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**CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF:
INDEPENDENCE OF THE JUDICIARY, ADMINISTRATION OF JUSTICE,
IMPUNITY**

**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).

DELAYED JUSTICE DISPENSATION SYSTEM DESTROYING RULE OF LAW IN INDIA

1. Mr. Lakhichand Paswan, father of Bhikari Paswan from West Bengal India, was not fortunate enough to see the murderers of his son tried for their acts. Mr. Paswan, a prime witness in his son's case died on 29 July 2004, one day after the 'Special Bench' of the Kolkota High Court ruled that the case against the perpetrators in the murder of Bhikari Paswan could proceed on the finding that "government permission is not required to prosecute Harman Preet Singh, now a Deputy Inspector General, as kidnapping was not among his official duties as a police officer". It took the Indian judiciary ten years to decide a matter that any informed person would have resolved in a few minutes.

2. Mr. Bhikari Paswan, a jute mill worker, was taken away by Additional Superintendent of Police (ASP) Mr. Harman Preet Singh and three of his men in the early hours of 31 October 1993 - reportedly to the Telinipara police outpost, where they tortured him to death. Bhikari was never seen again, nor was his body found.

3. As far back as 1995, senior police investigators had concluded that ASP Singh and his subordinates did in fact take Bhikari from his house that night in October; there was no uncertainty about the complicity of state agents. The questions that remained related only to what happened afterwards. However, the Indian judicial system responded to the urgent needs of the case by entangling it in technicalities, with one hearing upon the next, before delivering it to the doorstep of the state's high court. It lay there for years, through disinterest and the machinations of the perpetrators, who were since promoted to positions of authority, rather than being suspended and properly investigated.

4. A decade of waiting is not much time in deciding a case in India. It is equally applicable to civil and criminal trials. The legal process in India is always protracted, with parties being made to spend an unlimited amount of money and to run from one place to another in pursuing their claims in court. There are numerous reasons for this protracted process, which in fact could be eliminated by conscious efforts. In civil cases one such delay is primarily caused by technical snags and delaying tactics by the lawyers. The attitude of the judges once the case has finally been heard, resulting in the reservation of any open pronouncement of the judgement for years is another contributing factor. In criminal cases the delay starts from the very inability and often refusal of the investigating agency to submit a charge sheet in time after the proper completion of and investigation.

5. Even if the charge sheet is submitted, the prosecutors' office also plays a role in delaying the process. Often many courts do not have sufficient prosecutors to represent cases as and when they are taken up. In a local Magistrate Court in Wadakkanchery, Kerala State for instance, prosecutions were stalled for years due to the fact that the only prosecutor available was on deputation from another court. Only when this officer had enough spare time would he turn up at the Wadakkanchery court. By the end of one year the number of criminal cases pending disposal before the court was so large that it will take several years to clear off these cases, given the fact that every year the number accumulates to the existing backlog. It is shocking to note that when the backlog of cases increases, judges connive with police officers and force people to plead guilty on charges so that cases can be summarily tried.

6. Another element causing delay in proceedings is the lack of infrastructure to deal with evidence. The police in India are neither trained to gather evidence scientifically nor understand

the importance of forensic evidence. It is common for material objects to be wrapped in newspapers and bound by jute threads and then produced in court. The safety of the contents depends upon the quality of newsprint. Given the climatic conditions in India, this evidence can be easily damaged within a few months, which is often well before any preliminary hearing is heard.

7. In cases where there is a need for forensic examination, the situation is even worse. The objects requiring forensic examination will be detained at the central or state forensic lab for anywhere up to 15 years. This reflects upon the facilities provided for these labs and also the work habits of the forensic technicians. The evidence held at such labs is also prone to manipulation or destruction as demonstrated in the state of Kerala, where an 'accidental' explosion destroyed several pieces of evidence pending examination. The handling of human remains and dead bodies is equally bad. In cases where there is a requirement of finger print examination or handwriting examination, the minimum period required for the result to be sent back to the referral court from the forensic lab is ten years, only to the benefit of 'government recognised' private experts.

8. These technical hindrances that cause delay in court proceedings furthermore affect the quality of evidence given by witnesses. When a witness is required to testify for an incident she saw a decade earlier, her recollection of events will often be tempered by time. This may affect the quality of her testimony, as well as the entire trial. Evidence can also be affected due to the lack of witness protection provided to those willing to testify. More susceptible to threats and intimidation the longer a case is drawn out, witnesses may alter their evidence out of fear or even withdraw from the case.

9. The lack of basic infrastructure within the entire justice system is another crucial issue that causes delays and inefficiency. When a prosecutor's office wants to communicate with a particular police station, there is no mechanism available other than the initiative of the prosecutor to spend from his own pocket or to make the interested party pay for this communication if the entire proceedings are not to be stalled. This lack of basic infrastructure not only results in the delay of proceedings but is also a root cause for corruption.

10. Not even the Supreme Court of India - the highest court in the country - is immune to delays. Its much acclaimed judgement in the D.K. Basu case in 1996, known for its directives aimed to prevent custodial torture, took ten years to be reached. If a judgement takes this long in the Supreme Court, what can be expected from courts of lesser authority?

11. According to recent statistics, acknowledged by the former Chief Justice of India, Justice Bharucha, the judge population ratio is 12 - 13 judges per million. On 10 April 2004 there were 163 vacancies at various High Courts throughout India. A study conducted by the Ministry of Finance reveals that at the current rate it will take 324 years to dispose of the backlogs of cases in Indian courts. The Law Commission of India in its 189th report published in February 2004 acknowledged that over two million cases are pending in about 13,000 district subordinate courts. About two-thirds of these are criminal cases, while about a million are sessions cases which involve heinous offences such as murder, rape, dacoity. About 30 per cent of the sessions cases have been pending for three years or more.

12. The denial of justice through delay is the biggest mockery of law, but in India it is not limited to mere mockery; the delay in fact kills the entire justice dispensation system of the

country. This has led to people settling scores on their own, resulting in a growing number of criminal syndicates in the country and reflecting the loss of people's confidence in the rule of law.

13. The Asian Legal Resource Centre therefore requests the Commission to pressure the Government of India to:

- a. Take immediate steps to fill existing vacancies at various levels in the Indian judiciary.
- b. Make immediate arrangements through appropriate ministries such as the Ministry of Finance to provide adequate funds to the judiciary and the prosecution mechanisms so they are able to function effectively.
- c. Make use of available international expertise and advice to improve judiciary's communication infrastructure.
- d. Establish a process of accountability so that the aggrieved party suffering from delay of process could challenge the delay without fear of judicial wrath, including contempt of court charges.
- e. Provide adequate training and education to members of the judiciary so as to facilitate a respect for the rights and dignity of all individuals, as well as for the rule of law, in discharging their judicial functions.
