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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 right to fair trial in South Asia

1. Article 14 (3) (c) of the International Covenant on Civil and Political Rights recognises the right to be "tried without undue delay". However, nowhere in South Asia is this right respected. Delays in trials are extremely long and cannot be justified under any circumstances. Such extraordinary delays make a mockery of justice. In many parts of South Asia the delays are between five to ten years or more from the date of filing the indictments. Often, the time taken to file an indictment is itself too long. In other jurisdictions however, such as Hong Kong, a trial would normally be finalised within less than six months after the filing of the indictment.

2. The fact that these delays exist has not been denied by any of the countries in South Asia and there are almost constant promises to overcome this problem. However, none of the countries have taken any effective action in recent times to realise the requirements of article 14 (3) (c) of the ICCPR.

3. Delays create extreme difficulties for the realisation of fair trial. In Sri Lanka, for example, the official figure of the number of successful convictions in criminal cases is 4 per cent. Many of those convicted have pleaded guilty to the charges against them.

4. Long delays in adjudication affect fair trial in the following ways:

a. Over the years witnesses who first come to give evidence withdraw for various reasons. Often they have to attend court many times for several years and for this purpose they have to interrupt their lives. Whether the trial takes place or not the witnesses who come to court often have to wait the whole day. Thus, the witnesses experience a heavy sense of frustration and futility.

b. Others who become aware of the travails that they will have to suffer if they come forward as witnesses often withdraw at the very beginning even if they have vital evidence regarding a case. Thus, their sense of civic obligation to the community on the one hand and their awareness of the many inconveniences they have to suffer during civic duty come into conflict. Therefore, considerable sections of the population withdraw their cooperation from the judicial process due to such inconveniences.

5. It is difficult for people to remember every detail of an event that they experienced many years earlier. When a witness is cross-examined about something they may have seen or heard five or six years before, they are likely to make many mistakes when giving their evidence. A clever cross-examiner may be able to exploit this situation and have the witness appear unable to recall the truth. If this is to be avoided then the court must hear evidence while the event is still fresh in the minds of witnesses.

6. Another major problem associated with judicial delays is the pressure brought upon persons to not appear in court to give evidence or to change such evidence. When some members of their own communities bring heavy pressure over a long period of time, it is quite likely that many will succumb to fear. It is also possible that witnesses' fear may be realised and they come to harm. By having trials within the shortest period of time such pressure is very much reduced and the providing of witness protection is made much easier. Witness protection becomes an

almost impossible task when the state has to provide protection to witnesses for several years. This is due not only to reasons of limited resources but also due to interference with the personal freedoms of the witnesses themselves. It is not natural for witnesses to have police guards around them over long periods. Thus, achieving effective witness protection requires that cases be heard within the shortest possible time.

7. When the right to a speedy trial is denied, many other rights are automatically denied as well. In many instances people will not wish to lodge complaints about crimes when they know that the ultimate result of such complaints will come only many years after the event. Furthermore, if the complaint-making process gets retarded there is no way at all to ensure redress for violations of rights. Thus, delays in conducting trials inevitably favour perpetrators of crimes and not the victims. The worse-affected are innocent persons who are accused of crimes. They will have to wait for many years before the courts will declare them innocent. Another category of persons who suffer from delays are victims of various crimes done by state officers, such as the police or military. Such victims are exposed to much greater dangers than others. The result is that many will not make complaints even after suffering grave violations, or may withdraw their complaints after making them. As a result impunity will be reinforced. All attempts by the United Nations and various governments to break impunity will not succeed so long as there are enormous delays in the holding of trials. Thus, much more attention needs to be paid for the proper implementation of Article 14 (3) (c) by the Commission and attendant agencies.

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