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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 Center (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.

[13 February 2006]

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

LAW MADE A MOCKERY THROUGH DELAYED JUSTICE IN INDIA

1. The legal process in India is always protracted, with parties being made to spend limitless amounts of money and time in pursuing their claims in court. The effect on human rights is highly detrimental.

2. Take the case of Hasna Mondal, a 13-year-old girl who on 27 February 1995 was tortured by members of her own village allegedly to extract details regarding the whereabouts of Mr. Prabir Sarkar, who had eloped with her neighbour. She was then taken to the Dhupguri Police Station, West Bengal where she was further tortured and beaten up. On her way to the police station she was gang raped twice. At the police station she was sexually assaulted further by the police officer and further tortured. Early the next morning she was abandoned in front of her house by the perpetrators. Local villagers immediately went to file a police complaint. The case (No: 15/95) was registered under sections 376(2)(g) and 120B of the Indian Penal Code (1860) with Gautam Sen as the investigating officer: the same officer responsible for torturing Hasna the night before. Only after Sen was transferred was Hasna produced before a Judicial Magistrate attached to the District Criminal Court, where her statement was recorded under section 164 of the Criminal Procedure Code. The charge sheet (no: 67/96) was submitted on 26 December 1996 before the Sub-divisional Judicial Magistrate, Jalpaiguri. The matter was then transferred to the Sessions Court of Jalpaiguri and was heard by the 1st Additional Sessions Judge. All of the witnesses have since been examined except for the investigating officer. The last witness, Dr. Basumata was examined as prosecution witness number 9 on 4 July 2003, since which time the court has assigned and reassigned dates for the examination of witnesses but taken no further action. The dates fixed for the examination of the investigating officer have been August 9, September 9 and December 5, 2003; January 22, February 26, May 15, August 19, August 20 and October 12, 2004. Ten years have passed since the case was registered; however, the trial remains uncompleted. At present the 1st Additional Sessions Judge court is vacant as the presiding judge has been transferred. The case stands adjourned from 11 August 2005 to an undetermined date, which is against the Code of Criminal Procedure (1973).

3. The many reasons causing delays in legal proceedings in India could be eliminated through conscious effort. These include technical snags and delaying-tactics deliberately used by lawyers, and the tendency of judges to reserve their judgments for years. In criminal cases delays often occur due to the inability or refusal of the investigating agency to submit a charge sheet after the completion of investigations: in Hasna's case it took two years.

4. Even if a charge sheet is submitted, there are also insufficient numbers of prosecutors and judges to conduct cases. And when the backlog of cases increases, judges conspire with police officers to force people to plead guilty so that cases can be concluded swiftly. According to recent statistics, acknowledged by the former Chief Justice of India, Justice Bharucha, the judge to population ratio is 12 to 13 judges per one million. On 10 April 2004 there were 163 vacancies at various High Courts throughout India. A study conducted by the Ministry of Finance has revealed that at the current rate it will take 324 years to dispose of the backlog 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. Approximately two-thirds of these are criminal cases, of which about one million are cases which involve heinous offences such as murder, rape, or armed robbery. About 30 per cent of the heinous criminal offences have been pending for at least three years.

5. In cases where there is a need for forensic examination, the situation is even worse. The objects requiring forensic examination are detained at a central or state forensic lab for up to 15 years. This reflects upon the state of facilities provided for these laboratories and also the work habits of the forensic technicians. The handling of biological remains, such as dead bodies, is completely unprofessional. The police in India are neither trained to gather evidence scientifically, nor understand the importance of forensic evidence. Where fingerprint examination or handwriting examination is required it can take ten years to get results. These abnormal delays lead to a necessity to hire private experts, who are only chosen if 'government recognised'. The hiring of private experts or laboratories is expensive and the system open to corruption.

6. Delays in court proceedings further affect the quality of evidence given by witnesses. When a witness is required to testify concerning an incident she saw a decade earlier, her recollection of events will often be affected by time. This may affect the quality of 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. Witnesses may alter their evidence out of fear or even withdraw from a case because they are more susceptible to threats and intimidation the longer a case runs.

7. The lack of basic infrastructure within the entire justice system is another crucial issue that causes delays and inefficiency. In most parts of India the Office of the Public Prosecutor does not have a telephone connection to coordinate work with investigating agencies. In Kerala the telephone connection to the Office of the Public Prosecutor was disconnected since the state government failed to pay the bills. When a prosecution office wants to communicate with a police station, the prosecutor must pay out of his or her own funds or have someone else do it. Similarly, to obtain certified copies of documents from courts requires months if not years, because almost all lower courts lack basic equipment to make copies. Documents need to be sent to district headquarters for copies. This is usually done once per week and, due to the volume of applications, the district headquarters is often congested. Such a lack of basic infrastructure not only results in delays in proceedings but is closely related to endemic corruption.

8. The misplacement and damage of records can also contribute to delays. Currently, the record rooms of Indian courts are simply big halls where electrification or even good ventilation is not present. Records and evidence are piled without order in significant volume, often leading to spillage of evidence outside the room or building. It is also common for material evidence to be wrapped in newspapers, bound by thread and then produced in court. The safety of the contents depends upon the quality of the newsprint. Notwithstanding this, the climatic conditions in India can result in this evidence being easily damaged within a few months, which is often well before any preliminary hearing is heard. Thus, there is no guarantee as to the safety of documents or evidence and, if lost, cases are adjourned

indefinitely if and when the lost items are traced. Such situations result in frequent miscarriages of justice.

9. Outdated laws and judicial practices also hinder the speedy disposal of cases. For instance, despite amendment of procedural laws to incorporate communications via electronic mail and courier services as effective notice in regards to summons and other court actions, many courts today require the parties to a proceeding to serve notice through court officers. Such service, though designed for a time when electronic mail and courier services did not exist, is still insisted upon by the judiciary due to resistance to new technology.

10. The denial of justice through delays is a mockery of law and results the complete breakdown of the entire justice dispensation system in the country: from top to bottom. Even the Supreme Court of India takes decades to conclude single cases, such as its much acclaimed 1997 D.K. Basu judgment, which took ten years to be reached. The ALRC in the past has brought these issues to the notice of the Government of India and to the Commission. However, the Government of India has done nothing to improve the situation or even acknowledge the scale of the problems facing the country's courts. The result is that as the public loses confidence in the ability of the State to resolve their problems, they are increasingly resorting to their own means to 'settle scores': a fact reflected in the growing number of criminal syndicates in the country and overall declining interest in the rule of law.

11. The courts in India are known for their voluminous judgments. However, the practices of the courts speak volumes in themselves about practical reality of justice in India. Hasna is one among thousands there who have suffered from the indignities heaped upon them by this archaic and unresponsive system. In her case, those who violated her--including a police officer--are walking free and Hasna has lost all trust in justice dispensation. For Hasna, like countless others in India, justice is now without meaning thanks to the work of the country's courts.

12. The Asian Legal Resource Centre therefore calls upon the Commission to demand that the Government of India

a. Provide adequate resources to the judiciary and prosecution for effective functioning and provision of redress as envisaged under article 2 of the International Covenant on Civil and Political Rights, to which India is a party.

b. Fill all vacancies in courts and prosecutors offices without delay.

c. Seek international expertise on how to improve communication within the judicial system, in line with modern technological developments.

d. Train and educate members of the judiciary to better understand how to discharge their duties in order to uphold the rights and dignity of all persons coming before them.

e. Establish an avenue for any aggrieved party suffering from a delay in due process to challenge the court without fear of judicial retaliation, such as for contempt.

f. Expedite the case of Hasna Mondal.
