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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:
STATES OF EMERGENCY**

**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.

[7 February 2005]

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

DECLARATION OF EMERGENCY IN SRI LANKA

1. On 4 January 2005 the Public Security Ordinance (Part 2) was brought into operation by Presidential Proclamation to be effective in 14 districts in Sri Lanka. Sri Lanka has a bad record of committing gross human rights abuses during the emergencies declared by such Presidential Proclamations. In previous emergencies for instance, a large number of disappearances occurred due to the powers granted to law enforcement agencies. As shown by many reports published by several organisations, including the Asian Legal Resource Centre (ALRC), it has been demonstrated that even in normal situations where emergency laws do not operate, the extent of torture practised in police stations is extremely high. When emergency laws are in operation, this is even higher.

2. The regulations, which were published later (January 20) but were to be operative from January 4, are for the most part the same as those declared earlier during the times of civil unrest. However, the present emergency regulations have been declared after the worst natural disaster known in the country's recent history by way of the December 26 tsunami. How problems caused by a natural disaster could be dealt with, change of evidentiary laws regarding inadmissibility of confessions, granting power to the President to appoint police officers, ignoring the normal procedures, giving the armed forces the powers of arrest and detention, granting armed personnel the right to make searches and break into premises without warrants and imposing the death sentence for certain criminal is not clear. In actual fact, this greatest of natural disasters requires a high level of cooperation among the people and a high level of transparency and accountability on the part of the government to resolve some of the extraordinary problems faced by the people. Freedom of speech and association are the requirements of the post tsunami period, allowing people to recover from the loss of their loved ones, or their homes and their possessions. For the fisherfolk for instance, who have lost everything and are the most affected group, imposing emergency powers contributes nothing of positive value but creates further obstacles.

3. The President's use of emergency powers to appoint police is a violation of the provisions of the 17th Amendment to the Constitution, which prescribes that all appointments, transfers, promotions and disciplinary control of the police is vested with the National Police Commission. While an emergency declaration can invoke the provisions of the Public Security Ordinance, such emergency declarations cannot suspend the provisions of the Constitution. Apart from this, the ultra veres issue, the practice of appointments of police by political leaders, has so badly affected the policing service that parliament thought it fit to pass the 17th Amendment to the Constitution, to depoliticise the policing institution. One of the major problems faced by the policing system in the country is that the officers that were brought in as policemen by the politicians had to be assimilated into the police service later. They are among the least qualified and least trained sector in the police service creating tremendous problems of inefficiency and proper functioning of the institution. This past practice should not be allowed to come back into operation through emergency declarations or otherwise. The bad record of the presidential secretariats under different governments is also an experience that can be repeated only at the expense of paving the way for gross human rights violations.

4. The reputed Civil Rights Movement (CRM) of Sri Lanka has also pointed out that the declaration of emergency powers on 4 January 2005 was done without giving any prior information to the people. Neither the electronic nor the print media belonging to the state made

any declarations about emergencies. The Asian Legal Resource Centre endorses the following recommendations made by the CRM:

- a. Ensure that all proclamations, orders and regulations under the Public Security Ordinance are published contemporaneously in all three language media;
- b. Ensure a strict check is kept on all shootings by the security forces. The use of firearms/bullets must be accounted for and reported to superiors and accounted for publicly. Details of any killings in the course of law enforcement of law and order so far should be announced publicly; and,
- c. Ensure that any deaths now occurring are subjected to the normal inquest requirements.

5. The Asian Legal Resource Centre further recommends that the Emergency Regulations be lifted as soon as possible as the likelihood of gross human rights abuses taking place under such regulations is very high. Further, past experiences have shown that emergency regulations can even be used to postpone elections and derail the democratic process. The Presidential powers to make regulations, bypass the parliament and suspend the powers of courts have in the past created enduring problems to the rule of law in the country. In a proposal made by the ALRC to the Sub-Commission of the UN Human Rights Commission, ALRC characterised the situation which has resulted from the past emergencies as one of an “Exceptional Collapse of Rule of Law” [Ref E/CN.4/Sub.2/2004/3]. We therefore urge the Commission and other relevant UN agencies to address this issue and to encourage the state party to abandon the declaration of emergency and bring Sri Lanka back under the rule of its normal laws.

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