



**Economic and Social
Council**

Distr.
GENERAL

E/CN.4/2005/NGO/38
7 February 2005

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Sixty-first session
Item 11 (d) of the provisional agenda

**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).

DAMAGE TO THE COURTS AND DENIAL OF THE RIGHT TO A FAIR TRIAL IN SRI LANKA

The Asian Legal Resource Centre (ALRC) has in a separate statement to the sixty-first session of the Commission expressed its concern over denials of citizens' rights to fair trial in South Asia. In this statement it directs its attention to the manifold malpractices mitigating the right to proper legal representation for persons accused of crimes in Sri Lanka. Together, these undermine the rights to fair trial stipulated in article 14(3) of the International Covenant on Civil and Political Rights, to which Sri Lanka is a party.

A recent letter from the Wattala branch of the Bar Association of Sri Lanka to the officer-in-charge of the local police station received wide publicity after it was also forwarded to senior police and the main offices of the Bar Association. The letter complained that local police officers were referring suspects to specific lawyers to act as their counsel in court. After the letter was publicised, lawyers across the country complained of similar practices. The police involved then demand commissions from the lawyers, sometimes exceeding 50 per cent of their fees for a given case.

While these transactions are in themselves a cause for deep concern, they also give rise to many other questions regarding investigation, prosecution and management of criminal trials in Sri Lankan magistrates' courts. Procedure demands that in a criminal trial the police act as investigators seeking the successful prosecution of the accused, who engages a lawyer in his defence. When police and defence lawyers collude, the conduct of all investigations and legal proceedings is compromised.

Accused persons are thereby put in a very difficult and entirely unexpected situation. An accused may be advised to tender a plea on advice of a lawyer acting to satisfy the police who sent the case. If the accused, realising that he is being denied the right to put up a proper defence, demands that the lawyer fight for his innocence or attempts to engage a new lawyer, he may antagonise both the lawyer and the police. As a consequence, he may be implicated in other cases or face other forms of retribution.

Where courts are under pressure from a big workload, collusion between the police and defence lawyers is likely to increase. Judges and other staff will be satisfied to deal with as many cases as possible without having to go to full trial. There is less tolerance of persons insisting on not guilty pleas. Quick settlement becomes the central characteristic of the courtroom; proper judicial process disappears. As a consequence, the public has a less and less favourable view of the courts. Legal professionals too become increasingly demoralised.

Although the Bar Association of Sri Lanka should be playing a central role in addressing these deficiencies, in recent times it has itself been subjected to increasing criticism over numerous shortcomings. In the Daily Mirror newspaper of 21 January 2005, the Bar Association president wrote that

"We have experienced how arbitrarily issues concerning the Judiciary have been dealt with. We have experienced how some members of the bar including those in the official bar have been dealt with. We have experienced how damning allegations have been made against the members of the Judiciary. In all these instances the [Bar Association] had maintained a deafening silence and had continued unperturbed, engaging solely in welfare work obviously mixing up its priorities. Many members of the Bar have taken up these issues from time to time in the Bar council with no response at all."

With the Bar Association in decline, unhappy litigants' complaints of alleged malpractices by lawyers are not dealt with in a prompt and professional manner. For instance, torture victim Dingiri Banda has complained that his lawyer in a fundamental rights application case arrived at a settlement with the accused police despite his express written instruction not to settle under any circumstances. Despite many reminders, this matter has not been investigated.

In light of all the above, the Asian Legal Resource Centre urges the Commission to raise concerns with the Government of Sri Lanka over non-application of article 14(3) of the ICCPR there, with a view that appropriate action be taken to ensure compliance.
