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Photo by Roshan Chaturannga

SRI LANKA

The need for radically
re-engineering the policing,
prosecution and judicial systems



*“We need a new frontier in the human rights field.
This frontier is the frontier of institutional reform.”*
~ **Basil Fernando**

Two elections were held in Sri Lanka during 2015, one for electing the President in January, and the other to elect members of Parliament in August. Both elections saw the defeat of the government of President Mahinda Rajapaksa, with a coalition of new parties establishing a new government.

The key election promise of those who came to power was a change in Sri Lanka’s political landscape from authoritarian rule to full-fledged democracy. The central aspect of the strategy promised was to replace the executive presidential system to a power model based on democratic principles.

The election slogan was the establishment of ‘Yahapalanaya’, meaning good governance. President Maithripala Sirisena himself popularized this slogan by repeating it in his speeches and communications. Prime Minister Ranil Wickremasinghe has also insisted on transparent governance, particularly in matters of finance.

Over the past few months what has become clear however, is that while good governance has been proclaimed as the government’s key strategy, the government lacks the practical support of a strong legal mechanism to carry out its promises. The basic institutions of justice—the police, the prosecution system, which is in the hands of the Attorney-General’s Department in Sri Lanka, and the judiciary—are inherently defective, hence depriving the government of practical means to deliver what they have promised to the people.

Of course, the defective nature of the justice mechanisms are not the fault of this government; they are the result of about four decades of the imperatives of the executive presidential system undermining the rule of law. Essentially, the executive presidential system meant the superior power of the President over the Parliament and Judiciary. The old balances created by the first constitution of Sri Lanka, the Soulbury Constitution, were displaced. The 1972 Constitution undermined the place of the judiciary, and the 1978 Constitution virtually displaced all the basic notions on which the Soulbury Constitution was founded.

After the adoption of the 1978 Constitution, new trends developed in the area of law making, legal interpretation and even in terms of institutional objectives. Following the orders of the President became the basic style of administration, and in doing so, all internal checks and balances were systematically abandoned.

An additional factor that contributed to the undermining of the judicial structure in Sri Lanka was the emergence of two internal conflicts: the Southern rebellion led by the Janata Vimukthi Peramuna (JVP), and the emergence of the militant LTTE in the North and East. The State’s response to these armed conflicts was to crush them with the use of superior force. The spread of the armed conflict inevitably undermined the nation’s legal system and justice institutions.

One of the government’s responses to the Southern rebellion was condoning the practice of forced disappearances. Much later, when a subsequent government appointed four Commissions to investigate what happened in different parts of the country between 1987 and 1991, the commission reports graphically detailed the violence prevailing at the time. One unfortunate

factor in the retaliation to the Southern rebellion was the use of the Sri Lankan policing service for military activities. The direct result of this was the loss of professional habits inculcated over a long period of time within the police force.

The present report will focus on how practices relating to arrest, detention and fair trial changed during this time. Earlier, persons were arrested only when there were reasonable grounds to suspect them of having committed a crime. During the counter-insurgency operations however, such a practice was seen as a luxury that the government could ill afford. Resultantly, persons were routinely arrested on unchecked information given by any source. Moreover, the purpose of arrest was no longer for further investigation in order to bring the suspect before the Courts. As the Commissions illustrated, the ultimate end of the arrest was the person's execution and secret burial as a counter-insurgency measure. Thus, concerns for justice were lost in favour of national security and national interests. Tragically, this habit did not end with the suppression of the JVP, with no efforts made to restore the police to a civilian system engaged purely in law enforcement in accordance with Sri Lankan law. Arresting persons on flimsy grounds has thus become a routine practice in almost all police stations across the country.

The situation in the North and East was even worse, with the conflict more intense and entirely conducted by the military. Civilian policing and the functioning of local courts became practically impossible. Even after the conflict ended and the LTTE were crushed by the Sri Lankan armed forces, there was little attempt to restore the old system of law enforcement. These conditions have left a deep imprint in people's lives as well as the institutional framework of the North and East. Very little progress has been made in turning the situation around.

In fact, the system of law enforcement has broken down throughout Sri Lanka, as stated by government agencies as well as the media. Regular incidents demonstrate the complete lack of knowledge in conducting lawful arrests and investigations at local police stations. The Asian Human Rights Commission has routinely reported on the arrest of persons which cannot be justified in any manner, as well as the torture and ill-treatment of prisoners, often following the arrest of persons of low income groups.

Command responsibility within the police has suffered a great setback, with any supervision of officers' conduct largely abandoned. The key player of disciplinary control within the overall framework of the police regulations is the assistant superintendent of police (ASP) of a given area. Among his duties are regular visits to the police station, inspection of all facilities within a given station, seeing to the training of officers and taking active part in all investigations into serious crimes. He is required, for example, to visit the crime scene whenever a crime like murder takes place.

Unfortunately, in many parts of the country, the ASPs themselves have become complicit in corruption as well as neglect. There is hardly a single case where an ASP has taken an active role in stopping the use of torture and ill-treatment within the police stations, despite of the large body of complaints that have surfaced from all parts of the country.

Under the last government there was the constant allegation of politicization of the police and the interference of politicians in directing the investigations in the manner they thought fit. The new government has promised not to interfere with the functioning of police officers and to allow the normal process of law to take place. However, the new government has not taken any measures to set the system right by issuing clear instructions and taking firm action against those who break the law and discipline. It is not unjust to allege that the new government has condoned the

pathetic state of affairs prevailing in police stations throughout the country, which contributes greatly to undermining the rule of law in Sri Lanka.

The only positive step that the new government has taken in this regard is the appointment of the new commissioners for the national police commission. However, the powers of the commission consist mostly in making recommendations and its powers of directly implementing its own decisions arrived at after inquiries has been taken away. Thus, unless the law is soon amended to grant the commission more powers to ensure its effectiveness taking corrective actions regarding the policing matters would continue to be neglected.

Civilian policing and good governance

A significant move on the discourse of civilian policing in Sri Lanka has attracted the attention of civil society. Civilian policing is indeed the most important part of re-engineering the nation. The principles of social change might easily take root if the public were allowed to realize the possibilities of non-violent democratic social re-engineering. That is what was observed when it came to the political change in the country at the beginning of the year. The people, in general, were craving for changes in the system, as they knew that nothing could be possible if the same people were repeatedly elected.

Despite the enthusiasm of ordinary citizens, the response of the bureaucracy remains problematic. This is diminishing the hopes born from the political change that took place during the two elections. Nonetheless, there were some good decisions made by the political leadership: the activation of the National Police Commission (NPC), which was constitutionally dismantled by the preceding leadership, and the establishment of a subsidiary agency, the Financial Crimes Investigation Division (FCID),¹ a law enforcement agency for financial crime investigations.

According to the newly appointed head of the NPC, the key areas of focus² include addressing the people's bad impression of the police.

Torture continues

However, political interference remains the major obstacle to police reforms. It has not only made the challenge more complicated, but also created frustration among the public. Meanwhile, the police are continuing to practice medieval methods of investigation, such as custodial torture and other forms of intimidation. Many innocent people are still becoming victims of fabricated charges, police negligence, aberrant actions, extrajudicial executions, and so on.

Mr. Liyanarachchilage Samantha (34), father of three, lived in Viharagala, Sooriyawewa, in the Hambantota District. He was illegally arrested and severely tortured in public by a group of six police officers in Sooriyawewa Police Station on 19 February 2015. Then he was detained at the Sooriyawewa Police Station, and the torture continued. Later it was documented that the victim was admitted to the regional hospital, where he died.³ Dozens of such cases were reported throughout the year.

¹ Opening of Financial Crime Investigation Division (www.police.lk/index.php/special-events-/1154-opening-of-financial-crime-investigation-division - Accessed on December 1st 2015)

² Professional police force, the aim - Prof. Siri Hettige (www.sundayobserver.lk/2015/11/15/fea09.asp - Accessed on December 1st 2015)

³ SRI LANKA: An independent investigation needs to be carried out on a torture killing by the police and the murder of the witness to the crime (www.humanrights.asia/news/urgent-appeals/AHRC-UAC-011-2015 - Accessed on December 1st 2015)

Meanwhile, the police were asked to restore public safety and peace in an area where serial killings have been reported since 2008 and continue in 2015. All those killings have similarities that indicate systematic and extrajudicial killings.⁴ In another incident, a woman was brutally attacked by a police officer after she refused to perform a sex act on him.⁵ The shocking video went viral, showing him vowing to 'teach her a lesson' and brutally beating her before witnesses, who secretly filmed the attack.

After a shocking incident of gang rape was reported in May 2015, it was alleged that a senior police officer prevented the alleged perpetrator from being arrested.⁶ Later, President Maithripala Sirisena visited the victims' families and ensured that justice would be delivered. The litigation continues.

Meanwhile, the investigation procedures used by the police were questioned in a case in which a five-year-old child was abducted, raped and murdered.⁷ The police arrested a number of suspects and practiced their usual medieval methods to obtain confessions, ignoring the more scientific methods available. For example, a 17-year-old school boy was arrested and tortured in custody. The court later released him.⁸ The victim has to continue his student life with the trauma, for which the state is responsible.

There was yet another attack against students agitating for their minimal rights by the police, reported on 29 October 2015. This time the attacks led to widespread recriminations. The police tried to justify their reactions while the facts of the actual situation went viral. The justification by the police for their use of force mainly focuses on civil disobedience and establishing the public peace. A short statement in the Sinhala language⁹ published by the police stated that protesters blocked the main road and forcefully attempted to enter the ministry's premises, so police had to disband the protest. However, this was not true. The brutal attacks against the students were recorded and went viral in the media.

At the same time, there was another peaceful protest by the villagers in Hakmana,¹⁰ a village in the southern part of Sri Lanka, against the Officer-in-Charge of the police station in the area, who allegedly tortured a youth in order to force a confession out of him for a crime in which he took no part.

Arbitrary arrests based on fabricated charges, the use of torture to force confessions, police negligence, ignoring official procedures, killing suspects when taking them on trips to show the weapons they had hidden (encounter killings), are famous strategies followed by the police to tame the suspects. A lengthy account can be compiled against the police with facts widely known by the public. A long list of victims of police brutality can be made. These are all but indications of a failed system.

⁴ SRI LANKA: Alleged serial killers take the life of the 18th woman, in Kotakethana in Kaha watte (Accessed on December 1st 2015)

⁵ Bared: Sex workers' vulnerability (www.sundaytimes.lk/141012/news/bared-sex-workers-vulnerability-122145.html - Accessed on December 1st 2015)

⁶ Sri Lanka police slammed over ex-war zone gang rape (<http://english.alarabiya.net/en/News/asia/2015/05/23/Sri-Lanka-police-slammed-over-ex-war-zone-gang-rape-.html> - Accessed on December 1st 2015)

⁷ Murder of Seya Sadevmi (https://en.wikipedia.org/wiki/Murder_of_Seya_Sadevmi - Accessed on December 1st 2015)

⁸ Seya murder: Teen released (<http://www.dailynews.lk/?q=security/seya-murder-teen-released> - Accessed on December 1st 2015)

⁹ විඥානා නැමීම සිදුවූ ගිණි පදනම මෝචනය (<http://www.police.lk/index.php/component/content/article/80-news/1446-2015-10-30-09-41-39> - Accessed on December 1st 2015)

¹⁰ It is the police that entice the people to crimes; charges from a mother of a youth alleged to have been subjected to a police assault (<http://www.hirunews.lk/119544/police-that-entice-people-to-crimes-charges-from-mother-youth-alleged-have-been-subjected-assault> - Accessed on December 1st 2015)

The Attorney-General's Department

In Sri Lanka, the function of the public prosecutor is exercised by the Attorney General's Department, created on the same principles as the British institution of the Advocate General. In the first few decades after independence, this institution was held in high esteem for its professionalism, independence and efficiency.

The department no longer enjoys that reputation. Allegations of politicization, inefficacy, delay and even corruption are quite common. A State Counsel speaking to the Human Rights Commission stated that prosecuting lawyers have thousands of files to attend to. The result is that they have to seek postponements of cases, which in turn result in serious delays in adjudication, or they have to resort to arriving at compromises which may not be justified in law for the purpose of disposing of cases. For example, there have been instances where State Counsels have agreed to grant suspended sentences in cases of serious crimes such as rape. Due to delays, several State Counsels may appear in a single case before it is completed. Naturally, this affects the quality of prosecutions.

There are many complaints about delays in filing indictments. Sometimes these delays last five years or more. Added to this, there are more cases now of Magistrates referring to the Attorney-General for advice on matters that arise in a particular case. The Department's advice often gets delayed. The result is that these cases stay pending in Magistrates' courts for a long time.

There are also allegations of some case files getting lost within the department. As a result, victims of crime may lose their right to pursue justice.

There are also allegations of political and other forms of corruption. It is difficult for lawyers appearing for parties who suffer from such corruption to predict the legal position of the department's representatives in such cases.

The number of staff working for the department is grossly inadequate. The general view is that the department should have double the amount of staff it has now. While the government seems to admit this, its reluctance to address it is said to be due to the absence of adequate space within the department to accommodate more staff. There seems to have been no attempt to find a solution to this problem.

There is also a public perception that there has been a deterioration in the quality of the staff. This is sometimes attributed to inadequacy of the salary for State Counsels, as a result of which more talented and qualified lawyers do not wish to join the department. For this and other reasons, joining the department has lost attraction and is not considered a worthwhile career option.

The demand for a quick reform of the institution is now being made publicly by the media, and also by civil society organizations. There have been public demonstrations demanding improvements and adequate reforms.

Despite some ministers in the new government themselves being critical of the performance of the Attorney-General's Department, the government has neither declared a policy for addressing this problem nor undertaken any serious assessment with a view to provide the funding and other resources necessary to achieve the considerable change required.

JUDICIAL INSTITUTIONS

The judicial institutions were also seriously affected by the transition to the executive presidential system and the internal conflicts in the past few decades. The 1978 Constitution undermined the independence of the judiciary, virtually making it subordinate to the Parliament.

During the presidency of J. R. Jayawardena, who introduced that constitution, there was a refusal to provide adequate funding for the recruitment of new magistrates. As a result, the then-Chief Justice had to resort to the recruitment of some retired persons as magistrates. The conflict between President Jayawardena and the Chief Justice Samara Koon is well recorded. This conflict marked an openly aggressive approach by the Executive President against the judiciary.

This situation became much worse under the Presidency of Chandrika Bandaranaike, who appointed the then-Attorney General Saratha Nanda Silva, who was quite openly supporting the ruling political party, as the Chief Justice. The period in which Sarath Nanda Silva was the Chief Justice is rightly marked as the darkest period of the Supreme Court in Sri Lanka.

Chief Justice Silva contributed to the decline of the power and image of the Supreme Court of Sri Lanka in many ways: he was openly in collusion with the President and made orders which appeared to be politically biased; he was aggressive towards many senior members of the Bar appearing before him and quite openly bullied them in court, resulting in intimidation and some members of the Bar resorting to seeking personal allegiances with him to promote their professional interests; and, in perhaps his most grave attack on the judicial tradition in Sri Lanka, virtually abandoned procedural justice.

Silva abandoned well-established procedural rules and created rules of his own for what he called 'his court'. He side-lined some of his fellow judges when they did not fall in line. Among them was the late Justice Mark Fernando, who is held in high esteem by many persons in the legal profession and outside. Silva abused contempt of court proceedings, and this is illustrated by the sentencing of Tony Fernando and S. B. Dissanayake. Both of these cases came under criticism by the United Nations Human Rights Committee, which responded positively to communications filed by Tony Fernando and S. B. Dissanayake.

The decline of the independence of the judiciary had its peak point in the removal of Dr Shirani Bandaranaike as Chief Justice and the appointment of Mohan Peiris, another Attorney General, who was known to be a completely obedient ally of the President and his family. The current government voided the appointment of Mohan Peiris, reinstating the former Chief Justice and then appointing the current one.

The appointments to other higher judicial positions have also come under attack as many of them did not follow the traditional merits approach, but instead depended on political loyalty.

There have also been allegations of bribery and corruption. There have been reports to this effect by reputed research organizations and there is a widespread perception among the legal profession that this problem exists. However, no action has yet been taken against any judge of a higher court on this basis.

Perhaps one of the most shocking situations is that a Supreme Court judge who has been served with an indictment in high court for rape, still continues to hold his office, although he is not allowed to sit to hear cases.

There is also a common acknowledgement that the number of judges are insufficient and that the number of courts are also inadequate. This is one of the causes for constant delays in adjudication, which have reached a scandalous length. The average time for adjudication of a serious crime is over ten years. An appeal takes more years. Sometimes at this stage a case is returned to the high court for a fresh trial on the basis that the earlier trial was not conducted in a proper manner.

Results of the onslaught on the judiciary

The judicial institution has been exposed to this ongoing onslaught since 1978. Successive governments wanted to suppress the independence of the judiciary in order to increase their power. They sought to destroy the people's trust in the judiciary. This objective has been achieved. This damaged institution cannot perform the functions of a separate branch of government. Its primary objective is supposed to be to protect individuals from infringements on their rights by the government. The present state of the judiciary is dangerously opposed to democracy and the rule of law.

There cannot be a democracy and people cannot have their basic protections, their human and constitutional rights, without the existence of an independent and impartial judiciary. A democracy cannot exist if there is no rule of law. In turn, rule of law cannot prevail unless every citizen is treated as equal before the law and afforded the right to fair trial. There cannot be a fair trial if there isn't an independent and impartial judiciary.

An independent judiciary is therefore the cornerstone or the bedrock on which democratic principles, the fundamental guarantees of human rights and the rule of law rest upon. An independent judiciary does not merely involve having independent judges. It is vital that there is a commitment from the state and a clear state policy to protect, safeguard and respect the independence of the judiciary as a whole and the security of tenure of the judges. An independent judiciary is necessary for the protection of the rights and freedom of every citizen.

Sri Lanka's judiciary has over the years failed to protect constitutional and human rights, and has contributed to the collapse of the rule of law. Sri Lanka began with a comparatively independent judiciary at its independence in 1948. The constitutions of 1972 and 1978 took away the independence of the judiciary, allowing for parliamentary and presidential influence to seep in. The 1978 constitution hit the nail on the coffin of judicial independence, with unfettered powers being vested in the executive for the appointment of judges.

The drafters of the 1972 Constitution quite openly renounced judicial independence, raised the Parliament and the cabinet of ministers over and above the judiciary, and terminated all judicial review of executive or administrative action. Judicial reviews relating to constitutional rights and review of legislation was vested in a five member "Constitutional Court" appointed by the President, with power only to issue rulings at the request of the Attorney General. Appeals to the Privy Council in London were abolished and a single Supreme Court was established. Judges were appointed by the Cabinet of Ministers and the transfer of judges was vested with the Minister of Justice, who also had wide powers to do so. The Parliament could remove judges for misconduct.

The 1978 Constitution veered completely away from this basic constitutional structure, and the very notion of equality before the law was abandoned by placing the Executive President above all branches of government, including the judiciary, and above the law. This document was in fact

a declaration of accepting arbitrariness as opposed to the law. The very foundation of law itself was removed. It is the document that delegalized the state.¹¹

The 1978 Constitution set up a Supreme Court, a Court of Appeal and provincial High Courts. It did away with the Constitutional Courts and vested judicial powers back into a newly created hierarchy of courts. The power of the judiciary was nevertheless limited; judicial review was confined to the Supreme Court; Acts of Parliament can be referred to the Supreme Court solely to determine their constitutionality, basically treating the independence of the judiciary as a threat to the Executive President. The constitution gave the President complete impunity and weakened the powers of the courts. It expressly bars any legal action against the Executive President and limits the filing of constitutional ‘fundamental rights’ challenges against the executive and administration to the Supreme Court¹².

An important component in the legalisation of tyranny was the absolute immunity granted to the President. The first Executive President, J. R. Jayawardene, as well as his Prime Minister, R. Premadasa, were well aware that judicial independence was still a valid concept within the country in 1978. For this reason, it was quite possible that judicial challenges would be made against the system of legalised tyranny, and in fact they were. Even the Chief Justice, who was appointed by the President, opposed him within a few years. However, the President had one last resort with which to attack his opponents: the constitutional provision of absolute immunity.

The responsibilities for the appointment, transfer and disciplinary matters regarding lower court judges is vested in the Judicial Services Commission, and the President is vested with the power to appoint judges to the higher courts.

These unfettered powers can be used by the executive to influence all judicial appointments. It is not obligatory to consult the Parliament or the judiciary in making appointments. The continuous manipulation of judicial appointments by the incumbent Executive President are used to promote his/her own political agenda. What was traditionally done through the selection of the most senior judges from a pool of career judges was turned into an appointment of political allies to the judiciary, and this manipulation of appointments extended to the Attorney General’s Department as well. This led to some stooge Chief Justices wielding such powers as assigning and transferring of judges, control of funds for judicial reforms, and complete control of the Judicial Services Commission and its affairs, so much so that it became almost impossible for a career judge to move up the judicial hierarchy from being a magistrate to a Supreme Court judge.

The duty of the judiciary to protect the rule of law needs to be brought to the forefront of public discussions. If Sri Lanka’s system is based on the separation of powers, then it is the duty of the judiciary to limit the executive power with the framework of the law. This may create a conflict with the executive, if the executive insists that it is above the law. In such a situation, the judiciary has no basis to avoid the conflict without abandoning the rule of law. If the judiciary dared to face the conflict, then the people themselves would have had the opportunity to intervene to save the rule of law system. However, when the judiciary avoids this conflict, the executive can, in fact, stand above the law. This, in fact, is what happened in Sri Lanka.

An independent judiciary is an essential component to the rule of law and is the bedrock of the separation of power principle. The judiciary’s independence from the other branches of

¹¹ Fernando Basil, ‘*Gyges Ring, The 1978 Constitution of Sri Lanka*’, 2011, p.11

¹² Articles 35(1) and 126(1) of the 1978 Constitution

government, the executive and the legislature, safeguards the judicial function as an effective check against the abuse of powers by the executive or the legislature.

Hong Kong, where the Asian Human Rights Commission has been based since its inception some decades ago, is one country in Asia where rule of law is strictly maintained, and owes that to the fierce independence of Hong Kong's judiciary. Drawing from a recent example, a remark by the Director of Beijing's Liaison Office in Hong Kong that the Chief Executive has "superior status" or "transcendent status" above the judiciary and all other branches of government, created a storm of controversy. This storm was poised to escalate, but Chief Justice Geoffrey Ma stopped such an event from unfolding. In a public speech, Judge Ma stated that Hong Kong's Basic Law (Hong Kong's main constitutional document) guaranteed the independence of the judiciary and that everyone was equal before the law. He stated that the independence of Hong Kong's judiciary is fully guaranteed under several articles of the Basic Law and that all citizens, including the Chief Executive, are equal before the law. The message from the judiciary reiterates *a fortiori* that judicial independence and rule of law are the foundation to Hong Kong's success as a major commercial and financial centre in the world.

Articles 2, 19 and 85 of Hong Kong's Basic Law guarantee the Hong Kong judiciary's right to independence and final adjudication (except in specific matters such as defence, reserved for the central Chinese government) free from any interference. Further, Article 88 provides for the appointment of judges by the Chief Executive on the recommendation of the Judicial Officers Recommendation Commission, which is an independent statutory body comprised of local judges, persons from the legal profession and other professionals, and is done in a very stringent manner, ensuring that only those with the required ethical standards of integrity, independence, professionalism and substantial legal experience are considered and appointed to judicial office.

While Hong Kong's judicial independence is constitutionally entrenched in its Basic Law, successive Constitutions in Sri Lanka have explicitly corroded this independence. The current state of the judiciary damages Sri Lanka's ability to adhere to the rule of law.

An illustrative case is that of the rape and murder of a 17-year-old schoolgirl in May 2015, which gave rise to the biggest protest seen in the North in recent times. The police announced that nine persons had been arrested and were being investigated. DNA samples had been taken and sent for examination. Meanwhile, the President of Sri Lanka publicly stated that the case would be tried in a special court to ensure justice without delay. This promise by the President was a positive step and the Asian Human Rights Commission hoped that the investigations will be completed soon, and the Attorney General would also file the indictments quickly, and that the trial would commence. There are grave concerns in relation to the severely delayed prosecution of rape cases, and it is hoped that this case will not be so treated.

The case of Rita,¹³ who was 14-years-old when she was raped on 12 August 2001, has taken over a decade. She was a schoolgirl from an underprivileged background. Her parents were working in the tea plantations. The alleged rapists in her case were two young boys from affluent families in the area. Within a short time following her complaint, the police were able to locate and arrest the two suspects. However, now, 14 years after the event, the trial is still dragging on. The victim has regularly attended the court and has in no way contributed to the delays. However, as is done often in such cases, the defence sought delay for all kinds of reasons, knowing that it has a weak

¹³ These examples are excerpts taken from an AHRC publication titled, *The Deterioration of the legal intellect in Sri Lanka*, Basil Fernando, 2015

case. Unfortunately, the courts in which the case has been taken up have made no serious effort to ensure a fair trial without undue delay.

Cases in which there are scandalous delays number in thousands. The task before the President and his government is to find a solution to this terrible problem. The President should first of all, request the appropriate authorities, particularly the Minister of Justice, to provide a thorough report to him on the state of delays in adjudication of criminal cases, with emphasis on the trials in most serious crimes, such as rape, murder, and the like.

The President has declared that the primary goal of his government is to ensure good governance. As long as there is a scandalous level of undue delay in trials of serious crimes, good governance is not possible. The greatest threat to good governance is crime. Addressing this problem about undue delays in adjudication, among many other problems, the President and his government needs to take action to ensure the following: the first and most important step is to restore the hearing of criminal trials on a day-to-day basis. This was a practice when jury trials were common. However, the virtual abandonment of jury trials has left the decision of postponing the dates of trial to the discretion of the judges. An examination of any of the case records of the trials that have been going on for some time clearly indicate that the grounds on which the postponements have been given are not rationally or morally justified.

Hearing cases on a day-to-day basis should not be left to the discretion of the judges; such hearings should be made compulsory. Adjusting of court schedules for this purpose is purely a task of managing cases. If a court cannot hear a case on a particular date, there is no rational purpose in fixing the case for trial on that date. That is just a matter of common sense. It should not be a difficult task for the President of the country to set-up a way to address this through appropriate authorities and also to get the cooperation of the courts for that purpose.

There are other matters, such as delays in investigations and delays at the Attorney General's Department, which are also, for the most part, a result of neglect in management. Inadequate funding of relevant departments is certainly one of the major causes for management problems. It is the duty of the President and his government to make the necessary funding allocations to the relevant departments so that they can resolve the internal problems leading to delays.

In taking these steps, the primary policy issue involved is the important place that should be given to the administration of justice. As the President often highlights the difference of his political administration from that of the former President, Mahinda Rajapaksa, one of the most important areas of distinction would be emphasis being placed on the proper administration of justice. With the former government, neglect of the justice system was part of its political agenda. It is only by destabilizing the system of administration of justice that largescale corruption and abuse of power became possible.

Military

It is understandable that due to the political climate of the recent past, the military has acquired a prominent place in the country. It should be noted that in maintaining peace and stability, the institutions of administration of justice play a far more important role than the military. This peacetime perspective however, was completely missing during the last regime. This is one area that the President needs to take a critical look at if the goals he has set to achieve are to be realized. It is quite well known that a large part of the national budget is allocated to the military, as compared to the budget allocated for running the institutions of the administration of justice. Such lopsided allocations of the budget are an indication of the absence of a national policy for

realising peace and stability through the means of a functioning system of administration of justice. No amount of military intervention could address problems of internal security and stability if the institutions meant to administer justice are neglected.

Thus this case of the brutal rape and murder of the 17-year-old girl requires a more profound response than the mere promise of a speedy trial only for this case. In the first place, if the country's civilian policing system and the courts were functioning properly in the area where this crime took place, it is quite likely that the crime itself could have been prevented. The prevention of violent crimes is primarily a task for the institutions responsible for the administration of justice. Therefore, civilian policing and the courts need to be strengthened in these areas, as well as in the rest of the country, to prevent further chaos.

The aforementioned rape victim Rita, visited the magistrates' courts 24 times between 2001 and 2004. Then the case was referred to the Attorney General for the filing of the indictment. The visits she made to the High Court thereafter, and the reasons for postponements, are catalogued as follows:

Case No: HC 57/2007 High Court - Kandy Case Dates:

23 October 2006: Indictment filed by the Attorney General

23 February 2007: Indictment received by the Kandy High Court. Summons issued to the two accused.

26 March 2007: The two accused were granted bail.

27 April 2007: 1st and 2nd witnesses summoned as prosecution witnesses. 18 October 2007: Productions were not presented in court.

01 February 2008: The judge was absent.

30 May 2008: The State Counsel was absent.

30 January 2009: The State Counsel reported that there are two indictments with the same charges. Therefore, the matter was referred to the Attorney General. The judge was absent.

15 May 2009: The matter was pending for Attorney General's advice.

23 June 2009: HC 260/2008 Case was dismissed.

19 October 2009: The matter was transferred to Nuwara Eliya High Court.

Case No: HC NE 48/2010 High Court - Nuwara Eliya Case Dates:

03 March 2010: Summons issued for the 1st to 8th prosecution witnesses. 12 July 2010: State Counsel had not received the file.

05 October 2010: 1st accused was absent and a warrant was issued. 26 October 2010: The matter was fixed for trial.

20 April 2011: The matter was postponed due to an application of the defence counsel.

09 May 2011: 1st witness (Rita Jesudasan) was called for evidence. Evidence-in-chief was commenced. Productions were not presented to the Court. Therefore, another date was given.

14 June 2011: Productions presented in Court and 1st witness's evidence in chief concluded. Cross-examination commenced.

19 July 2011: Further cross-examination.

22 Nov 2011: Matter was called twice in the absence of the defence counsel and postponed due to misconduct of the defence counsel. The two accused were remanded.

22 March 2012: Cross-examination and re-examination of 1st witness concluded.

05 Sep 2012: 2nd witness Anthonimiuttu Annamary, 6th witness 23851 Alahakoon, 7th witness 22517 Selvanayagam, 9th witness Priyanka, 11th witness 28674 Samayamanthry, and 12th witness 29339 Gunadasa gave evidence. Warrants issued to witnesses 4 and 5.

18 March 2013: State Counsel was not ready for the trial. Defence counsel made an application to recall the 1st witness, Rita Jesudasan, for evidence. Summons issued to 1st witness.

10 June 2013: Judge and State Counsel were absent.

02 Sep 2013: 4th witness Kadiravel Palanisami's evidence concluded.

28 October 2013: 5th witness Dr. S.A.K.A. Wijesundara was called for evidence. Due to the vague nature of his evidence, the judge adjourned the case. When the case was taken up in the afternoon the defence lawyer was not present.

29 October 2013: 5th witness Dr. S.A.K.A. Wijesundara was not present in Court. 16 January 2014: The judge was absent.

24 March 2014: 5th witness Dr. S.A.K.A. Wijesundara was absent. 28 May 2014: The judge was absent.

03 July 2014: 5th witness Dr. S.A.K.A. Wijesundara (DMO) was absent. Therefore, J. Rita was re-called for evidence. However, the defence lawyer was not ready for the trial and due to this the case was postponed.

25 September 2014: 5th witness Dr. S.A.K.A. Wijesundara was present in court. However, the defence counsel moved a date on personal grounds.

15 December 2014: The judge was absent.

23 March 2015: 5th witness Dr. S.A.K.A. Wijesundara's evidence was concluded and 1st witness Rita was re-cross-examined until 5.30 p.m.

26 March 2015: Re-cross-examination and re-examination of Rita concluded. A date was given to the State Counsel to conclude the prosecution's case.

03 June 2015: The State Counsel informed the court that the 8th witness had not been called to give evidence in the trial. She requested to issue notices to witness 8 through the police. Notices were issued. Then the case was postponed.

How long this will go on, no one knows. Someday, the trial court will give its verdict. Then, if the accused are convicted, they will appeal. That will mean a few more years of delay and many more visits to court. If the court orders a retrial (as it has done in some cases), the whole process will be repeated. It is not wrong to condemn this way of conducting of trials as absurd and stupid. Above all, this kind of conduct is a conspiracy against the rape victim. It only helps the rapists and encourages the repetition of the crime. A rape trial can be conducted and completed within a year, as it is done in many other countries.

It is therefore shocking how judges and prosecutors adjust to this system. If they refuse to cooperate with this maddening scheme, reforms can be made very soon.

A window of opportunity

While the above examples speak for themselves about the state of Sri Lanka's judiciary, all is not lost. Simple mechanisms and rules can turn this around.

In finding an explanation for the pathetic state of law enforcement in the country, the report issued by the Office of the High Commissioner for Human Rights of the United Nations (OHCHR) in September 2015 is a useful reference. All those who are concerned with the future of law enforcement in Sri Lanka should seriously study the narrative that unfolds in this valuable document, which lucidly traces the weakening of Sri Lanka's institutions and how the country has reached this state of lawlessness.

In that regard, the opening speech made by Foreign Minister Mangala Samaraweera at the UN Human Rights Council, on 14 September 2015, is far sighted and encouraging. Among other things he stated:

“Mr President, in order to guarantee non-recurrence, it is proposed that a series of measures are undertaken including administrative and judicial reform, and the adoption of a new Constitution. A series of measures including amending the penal code to criminalise hate speech and enforced disappearance are also in process.”

While Foreign Minister Mahinda Samaraweera’s promises to bring about the reforms of laws and the constitution are welcome, it needs to be emphasized that what is required is not the mere enactment of some statutes. Law enforcement means much more than creating new laws; law enforcement necessitates the functioning of the institutions which have the duty to create a legal environment in which all crimes are investigated and all criminals are punished according to the law. Specifically, it means a properly functioning policing system, with the capacity and resources to carry out its legal functions; it also means a properly functioning prosecution system, which means a commitment on the part of the Attorney General’s Department not to subvert justice but to prosecute all crimes; it also means a functioning judicial system, which will act independently and, at the same time, efficiently by avoiding scandalous delays and other defects which alienate people from pursuing justice.

A dysfunctional justice system is what has allowed brutal crimes to take place in Sri Lanka. Such crimes will keep on recurring unless the paralysis of criminal justice created by the infamous executive presidential system is brought to an end.

Who will do this? That is the big question. Direct responsibilities lie with the Ministry of Justice and the Ministry of Law and Order and Prison Reforms. People have a right to know what plans these Ministries have in order to resolve the crime prevention issue, which is the same as the law enforcement issue. Up to now, no such plans or discussions about creating such plans have been revealed. It is not unfair to state that there is no indication that such discussions, with views to bring about concrete plans for action, are being considered at all. A related question is as to how the Government will allocate funds in the Budget for the improvement of all the institutions involved in law enforcement functions. If there would be no improvement of funding in this area, there will be more and more victims like little Seya and Wasim Thajudeen.

The OHCHR report has recommended that the High Commissioner’s Office and the international community provide financial and other assistance in order to deal with the problems of justice in Sri Lanka. Thus, the report opens up possibilities of obtaining assistance in order to cure our ailing criminal justice system. Such assistance also includes experts, such as judges from more viable jurisdictions, and other legal experts. Many other countries which have far more stable systems of justice still allow the participation of judges from more developed jurisdictions to be included with the view to keep higher standards all the time. Hong Kong is one such example. Its strong rule of law system, which is recognised as the basis for stability and prosperity, does not shy away from obtaining the support from other better functioning jurisdictions such as the United Kingdom.

The OHCHR report opens up possibilities for a comprehensive discussion. Such a discussion is direly needed. It is to be hoped that the country’s lawyers, judges, other legal experts, intellectuals from all professions and the civil society organisations will make use of this window of opportunity in order to raise the national consciousness about the tragic situation the country faces, and thus prevent the all-too-common incidents of shocking crimes.

PRISONS

That the prisons are overcrowded and as a result, inmates are exposed to extreme conditions and even illnesses, is generally accepted. Several prison officers we spoke to are themselves rather unhappy about the suffering of prisoners. They are forced to witness it and they are helpless in providing any relief.

In almost all prisons, there is no adequate sleeping space for the prisoners. In some prisons in Kandy, some prison officers revealed that sometimes prisoners have to sleep in a standing position.

There is also common agreement that the toilet facilities are grossly inadequate and create very inhumane environments in the prisons.

The number of persons in remand far exceeds the convicted prisoners. Often, sentencing people into remand prisons is a result of overworked magistrates' courts, where the magistrates often do not have adequate time to properly assess the applications for remand by the police. Some prison officers are of the view that, if due diligence was exercised by the magistrates, the prison population could be reduced.

WHAT NEEDS TO BE DONE?

A moment of opportunity to rebuild the damaged legal structure

The legal structure of Sri Lanka has suffered from a great fall due to what has been called "tomfooling with the constitution". The details of this decline have been well documented, but now it is the time to envisage the ways to rebuild the legal foundation of the country. This will require attention on many important areas: the removal of all provisions of the 1978 Constitution which are contrary to the basic principles of democracy and the rule of law; making the necessary corrections in order to resuscitate the basic public institutions in the country; re-invigorating the lost traditions relating to the independence of the judiciary, and removing the obstacles created against the judicial process; reforming legal education; and undoing the psychological damage caused through extensive lawless measures.

Removal of all provisions of the 1978 Constitution contrary to democracy and rule of law

This process has already started with the proposals made under the 100 day programme of the new government to remove all provisions of the 1978 constitution that undermine democracy and the rule of law. On 21 January 2015, the draft legislation to repeal the 18th amendment to the constitution was tabled before the Parliament. Other measures will be introduced thereafter. The proposed measures are necessary and will pave the way to undertake further measures to strengthen the legal structure of the country. However, the task of undoing all the damage done by the 1978 Constitution will necessarily be a very difficult task and it will require a consistent commitment for a considerable period of time to come.

Much will depend on a conscientious group of persons both from the government and the civil society to stick to the task of constitutional and legal reform. The Bar Association, which has been playing an admirable role in recent times, will need to sustain its efforts until these difficult tasks are achieved. Much will also depend on legal scholars and other opinion-makers making their contribution for the achievement of these tasks. Critical and well-informed public opinion on legal issues is direly needed in the country.

Making the necessary corrections in order to resuscitate basic public institutions in the country

All public institutions have suffered serious damage over several decades. Resuscitating the 17th Amendment would be the initial measure for undoing this damage. However, very much more needs to be done, particularly in terms of budgetary allocations.

Considerable budgetary allocations need to be made in order to improve Sri Lanka's policing system, which is one of the institutions seriously undermined under the administration of the 1978 Constitution. The major excuse for inefficiency in this regard is the lack of adequate funding for the development of the necessary modern expertise, and also funding for basic material requirements for the improvement of communications, transport, forensic equipment and other such facilities.

The structure of command responsibility within the policing system has witnessed considerable decline due to the politicization process introduced during the last decades. The functioning of the local police stations in the manner required by law will depend on the way supervisory roles are corrected by the Assistant Superintendents of Police. It is encouraging that the Inspector General of the Police (IGP) has shown great courage and leadership in support of the rule of law, as demonstrated by his cooperation in the conduct of the last presidential election. It is to be hoped that he will initiate a process of upgrading the quality of his high-ranking officers, and thereby pave the way for a change in the manner in which the rank and file continues their work. The IGP's attention should be directed towards restoring discipline of his officers.

Rampant corruption, disrespect for the public, in particular for citizens from lower income groups, the practice of extrajudicial killings and the widespread use of torture and ill treatment by the police have led to a public loss of confidence and their refusal to cooperate. Without a qualitative change of cooperation between the police and the public, the promised gold of good governance cannot be achieved.

The curbing of corruption is another promise of the new government. The present institutional framework for this, available through the Bribery and Corruption Commission, is wholly inadequate however. The tendency for this commission itself to be corrupt has been noticed by the public, and for the most part the commission is unable to win public confidence. While some degree of credibility can be achieved by the removal of those who have proved to be corrupt and inefficient, a major improvement can only be achieved if the necessary amendments to the law relating to the commission are made and considerable budgetary allocations are made for it to function as an independent institution.

In the past decades, there has been much criticism of the Attorney General's Department. It is to be hoped that, with the government keeping its promise not to interfere with the legal process, the Department will now take its own initiatives to regain its lost credibility. The legal officers of the Department must critically evaluate what went wrong in the recent past and urge for reforms.

The present Attorney General has demonstrated considerable courage by resisting the attempt of the former President to subvert the counting of the ballots by way of imposing emergency rule. It is to be hoped that this same courage will be demonstrated in jealously safeguarding the Department's independence and in ensuring a high degree of responsible commitment to adhere to the rule of law by all the members of the Department. One of the criticisms of the Department in the recent decades has been about the involvement of some of its officers in subverting the legal process to ensure impunity for security officers who have allegations against them. Such

compromises will undermine the Department's credibility and the Government's promise to ensure good governance. The role that has been played by the Department should be critically examined and corrective measures must be taken, particularly in the area of fundamental rights. The Department staff supporting officers charged with fundamental rights violations should have their contracts discontinued and the earlier traditions regarding this matter should be restored.

Re-invigorating lost traditions relating to judicial independence and removing obstacles created against the judicial process

The crucial institution that needs change is the judiciary itself. The process of politicization undermined the judiciary, even at its highest levels. The last crippling attack on the judiciary was the removal of the former Chief Justice Dr. Shirani Bandaranayake, and the later appointment of Mr. Mohan Peiris as the Chief Justice. This matter has been addressed by the government. There should now be a re-examination about many wrongs that have taken place in terms of wrong appointment policies and other interferences. Much of this change should start from within. The judiciary and the legal profession must initiate a visible process of self-correction.

While the Bar Association has won admiration for its courageous struggle to safeguard the independence of the judiciary, it should be noted that there is public outrage about the manner in which the lawyers themselves abuse the legal process, which has contributed to the undermining of the proper administration of the law. The Bar Association should strengthen the disciplinary processes regarding its own members, following all other countries where the rule of law is maintained.

Reforming legal education

There is something radically wrong with the way legal education is being conducted, whether it is in the Law College or the faculties of law. The legal profession as a whole, including the education institutions, did not provide any serious resistance against the assault on the law and the judicial process which took place in the last decades. This lack of resistance is a clear indication of poor education regarding law and the legal process. Legal education must create lawyers who are imbued with a deep understanding of what is involved in the maintenance of the rule of law. They must also have a deep enough understanding of the factors that enable the functioning of judicial independence. Law students must be able to gain a critical understanding of what has gone wrong with the legal structure in the country. Such education must create a sense of disgust against the malpractices of the legal profession, which has compromised all principles and behaved in a despicable fashion, betraying all the great traditions associated with law, the judicial process and the legal profession. It is up to the academic staff to take a critical view of the kind of education that has been imparted, and to take necessary measures to qualitatively improve the same.

Undoing the psychological damage caused through extensive lawless measures

Over the last few decades, people belonging to all sectors of the society have suffered greatly due to lawlessness. As the Asian Human Rights Commission has repeatedly pointed out, the idea of legality has lost relevance in Sri Lanka. The unbelievable levels to which state resources were abused by the previous regime were possible only because of such lawlessness. Restoring the confidence of the people in the law and judicial process will not be an easy task. Much work will have to be done both by the government and by the civil society in Sri Lanka, including its intellectual community, by way of critical engagement on this issue for a considerable period of time before people can regain their confidence. The media should also play its role in

encouraging critical debates on the rule of law to improve public education and support good governance.

Possible alliance between citizens and public institutions under amended constitutional provisions

Two important steps towards creating a greater space for people's interventions to protect their dignity and rights are the passing of Amendment 19A and the appointment of a new Chief Justice.

However, the debate on these constitutional amendments demonstrated that there are still a number of Members of Parliament who favour the authoritarian style of governance and resist the implementation of the will of the people as expressed through the election of 8 January 2015. The argument from these members that only Members of Parliament should function as members of the Constitutional Council is grounded on the same constitutional philosophy which led to the passing of the 1972 and 1978 Constitutions, and which would paralyse independent institutional functioning. The new government, which is a minority government, succeeded in damage control by reserving three places on the council for those who are not Members of Parliament.

This demonstrates that the struggle for creating independent public institutions is far from being realised. Yet, it also cannot be denied that an important step was taken towards that goal by the successful passing of Amendment 19A. The task now before democratically minded citizens is to utilise the expanded space to assert their rights by reviving the public institutions made defunct by the passing of the 18th Amendment. Democratically minded citizens acting with the understanding of their obligations could now force considerable changes in the functioning of the public institutions.

In particular, it is important to eliminate the politicization undergone by the police, prosecution and judicial institutions, which often forced officers to act contrary to their obligations under the law, blindly obeying orders of their political superiors. Sri Lankan citizens have a right to expect that all public officers would serve them within the framework of law. This means that public officers would not deny citizens their rights due to undue influence by political superiors.

In the same way, public officers also now have a right to expect that their political superiors will not request them to act in a manner contrary to the law. In the event of any such demand being made, the public officers have a duty to disregard such illegal orders. They must be made capable of refusing without incurring negative consequences.

This, again, brings us back to the role of the judiciary for the purpose of the protection of public institutions, and thereby guaranteeing that the citizens will get their entitlements respected and practically enforced through these public institutions. The citizens, with the passing of Amendment 19A, have a right to expect courts will protect their rights by resisting any actions by public authorities that are arbitrary and contrary to the law.

The responsibility for getting the judiciary to act against arbitrary and unlawful actions of public authorities is now on the citizens themselves. In the previous period, any attempt to resist arbitrary and unlawful actions of public authorities was regarded as futile as these authorities were merely carrying out the political directives given to them by their political superiors. An opportunity has now arisen to establish a new alliance between officers of public institutions and the citizens of the country. This alliance can be based purely on the agreement to enforce the rule of law within each of the public institutions, and thereby allow a greater space for citizens to seek

the services of these public institutions. This would require active and energetic participation of both the citizens and the public officers.

RECOMMENDATIONS

1. Government must issue clear policy statement

In terms of measures that the government intends to make, on reform of the policing, prosecutions, judiciary institutions, and penal system, and the Commission on Bribery and Corruption, the government needs to make a clear policy statement. It needs to clearly state what will be the content of such reforms and what will be the time frame within which it intends to achieve these changes. The government must also reveal to the public what would be the allocation of funds for achieving such reforms. A clear statement on these matters would be the beginning of the practical implementation of Yahapalanaya, i.e. good governance. So long as the government fails to do this, Yahapalanaya will remain empty rhetoric.

2. Extraordinary delays in adjudication process need to end

This involves the increase of court houses, particularly court houses for the high courts, where trials for all serious criminal cases take place; increase of judicial officers so that there will be an adequate number of judges to carry out the judicial function with required professional integrity, independence, and efficiency; increase in staff members of the Attorney General's Department, so that the Department would once again become capable of discharging its duties to the public without making a mockery of justice and without having the excuse that increase in the filing of indictments force State counsels to demand postponement and thereby contribute to the enormous delays affecting adjudication.

Also, limits to granting dates to suit the convenience of some lawyers should be discontinued forthwith.

Furthermore, day-to-day hearing of criminal trials should be restored, and the practice of postponing trials from one day to another should be discontinued immediately as well. If hearing of trials on a day-to-day basis is employed, particularly in the high courts, where trials relating to serious crimes take place, the problem of delays will be reduced greatly.

Granting of suspended sentences for serious crimes such as rape or murder, for the purpose of reducing the courts' workload, should be discontinued immediately. Such practices are an encouragement to criminals and against the basic principles of criminal law.

The government, in consultation with the Supreme Court and the Bar Association of Sri Lanka, should set up a committee to monitor how speedy trials are guaranteed without undue delays. Aggrieved parties should be able to petition this committee regarding any unreasonable delay in the adjudication of cases. The committee should present regular reports to the Chief Justice of Sri Lanka on the manner in which right to a fair trial without undue delays is guaranteed in all courts, particularly in the high courts.

3. Magistrates should ensure no person is arrested or detained on ‘flimsy’ grounds without adequate evidence for reasonable suspicion of offence

The practice of arresting persons without any basis justifiable in law has become common. Often, innocent persons are arrested and tortured or ill-treated for the purpose of finding whether they are involved in any crime, or in order to obtain a confession by force. The practice of forcing arrestees to sign on blank pages is also a common practice. In order to eliminate arrest and detention without a legally justifiable basis, magistrates should allow affected persons or their lawyers to present their submissions on such baseless arrests and detentions. Magistrates may encourage filing of affidavits by such affected persons and then inquire into such allegations.

4. Measures needed to improve the quality of policing

Except in places like the Criminal investigation Department (CID), the quality of policing in Sri Lanka is extremely poor. Forensic and scientific modes of criminal investigations should be rapidly introduced, and for that purpose the educational standards of the police should be raised. In particular, the qualifications of officers in charge of the police (OICs) and assistant superintendents of police should be raised, as these officers play a key role in direct implementation of law and the conduct of criminal investigations. The system of command responsibility should be upgraded so that the higher-ranking officers are able to take responsibility for investigations and other policing functions. The necessary material resources should be provided so that the officers can carry out their duties with relevant equipment, making people feel that their security is being guaranteed by a highly functional and efficient policing system. Additionally, the taking of statements and all other documentation should be computerised, and the officers must be given adequate training to operate such technological facilities.

5. Raise quality of Commission against Bribery and Corruption

The model under which this commission has been established is now out-dated, and new models rely heavily on persons with greater knowledge and efficiency. In the modern conception of corruption control agencies, emphasis is also placed on the education of citizens on matters relating to the elimination of corruption, as well as providing protection to complainants and witnesses so that people may come forward without fear to actively cooperate with anti-corruption authorities.

6. Effective measures to end torture and ill-treatment, extrajudicial killings, and enforced disappearances

Under no circumstances should the police, military officers or members of paramilitary organisations be encouraged or allowed to commit torture, extrajudicial killings or enforced disappearances. All such acts are illegal at all times, and cannot be justified in any manner under any circumstances. The Sri Lankan police have a notorious record of engagement in such crimes; the government must take genuine and practical measures to prevent such acts and take disciplinary measures whenever such acts take place.

7. Human Rights Commission needs to promote reforms in justice institutions

The Human Rights Commission of Sri Lanka (HRCSL) cannot achieve its mandate to protect and promote the human rights of all citizens so long as the institutions of justice in Sri Lanka—policing, prosecution, judiciary, and penal institutions—are in their present dysfunctional state. On the basis of rights violation complaints that the HRCSL itself receives on a daily basis, the HRCSL should develop its own critique of the justice institutions regarding their failure to protect people's rights. The negative role played by justice institutions is the major cause of human rights violations in all spheres of life, in civil and political rights as well as economic, social and cultural rights. The HRCSL must particularly be concerned about the failure of justice institutions to create an environment within which women can exercise their rights. The climate of fear and insecurity that are a direct result of the failures of the justice institutions prevents women from freely moving around and from taking part in economic and social life, thus asserting their equal status. Sexual violence against women and children is encouraged by the failures of justice institutions to act promptly and to curb such crimes. So long as this situation remains, the HRCSL can do little by way of fulfilling its mandate. Thus, the mandate of the HRCSL is linked with the reform of Sri Lanka's justice institutions.

8. National Police Commission needs to address grievances

The National Police Commission (NPC), which was recently appointed on the basis of constitutional amendments, has the difficult task of bringing order within the policing institutions in Sri Lanka. Given the depth of the crisis of law, created by the failure of the law enforcement agencies, the NPC should develop a vision and a methodology of intervention for addressing reform of the policing institutions so that it could contribute to peace and harmony within the country. In particular, it should create opportunities for listening to public grievances arising from the malfunctioning of the policing system.

9. Civil society must take up institutional reform

Civil society organisations must give highest priority to reforms of justice institutions, as none of the promises of good governance, or aspirations for greater democracy, can be achieved without them. Civil society organisations can create the national discourse needed to arrive at this change. These organisations should constantly engage with the government in order to develop practical strategies, both at government and non-governmental levels, to engage with this task of justice system reforms.

10. Public education and awareness regarding justice reforms

It is necessary for school and adult education to include material on the present state of justice institutions and ways by which they can be improved. Constant public seminars and discussions should also be held regarding how to achieve the needed reforms.

11. Citizens' movements

Women, student and other movements should develop ways of engaging in the task of improving justice institutions.

12. Academic community should contribute data that encourages discussion

Through research and education, Sri Lanka's academic community should contribute to the task of justice system reforms. Research on the relevant institutions could contribute the necessary data and also encourage public discussions, assisting the development of enlightened opinions for achieving positive changes.

13. Legal education institutions must spread awareness of crisis

The legal education institutions for law students, as well as for judges, prosecutors, and lawyers should contribute to the development of relevant study curricula, which will help students understand the enormous crisis of the legal institutions in Sri Lanka, and thereby contribute to resolving these problems. The existing legal education is extremely backward, particularly in the area of constitutional law education and the studies on the legal system. Law students should be encouraged to develop a critical approach to the understanding of law and justice institutions so that they will be able to understand the existing impasse and contribute to a better understanding of what needs to be done in improving the institutions of justice.

14. International community

The international community, in its efforts to help improve human rights in Sri Lanka, should give priority to the development of justice institutions. In particular, those organisations and countries dealing with transitional justice and reconciliation should improve their understanding of the manner in which Sri Lanka's justice institutions have contributed to past conflicts and violence in Sri Lanka.

15. Introduction of new technology in courts

The technological facilities, such as digital recording of evidence and proceedings, and the computerisation of all aspects of record keeping at the courts should be introduced as soon as possible. While the cost of obtaining such technological facilities is meagre, the benefit that they could bring to the courts—particularly to acquire greater efficiency and reduce delays—is enormous.

16. The need for a Declaration of Victim's Rights

The crisis in the judicial institutions acts adversely to the rights of victims of crimes and human rights abuses. In the search for justice, victims get victimised again and again. The distorted justice system acts in favour of the perpetrators of crimes and human rights abuses. Victims have an uphill task, from the very inception of the process, where obstacles are often placed to prevent even the filing of complaints at police stations. They are also further victimised by demands of bribery and corruption at all levels of the justice system. They often do not have the right to information about the investigations and other processes related to trials. Extraordinary delays expose them to threats to their lives and liberty and also threats to witnesses who speak on their

behalf. In any case, when the ultimate result comes many years later, the very purpose of adjudication is lost, and even a verdict in favour of the victim means little. The search for justice often turns out, for the victim, to be an exercise in futility. Thus, a clear statement of the rights of the victims at the police stations, at the prosecutor's office, in the Courts, and also at penal institutions should be clearly stated. Such a Declaration of Rights of Victims should be used in the education of all involved in the justice processes and also the general public.