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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 organisation 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.

[26 January 2005]

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

The independence of the judiciary in Sri Lanka

1. The Asian Legal Resource Centre (ALRC) is alarmed at recent events and practices in Sri Lanka that are eroding the independence of the judiciary and further jeopardising the rule of law in the country. These include the lack of protection for the country's judges; poor security of tenure inhibiting the ability of judges to carry out their work; issues relating to contempt of court; overall limited powers of the judiciary; the intimidation of lawyers by police; collecting of fees by police for directing certain cases to particular lawyers; and the weak ethical practice of lawyers before courts of law.

2. On 19 November 2004 a senior high court judge, Sarath Ambepitiya, was assassinated in Colombo. This was the first assassination of a high court judge in the history of the judiciary in Sri Lanka. A few months earlier, another high court judge was reported to have been attacked in an attempted rape. Both instances highlight the lack of protection for judges in Sri Lanka. In a statement by the Bar Association of Sri Lanka it was pointed out that Judge Ambepitiya had received threatening telephone calls in the days prior to the assassination. Although these calls were reported, no security measures were taken. In fact, three days prior to the killing, protection previously provided to the judge at his place of residence was removed. The Bar Association also stated that at the time of the murder the telephone lines of the judge's residence were disconnected; as a result there was a considerable delay in the police arriving at the scene of the crime. Later, during the investigations, it was revealed that the alleged mastermind of the murder had connections with several senior-level police officers. The Bar Association has called for a commission of inquiry into security matters related to this murder. In the case of the judge who was attacked, it was found that the police guard assigned to her residence for security purposes was asleep at the time of the incident.

3. No agreement exists between the judiciary and the police regarding the manner in which security should be granted, carried out and supervised in Sri Lanka. While statements are made about various arrangements for the future security of judges after serious incidents, all that is offered are ad hoc arrangements, which often become diluted soon after the event. Witnesses also lack effective protection. In several instances witnesses have been killed either inside the court's premises or on their way to or from court. Thus the need for witness protection is as paramount as what that for judges. The ALRC has taken up this issue in a separate written statement to the Commission during the sixty-first session.

4. Judges also fear threats due to inadequate and sometimes questionable practices relating to the security of tenure. One magistrate in Welliwaya who issued a warrant for the arrest of a Senior Superintendent of Police was suspended from his service as a result. Prior to that, the Judicial Service Commission, which is not a judicial body, issued an order to cancel the warrant. This incident gave rise to questions from many quarters. There are other disciplinary inquiries regarding some judges, but these inquiries can take a long time. Such delays in inquiries create considerable confusion in the public mind. Even if the judge is exonerated, serious damage has often already occurred due to such delays.

5. A further issue that has had debilitating effects on the independence of the judiciary relates to those cases involving contempt of court. The case of Michael Anthony (Tony) Fernando, who was sentenced to one-year imprisonment by the Supreme Court on 6 April 2003, supposedly for

speaking too loudly in court, has considerably wounded public confidence in the judiciary. Further, the recent imprisonment of a former senior minister who had split from the party of the president of Sri Lanka for a statement allegedly made by him at a political rally has also been seen as a political – rather than judicial – decision.

6. Besides this, on two recent occasions impeachment motions have been filed in parliament against the chief justice. Due to political reasons, these motions were not brought to conclusion. Thus, the veracity of allegations made has not been clarified. There has also been a motion before a parliamentary select committee regarding the chief justice. A lengthy book has been written narrating incidents to illustrate the problems affecting the judiciary and in particular those of the chief justice. However, there has been no response to such allegations or any action taken against the authors to suggest that the book's contents are unfounded.

7. Sri Lanka, as a state party to the International Covenant on Civil and Political Rights, is obliged to provide an independent judiciary to its people. However, the Constitution of 1978 shifted power very much in favour of the executive president, to the detriment of the parliament and the judiciary. Though the constitution theoretically accepts the separation of powers, in actual fact the type of power arrangement it contains relegates the judiciary, including the Supreme Court, to a lesser position. The judiciary has very limited powers over judicial review. That something has gone seriously wrong with the judicial process in Sri Lanka has been asserted by senior lawyers during public speeches.

8. This situation affects the implementation of human rights in a very serious manner. It has been a long-standing practice in Sri Lanka to treat the courts as the ultimate guardians of human rights. However, this perception has been seriously eroded in recent times. The reassertion of the independence of the judiciary is a precondition for safeguarding human rights in Sri Lanka.

9. The lawyers who would have ordinarily taken up the fight for the independence of the judiciary and the independence of their own profession have also been undermined in recent times. There are allegations of the intimidation of lawyers by police to the extent that the police are assigning which lawyers should appear for the accused when they are brought to court, and are receiving 50 per cent of lawyers' fees when referring cases to selected lawyers. The Wattala Bar Association wrote an official letter describing in detail the manner in which the police have tried to gain control over lawyers practising in the local Magistrate's court. The letter, which was published in the newspapers, brought responses from many other magistrate's courts stating that they had similar experiences.

10. Supreme Court Justice Vigneswaran has asserted that the independence of the judiciary in Sri Lanka has been so eroded that perhaps it may be necessary to look for alternative ways to find justice. In particular he and other judges have criticised the manner in which judges' panels are fixed in the Supreme Court.

11. The ethical practices of lawyers also came to be questioned in one recent case where a client had given written instructions to his attorney not to come to any form of settlement. The attorney allegedly ignored these instructions and reached a settlement in his fundamental human rights application. In another concerning development, a statement made to the press by some Bar Association officials implying that lawyers should consult their consciences before appearing for the accused in the murder case of Justice Ambepitiya, also came under heavy public criticism.

12. Thus in all respects, the regaining of the independence of the judiciary in Sri Lanka will require serious attempts to reverse the present debacle. Accordingly, the Asian Legal Resource Centre urges the Commission to

- a. Direct the Sub-Commission for the Promotion and Protection of Human Rights to study the serious deterioration of the rule of law in Sri Lanka.
- b. Urge the Special Rapporteur on the independence of judges and lawyers to scrutinise the exceptional degeneration of judicial independence and also the independence of lawyers in Sri Lanka.
- c. Request the Government of Sri Lanka, through a special commission, to review its approach to security for judges, with a view to reform of the entire system.
- d. Urge the Bar Association of Sri Lanka to thoroughly review the practices of the police, particularly with regards to the magistrate's court, and touting by police officers.
