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HUMAN RIGHTS COUNCIL  
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**IMPLEMENTATION OF GENERAL ASSEMBLY RESOLUTION 60/251  
OF 15 MARCH 2006 ENTITLED “HUMAN RIGHTS COUNCIL”**

**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.

[28 February 2007]

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

### **The problems of immunity and impunity in Sri Lanka**

1. The Asian Legal Resource Centre (ALRC) wishes to draw the attention of the Human Rights Council to the problems of blanket immunity and blatant impunity that exist in Sri Lanka, which obstruct any possibility of finding an adequate remedy for human rights violations as is required under article 2 of the ICCPR.
- 2.a Section 35 (1) of the Sri Lankan Constitution states as follows: ‘While any person holds office as President no proceedings shall be instituted or continued against him in any court or tribunal in respect of anything done or omitted to be done by him either in his official capacity or private capacity.’
- 2.b The courts in Sri Lanka have interpreted the above article of the Constitution as giving blanket immunity to the President, even in instances when the President may be acting contrary to the Constitution itself. In the Court of Appeal Application 66 of 2006, the court held that if the President by his act or omission violates any provisions of the Constitution, other than articles 44 (a), 129 (2) and 131 (a), he will not be liable to be questioned before a court of law. Following this interpretation given to article 35 (1) there is no legal forum available to challenge any wrongdoings by the president. This case involved a complaint regarding alleged violations of the Constitution by the President of Sri Lanka, due to his failure to comply with the 17<sup>th</sup> Amendment to the Constitution.
3. Under emergency and anti-terrorism provisions currently in force, acts committed by State-agents in good faith are excluded and given blanket immunity. Thus, even gross abuses of human rights such as abductions, disappearances, torture may not be investigated or prosecuted due to this blanket immunity.
4. Another related problem is that of the impunity that prevails in the country through the prevention of effective investigations into gross abuses of human rights. While this may be illustrated through numerous examples, the killing on August 6, 2006 of 17 aid workers belonging to Action against Hunger (AAH) did not lead to any arrests, despite expressions of concern both locally and internationally at the highest levels. A statement issued by AAH on February 2, 2007, reported that six months after the incident, no suspects had been identified or brought to justice.
5. The absence of witness protection has been identified as one of the major causes of impunity and virtual immunity in many cases of crimes and gross abuses of human rights. The success rate of prosecutions in the country is four per cent, and the major reason attributed to the failure of prosecutions is the absence of witness protection. Witnesses either do not come to court or go back on their evidence due to threats to their lives and liberty. The most glaring example of attacks on complainants and victims is the case of Gerard Perera, who was shot on November 21, 2004 and died three days later, while waiting to give evidence at a High Court against several police officers who had tortured him. Earlier, the Supreme Court in a fundamental rights application held that several police officers had in fact tortured him (SCFR 328/2002). Later, a police officer and a person alleged to be his assistant were charged before the High Court of Negombo with his assassination. The fear of such repercussions keeps people away from making complaints or pursuing them. This is more the case in

instances where the alleged perpetrators are the military, as in the case of the 17 aid workers mentioned in the earlier paragraph. AAH identified the absence of witness protection as one of the main reasons for the failure of any witnesses to give evidence. AAH recommended that "the establishment of a witness protection programme is imperative if we are to find out exactly what happened". The ALRC and its sister organization, the Asian Human Rights Commission (AHRC), have repeatedly pointed out the disastrous effect of the lack of a witness protection law and programme. This lack enables the continued perpetration of abuses and the failure of prosecutions of those responsible.

6. Sri Lanka does not have a law relating to command responsibility. As a result, except for those often lower-ranking officers who are the direct perpetrators of the abuses of rights - such as torture, extra-judicial killings, disappearances and the like - the superior officers who hold command responsibility are not being prosecuted. Also in cases of torture, while in recent times there have been several cases filed under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment Act (CAT Act No. 22 of 1994), no officer above the rank of inspector has been charged under this act. In the case of the torture of Gerard Perera (HC Negombo 326/2003) the officer in charge of the police station whom the Supreme Court had earlier found to be responsible for the torture (SCFR 328/2002), was taken out of the list of the accused on the basis that his liability was only a civil liability, not a criminal liability. An illustration of the absence of the doctrine of command responsibility in Sri Lanka's criminal law is the well known case of the Embilitpitya children, which concerns the abduction and disappearance of 24 Sinhalese schoolchildren. In this case, the Attorney General did in fact prosecute, among others, Brigadier 'Parry' Liyanage, the district coordinating military secretary who was in effective charge of the military in the said area. Notwithstanding the fact that a fact-finding Commission of Inquiry into Disappearances had found that a measure of responsibility was attributable to this senior army officer, he was acquitted in the High Court due to the finding that no evidence could be found to directly link him to the abductions. Thereafter, a fundamental rights violation was filed by the Brigadier, and the Supreme Court did not consider the issue of command responsibility and held that his non-promotion to the rank of Major General was a violation of his rights. The court held that in the absence of direct involvement in the disappearances, Brigadier Liyanage merely occupied a place of authority in the chain of command (SCFR 506/99).
7. The delays in hearing criminal cases also contribute to effective immunity. In communication number 1250/2004 filed by Sundara Arachige Lalith Rajapakse, the UN Human Rights Committee held that the delay in the High Court case in this matter violated the rights of the author to an effective remedy under article 2 (3) of the ICCPR. Due to delays, witnesses come under serious threats or are unable to pursue their cases due to other reasons. The ALRC and its sister organization, the AHRC, have made consistent submissions to the government of Sri Lanka as well as to United Nations agencies on this issue. The United Nations Human Rights Committee, in considering the periodic report of Sri Lanka in December 2003, recommended that the State should make provisions for ensuring speedy trials.
8. Delays and other deficiencies at the Attorney General's Department, which, under Sri Lankan law, exercises the power of public prosecutor, also lead to impunity. For

various reasons, such as the lack of sufficient staff, filing of indictments takes a long time. There is no consistent policy in the department concerning these matters. Some cases are being filed urgently, as in the case of the assassination of Justice Ambepitiya (please refer to AHRC statement entitled: “Gerald Perera's murder trial may not begin for another 5-7 years” - <http://www.ahrchk.net/statements/mainfile.php/2005statements/272/>) in which the case was prosecuted within a very short time. However, in the case of Gerard Perera’s assassination, which happened a week later, the prosecution was filed a long time thereafter and the case is still pending before the High Court. There are many cases of torture in which the Special Investigating Unit (SIU) has completed investigations, but the cases remain pending before the department for a long time without indictments being filed. Meanwhile, in serious cases of gross abuses of human rights, the department does not have a policy of supervising investigations and ensuring prosecution. Often in the cases of alleged abuses by the military, the department has a very poor record of instituting prosecutions.

9. Impunity and immunity have the impact of paralyzing Sri Lanka's rule of law system as a whole. They arise by way of the Constitution, by other laws and by emergency or anti-terrorist laws on the one hand, and through non-investigation into serious crimes and gross abuses of human rights, the absence of witness protection, delays in the adjudication of cases and the defects in the prosecutor’s function as exercised by the Attorney General's Department, on the other. On this basis, the ALRC and its sister organization, the AHRC, have characterized Sri Lanka as a State affected by an exceptional collapse of the rule of law.

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