about being sentenced to one year of rigorous imprisonment by the Supreme Court of Sri Lanka without providing him with the right to a fair trial and the assistance of a legal counsel. No law relating to the manner in which trials regarding allegations of contempt of court have been promulgated, despite of the Bar Association of Sri Lanka having submitted a draft of such a law. In expressing its view on the aforementioned communication, the HRC recommended that Sri Lanka should enact a proper law regarding this matter, which also should prescribe what the related punishments should be. In the communication mentioned above, the HRC held that the imprisonment of the author amounted to illegal detention and was thus a violation of his rights. In a pending case (SC Rule No. 1/2006(D)) regarding a lawyer, Elmore Perera, the Supreme Court of Sri Lanka held that he is not entitled to a list of witnesses, as the alleged incidents happened in the presence of the court. A list of witnesses is normally prescribed in law as an entitlement of a person facing an inquiry that might result in his removal from the list of lawyers. The court also suspended Mr. Perera from practicing law pending the final decision of the case. In both of these instances the requirement of an adequate remedy implies that the law relating to these matters should be clearly laid down with all the necessary details. The ALRC submits that Sri Lanka, as a State Party, should enact such laws as soon as possible.

10. Another form of the denial of an adequate remedy as required under article 2 of the ICCPR, relates to murders that allegedly take place at police stations, which are often presented in court as being the result of police shooting when the arrestees have tried to escape. Often, when these cases come before magistrates at the inquest stage, police officers claim that the death was due to shooting in self-defense and the magistrates frequently then deliver verdicts of justifiable homicide at that stage. The result is that no further inquiries take place into the matter and these cases do not proceed to trial. Under the Sri Lankan Criminal Procedure Law, no power is granted to a magistrate to declare a justifiable homicide. Such a verdict can be arrived at only after a trial, if the trial judge is satisfied by the version given by the accused officers in such instances. However, the trial court will consider all the circumstances given on behalf of the deceased persons. The ALRC urges Sri Lanka to take action in order to halt this practice and the Supreme Court of Sri Lanka to give clear guidelines for use by magistrates regarding inquests into such deaths.