



**General Assembly**

Distr.  
GENERAL

A/HRC/9/NGO/20  
29 August 2008

ENGLISH ONLY

---

HUMAN RIGHTS COUNCIL  
Ninth session  
Agenda item 4

**HUMAN RIGHTS SITUATIONS THAT REQUIRE THE COUNCIL'S  
ATTENTION**

**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.

[25 August 2008]

---

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

### **SRI LANKA: The widespread practice of filing fabricated charges**

Studies into literally hundreds of cases clearly demonstrate the existence of the widespread practice of fabricated charges being made against innocent citizens in Sri Lanka. The result of the fabrication of charges can be prolonged detention without bail and severe harassment for victims, as well as their families when they make complaints about such fabrications. At the initial stages of arrest based on fabricated charges torture is frequently used, either to get the victims to admit to the charges or to provide other information. Experience shows that there are no means of getting speedy investigations into the allegations of fabricated charges. Furthermore, even where the fabricated nature of the charge is proven at criminal trials, no action is taken against those who have filed such charges, despite of the fact that the Penal Code treats the fabrication of charges as a crime.

The following are some illustrations of the fabrication of charges:

**Dodampe Gamage Asantha Aravinda**, was travelling on a motor scooter with a friend when he was struck from behind by a truck. In the accident, Aravindra's friend suffered injuries while Aravindra was thrown to the ground. The truck driver, a businessman in the area, ran from the scene and returned with a group of policemen from the Pitabaddara Police Station, Matara, including its Officer-in-Charge (OIC). The policemen arrested Aravindra and assaulted him severely. When he cried for help and asked for water, the truck driver instead offered him a cup containing acid. When Aravindra refused to drink it, the acid was thrown in his face. The police later took Aravindra and his friend to the police station and held them for several days without medical treatment. Finally, due to pressure exercised by the families, they were brought to a hospital where the doctors declared that Aravindra had permanently lost the use of an eye. The OIC filed charges against Aravindra alleging possession of a live bomb and stated in a report to the Magistrate that a person who could not be identified because it was dark had thrown the acid. The possession of a live bomb is a non-bailable offence, so the victim, who suffered the acid attack and loss of an eye is now in remand prison while the acid thrower remains at large. Despite complaints made to the Assistant Superintendent of Police, Akuressa, other senior police authorities in the area, the Inspector General of Police, the Human Rights Commission of Sri Lanka and the National Police Commission, about the acid attack and the fabrication of charges, no inquiries have been held and nothing has been done to release Aravindra from the fabricated charges.

**Sarath Kumara Naidos**, a young construction worker, was arrested on the 5<sup>th</sup> July 2008, at noon near his sister's house, where he was residing. From the moment of arrest, members of Mr. Naidos' family visited him several times each day at the Moratuwa Police Station where he was being held. He complained to family members and others, including two lawyers, that he was being beaten severely several times a day and that the police officers were demanding that he should hand over the gold he was supposed to have stolen. Pleas by him and his family that they were unable to return what they had not stolen were of no avail. From the 5<sup>th</sup> to the 13<sup>th</sup> of July he was held at this police station. His family members made complaints, including written complaints to the Inspector General of Police, the Human Rights Commission of Sri Lanka and the National Police Commission with regard to illegal detention and torture and pleading for Mr. Naidos to be brought before a magistrate. Angered by these complaints, the police filed an added charge when he was finally produced before a magistrate on the 13<sup>th</sup> July. According to this charge, Mr. Naidos

was arrested while in possession of 2,300 milligrams of heroin at 11:30 p.m. on the night of the 12<sup>th</sup>. As Mr. Naidos was in police custody from the 5<sup>th</sup> to the 13<sup>th</sup> July it was physically impossible for him to have been found in this manner on the evening of the 12<sup>th</sup>. The charge of possession of such a quantity of heroin is a non-bailable offense and if proven also carries the death sentence. The complaints made to the Superintendent of Police, Moratuwa, other local police authorities, and the offices mentioned above have not lead to any inquiries. Despite lengthy representations with oral and written evidence in proof of the illegal detention and torture of Mr. Naidos, he has not been released and no action has been taken against the officers who fabricated the charges.

**Lalith Rajapakse** was arrested by the Kandana Police on April 20,, 2002 and was subjected to severe torture causing him, amongst other injuries, a brain injury that resulted in him being unconscious for over 15 days. The police hospitalised him while he was in this condition. The report of these injuries lead to considerable publicity and later a police Sub Inspector was charged in a High Court for torturing Lalith. This case, which is filed under Act No 22 of 1994 is still pending before the Negombo High Court.

In retaliation against the complaints of torture, the police filed three fabricated charges before the Magistrate's Court of Wattala. Subsequently, in two of the charges the complainants came to court and declared that at no time had they made any complaint against Lalith and the court acquitted him of both. In giving evidence before the Negombo High Court, the Sub Inspector who made the arrest admitted that neither at the time of the arrest, nor at any other time thereafter, had the police received any complaint or evidence against Lalith.

Although Lalith has been acquitted of the fabricated charges, there has been no investigation despite the fact that the Penal Code makes it an offense to file fabricated charges. In the third case, which was one of attempting to obstruct police officers in the course of their duty, no evidence was lead for several years. Then an application for Mandamus on behalf of Lalith was filed against the officers and the Attorney General in the Court of Appeal. The AG agreed not to proceed with this case at the Magistrate's Court. However, no inquiries have been made regarding the fabrication of this charge.

**Angeline Roshana Michael** was arrested on December 3, 2000, by a group of policemen from the Narahenpita Police. It was alleged that she had stolen a gold watch valued at around US\$ 5,000 from the house of a rich employer for whom she worked. The police officers tortured her throughout the night, demanding that she return the watch, which she denied having stolen. Due to pressure, she was produced before a magistrate where she was charged by the police with theft. The officers later faced a fundamental rights application where the Supreme Court found that they had violated her rights under article 11 of the Constitution which prohibits torture. The two officers were also found guilty by a High Court of torturing her and were sentenced to seven years of rigorous imprisonment and fined. The officers have appealed.

The fabricated charge of stealing a gold watch was continued in the Magistrate's Court for a long time with no evidence being produced. Finally, she was discharged by the magistrate as the police failed to pursue the case. However, no inquiry was held into the fabrication of the charge against her. This charge caused the threat of imprisonment and also damaged her reputation, but the Sri Lankan State has not taken any action to deal with the matter.

There are many other such examples. In August 2002, the ALRC published 22 cases of torture accompanied by fabrication of charges in Vol.1 No. 4 of its *Article 2* publication. In February 2004 another 31 cases were published in Vol. 3, No. 1 of *Article 2*. Several hundred other cases have been compiled and submitted to the Sri Lankan authorities, including the Inspector General of Police, the Attorney General's Department, the Human Rights Commission of Sri Lanka and the National Police Commission. These cases involve illegal arrest, illegal detention, torture and fabrication of charges, and are available on the Asian Human Rights Commission's website. The Sri Lankan Supreme Court has repeatedly found that persons have been illegally arrested, detained and tortured by the Sri Lankan police or other authorities. In most of these instances the arrest has been on the basis of fabricated charges. However, no action has been taken by the authorities to have the fabrication of charges properly investigated with a view to bringing the perpetrators to justice.

Fabrication of charges is a violation of Articles 9 and 14 of the ICCPR. Arrest and detention on the basis of fabricated charges clearly amounts to a violation of the right to security and the right against illegal arrest and detention. Arrests on fabricated charges often lead to torture in police stations. The abuse of non-bailable provisions of the Penal Code or other ordinances also amounts to a clear abuse of power. This is a violation of Article 14 which guarantees the right to a fair trial. To begin a process of investigations on charges which are known to be false and the maintenance of such false charges at the time of prosecution is a violation of the right to be tried only on the basis of genuine investigations and makes a mockery of the trial process.

Regarding this widespread practice of fabrication of charges, the Sri Lankan government has failed to comply with Article 2 of the ICCPR, which requires that persons who suffer violations of their rights should be provided with an adequate remedy. Although the Penal Code provides a remedy by making it an offence to file fabricated charges, there is no authority to investigate the offence and to file charges. The Inspector General of Police and the National Police Commission have failed to provide any mechanisms for complaints against the fabrication of charges. The Attorney General's Department and the judiciary have not made any directions to the police and other authorities on the conducting of inquiries into fabrications. Experience of making complaints concerning this matter also demonstrates that even after instances of such fabrications are brought to the notice of the authorities, there is no attempt to inquire into these matters despite people remaining incarcerated on the basis of such charges.

The adverse impact of impunity with regard to the fabrication of charges manifests itself even more glaringly during the use of emergency laws and the Prevention of Terrorism Act. In such instances, detention can be long and there are very limited possibilities for seeking redress from the courts. In statements given to the commissions of inquiries into forced disappearances in the late 1980s by parents of disappeared persons, there is a large body of information about arrests that were made on flimsy grounds which ultimately resulted in the disappearance of the person involved. The practice of allowing persons to be arrested without strong evidence supporting their involvement in crimes can, at times when extraordinary powers are given to the law enforcement authorities, also lead to such practices as forced disappearances.

-----