SRI LANKA

Impunity, Criminal Justice & Human Rights

Basil Fernando

ASIAN HUMAN RIGHTS COMMISSION

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Front Cover:
Photo of the frontline of the war zone in Killinochchi, Sri Lanka during the final battle between the LTTE and the Sri Lankan security forces, March 2009.

Photo and layout by Nilantha Ilangamuwa

This book is dedicated to my close colleagues, who have painstakingly worked for several years to address the problems of ordinary citizens deprived of justice in different Asian countries. Their work has been geared towards developing perspectives for improving the realization of human rights in the region.

Contents

Human rights development outside liberal democracies

While there has been considerable discussion and debate on human rights, actual improvements in countries other than traditional liberal democracies has been quite slow, particularly in the Asian region. While bill of rights have been included in most constitutions and international human rights treaties have been ratified by most countries, the realization of human rights within the countries' political and legal frameworks has not seen much progress. In fact, in several countries, even the limited human rights developments achieved in the past have been lost in recent decades to a significant degree. So, what are the causes of this situation?

Studies into most of these countries clearly demonstrate that defects in rule of law systems have undermined the various attempts made to improve human rights. To illustrate: a constitution may introduce a bill of rights, however, defects in the country's criminal justice system can undermine whatever possibilities the bill of rights may create. The bill of rights may provide for the elimination of illegal arrests, detention and torture for instance, while the country's criminal justice system may tolerate such practices as methods of investigation. Such conflicts may reduce the introduction of human rights norms to purely academic or rhetorical importance. Another problem is that of laws relating to national security. When enormous powers are granted to the police and military under these laws, suspending normal criminal procedure provisions, law enforcement within the country can undergo a radical change.

The legal systems of these countries, with their own historical evolutions, have created specific practices that affect the actual political and legal operations. The various historical periods, be they feudal, colonial or post independence, have left various traditions that particularly affect countries' basic criminal justice systems. These systems cannot be transformed merely through constitutional provisions or treaty obligations. In fact, even the introduction of domestic human rights legislation cannot by itself transform these systems. It is therefore necessary to make deliberate attempts to understand the existing systems, and gauge the measures required to realize international human rights standards.

Under these circumstances, it becomes an obligation for the human rights practitioner to know the existing political and legal system and to critically analyze areas for improvement. Only then can the introduction of human rights norms and provisions be of practical use to citizens. Past initiatives on human rights have not included consistent efforts in these areas. Moreover, it is necessary to develop an overall human rights approach that can incorporate new ideas and principles—inherent in developing respect for human rights—into these systems.

This book has been based on the attempt made in that direction in relation to Sri Lanka. It makes an attempt to understand the obstacles to the realization of human rights norms, relating to the constitution, criminal justice system or local traditions. The ideas discussed in the book are the result of practical interventions by way of litigation, providing assistance to victims, and through debates conducted on these issues over a considerable time. It is hoped that the reflections found in the book will provide a basis for further discussion.

This book is the result of many years of discussions with many persons whom I was privileged to work with. To be able to share ideas with human rights practitioners who work in extremely difficult circumstances has been one of the most treasured aspects of my experience. I remember with gratitude all those colleagues and friends from so many countries who have participated in actions and reflections concerning human liberty, and which I have tried to reflect in these pages.

I must specifically mention the painstaking work of transcribing most of these articles by John Sloan, and the editing of this manuscript by Meryam Dabhoiwala.

Basil Fernando
Hong Kong, March 2010

Earlier publications on Sri Lanka:

An X-ray of the Sri Lankan policing system & torture of the poor (2005)
Recovering the authority of public institutions (2009)
The Phantom Limb: Failing Judicial Systems, Torture and Human Rights Work in Sri Lanka (2009)

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Asia: Institutional reforms regarding justice administration must be given primacy to protect human rights in non-rule of law countries

The celebration of the 60th anniversary of the Universal Declaration of Human Rights is a grim reminder that even after 60 years of its adoption, the gap between what is declared and what is actually achieved in terms of human rights protection is enormous. Both in the fields of civil and political rights as well as economic, social and cultural rights, people living outside developed democracies have so little to celebrate. It would therefore be prudent, on this occasion, to critically examine the real situation faced by the people and resolve to address the problems depriving them of their declared rights rather than celebrating in a self congratulatory fashion.

A meaningful discourse on working towards the realization of the rights declared in the Universal Declaration requires that distinctions are made regarding problems faced in countries other than developed democracies, as well as the way to resolve them. The grave impediments to the realization of human rights in these countries need to be articulated, agreed upon and resolved through global efforts.

A major such impediment in Asia is the defective justice administration system in most countries. There is a clear distinction between the justice administration system in countries where the rule of law exists, and the system found in many Asian countries, as depicted below.

A comparison between the administration of justice system in a rule of law country and those found in non-rule of law countries

RULE OF LAW SYSTEM **NON-RULE OF LAW SUSTEM**

This diagram shows that even in a developed rule of law system, defects can exist, as indicated by contemporary experiences about the Guantanamo Bay detention centre, the introduction of laws in most European countries and the Unites States restricting bail conditions for suspected terrorists, the introduction of various modes of surveillance, as well as the failure of courts to strongly defend individual freedoms.

Despite this, to compare justice administration systems in many Asian countries with the system found in a developed democracy would be misleading and would prevent a proper analysis of the problems faced in these jurisdictions.

As indicated by the diagram, while there can be defects within a rule of law system, these can be dealt with within a well established policing, prosecution and judicial framework, supported by viable public opinion and protest. In the non-rule of law model however, there is a situation of overwhelming lawlessness, with only a few institutions maintaining a semblance of rule of law. In such systems, institutions and individuals operate in a framework where rule of law is not considered important at all. Limited past developments regarding the rule of law are modified by political systems seeking absolute power.

What is important to note here, is that there can be no meaningful comparison of the limitations on individual freedoms within the two systems described above. To elaborate, let us take the case of Guantanamo Bay. The Guantanamo Bay detention center was established to deprive prisoners taken by US agencies of the rights available within the US justice system. In other words, a strong and

comprehensive justice system exists in the US, but certain persons are deliberately being denied the rights available within that system. Those wanting to fight against such denial have many alternatives, foremost being the abolition of the detention centre and bringing its detainees under US law. To achieve this objective, individuals and groups can resort to various avenues available for the freedom of expression, recourse to the courts as well as the electoral system. In the recent presidential elections, both candidates promised to abolish the Guantanamo Bay detention centre.

Dealing with a similar problem in a non rule of law system is far more difficult, with few avenues for redress available. Moreover, in many countries arrested persons are not kept in illegal prisons like Guantanamo Bay, but are forcibly disappeared or extrajudicially killed. Remedies such as habeas corpus and other applications to courts are defeated by delays in adjudication, witness intimidation and the destruction of evidence. Ultimately, a non rule of law system has no avenues to resolve politically motivated illegal arrests and detention. In such a system, the space available for creating and expressing public opinion is also limited. Newspapers and electronic media are subjected to severe restrictions, while limitations of the legal system, combined with restrictions on freedom of expression allow the state to develop propaganda justifying its actions and to label dissenters as traitors. The electoral process is so manipulated in these systems, that far from being used to change governments, it is used by authoritarian regimes to secure their power.

Given the consensus that non-rule of law systems do in fact function in the manner outlined above, there is little meaning in holding up a superior model and stating that it should be adapted. Such an approach is intellectually evasive and morally timid; anyone with even some ground knowledge of these systems is aware that the mere restatement of ideals cannot alter existing realities. In fact, using such an approach is to behave like a patient with the phantom limb syndrome, where an individual believes that an amputated limb is still attached to their body. To live in a non-rule of law system and work as if it is a rule of law system amounts to the same form of delusion.

Rather, it is necessary to accurately articulate the problems faced in these systems, such as brutal policing, politicized prosecutions, corrupt judiciaries, authoritarian political systems and restricted freedom of expression. Only with a thorough understanding of the problems, can attempts to resolve them be made.

Institutional reform key for human rights protection

The serious defects in Asia's justice administration mechanisms mean that human rights work in the region should focus primarily on institutional reforms for the police, prosecution and judiciary. Previously, human rights related work has concentrated on education and the search for redress for individuals. These may make sense in developed rule of law systems, but have little impact in countries where institutional flaws defeat the possibility for individual redress, or for education and training to be put to good use.

Government human rights initiatives often request donor agencies to provide various forms of training, including for the police, prosecution and judicial institutions. When institutional defects are so overwhelming that the training of a few individuals is irrelevant to the normal (dys)functioning of the institution, such investments do not produce the expected results. Police officers who are given training in forensic science can do little investigative good for instance, if the system they work within does not operate on the basis of equality before law, granting impunity to many offenders, and ensuring their crimes are never even investigated. No amount of forensic training can alter this institutional practice of setting some persons above the law. Similarly, human rights education being imparted to state officers is of no value when the institutions meant to protect human rights are so politicized that they work to violate the rights of certain categories of persons. Experiences from several countries demonstrate a waste of resources invested in such reforms.

National institutions within the region, known as national human rights commissions, indicate a similar problem. Fundamental flaws in justice institutions leave little room for these commissions to work towards human rights protection; they cannot take the place

of the police, prosecution and judiciary. The European concept of the ombudsman, developed after a well established system of justice administration was in place, cannot work in countries where basic justice institutions are flawed.

The considerable investments made by donors in such national institutions were thus doomed to failure due to the lack of appreciation of basic institutional defects that must first be addressed. In fact, these national human rights commissions in a non-rule of law country can be nothing but a phantom limb.

It is thus clear that without improving the functioning of the police, prosecution and judiciary, there can be no effective promotion and protection of human rights. Improving these institutions requires an understanding of the political, social, cultural and legal aspects that have created the obstacles preventing their proper functioning. It also requires public support, for which human rights groups need to engage civil society by exposing the defects and creating relevant debates. Such exposures should include both the wrongdoings and the omissions of the justice system. These have to be thoroughly researched and documented, to ensure that the government cannot easily deny these violations as inaccurate or false. Human rights groups need to develop sophisticated mechanisms allowing them to communicate these exposures to large audiences locally and globally.

Policing institution's preeminence has damaged the justice system

A well functioning justice administration system ensures a balance between the investigations into crime, the prosecutions of crimes and the criminal trials where a judicial function is exercised. Such a balanced system has been envisaged in the legal texts of many Asian countries, most of which were introduced under the influence of colonial powers, and which make use of progressive and democratic jurisprudential developments. These texts therefore include safeguards against the police gaining a preeminent position within the system and diminishing the effectiveness of

the prosecution and judicial branches. There is a vast gap however, between the legal text and actual day to day operations throughout the region.

The extent to which the police dominate the justice system in many places is scandalous, and leaves little room for the proper implementation of law or obtaining justice. Police abuse of power encourages widespread corruption and easy exploitation of the policing system by political and other elements of society. In many cases for instance, there is a close nexus between criminals and the police, posing serious threats to people's security.

The police investigating capacity can be undermined through the complaint receiving mechanism and the criminal investigations. The receipt of complaints is the beginning of any inquiry into crimes; unless complaints are received promptly and efficiently by a user friendly mechanism, much of the information and evidence needed to prove a crime can be lost. There are various ways in which the police can place obstacles in the making of complaints, from extortion to a lack of protection for victims. Indirectly, when people realize they may face greater reprisals after making complaints, or making complaints does not lead to any positive result, people often refuse to make complaints. This is actually more effective in maintaining silence and a climate of fear than any direct obstacles.

Incompetence and impartiality will undermine the investigation process and reduce the possibility of achieving justice. Large numbers of policemen are often required for purposes other than investigation, such as providing security to VIPs. After lengthy periods of undertaking such duties, their investigative skills are underdeveloped. And yet, these same persons are given investigative responsibilities, while good investigators often face punishment transfers, other forms of reprisals or even death. Incompetence is thus not only a result of the absence of capable and trained personnel, it is also a result of deliberate internal policies that value political loyalty and compromise far more than competence and professionalism. It is not uncommon in many Asian countries to find investigations hampered by powerful interest groups and corrupt state officials.

Another instance when investigations are deliberately prevented are when the state itself encourages the police and military to engage in large scale rights abuse such as extrajudicial killings and torture. In these circumstances, the state directly or indirectly approves impunity by creating enormous obstacles for investigations into these abuses. This happens when emergency regulations and anti-terrorism laws are in place.

The possibilities for subverting both complaint-making and investigative procedures are directly related to the loss of effective command responsibility within the policing system. The police hierarchy often subordinates itself to politicians, thereby becoming an obstacle to rule of law. Such subordination may be due to the police believing circumstances to be beyond their control, or because they wish to acquire greater power and personal benefits. Once the chain of command responsibility is damaged, junior officers will also develop their own methods of gaining benefits from the system. In this way, personal gain and influence takes prominence over public interest.

The predominance of the police within Asian justice systems is the single most important factor obstructing the proper administration of justice. It is therefore not possible to achieve any improvement in the protection of the rights of individuals without addressing this factor.

Lack of funds allocated for justice administration

When budgetary allocations for the administration of justice are compared to other areas, justice administration clearly appears as a neglected item. The funds allocated for proper policing, prosecution and an effective judiciary are so inadequate that they predetermine the failures of these institutions.

Military budgets often far exceed justice administration budgets, which has a doubly adverse impact. The vast allocation of funds lends the military national importance, while diminishing the police and other justice institutions. Like characters in Alice in

Wonderland, the public image of the military grows taller, while the institutions of justice, education, health and the like grow smaller. At the same time, a climate of impunity is necessary for the military to gain the upper hand; this only serves to diminish the supremacy of law and its related institutions.

One of the reasons for the lack of adequate funding given to justice institutions is that they are seen as a hindrance in winning the war against terrorism. Sri Lanka's former junior minister of defence succinctly noted in parliament that counter terrorist measures "cannot be done through the law". Throughout the region, judicial independence is seen as an obstacle to the defeat of terrorism. The view taken by Great Britain during the Second World War, that victory could be assured only if the courts were independent and functioning, is not popularly shared today.

Similarly, rule of law and judicial independence are not considered essential for economic and social development. Given such views, it is not surprising that many governments willingly postpone any reflections regarding the improvement of the administration of justice.

It is therefore important for the human rights movement to prioritize the issue of adequate budgetary allocations for justice administration. Without better funding, much of the discussions and work on human rights will not result in practical results. Local and international advocacy should thus be directed towards achieving this goal.

Problems faced by the prosecution system

A proper prosecution system requires the following conditions:

- A credible system of receiving complaints;
- A credible system of investigating complaints;
- A credible system of prosecution;
- A credible system of defence for the accused;
- A credible system of witness protection; and

- A credible system of judicial independence.

The absence of these conditions seriously affects the prosecution systems in Asia. In fact, in many cases these systems were not created to deal with state officers guilty of human rights violations, but merely to deal with criminals from mostly lower income groups.

Equality before law has not been realized in many societies, allowing powerful individuals and businesses to remain above the law. The prosecution systems of these countries do not have the will to address issues relating to wealthy and influential persons, or to deal with bribery and corruption, which is often linked to state officers. For this reason, the prosecution systems only deal with cases competently when they involve less powerful social groups. An increase in executive control of the prosecution also weakens the system.

In other instances, the prosecutor's failure to take effective action in various cases is justified by the misinterpretation of legal doctrines; for instance, prosecutors often justify their lack of action when police do not investigate a crime or rights violation and provide them with a case dossier, by stating that they are required to be 'neutral'. In fact, such a claim to neutrality allows prosecutors to perform their responsibilities in a selective manner. The different legal doctrines (mis)used by prosecutors should be documented and exposed.

Absence of effective witness protection

Most Asian countries have no effective means of witness protection, without which it is nearly impossible for witnesses and victims to provide testimony, which in turn is a crucial component of the justice process. A major reason for this absence is that witness protection requires a credible policing system. When the policing system itself is used to kill and harass witnesses, there is no possibility of protection.

Attacks on lawyers

The predominance of the police within the justice system serves to directly weaken the position of lawyers. Lawyers who want to be successful in criminal law need to collaborate with the police, and even have to act as intermediaries to carry bribes to the police and others.

Those who refuse to play such roles generally face harassment and intimidation, to the extent that their clients feel compromise is the only relief they can find within the system. The situation is worse for lawyers undertaking cases against state authorities, who become direct targets for attack by the police and others who feel threatened.

Pervasive corruption

The overwhelming corruption affecting the administration of justice in the Asian region is clearly indicated by the following anecdote: at the end of a lecture on the prevention of corruption by a senior lawyer, one law student asked, "Sir, when I join a chamber to practice law, if I am given some money by my senior lawyers to carry to the judge, what do I do?"

This question sums up the pervasiveness of corruption within the system, with it becoming a business that benefits the police, lawyers, their touts and even judges.

Corruption invariably worsens when dealing with human rights violations. A policeman accused of torture for instance, may develop a relationship with a judge directly or indirectly, providing him with various benefits, greater than what usual clients can provide. While a torture case may proceed in court therefore, the relationship between the judge and the accused police officer will negatively impact the case proceedings as well as the entire justice system.

It is hence impossible to weaken the predominant position of the police without developing anti-corruption agencies outside the policing system. The human rights movement should therefore

make the struggle against corruption a core part of its agenda. The Independent Commission against Corruption of Hong Kong (ICAC) is looked to with enthusiasm by many parts of the world as a credible model to be assimilated into local legal systems.

Linking the promotion of economic, social and cultural rights with resolving the fundamental problems of justice administration

The majority of Asian populations, belonging to lower income groups, are kept powerless by being denied justice within a functioning legal system. This denial also ensures that they have no capacity to assert their economic, social and cultural rights.

The question of entitlements in terms of economic, social and cultural rights is meaningful only when the justice system allows those deprived of these rights to express their grievances and seek redress. People deprived of their right to work need to find ways to highlight their condition and get the authorities to resolve them. People deprived of their rights to education and health need to have avenues through which they may influence public opinion and obtain the necessary measures that respect, protect and fulfill their rights. If the justice administration system is defective however, various reprisals will exist to suppress people who demand bread, medicine, schools and basic protection for their young. In another sense, maintaining a defective justice administration system also includes the maintenance of slavery-like living conditions.

It is quite obvious that without functioning justice systems, all attempts to improve human rights protection will appear as nothing but loud noises. Throughout the Asian region, ordinary folk react to human rights discourse with little enthusiasm due to their realization that their defective justice administration systems will not allow them to enjoy their rights.

We therefore urge the global human rights community to

seriously consider this issue during this celebration of the Universal Declaration of Human Rights, and support a human rights strategy that prioritizes institutional development.

Abysmal lawlessness and the zero status of citizens

Introduction: The distinction between genuine and counterfeit actions for justice

Leo Tolstoy once wrote that the art of his time in Europe was counterfeit. In counterfeit art, the artist believes himself to be creating a work of art but is in fact only creating impressions of art. These impressions are derived from an understanding of some external qualities of art, which the artist tries to recreate. The work produced in this manner appears to have the external characteristics of genuine art. By imitation, artwork was mass-produced to suit the appetites of people willing to pay for it.

The analogy is relevant for the protection and the promotion of human rights. Do activities really address the problems towards which they are directed? Do they really go into the deeper qualities or are they merely restricted to the superficialities? This depends upon the extent to which the real problems are addressed through mature use of judgment. It depends on the extent to which the solutions are real ones, not mere imitations of other works.

In counterfeit human rights work the actor begins on the basis of some training or some understanding gained from observation or reading on the general nature of some problems and assumes that there is no need to develop specific knowledge about the specific problems that they may encounter in real life, in the particular circumstances in which they have to work.

It is possible for someone to gain some knowledge of what other people have done to resolve some problems without understanding the particular reasons as to why those things were done in those other circumstances. The person might get some impressions about those activities and then try to replicate them. Externally, the replicated activities will have some of the qualities of the original.

They may have the appearance of genuine human rights efforts, but will in fact be mere counterfeits.

In a particular country, disappearances, extrajudicial killings, torture, illegal arrest and detention may have taken place on a large scale. Well-intentioned and highly motivated citizens may demand that impartial and competent bodies investigate and prosecute perpetrators. If these demands are made within a country where criminal justice institutions genuinely exist, then there will be results sooner or later. But if these institutions do not exist at all or are completely dysfunctional, however long demands for justice are made nothing will happen, because there are no institutional possibilities. Even with regime change, institutional capacity will not be automatic.

Under such circumstances, the honest citizen who engages in work with the best of intentions can make demands for many years but not attain results. The citizen may think that he or she has done as much as possible, on the basis of impressions gained from others who have dealt with similar problems in other circumstances. Both in terms of attempts and in terms of failure, the citizen's honest activity remains a mere imitation.

Where institutional impediments to justice exist, it is the task of anyone who desires justice to struggle for the creation of or improvements to its institutions. Particular methods and strategies need to be developed with comprehensive knowledge of the local context. Lessons learned or impressions gathered from others can be useful, but are no substitute for knowledge of the actual circumstances.

For some years, the Asian Legal Resource Centre (ALRC) and its sister organization the Asian Human Rights Commission (AHRC) have through *article 2* and other publications attempted to bring this point home very firmly with regards to the human rights situation in Sri Lanka. Just a few of the major reports and other publications that it has produced towards this end include: *Sri Lanka: Disappearances and the collapse of the police system*,

AHRC, 1999; "Torture committed by the police in Sri Lanka", *article 2*, vol. 1, no. 4, August 2002; "Endemic torture and the collapse of policing in Sri Lanka", *article 2*, vol. 3, no. 1, February 2004; *An exceptional collapse of the rule of law*, AHRC, 2004; "UN Human Rights Committee Decisions on Communications from Sri Lanka", article 2, vol. 4, no. 4, August 2005; *An x-ray of the Sri Lankan policing system & torture of the poor*, Basil Fernando & Shyamali Puvimanasinghe (eds), AHRC, 2005; *The other Lanka*, by Meryam Dabhoiwala & Rob Hanlon (eds), AHRC, 2006; *Sri Lanka's dysfunctional criminal justice system*, by Jasmine Joseph (ed.), AHRC, 2007; *Conversations in a failing state*, by Patrick Lawrence, AHRC, 2008; *Recovering the authority of public institutions*, by Basil Fernando (ed.), AHRC, 2009; and, *A baseline study of torture in Sri Lanka*, by Basil Fernando & Sanjeewa R. Weerawickrame, AHRC, 2009. Most of these are available online at the *article 2* website (www.article2.org) or the AHRC bookstore (http://www.ahrchk.net/pub/mainfile.php/books/).

From these publications and the work that it has conducted with partners in the country over the last 15 years, the centre has concluded that what exists in Sri Lanka today is a situation of abysmal lawlessness, resulting in the zero status of citizens. The word "abysmal" is here used in its ordinary meaning to mean limitless, bottomless, immeasurably bad and wretched to the point of despair. Lawlessness of this sort differs from simple illegality or disregard for law, which to differing degrees can happen anywhere. Lawlessness is abysmal when law ceases to be a reference. What would normally be crime ceases to be thought of as crime and lawlessness becomes routine. This kind of abysmal lawlessness manifests itself in "arrests", "detentions", and "trials" that require no legal justification.

Under these circumstances, the idea of legal remedy or redress also ceases to have any meaning. All legal systems are built around the idea of legal redress. Laws and procedures are meant to make redress possible, to one degree or another. Abysmal lawlessness implies a complete loss of the linkage between redress and whatever may be called law.

The situation of abysmal lawlessness will not be changed through the victory over the Liberation Tigers of Tamil Eelam (LTTE) that the military finally achieved this year. The suppressing of violence does not in itself guarantee that human rights will be better protected. In fact, the military victory can easily be utilized to further strengthen authoritarianism and to suppress democracy and the rule of law even more.

With this perspective, this essay is organized according to the following themes:

1. The lost meaning of legality: how the notion of legality itself has been defeated, accompanying the collapse of institutions for justice and leading to the zero status of citizens to which the title alludes; the loss is associated with the suspending of criminal procedure law through antiterrorism and emergency laws.

2. The predominance of the security apparatus: with the decades of conflict and final victory over armed groups in the country, the security apparatus is now both the paramount and most comprehensive agency for political and social control in Sri Lanka; it is unbound from conventional rules that once at least delimited its sphere of activity and extent of its authority thanks to the use of emergency and antiterrorism laws; it can act with unlimited secrecy and without challenge, on the pretext of national security.

3. The disappearance of truth through propaganda: with the first two elements of the state in Sri Lanka, the government propaganda machinery is no longer bound by any rules of truth or falsehood; even the distinction between the two is completely lost.

4. The superman controller: a constitutional and political arrangement that allows a single person to manipulate the three elements above as he or she wishes; the superman controller was created through the political and legal vacuum of the 1978

Constitution, in which the rule of law could not survive, but has over time accumulated even greater powers through the combination and manipulation of the three elements.

5. Destroyed public institutions: the institutions for the administration of justice are completely destroyed through the combination of the above four elements; this is the feature of life in Sri Lanka today on which a great deal of the earlier work of the ALRC has turned, so as to document and demonstrate this fact and in order to arrive at the understanding of the present situation in terms of the four elements; there is nothing sacrosanct or predetermined about any institutional practices now, and the citizen who goes before public institutions knows not what to expect.

6. The zero status of citizens: Sri Lanka's citizenry, while believing that nothing has significantly changed, is doomed by the four elements and the consequences of its destroyed institutions; due to conflict on the island, at present the hundreds of thousands of persons detained in camps outside the framework of law and without legal status are suffering the greatest consequences of this zero status, but in fact it is a feature of the situation in the country that is common to all citizens to one degree or another.

The material used for this article has been variously drawn and adapted from the ALRC's and AHRC's statements and other appeals, the author's articles on online websites, including the *Sri Lanka Guardian and Ground Views*, and some outside sources, which are cited in the text.

The lost meaning of legality

At one time it was common for lawyers and judges, and even some politicians, to boast about Sri Lanka's long tradition of law, judiciary and legal profession. Books have been written on the history of its modern legal system; however, they are hardly read today. In their place, in the corridors of courts, in the chambers of lawyers, and even in general conversation are just curses about an

accursed system in which legality has lost its meaning and citizens are reduced to zeroes.

The law in Sri Lanka today is an exercise in futility. After 31 years of the 1978 Constitution, it is not even possible to recognize what is law and what is not. When the executive president placed himself above the law, there began a process in which law gradually diminished to the point of no significance. This is unsurprising. The constitution itself destroyed constitutional law, by negating all checks and balances over the executive. When the paramount law declares itself irrelevant, its irrelevance penetrates all other laws. Thereafter, public institutions also lose their power and value.

The consequences would be comical were they not life threatening. Take the whole debate on the 17th and 13th Amendments to the Constitution. Debate goes on endlessly about these amendments because of an underlying false assumption that a constitutional amendment to an irrelevant constitution is a matter of some significance. There is unwillingness to accept that the grafting of a living branch to a dead tree brings life neither to the branch nor to the tree.

Today, underground elements have taken over the functions of law enforcement agencies, guided by the institutions of administration of justice. For example, if a debtor does not pay back his loans, the creditor may turn to a reputed criminal to get his money back. The criminal is able not only to get the money back, but also to do so quickly, whereas the legal process is so beset with delays that a creditor may have to wait years and spend more money than what is owed to have the same result. The criminal is far more efficient in this setting than the legal process.

Politicians too rely more on criminal elements than they do on legal agencies. Every election is a contest between criminals supporting this or that party. Instead of a democratic process to persuade voters about policies for the improvement of their lives, there is a coercive process to intimidate voters about the risks of not choosing this candidate or that.

When there is a loss of meaning in legality, terms such as "judge", "lawyer", "state counsel" and "police officer" are superficially used as in the past; however, their inner meanings are substantially changed. Those who bear such titles no longer have similar authority, power and responsibility as their counterparts had before, when law still had meaning as an organizing principle.

For instance, under normal criminal procedure in a society based on the rule of law there is an obligation to investigate all crimes, and the methods of investigation are standardised. Now there is no such obligation in Sri Lanka. Where investigations are carried out, they are done so manipulatively. If someone desires to destroy another person, completely bogus inquiries can be conducted. The criminal investigation process ceases to be a mode of maintaining law and order, and becomes a mode through which to victimize and terrorize citizens.

The diminishment of the lawyers' role is also indicative of the loss of meaning of law. Today, even constables run roughshod over lawyers who intervene on behalf of their clients at police stations, or in magistrate courts. Bribing policemen is a better method for getting bail than following procedures and insisting on legal rights. Questioning police illegality will only provoke harassment of the client as well as of the lawyer him or herself. When the law loses meaning, the quality of legal practice naturally diminishes. No one will waste energy on futile exercises. If people can be arrested, detained and punished without trial, without recourse to the protection of the Criminal Procedure Code, then lawyers too can do no more than look for methods that are outside of the normal process. In this way their role too ceases to have legal meaning.

The judiciary is the biggest loser of all. The conceptual basis of judicial independence has been completely displaced in Sri Lanka. In the early years of the 1978 Constitution's operation, judges, lawyers and citizens still had thinking and behavioural patterns from earlier times that acted to buffer the courts against its impact. Now that resistance has been greatly diminished. As the system has adjusted itself to the executive presidency and everything that it entails, it has

been emptied of significance.

The lost meaning of legality can be illustrated with reference to the government policy to abduct and kill alleged criminals—not those criminal elements working with politicians, but those identified as criminals to be eliminated for political advantage. The method of killing is, like the collecting of debts, now cheaper, quicker and less risky than going through the courts. The police, military or anyone acting under them, including other criminal elements, are assured of impunity because of the secretive manner in which killings are conducted and the many protections afforded to the perpetrators. This is revealed in two incidents that occurred during 2009.

An assistant coordination officer working under of the Ministry of Disaster Management and Human Rights was abducted from his house. After receiving frenetic calls on his behalf, the minister made telephone calls all over and managed to locate this person in the custody of some police; it was the minister's intervention alone that saved him. The police accused the person of being a dangerous criminal and the leader of a criminal gang. They also, according to reports, stated that they found a firearm and ammunition in his house. The minister himself had to make a public statement condemning the kidnapping.

In another case, Ravindra, a school-going son of the director of the Colombo Criminal Investigation Division (CID), had a quarrel with another schoolmate named Chamie. When Chamie and a friend Nipuna were having tea, Ravindra came and tried to provoke a fight. When the two left the teashop and were walking towards their boarding house, a police jeep followed them. The jeep turned and blocked their path. About four persons with firearms got out of the jeep. They held Chamie against a wall and put a pistol to his head, and another to that of Nipuna. The latter shouted to let go of Chamie and to take him instead. Then, these policemen took Nipuna in the jeep to Ravindra's house. He was told to get down and forced to crawl. While he was crawling, he was beaten with poles. Ravindra's mother, wife of the director of the CID in

Colombo, allegedly stood on his body and asked, "Do you know my weight now?" After that the police took Nipuna to the Paliyagoda CID, where the director himself allegedly joined in, threatening to charge him with possession of bombs, and telling him that the only way to avoid the charge was to sign a statement. In this case the boy's life was saved due to quick intervention from his family, who reported the matter to the Inspector General of Police (IGP) and other authorities.

Not only is it institutionally more convenient to kill, but also the very notion of killing as an illegal act has been lost upon the persons responsible for this policy. When the Sinhala BBC service interviewed the official police spokesman, the correspondent asked how the victims of killings are treated as criminals when in fact they are only suspects in alleged crimes. The spokesman said that according to the police, they are criminals and not suspects.

According to the law, anyone at or before the stage of interrogation is merely a suspect, and cannot be named as an accused. A person is named as an accused only when the charges are filed before courts; however, the official spokesman for the police does not accept this distinction. Since what he says represents the official position of the Sri Lankan police, then the police themselves have taken the power to convict, through killing. Thus, the presumption of innocence is no longer of any significance, and nor is judging a person and imposing punishment any longer the sole prerogative of the judiciary.

The lost meaning of legality coinciding with the rise of extrajudicial killings under the pretext of crime prevention is not merely confined to the work and reasoning of the police themselves. It has also taken a sinister shape in the magistrate courts, where in most instances magistrates declare "justifiable homicide" purely based on the police's own incident reports. Thus the police spokesman told the BBC that obviously no such killings of criminals are taking place in the country because the judges have confirmed that these are justifiable homicides.

When magistrates conduct inquests and other inquiries, they are expected to follow the legal procedure in the country. The Criminal Procedure Code obligates investigations into all suspicious deaths, particularly in cases where the police conduct is suspicious. It is the duty of the magistrates to ensure that proper legal process is carried out in all cases of suspicious deaths, including ensuring that independent investigating units, which are able to resist the pressure from police of local areas, should carry out these inquiries. The failure of magistrates to perform this duty is a further illustration of the lost meaning of legality in Sri Lanka.

The predominance of the security apparatus

The security apparatus that arose through the conflict with the LTTE will continue to exist despite the declared end of the conflict. Judging by the statements of the government, the strategy is to strengthen and broaden this apparatus to cover the whole country. In the north and east this will be done on the pretext of preventing the LTTE from reappearing. Elsewhere, it will be done to ensure political control and to paralyze institutions for the advantage of the ruling regime.

The targets of the security apparatus are ordinary citizens. They include people engaged in simple protest, whether about wages, living conditions or other matters of societal importance. Everything is now under surveillance of this apparatus. Trade unions, journalists, civil society organizations and opposition political parties are all of special concern.

The security apparatus is particularly keen to control the electoral process. It targets the grassroots political activities of opposition parties so as to deny fair contest during elections. In fact, it acts to prevent any opposition group from operating freely at any time. It also targets groups within the ruling party itself, who compete for privileged positions in electoral lists or in local government bodies. The system of preferential votes encourages this. There is an assumption that those who receive a larger number of preferential votes may obtain higher positions as ministers or

members of local governments. It in turn gives rise to intense competition among members of the ruling group.

Groups exist within the security apparatus for the purpose of activities that are not authorized by law. They monitor political leaders and any other persons whom the government targets, and abduct, torture, interrogate and kill with impunity.

The Prevention of Terrorism Act (PTA) continues to give very wide powers to the security apparatus. All legal safeguards available through the normal law can be suspended through use of the PTA. Most of its provisions cannot be justified to deal with an emergency; their real purpose is to arbitrarily extend state power.

But the security apparatus does not feel limited to the provisions of the PTA. It can do anything whether the PTA allows it or not, because with the loss of the meaning of legality there is nothing to stop it from acting completely outside the law. There is no way for the parliament or the judiciary to monitor or intervene.

Within the last few years there have been no investigations into complaints against the security apparatus. Calls for such investigations are actively opposed. The mentality developed during the conflict, which persists today, is that demands for investigations are treacherous, analogous to acts of sabotage or the aiding and abetting of terrorism. The security apparatus has consistently attacked the media from this ideological position and the propaganda campaign that has followed is the subject of the next section.

Today the term security apparatus refers not to the military and policing structures of the state in Sri Lanka, nor the laws that are supposed to guide their work, but to a whole political system and a way of life. The predominant position of this apparatus reflects the reduction of law to meaninglessness. This is why in various places during the last year the AHRC has referred to Sri Lanka as the Gulag Island.

Aleksandr Solzhenitsyn used the word "gulag" to describe a type of experience that is being repeated in many parts of the world. His own three-volume study was of Russia from 1918 to 1956. The dreaded Cheka, the security organization, exercised the function of informer, arresting authority, interrogator, judge, executioner and even gravedigger. All these functions were exercised in complete secrecy with whatever procedures it chose to adopt. What the law in the country was and how it was implemented was almost completely left to the Cheka; only the communist party general secretary had greater authority. Within this system decisions of life and liberty were made casually, and without transparency or accountability.

The insurgencies in Sri Lanka from 1971 paved the way for the emergence of such an authority in the form of the security apparatus there. Tens of thousands of people from all parts of the country have been forcibly disappeared in a similar manner to that described by Solzhenitsyn.

The recent investigations into an open letter that 133 well-known Sri Lankan citizens signed illustrate how the gulag is extending into and overwhelming all parts of the judicial process. The letter was published in newspapers to condemn the death threat against Dr P Saravanamuttu, a civil society activist. The president instructed the defence secretary to verify the facts, asking if there was such a threat or that there might be some international conspiracy against Sri Lanka. Officers from the CID then visited and questioned many of the signatories. The officers asked how they know of Dr Saravanamuttu; whether there was any meeting of all the signatories; whether they had in fact seen the threatening letter, and who had sent it.

The CID visits and questions had no legal basis. They were direct interference into the basic rights of citizens to engage in any solidarity work within the law. The defence secretary has no legal authority to direct inquiries into the legitimate acts of citizens. The CID officers have no duty to obey such orders. They particularly should not be carrying out political work aimed at suppressing those that the government considers its political opponents.

In this instance the letter containing the death threat was brought to the notice of the government and it was widely publicized right from the start. But like in earlier similar cases, no investigations were carried out into the letter itself. Instead, when the prominent citizens published the letter condemning the threat and demanding protection for the target, it was they who were subject to investigation. In this manner the entire legal process has been turned upside down and inside out.

The defence ministry in 2009 also went to the stage of directly threatening lawyers who appear for clients against it in court. In mid year, the following article appeared on its website:

> Leader Publications (Pvt) Ltd, publishers of the Sunday Leader newspaper was charged with Contempt of Court for publishing an article comparing Secretary of Defence, Mr. Gotabaya Rajapaksa with Velupillai Prabhakaran, who was responsible for the death and destruction of over 100,000 civilians, despite extending an assurance in Court not to publish any defamatory content in reference to the Secretary Defence and the Sri Lanka Forces. The article in question was published minus a by line, which is a rarity in professional journalism.
>
> Leader Publications (Pvt) Ltd was given time to show cause and the case was heard yesterday 9 July 2009 at the Mt. Lavinia Courts before the Additional District Judge Mohammed Macky. The original Defence team had voluntarily resigned from handling the case citing it was against their ethical and moral standing to oppose a national hero like the Secretary of Defence, with whose unwavering commitment and focus Sri Lanka is a free country today.
>
> A new team comprising of some who have a history of appearing for and defending LTTE suspects in the past, namely Srinath Perera, Upul Jayasuriya, S. Sumanthiran, Attorney-at-Law Viran Corea, Attorney-at-Law instructed by Athula Ranagala, Attorney-at-Law appeared for Leader Publications.
>
> It was the observation of some senior independent Lawyers who were present in court that day, that this team of Lawyers share a common anti-patriotic sentiment fired by pro UNP activism and following. One such Lawyer speaking to the media mentioned his disbelief and shock at the manner in which these Lawyers had banded together in the face of prima

> facie proof of Contempt of Court. As a respected senior member of the legal fraternity, he opined that the behaviour of these Lawyers was an insult to the whole profession and totally unacceptable at a time when Sri Lanka is enjoying its veritable independence after 30 long years. He went to the extent of branding these Lawyers as traitors of the nation.

Lawyers are officers of the court. Any attack on them in relation to their official functions amounts to contempt. The publication of this article, with photographs of three of the lawyers, is an attack not only on them but also on their official function. The article calls these lawyers traitors simply because in this case they appeared against the defence ministry. It also implies that the status of a "national hero" before the law is unequal to that of other parties, even though the basic principle of the law is the equality of all citizens before it. Such is the condition of law under this security apparatus.

The disappearance of truth through propaganda

Over years of conflict the government has increasingly adopted a position that it alone should have a monopoly on information. A part of the military strategy was to create a single version of truth. The LTTE for its part claimed to be the sole representative of the Tamil people and from that position to be the single source of information regarding the country and its history. The war was of arms and of interpretation. People were called to stand at one or the other of these two polarities.

Society has for the most part accepted the claim of the state to be the sole arbiter of what is true and false. Those who run the media also usually comply with demands to reproduce and disseminate government propaganda. Those who do not comply are threatened.

In this way, a cynical attitude has developed regarding the concept of truth. Accusations against the government are described as conspiracies of international agents or opposition figures. No critic is regarded as a person with genuine intentions. At best he or she has unintentionally fallen into traps set by people whose sole aim is to destroy the nation.

When the distinction between truth and falsehood is cynically disregarded, it leads to a lack of interest in information itself. People cease expecting to know the truth of anything. This cynicism then seeps down to the minute details of life. People do not know what to believe about a death even in their very neighbourhood. Was it natural, or a murder? Was it done for a political purpose or for no purpose at all? Was it suicide or some trick? Who knows?

Government spokesmen deny allegations of gross human rights abuses and accounts of crimes by replying simply that they have not seen any evidence of such incidents. They can take for granted that no one will really come forward to state whatever they know, either because of fear or out of a sense of sheer futility.

The extent to which propaganda has overtaken the truth can be found in an episode around a letter from Justice P.N. Bagwati, the chairman of the International Independent Group of Eminent Persons (IIGEP), which was established to observe investigations into recent grave human rights abuses in Sri Lanka. Justice Bhagwati wrote his letter to the president, Mahinda Rajapaksa, in response to the meeting of a number of members of the IIGEP with the president to discuss and clarify some of the issues arising from the public statement of the IIGEP, announcing its resignation from the monitoring mission due to the government's disregard for the group's mandate. In his letter, Justice Bhagwati wrote that

> I would like to point out to Your Excellency that if you would kindly look at the Public Statement at the relevant part you will find that IIGEP has not accused the Government of Sri Lanka of any lack of political will insofar as the functioning of [Commission of Inquiry into serious rights abuses] is concerned. What has been recited in the Public Statement is about "IIGEP's apprehension regarding absence of political will". IIGEP has never alleged that there was absence of political will on the part of the Government of Sri Lanka. It was merely an apprehension which was voiced by IIGEP in view of the facts before them.

IIGEP of course could not voice anything more than a mere apprehension because it was not within their jurisdiction to find whether there was absence of political will on the part of

Government of Sri Lanka or not. That was not within their terms of reference which were confined merely to observing whether the proceedings before the Commission of Inquiry were transparent and in accordance with the international principles and norms.

The government propagandists thereafter used this letter to create the false impression that the IIGEP had retracted its April 15 final report (available online at http://www.ruleoflawsrilanka.org/resources/IIGEPnbspSTM.pdf). Nowhere in the letter is there any such retraction, neither of the apprehension of the lack of political will on the part of the government to uncover the truth, nor over conflicts of interest in the role of the Attorney General's Department or the problems of witness protection. The letter itself was not reproduced in the propagandists' materials or in the media in Sri Lanka.

Among the leading propagandists using the letter for this purpose was the secretary general of the government's Secretariat for Coordinating the Peace Process, Dr Rajiva Wijesinha. The role of the so-called peace chief throughout this and other recent episodes has been to spread the official version of truth. In a statement responding to comments on the letter by another member of the IIGEP, Sir Nigel Rodley, Wijesinha accused Rodley of "sanctimonious bluster" and of not understanding the IIGEP's mandate.

Wijesinha particularly objects to the use of adjectives. He writes in response to the work of the AHRC that, "Basil Fernando cannot conceive of abuses, they have to be gross, a crisis must be acute, a situation must be abysmal, helplessness is utter. The adjective 'political' is applied to lunacy, realism, intellect and disasters, plus another half dozen or so words." In reply Fernando wrote,

> The problem about adjectives is that when describing situations of the collapse of the rule of law it is difficult to find words that can adequately describe the actual depth of the tragic situation. Like some natural tragedies, for example the recent experience of the tsunami or manmade tragedies by way of wars and civil wars, language becomes an inadequate tool to describe the experience. One has unfortunately to rely on adjectives, which fall far short of expressing the enormity and human and social consequences of

> such tragic experiences. However, Rajiva Wijesinha, in his role of Squealer [from George Orwell's *Animal Farm*], objects to these adjectives for a very simple reason: he has to make out that no really big problems exist in Sri Lanka. His role is to deny or trivialize or understate the situation that the country is actually facing.
>
> Orwell's argument in "Politics and the English Language" is that the bad language used is a result of the failure to think clearly. That is really the problem that one has to address in thinking about the continuing catastrophe in Sri Lanka. What I mentioned in my column is that there is a degeneration of the political intellect in the country and a lack of capacity to develop political realism that some of the political leaders in places like Nepal and Cambodia developed as a result of the sufferings caused by a prolonged crisis. Even bad leaders who have themselves contributed to the civil war in these countries realized that, even from the point of view of their own self-interest, some outside help was needed to bring an end to the ongoing civil war. The help obtained from the United Nations did not and could not solve all their problems. But it did help to bring the violence and civil war to an end. It is on those issues that clear thinking is needed in the country. And of course if one has opted to play the role of Squealer, then one has to abandon even the wish to think clearly.

The point here is not that the situation in Sri Lanka is equivalent to that previously or presently in either Cambodia or Nepal. No country in conflict is the same as another. But the consequences of prolonged conflict on one place can be studied usefully for the purposes of understanding those in another. The effects of prolonged conflicts on notions of legality in particular deserve special study.

In this respect, Cambodia and Nepal are examples of how an outside intervention helped to create a beginning for some kind of recovery, however fraught, while in Sri Lanka the downward spiral has continued despite attempts at such intervention over some years.

Wijesinha is himself aware of the downward spiral. For many years he has been writing books and articles on the erosion of democracy in Sri Lanka. Among his best are the detailed analyses of J.R. Jayawardene's contribution to the collapse of democracy via the executive presidency and other measures when he because

the first executive president. Unfortunately, Jayawardene's scheme is continuing with greater vehemence now, and, sadly, even some critics of that scheme such as Mahinda Rajapakse and Rajiva Wijesinha have also become its agents, as executive president and peace secretariat chief respectively.

Wijesinha also knows that questions of the sort raised by the IIGEP are not new to anyone who has followed the decline of the legal system in Sri Lanka. For a person who wrote a book entitled *Declining Sri Lanka*, the outcome of the IIGEP's work could not have caused any surprise. Therefore, his expressions of outrage in response to this type of international intervention can only be understood as part of his role as master propagandist-cum-peace chief.

Wijesinha also writes about the emotional language of what he calls the foot soldiers of the human rights army. The choice of this expression is no accident. He is a spokesman for the real army, therefore he sees his opponents in the same form. Like Don Quixote, Wijesinha as propagandist needs to invent armies that he can fight and conquer.

As propagandist he has also acquired the capacity to speak unemotionally about, for example, the massacre of 17 aid workers belonging to Action Contre La Faim. His comments on the issue to the effect that this French aid agency was itself responsible for the deaths caused embarrassment even to his employer, which through the foreign affairs minister clearly stated that his comments did not represent the view of the government. An appeal to be unemotional while talking about mass disappearances, extrajudicial killings, torture and lawlessness implies that one has to accept these things rationally as the unavoidable consequences of conflict, and as inevitable features of the security apparatus on whose behalf he is working.

This is quite a different Wijesinha from the one who once wrote emotionally about the killing of his schoolmate, Richard de Zoysa. In that article he exposed everyone involved in the killing, including

the role of the then Attorney General, Sunil Silva, regarding the subsequent inquiries. Perhaps his school chum deserved different treatment from the aid workers as he was a member of the aristocracy to which Wijesinha thinks he also belongs, and whom he likewise represents as propagandist. The elite are of course quite unemotional when talking about the disappearances, killings and torture of people belonging to classes in the south, north or east whom they have either never met or hope not to meet.

In a letter of 8 January 2009, Basil Fernando addressed Raijva Wijesinha in his capacity as secretary in the Ministry of Disaster Management and Human Rights as follows:

> As a servant of an institution called the Executive Presidency that has ruined the parliament, the judiciary, the executive itself and all the public institutions of the country, you share the same guilt as anyone else who has contributed to the destruction of the Sri Lankan state and the spread of anarchy and lawlessness...
>
> All sorts of pettiness found in your letters indicate the type of mind that can participate in the political hooliganism that has ruined Sri Lanka. No issue of importance concerns you. The issues of witnesses being killed or intimidated would upset anybody who had even the slightest understanding of the rule of law and the administration of justice. You, however, have been a propaganda agent to justify witness assassinations and witness intimidation. After all, to 'poo poo' all complaints and allegations about human rights abuses is your job and therefore you may claim that could not have done otherwise...
>
> As we are writing this letter the news of the shooting of Lasantha Wickramatunga was brought to my notice. This, without doubt, is the work of your political clique and as a Sri Lankan I accuse you also as being complicit in the shedding of his blood. Of course, it would be foolish on my part to ask you to initiate inquiries into this attempted assassination. However, for the purpose of record I am bringing this matter to your notice as an issue on which you are officially obliged to act. I am doing this to forestall a future accusation that the matter was not brought to your notice.
>
> As the issue of the attempted assassination requires my attention I will stop this letter at this point. My last reminder is a letter that I wrote to you personally when you falsified a personal conversation I had with you in

> Cambodia. That letter is available on my website for future reference. At that time I called you a liar. Despite of that we did try to communicate with you officially although we knew that you are neither willing nor capable to do anything on complaints about human rights except to deny the very existence of human rights abuses in the country. Therefore your threat that you will have no further communication does not invoke much concern on our part, because your position as an apologist for the government and our position as persons concerned with human rights are incompatible. There never was any real communication and there cannot be any now. But as a matter of routine and out of the sheer tradition in human rights, anyone holding a title relating to human rights will be informed about human rights abuses in the country and we shall send our letters to you or anyone else that might hold your post in the future. We are fully aware that you can do nothing more than to pass it to an officer and that, that officer will not respond.

The superman controller

At the heart of the political, social and psychological problems of Sri Lanka is the executive presidency of the 1978 Constitution. It has turned into a political monster with virtually no parallel. The executive president is a person freed from any and every kind of check and balance. He is not under any constitutional, economic or social force. He is a power unto himself.

The executive president, while holding such power, is completely disconnected from the apparatus of the government. Since he alone has power, nobody else has real independence to run the institutions of state. He must run them. All below depend upon him. None have authority or entitlements of their own. This is unworkable. It is not possible for any single person to run all institutions all the time. Therefore, institutions malfunction, to the point of complete dysfunction in Sri Lanka to which the AHRC has adverted many times previously. The dysfunction characterizing Sri Lanka's public institutions will continue for as long as the executive presidential system under the 1978 constitution is in effect.

Michael Roberts has described this style of misgovernment as a consequence of the 'Ashokan Persona':

> The Big Man (invariably male) has to control every fiddling little thing. My theory therefore highlights a deeply-rooted cultural tendency towards the over-concentration of power at the head of organisations and a failure (if not an ingrained inability) to delegate power.

Elsewhere, novelist Aravind Adiga has in *The White Tiger* brought out a similar idea of social control through 'the rooster coop':

> The greatest thing to come out of this country in the ten thousand years of its history is the Rooster Coop. Go to Old Delhi, behind the Jama Masjid, and look at the way they keep chickens there in the market. Hundreds of pale hens and brightly coloured roosters, stuffed tightly into wire-mesh cages, packed as tightly as worms in a belly, pecking each other and shitting on each other, jostling just for breathing space; the whole cage giving off a horrible stench — the stench of terrified, feathered flesh. On the wooden desk above this coop sits a grinning young butcher, showing off the flesh and organs of a recently chopped-up chicken, still oleaginous with a coating of dark blood. The roosters in the coop smell the blood from above. They see the organs of their brothers lying around them. They know they're next. Yet they do not rebel. They do not try to get out of the coop. The very same thing is done with human beings in this country.

He thereafter explains why the rooster coop was made possible. He attributes it to the Indian conception of family and the system of punishment where entire families of the servant class are punished for any transgression of one member. Asking the reason for its existence and why no one tries to get out of it, he continues:

> The answer to the first question is that the pride and glory of our nation, the repository of all our love and sacrifice, the subject of no doubt considerable space in the pamphlet that the prime minister will hand over to you, the Indian family, is the reason we are trapped and fled to the coop. The answer to the second question is that only a man who is prepared to see his family destroyed — hunted, beaten, and burned alive by the masters — can break out of the coop. That would take no normal human being, but a freak, a pervert of nature.

From this perspective we can return to the problem of the superman controller in the 1978 Constitution. This constitution was meant to dismantle, or at least to undermine seriously, the rule-

of-law system introduced by the British so that the 'rooster coop' could resurface. It was meant to remove barriers against corruption, undermine every possible avenue—including judicial intervention—to abuse of authority and not to have any system at all except the direct use of force on all, trade unions, and opposition political parties, young radicals looking for new avenues and on everyone else. A further important component was to close the electoral map.

The survival of the constitution was greatly enhanced by the rise of militancy in the south from the mid 1980s and Tamil nationalism, which finally came under the grip of the LTTE. It was possible to deflect the attention of people to the need for repressing terrorism and thereby to ensure that no real democratic challenge was made against the constitution itself.

Roberts correctly points out that, "What the Sri Lankan President gives as a constitutional gift, he can withdraw too"; the 17th Amendment is an example of this. This remains possible as long as the constitution is premised on the notion of the superman controller rather than the balance of powers. In a place where the law has little meaning and the supremacy of the law has been removed and replaced with the supremacy of the 'Big Man' all that can happen is the continuance of the 'rooster coop'.

In a piece first published on the *Sri Lanka Guardian* website and reproduced in *article 2* (vol. 8, no. 3, September 2009), Basil Fernando explored the problems created by the superman controller through a fictional conversation among a group of imaginary characters: a journalist; a senior police officer; a retired judge; a political scientist; and, a philosopher. The conversation included an account of the political concept of Gyges' Ring in terms of the current conditions in Sri Lanka:

> **Political scientist:** The Greeks talked about Gyges' ring. When one wears this ring one becomes invisible. Then you can do whatever you like. You can even rape the queen. Now we seem to have developed a home grown Gyges' ring. We have replaced the paramount law with it. In that transformation the 1978 Constitution played a very significant role. Perhaps we need to discuss this more.

Philosopher: At this stage, I think it is better to recall the legend of Gyges' Ring. According to the legend, an ancestor of Gyges of Lydia was a shepherd in the service of King Candaules. After an earthquake, a cave was revealed in a mountainside where Gyges was feeding his flock. Entering the cave, Gyges discovered that it was in fact a tomb with a bronze horse containing a corpse, larger than that of a man, who wore a golden ring, which Gyges pocketed. He discovered that the ring gave him the power to become invisible by adjusting it. Gyges then arranged to be chosen as one of the messengers who reported to the king as to the status of the flocks. Arriving at the palace, Gyges used his new power of invisibility to seduce the queen, and with her help he murdered the king, and became king of Lydia himself.

Political scientist: Now, the moral of the story is that a typical person would not be moral if he or she did not have to fear the consequences of their actions. If anyone can be invisible, it is possible to do things that one may not be willing to do because of bad publicity and other adverse consequences.

Senior police officer: I think I understand this legend and what it tries to say. But, I cannot agree that we should encourage our officers or leaders to follow the moral of this story. If we have to become visible, we cannot do anything. We will become powerless. How can we ask our officers to kill undesirable people, bad criminals, if they have to do that openly? If their wives and children know these things, they will think they are bad people. Ordinary folk need to observe morals. If they know what we do, they will try to emulate us and then there will be more problems. We need to have the capacity to do many things in an invisible way.

Retired judge: Some people might say that what our police officer says is wrong. However, he is simply saying honestly what everybody knows to be happening.

Political scientist: Now, let us go back to our original question. In 1978 when the executive presidential system was created, the president got Gyges' Ring. We rejected western democracy and created our own thing.

Philosopher: What you mean, I think, is that we replaced the paramount law idea with the idea of the paramount persona. Large, big, tall, fat personae as we see them in ancient statues are really our idea of who the powerful person should be.

Senior police officer: Let us be frank. Do you think that we can persuade people to work for the government and hold high office if they are to be told that they have to account for every rupee they spend, that they have

to keep books and be audited, that they can't use their official position to help their family or friends and the like? If we ask our officers to bring every suspect before judges, that they should not torture people who do not give information, or that they have to produce every dead body before a magistrate to have a post mortem, will they do anything? We will have to pay officers who do nothing.

Retired judge: I think what you are saying is that we must be more flexible. We must give people room to exercise power, more freedom. Freedom of those in authority is more important than the so-called people's freedom. People are free only if they obey rulers and respect rulers.

Philosopher: So this is what has happened since 1978. This is our new order.

Destroyed public institutions

The AHRC and ALRC have over a number of years emphasized how the destruction of Sri Lanka's public institutions has been related to the collapse of the rule of law. In this section some aspects of the problem are again taken up through recent writings on the police, the attorney general's department and the judiciary.

An article by retired Senior Deputy Inspector General (DIG) Gamini Gunawardane, "What is wrong with the police?" was published on the Sinhale Hot News website on 7 September 2009; the following is an extract that speaks to the problems of policing attendant to the lost meaning of legality in Sri Lanka today:

The police department in its existence for the last 142 years has passed through several stages of evolution: 1. A colonial police (1867-1948) 2. A post-colonial police (1948-1972) 3. Political interference stage (1972-1988) 4. Politicization stage (1988-2001) 5. Reduction to a status of a virtual private security service of the party in power (2001-to date). Though specific years are given for convenience, they really overlap, because it is an evolutionary process.

Of course, there is a strong reason among others for the rapid passage in to the latter three stages. It is the damage caused to the police service while it was going through the socio-political trauma owing to the coup d'etat in 1962 and the 3 insurgencies that occurred in this country since 1971.

> In fact, after the post-colonial stage we should have evolved ourselves into a 'people's police' as vaguely envisioned by the Mr. Osmund de Silva IGP [Inspector General of Police]. But [because of] the rapid political developments since his time followed by the insurgencies, the police instead became militarized and in the process, many sound policing practices of the post-colonial era fell by the wayside.
>
> Owing to the fifth stage above, even the most junior police constable knows that [the] people are not the primary client of the police, but that his top client really is the politician. Politician's requirement always takes priority. Though the politician is supposed to be only a representative of the people, the peoples' requirement came only after his requirement. Sometimes some members of the public with political clout do get their things done when they too approach the police through a government party politician. That is how the parents of the SLITT student were able to stop the police from doing what they intended to do with their abducted son. The parents moved fast through a relative who was a Minister. The people of Angulana had no such luck. The parents of the deceased youth had to be consoled after the event, by an embarrassed President, having being invited to his residence. Naturally, one is embarrassed when one's domestics misbehave.

The Angulana case to which the former senior DIG refers is indicative of the extent to which abuse of police power in Sri Lanka is associated with corruption. The Angulana police murders of two youths, Dinesh Tharanga Fernando and Danushka Udaya, shook the whole area and led to violent protests. The army and Special Forces had to be sent in to restore peace, while the local officers were transferred out. According to Tharanga's mother, speaking to the BBC Sinhala service,

> That gentleman [the Officer in Charge, OIC, of the police station] can't stand the sight of young boys. He arrests them and takes them to the police station and assaults them. Parents go to the police station and pay money to get the boys released. He arrests the boys in order to make money. We also went to the police station when we heard about the arrest of our son, and we took money to give him. But we were not shown the boy and we were unable to rescue him.

The boy's father said, "When we went to the police station we found that all the police officers were heavily drunk." Jeevan Kumaranathunga, the Angulana parliamentarian, told the BBC that

he had received many reports about the drunkenness of police at the Angulana police post and that he had made representations to the relevant authorities about this situation, but because no action had been taken, this unfortunate tragedy occurred.

Drunken police misbehaviour is not exceptional to the Angulana police. It happens everywhere, like torture, extrajudicial killing and bribery. It is the duty of the member of parliament of an area to receive complaints about state officers, including policemen. It is also his or her duty to intervene promptly on behalf of citizens whom the police harass.

However, in the Angulana case there is no indication that the families of the boys rushed to the house of their member of parliament to get his intervention so as to save the lives of their children. In so many other cases also, people do not go to their members of parliament seeking protection when events such as these occur, due to a loss of confidence and alienation of citizens from their supposed representatives.

One reason for this alienation is that around the country members of parliament work hand in glove with the local police. Since people know of these close relationships, there is a general feeling that it is futile to complain to a parliamentarian about police abuses. It is also well known that local politicians intervene to save suspects when they are supporters of their party. The illicit liquor sellers, drug dealers and others who engage in all kinds of seedy businesses get the patronage of local politicians. The ordinary citizens who come into contact with the police without breaching any law get into serious trouble and find no support from the politicians.

If the member of parliament for Angulana had received information on the drunkenness of the local police, it was his duty not just to make some representations to authorities—knowing well that nothing would come of it—but rather to take all the measures that he is empowered to take as the representative of the people in order to protect their rights. If his initial protests were not heeded,

he could have made representations to the higher police authorities, such as the IGP and the National Police Commission. He could have done so in writing. If that also did not work, he could have taken up the matter through his political party, which is in government.

Even if all these methods had failed, he could have made a statement in parliament. He could have called for an inquiry. He could have sought the intervention of the president. And as a member of the parliament he has access to the media and any statement by him on the drunkenness of policemen at a police station should have created sufficient pressure for action.

Thus, looking into the causes of the murders of the two young persons from Angulana and the police abuse that is rife across the island requires some examination not only of the police's own behaviour but also of the responsibility of the member of parliament of the area.

Another agency that should be acting to counter-balance the authority of the police but instead has for years worked closely with them to the detriment of the system is the Department of Attorney General (AG's department). One feature of the close relationship between this department and the police has been its complicity in cases of police violence and torture.

To reduce torture, complaints must be investigated. However, it is a long-established practice that investigations are deliberately sabotaged. The main saboteurs are of course the police themselves and the AG's department in its capacity as prosecutor.

The role of the AG's department as a co-conspirator in abuses goes back some way. In the late eighties, for instance, emergency laws were used to encourage extrajudicial killings. At least 30,000 persons, mostly from the south, disappeared during this period. The disappearances were caused through the emergency regulations, which were framed in a manner to make such extrajudicial killing possible. Magistrates were deprived of the rights to conduct inquests into all suspicious deaths by giving police officers the right to grant

permissions for burials. As a result of this regulation, which shifted the law that all suspicious deaths must be investigated, the bodies of people whom police or related agencies had killed were not brought before a magistrate, and were buried without autopsy. This was a regulation designed to permit mass murder.

There is reason to believe that the AG's department was involved in advising on the draft of these regulations. There is also no evidence at all to indicate that the department in any way opposed them, or pointed to the illegality of arranging for and permitting mass murder. Similarly, when Tamil prisoners were killed inside the Walikada prison in July 1983, officers from the AG's department participated in the inquest proceedings not in order to prosecute the offenders, but so as to hush up what really took place.

A case that became famous in the 1990s illustrates the point further. Richard de Zoysa—a well-known film actor, author and journalist and a popular socialite—was abducted from his house, and several days later his body was found washed up on a beach. It is speculated that after he was arrested and tortured, his body was dumped from a helicopter into the sea in the hope that it would never be recovered.

The news of the killing was one of the most shocking events that influenced politics at the time. Local and international media coverage was extensive and fingers were pointed at the security forces, which were then engaged in wiping out an insurgency in the south in which tens of thousands of people were similarly abducted and killed.

Despite enormous pressure, the government of the day persisted in covering up de Zoysa's murder. On the first anniversary of his death, the Liberal Party—which no longer exists—took up de Zoysa's case. A whole volume of the Liberal Review was devoted to his assassination.

That volume included a long letter written by the party to the government, analyzing the manner in which the inquiry had been

sabotaged. The letter blamed the police and the AG's department for failing to investigate. The party called for a commission to inquire into the murder. The reasons it gave are revealing:

> There is a significant possibility of the complicity of elements of the police in this crime and the apparent unwillingness of the Attorney General and his department to act impartially in this case, which prompts us to suggest the appointment of a commission of inquiry.

The letter was written in February 1991. From then until now, nothing has happened to improve confidence in either the police or the AG's department with regard to independent and impartial inquiries into human rights abuses of this sort. One of the major reasons for this failure remains the complicity of the police and the prosecutors, who work to prevent proper inquiries into serious crimes.

Today, the position of the police is much worse than it was in the late 1990s. Everyone acknowledges this, even high-ranking police officers that have made public statements expressing bewilderment about the situation.

In current times, even a person accused of murder can continue to work as a police officer. Suresh Gunaratne, a police sub-inspector accused in the murder of torture victim Gerard Perera, continues to work as an investigator at the Gampaha Police Station. Many others accused of serious crimes are not even subjected to investigation. One of the known pastimes at many police stations is to intimidate witnesses who make complaints against police officers.

What is more shocking is the way the AG's department has undermined its duty to help prevent torture. There were some positive developments in the early part of this century when the department filed a large number of torture indictments against police officers. These were made under the then AG, K C Kamalasabayson, who was not one of the destroyers of institutions in Sri Lanka, but rather a captive to their destruction.

Kamalasabayson held the post from October 1999 to April 2007. Compared to others, he tried to be more politically neutral and to keep some balance even as the ship of state tossed and turned. By the time Kamalasabayson became the AG, the country had already witnessed some of the most colossal human rights abuses in its modern history. It was a difficult time for anyone with some integrity to hold the post. Kamalasabayson did not deal decisively with the threats to his institution. He was unable even to prosecute effectively many cases of disappearances concerning police and military officers, against whom commissions of inquiry were reported to have adequate evidence. As the prosecuting of police and military officers for disappearances is a highly sensitive issue, it would perhaps have taken a giant to withstand political pressure and do his job according to the law.

Kamalasabayson was not a giant, but he did show that he was aware of the acute problems caused by the collapsed rule of law. Giving the 13th Kanchana Abhayapala Memorial Lecture on 2 December 2003, he spoke of many of these. He highlighted the absence of a witness protection law and program, delays in courts, lack of legal provisions protecting the victims of crime, lack of investment in administration of justice, and even the inadequacy of staff at his department. He was also aware of the crisis over the country's criminal investigation function, exercised through the police.

His most important decision was to prosecute cases under the Convention against Torture and Other Cruel and Inhuman Punishment Act, No 22 of 1994. Procedurally, he did this by referring all the complaints of torture received from United Nations agencies or local channels to a Special Inquiry Unit (SIU) of the CID. Within a short time, several SIUs investigated a large number of cases and submitted files to the AG's department for prosecution of officers. The department held over sixty files on which it had decided that it had adequate evidence to prosecute. In many of these cases, it filed indictments in High Courts.

Most cases are still pending. After Kamalasabayson retired it did not take long for the department to change policy on the referral of complaints through SIUs. His successor, C.R. de Silva, often mentioned that the department would not bow to the pressure of NGOs, meaning that prosecuting cases of torture is somehow something that is a result of pressure that should be resisted. Under him, there ceased to be any high-level inquiries into allegations of torture. Even where evidence emerges by other means, the department now most of the time refers the cases to magistrates to be prosecuted under the Penal Code as simple hurt. Departmental officers have also made reports to UN agencies, including the Committee against Torture—which monitors the convention—stating that there is no serious problem of torture in Sri Lanka.

Even in cases where fundamental errors have been made in the facts and application of the law, the AG's department has refused to file appeals or revisions, despite requests on behalf of aggrieved victims. The tacit policy today is not to eliminate torture but to protect perpetrators.

As a consequence, policemen who arrest, detain and torture for the purpose of getting money are common throughout the country. The well-publicized case of Sugath Nishantha Fernando of Negambo illustrates how adventures relating to bribery can lead to so many other police crimes.

Nishantha Fernando initially complained about a police inspector who had sold him a lorry of which he claimed to be the owner, while in fact it was a stolen vehicle. His complaints led to the fabrication of charges against him. He had to pay bribes and to promise payment of more in order to get the charges dropped. Finally, when the demands were too much, he complained to the Bribery Commission. The commission, after inquiries, filed charges against a police inspector.

Thereafter, Nishantha and his wife were pressured not to give evidence in the case. When they failed to pay heed, about 20 police officers, including the OIC of the Negambo police station,

surrounded their house and assaulted them and their two young children, and took them to the police station. Later, the family filed a fundamental rights application regarding torture of all the four family members, and the Supreme Court granted leave to proceed. The family named 12 police officers as respondents.

Then, some unknown persons visited the family and told the couple to withdraw the fundamental rights application in 24 hours or the whole family would be killed. Nishantha complained to the IGP and all the Sri Lankan authorities, including the Ministry of Disaster Management and Human Rights.

On 21 September 2008, two gunmen shot Nishantha Fernando in front of his young son (see "The price of fighting the state in Sri Lanka" by Julianne Porter, article 2, vol. 8, no. 1, March 2009). No one has yet been arrested and there seems to be no inquiry at all about this murder. The mother and the two children received further death threats and they had to move from house to house over several months for security. The family has remained in hiding.

Hundreds of cases of this sort, arising not from security concerns but from the adventures of policemen abusing their authority to make a profit, can be narrated due to the AHRC and its partners' documentation over the last few years. The fundamental rights cases before the Supreme Court alone, tell a tale of enormous cruelty and of abuses of power that neither the police authorities nor the government have made any attempt to stop.

In all discussions relating to development as well as peace in Sri Lanka, radical reform of the police should have a significant place. However, as retired DIG Gunawardane points out, this is not likely to happen any time soon:

> Judging by what is going on at present, no government is likely to change this arrangement with regard to the police. In the short term it is advantageous to the party in power to be able to directly manipulate the police. For, this is the direct exercise of civil coercive power. The party in power only realizes the adverse effects of this when they become the opposition. They then dare the party in power to hold elections having

implemented the 17th Amendment etc. But when they get back into power they do not wish to change this set up, in the interest of the people whose sovereignty they exercise. Neither is there a strong movement by the people to have this situation changed. It is doubtful whether even the public wants a totally independent police or whether they would like a police manipulatable through politicians depending on which side of the law one is placed in a given situation! No proper research has been done on this question. Thus, the saying 'people get the police they deserve.'

In these circumstances, there is no hope that the character of the police will be allowed to develop oriented towards people as its chief client, despite lip service to current world trends such as community oriented policing etc. So the police are compelled to work within this latest paradigm. Hence, public interest will be only marginal.

Now I come to my point. I see a problem for the police to function effectively as an organization even under this paradigm. It is really a structural and a managerial defect. Of late, the Senior DIGs who form the Top Management team of the IGP are posted to the provinces, to the forward headquarters. He sits over and above the local DIG in the provincial capital. He is thus drawn towards the ambit of the sphere of activity of the DIG, as the most senior officer present. He is thus compelled to encroach on the work of his DIG. Similarly, the DIG is drawn to do some of the work of the SSP [Senior Superintendent of Police]. The SSP in turn is led to do some of the work of the ASPs [Assistant Superintendents of Police].

And the ASP is very often seen doing the work of the OIC. Thereby the supervisory function at each level suffers. The OIC in the meantime has not much work to do other than to be present at the many occasions of a VIP who visits his area. In view of the political character and also owing to the security concerns, the entire local hierarchy tend to be present, mainly to be seen by the VIP. Thus the OIC has not much time to supervise his men or look at his records or do any court work. The snowballing effect is that most senior officers are found to be immersed in office work, working late into the night, mostly doing their subordinates' work. As a result of the senior officers doing the work of their subordinates the subordinates miss the opportunity of acquiring more skill, experience and maturity at their different rank levels. Hence, as they go up the ladder, they possess less and less experience both to manage their jobs and to give appropriate directions to their subordinates. They also do not have sufficient confidence in the subordinate to discharge his responsibility. So superiors themselves do the work of the subordinates to ensure that there is no slip up. This is because, the responsibility of getting the job done falls ultimately on the senor officer.

> So to be sure, he does the subordinate's job himself! So the subordinate never learns. Thus the situation keeps on deteriorating in a counter snowballing effect. The senior officers on other hand, have no time to pay attention to detail or to do any creative work in their higher capacity, beyond performing their routine tasks. The norm is, to get by each day. Neither the officer nor the subordinate is tested or held accountable. So no improvement, or deeper levels of supervision. The result is such as Malabe and Angulana incidents. Many more to follow.
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> Consequently, the officer levels lose the opportunity to develop their managerial and interpersonal skills though they may acquire the technical skills required for their survival. Thus, there is lacuna in the officering skills at the officer levels. This is the complaint of many subordinates of their superiors. This problem has become further complicated as a result of the absorption of the Police Reserve into the regular force, consequent to an election promise. The details of this problem could not be discussed here as it is beyond the scope of this essay.
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> In these circumstances mediocrities have a field day. Of course, to facilitate their upward mobility and protection for incompetence, one needs the 'political clout, for, efficiency is not the criterion. Hence, out of necessity, they develop skills of 'politician management' as against personnel management etc.
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> Starting from here, problems escalate from one to the other and spread like a cancer. Thus, it is surprising that even the present level of service delivery is possible.

The article talks about some of the problems associated with management of the police hierarchy, that had the system not been so heavily politicized for so long would not have emerged as serious threats to its coherence.

A policing system is a hierarchical institution. Those at the top have responsibility for the behavior of those in different layers within the institution. It is the job of those who are at the top to ensure that all those below do as expected of them. Departmental orders lay down the responsibilities of leadership and of supervision. They prescribe intricate arrangements for the maintenance of documents. The officer in charge of a police station is responsible for what happens within it; the ASP of an area inspects books, makes

visits and takes his own notes, by which he keeps track of the work of all police stations under him; superintendents supervise and guide the work of the ASPs; senior superintendents exercise further monitoring and supervision; and deputies to the IGP look after the entirety of the institution.

That was how it was and that is how it is supposed to be. But now any police officer may think this is just a fairytale. Today, the police hierarchy from ASP to IGP cannot even arrange for the proper transport of an alleged suspect when he is escorted to find some material evidence. The oft-repeated story is that during the journey the handcuffed suspect takes a gun or bomb and tries to attack the police, who in turn shoot him dead.

Are the officers of the police hierarchy incapable of devising a system for the safe transport of criminals from one place to another for purposes of investigation? Surely it is not such a difficult task to design guidelines and instructions about the transport of suspects during criminal inquiries. All over the world such things are done quite safely. It does not require extraordinary intelligence to design and implement such a system; however, Sri Lanka's police hierarchy has proved incapable of doing this much.

Instead of command responsibility, complete carelessness has spread from top to bottom of the law-enforcement infrastructure. Take the case of Douglas Nimal and his wife. Nimal was a police inspector who took his job seriously and tried to arrest some persons involved in drug dealing. Some persons at the top moved against him, and finally he and his wife were killed. No one was arrested or prosecuted for killing a law enforcer who was discharging his duties.

In the Supreme Court and high courts there are constant revelations of police tampering with documents. In fact, there are hardly any cases relating to fundamental rights or torture complaints at high court trials where police have not tampered with books and made false entries. In all cases where arrested persons are later extrajudicially executed, the documents in the books are also manipulated. Had the ASPs and those above them exercised

their supervisory powers as required by departmental orders such distortions would not be possible.

The police hierarchy is paid with public funds; however, it is not performing its public duties. There has not been sufficient scrutiny of its work in parliament or in the media. If the lawlessness that the country has descended into is to be addressed, the public must ask questions about what the IGP and his deputies are doing. If by not following legal and departmental procedures they are breaking the law, then who is there to safeguard law and order in the country?

Another feature of the system that Gunawardane identifies is the ever-present danger of greater military control over policing. He notes that:

> There seems to be a line of thinking these days that since the military officers who did well under a capable leader, appointing an Army officer will be the panacea to all problems. The naiveté in this thinking is indeed astounding. Because each field is so specialized these days. The thinking seems to be that "you appoint the 'right' man and the rest will fall into place." One shudders to imagine the consequences.

In fact, analyses of the country's police problems—from the Soertsz Commission Report in 1946, followed by the Basnayake Commission of 1970 to the Police Service Report of 1995—demonstrate that a central problem from the inception of Sri Lanka's police system has been its militarized rather than civilian policing style. Insurgencies since 1971 have further militarized it. The appointment of an inspector general from military ranks would only compound problems.

These days, anything and everything is possible within that system, however illegal. Whether police officers engage in drug dealing and protecting the drug dealers; whether they use their powers of arrest and detention to obtain bribes for themselves; whether they help politicians by putting their opponents behind bars under false charges, using anti-terrorism laws and anti-drug laws; or engage in any other type of illegality, there is hardly anything the

system can do to stop it. Cosmetic measures such as arresting a few low-ranking officers do not make any difference.

How can these problems be resolved by appointing a military officer to head the police force? Can a military officer establish command responsibility for officers from the lowest to the highest rank? Will not the introduction of a military officer only help the errant superior officers even more, because they can easily mislead and even cheat their new leader, who is totally unfamiliar with the area of work in which they are engaged? Similar experiments elsewhere, where top posts have been given to people from completely different fields, provide enough examples of the distortions that can happen under such circumstances.

A policing system is a public service devoted to law enforcement. Thus, the relations with the public that are required of a policing system are of a completely different nature than those of the military. The political leaders who have proposed bringing an inspector general of police from the military are aware of this. Why, then, do they want to introduce a military leader into the already collapsed police system? They may have other ambitions. A more militarized police may be what is needed to subject the population to greater controls and to displace the rule of law altogether.

For a more militarised system, one need only look as far as Burma—whose military supremo in November 2009 visited Sri Lanka after the president had paid him a call in his own country. In this year, the junta again arranged to keep democracy party leader Daw Aung San Suu Kyi locked up in her house. That case is widely known and condemned globally. A court sentenced Aung San Suu Kyi to five years of rigorous imprisonment. Within hours the junta chief reduced the sentence to 18 months of detention in her own home. The sole exercise of this trial was to give a semblance of legality to an executive order for imprisonment so that this lady cannot participate in any events relating to proposed elections in her country.

In Sri Lanka the case of J S Tissainayagam, though not as well

known as Aung San Suu Kyi's, also created waves internationally in 2009. The arrest, detention and trial of this man, a prominent journalist and a human rights activist, received the attention of many governments. The American president, Barack Obama, himself mentioned this case as an example of the repression of journalists throughout the world. All leading media organizations worldwide condemned the arrest, detention and trial and repeatedly called on the government for Tissainayagam's unconditional release.

Tissainayagam was charged with aiding and abetting terrorism and instigating racial violence by writing a few lines in an article that referred to the armed conflict then taking place in the north. Tissainayagam, who had been a veteran journalist and a human rights activist, had over a long period of time reported matters regarding internal conflicts in the south as well as the north and east. In the late eighties he helped the incumbent president, who was then in the opposition, by preparing and translating documents relating to disappearances and other atrocities in the south.

There was nothing in Tissainayagam's writing to indicate any attempt to instigate violence or promote racial hatred. There are thousands of similar pieces and none of their authors have been prosecuted. Tissainayagam was singled out for arrest, detention and prosecution solely to intimidate other journalists and newspaper editors publishing materials relating to the war. Several other journalists left the country after his case emerged.

Like the case of Aung San Suu Kyi, in the case of Tissainayagam there were no real grounds on which to base a criminal charge. In both cases the charges were fabricated. The issue before the court in both cases was to decide on the legality and the validity of the charges in the first instance. Both courts proceeded on the basis that fabricated charges had some basis in law and found the accused guilty.

Joseph Stalin's prosecutor, Andrei Vyshinsky, also conducted trials in which the outcome was predetermined. The trials of the 1930s were known worldwide as show trials. The accused were not

really the targets of the proceedings. The accused were mere exhibits to be advertised before the rest of society in order to pass a message to the people. Vyshinsky's biographer Arkady Vaksberg wrote that the "purpose of the trial had not been to disgrace or, indeed, to annihilate some of the accused but to create a precedent and pave the way for a psychological attack on the population".

In a similar fashion, the prosecutor proceeded against Tissainayagam and the court sentenced him to 20 years. Previously the Supreme Court had asserted the rights of citizens to freedom of expression and publication. The court has also upheld the rights of citizens to criticize the existing government. However, the High Court trying a case based on special regulations under anti-terrorism laws has gone completely against these traditions.

Sri Lanka's Ministry of Foreign Affairs has gone even further and in a communiqué stated that criticism of the judgment against Tissainayagam is a slur on the independence of the judiciary. However, in this case, like that of Aung San Suu Kyi, it is the destruction of the judiciary that is the problem, and to point to the court's non-independence is not a slur but a mere statement of fact.

When the Tissainayagam case came before the UN Human Rights Council in Geneva, the AG himself argued that the 20 years of imprisonment was a minimum sentence and that it was a decision of the court, since Sri Lanka respects separation of powers, just as the regime in Burma disingenuously insisted that the court, not it, was responsible for the Aung San Suu Kyi verdict. What was not placed before the council was that under the PTA—through which the conviction was secured—confessions are admissible as evidence, and acts that are not otherwise crimes are under this law considered offences.

Within Sri Lanka, this does not matter as the whole system of criminal justice is anyhow standing on its head. The law is manipulated and twisted to get whatever result the prosecutor wants. The prosecutors can even serve as defenders, particularly when they participate in preliminary enquiries and subvert the process by

various means. For instance, on 30 July 2009 the Lanka News Web reported that,

> The Attorney General has requested courts to grant bail to two of the five respondents produced before courts for the alleged financial fraud amounting to Rs. 4,300 million at the Finance and Guarantee Company, which is a subsidiary of the Ceylinco Group.
>
> The reason for requesting to grant bail to the two respective respondents in the case according to the Attorney General is that they had cooperated with the inquiry into the company.
>
> However, it is learnt that the Attorney General's friendship with the respondents developed during the time he served as the Legal Advisor to the Finance and Guarantee Company is the reason for the request to grant bail to two of the respondents.
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> The accused in the financial fraud case, who were produced before courts are Deputy Chairman and Chief Executive, Finance and Guarantee Company, Mervyn Jayasinghe, Financial Director Sunil Jayatissa, Executive Director Mohan Srinath Perera, Legal Officer Malini Sabharathnam and Deputy Financial Director Samanthika Jayasekera.
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> Legal sources say that although the Attorney General wanted to get bail only for Sabharathnam, Jayasekera's name had to be included to avoid any suspicion.
>
> A team of lawyers led by Attorney Kalinga Indatissa appeared for the respondents when the case was taken before Colombo Chief Magistrate Nishantha Hapuarachchi.
>
> Upon being told by the Attorney General that two respondents should be granted bail due to their cooperation with the CID investigation, Indatissa had challenged the Attorney General in open court to reveal how the said respondents aided in the inquiry.
>
> He had further said the five respondents had equally cooperated with the investigation.
>
> The Attorney General was represented by Deputy Solicitor General Yasantha Kodagoda.

> Lanka News Web earlier revealed in a story that the Attorney General did not institute legal action against the respective company due to his close affiliations with it.
>
> Following the Attorney General's request Sabharathnam and Jayasekera were released on a surety bail of Rs. 100 lakhs each and a financial bail of Rs. 1 lakh each. The other respondents were remanded till August 11.

In September the AG shocked the nation by requesting the High Court of Colombo to withdraw an indictment against an accused charged with preparation of forged documents and misleading the CID. The accused, B A Abeyratne, is the principal of a well-known Colombo school who was indicted in 2008. The indictment stated that he had influenced an investigating police officer to accept a number of forged documents in an inquiry with regard to the admission of children to the school.

The request to withdraw the indictment was made on the basis of an affidavit filed by the accused, which stated that he would resign from his service at the school and in which he expressed regret about the damage caused to the school by his actions. Besides this, a number of persons wrote to the AG asking him to exonerate the principal, considering his service to the country, to the school and to the sphere of education. It was on the basis of this affidavit and the letters that the AG made the request for the withdrawal of the criminal indictment, despite of the fact that there was sufficient evidence to continue with the prosecution.

Although the High Court refused the request and ordered the trial, the very attempt to withdraw it raises disturbing questions. Are affidavits from accused persons promising good behaviour and letters by others about various services rendered now going to be grounds for the chief prosecutor to withdraw criminal charges? If these are valid criteria for not prosecuting then the AG should not prosecute anyone, as every accused will be willing to give an affidavit promising not to misbehave again. And these days, it would not be difficult for any accused to get letters of recommendation from even the highest places, requesting that an indictment be withdrawn. Only innocent persons, who have failed to develop connections with

the corrupt and the powerful, might fail to get such letters.

Let us suppose that the judge allowed the application. Then the AG would argue that it is the court that has made this decision to not prosecute, not his department, and that Sri Lanka respects the separation of powers. Thus, the responsibility for the decision would have been placed on the court. This is the manner in which the responsibility of the absence of investigations and prosecutions into extrajudicial killings at police stations has been explained away on many occasions, where the decision of a magistrate that a killing is "justifiable homicide" is used to exonerate all other parties and cease prosecution.

What is not discussed in these cases is that the investigative authorities and the prosecutors have invariably not placed all the circumstances relating to the killing before the court. With no impartial investigations into such killings and documents forged to give the police version of events, the courts only have the evidence that the police and the prosecutors place before them. Yet later when complaints are made over the absence of investigations and improper prosecutions, the magistrate's finding is pointed to as the reason for inactivity or inadequacy.

From the above it can be said that whereas at one time there existed a department called the Attorney General's department, today it exists only in name. It has lost its place as the government's legal adviser and lost its way as the prosecuting agency. From the way that the government acts now, it is not doing so on the basis of proper legal advice. And judging from the number of cases that constitute serious crimes that are not prosecuted, it is also not possible to say that there is a genuine and authentic prosecuting agency in the country. Nor is it possible to say that the prosecutions in Sri Lanka are being undertaken on the basis of law.

The demise of the AG's department is a matter of grave concern because its functions are vital if a nation is to accord with the rule of law. By contrast, where legality itself ceases to have meaning, as in Sri Lanka, the department also becomes meaningless.

How did the department lose its role and arrive at the present position of pathetic subservience to the executive? It did not happen within one day. It was a long journey in which the department leaders gave in to the wishes of the executive, some due to pressures, but mostly due to the opportunism of officers who were too eager to please the executive.

Some episodes are well known: under presidents Jayawardane and Premadasa, the department's legal advisory function was ignored. It did not resist the 1978 Constitution. There is no evidence to suggest that the department had given any advice to the government about the implications of this constitution for the legal system of Sri Lanka. When Jayawardane started a war on the judiciary, the department did not give advice to the government on the unconstitutional nature of his interference and its possible adverse consequences.

Under these two regimes, the AG's department persecuted political opponents. The case against Srimawo Bandaranayake and others had its full cooperation. During this time there were also several criminal cases filed against SLFP politicians such as Vijaya Kumaranatunga, the present president Mahinda Rajapaksa and others, purely for political reasons. Though these cases didn't end up in prosecutions, the initial steps were initiated through the department.

The 1982 proposal for holding a referendum to extend the term of parliament for another six years would have shocked any legal department working according to common law traditions; however, Sri Lanka's AG had no legal advice to offer against this move. Not only was the country's electoral system completely destroyed, but so too was the very basis of law through which government derived legitimacy.

The best test of legal advice is the advice given on constitutional matters. The AG should have resisted executive moves to undo the basis of constitutionalism. If that led to conflict, the legal adviser should have faced the conflict, rather than avoid it by

unconscionable compromises. Had the AG resisted, it would have set off alarm bells about the executive's serious attack on the legal framework of the country. Even if the executive would not have wavered from its path, it would have met opposition, and the complete destruction of the institutions of law could have been avoided.

While the AG's department failed to act to oppose extralegal executive actions done in the name of law, the judiciary was dramatically attacked and damaged from within thanks to the work of the former chief justice, Sarath Silva, who resigned mid-year. On 7 July 2009 *The Sunday Leader* published an article by telecommunications expert Dr. Rohan Samarajiva, "Curtain closes on the Sarath Silva saga" to mark the occasion, of which extracts follow:

> I recall a conversation with a telecom CEO when I returned to Sri Lanka in 1998 to work in government. I asked him what his blackest day was. He said it was the third or fourth day of the extended blackouts resulting from CEB unions trying to blackmail the government. He had used up his backup power, backups to the backups, and there was no diesel.
>
> He was trying to supply reliable telecom services; his day of black despair came when the external infrastructure he depended on failed. My nadir was the day I realised that the judicial system of Sri Lanka was failing. It is the external infrastructure for everything. My day of black despair came under the watch of Chief Justice Sarath Nanda Silva, who retired last Friday.
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> ...
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> The Supreme Court is the final bulwark against assaults on the Constitution in any country. It is customary to say that the Constitution of a country is not what is written down in black and white on paper, but what it is said to mean by the highest Court. But how did the Silva Court safeguard the Constitution?
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> Abject failure on the 17th Amendment. Selective enforcement on the 13th Amendment (annulling the ad hoc merger of the Northern and Eastern Provinces while turning a Nelsonian eye to the other egregious violations). Outright failure on safeguarding the principle of parliamentary control of public finance, something fundamental to the parliamentary system of

> government and something written into our Constitution: "Parliament shall have full control over public finance. No tax, rate or any other levy shall be imposed by any local authority or any other public authority, except by or under the authority of a law passed by parliament or of any existing law" (Article 148).
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> The 2006 budget allowed the Treasury to move funds around among different heads without parliamentary approval, blessed by the Silva Court.
>
> The list goes on. Court tries to set petrol prices, infringing on the powers of the executive; executive refuses to implement court orders; court withdraws orders. Persons held on non-bailable offences are released without explanation by the highest court. The Constitutional terrain at the end of the Silva term looks like what Lanka must have looked after Lord Hanuman's tail was set on fire. No principles established; no doctrines for guidance; just random devastation.
>
> ...
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> The broad sweep of judicial activism has signalled to all who make economic policies and implement them that it is no longer enough to follow procedure, but to act in ways that would be acceptable to a future court... or to ensure that no one will be offended by the decision, thereby precluding a fundamental-rights challenge. These being impossible, the best course of action is inaction.
>
> This is worse than what happened with government-personnel decisions a decade or so ago. But at least, people in government knew what the rule was and what it applied to: personnel decisions. Now, there is no such certainty or delimitation. All executive actions are fair game. The rule is that there is no rule; one has to guess what the Supreme Court would find acceptable.
>
> Is it worthwhile trying to figure out what the present judges would decide? No, because the time limit on instituting cases has been thrown out. So the decision maker has to guess what would be acceptable to any court in the present and in the future.
>
> So what is the end result? Policy paralysis, something we can ill afford in a fast changing world.

A friend of former AG Kamalasabayson said that when asked at time of retirement what he thought of the legal system of the

country, he is said to have remarked that he saw nothing anymore that can be called a legal system; only some buildings. While the former AG tried to keep something of the system intact, the former chief justice played a part in its destruction. In the end, both of their institutions have fallen to zero, and with them, the status of the citizenry who depend upon them.

The zero status of citizens

When all legal entitlements are deprived to citizens their formal rights are insignificant. Anything can be done to them and no consequences will follow. Today every Sri Lankan citizen is a legal non-entity in this sense. Their entitlements are on statute books but have no actual relevance. Abysmal lawlessness and individual rights cannot coexist.

The situation in Sri Lanka at present demonstrates this fact with great clarity. Even senior persons suffer from misunderstandings about this fact until they themselves are made victims of it. For instance, in several video clips Dayan Jayatilaka, a former ambassador to Geneva, talks about his removal from his post. He states that Sri Lanka has no foreign policy, as if it should be a surprise to learn that there is anything other than the abuse of power. He talks about his removal as irrational as if it should come as a surprise for the Sri Lankan state to act irrationally. In fact, everyone there is treated irrationally all the time. The concept of merit in appointments and rationality in decision-making is absent. The 17th Amendment failed for this reason. The parliament made an attempt to acknowledge merit in appointments, dismissals and transfers of civil servants. It did not succeed. The principle now is that irrationality in appointments, dismissals and all such matters is normal.

Why is it that many people still do not grasp that the system in the country has gotten so warped that it is not capable of rational behaviour? Here the notion of zero status requires further explanation. The word here is used in the sense that Solzhenitsyn used it in his masterpiece on repression, *The Gulag Archipelago.*

Millions of Russian citizens were turned into zeroes just by somebody knocking on their doors or telling them that they were under arrest. Many citizens began to expect such a call at any time. However, the group that was surprised when such a call came and would never understand it, even after being brought into prisons, were the privileged sector that belonged to the party. Solzhenitsyn devotes an entire chapter to describe the plight of these people, who could not grasp how the system could treat them so irrationally. It never occurred to them that the rest of the country was treated far more irrationally all the time. They had participated in the creating of a society of zeroes and were shocked to find that they too were counted among those with no status or value whatsoever.

This is why the irrationality of the entire country escapes the attention and comprehension of those from the more privileged sections of Sri Lankan society, who still think that they have some kind of status by virtue of their positions in the hierarchy and relative wealth. The problem for them is that when society is reduced to a zero through the devaluing and destruction of public institutions, then the rights on which the system is premised too have no meaning, and no more for them than for anyone else.

The murder of Lasantha Wickramatunga, a prominent journalist, can be used to illustrate. Wickramatunga was the chief editor of *The Sunday Leader*. Two gunmen shot him and one of the newspaper's senior journalists on 8 January 2009, as they went to work; the second man was wounded.

Wickramatunga was a prime target of the government and particularly the Secretary of the Ministry of Defence, Gottabaya Rajapakse, which had earlier tried to have him arrested. Thereafter a group of unidentified persons attacked and burned his paper's printing press; they were never arrested. It is widely believed that the ruling party sent the group, and that it was probably from some section of the armed forces.

Just two days earlier about 20 unidentified attackers raided the premises of Sirasa TV and caused huge damage to equipment. The

group assaulted the staff and left a large Claymore mine. Sirasa TV is the most important centre for the independent media in Sri Lanka. The opposition leader said that the government was responsible for the attack and that members of a military unit carried it out. The attack provoked protests from journalists and opposition also from foreign embassies. Following the attack the AHRC issued a statement ("The attack on Sirasa TV an early warning of worse things to come", 7 January 2009), which predicted:

> The massive attack on the Sirasa TV station brings gloomy predictions of things to come in the very near future to a country, which is already bedeviled by lawlessness, violence and corruption. However, there is no rational basis to expect things to become any better but in fact reason to believe that worse things are yet to come. If there was to be political assassinations of opposition leaders, trade union leaders, journalists, human rights activists and others who stand for democracy, rule of law and human rights it would be the natural course of things arising out of a build up which has already taken place.

In less than 48 hours this prediction unfortunately proved true. Globally Sri Lanka has been declared as the second most dangerous place for journalists, the first being Iraq. It is also among the most dangerous places for anyone that the government suspects to be an opponent, as shown in the case of Ranga Bandara, an opposition parliamentarian whose house was attacked and burned on 6 October 2009. Shortly after he gave a recorded interview to the AHRC, of which the following is a summary:

> A group of people entered my premises on Sunday night, October 4 after breaking the decorations outside. They arrived in two vans. After entering my premises they spread highly inflammable liquid throughout the premises and set the premises on fire. The spread of the liquid had been done very carefully to ensure that they could raze the premises to the ground in the shortest possible time. Then they left the premises.
>
> I was away attending to election work on behalf of my party at the time. I learned that the neighbours gathered immediately but were afraid to go in because they were aware of recent experiences where bombs were placed inside when this type of attack is done. The people tried to throw water from outside to stop the fire. It was only after one of my employees, a lady, rushed

to the place and entered the premises that others also entered and tried to put out the fire. However, they could not do much to stop everything from being destroyed.

My house and office are situated next door to each other. All the documents relating to my work as a member of parliament was inside both premises. I also had five computers for the purposes of my work. There were many other pieces of equipment that were also used for communications. And there were also the household goods. All has been burned down and the total damage in monitory terms is about Rs. 11 million.

Immediately when the news about the fire had been spread the police were informed and they in turn informed the fire department of the Negombo area. The head of the fire department and the chairman of the provincial council were also informed. Initially, the fire department asked for Rs 15,000 as costs for putting out the fire. The police informed that they will pay the money but the order had not been given for the fire department to move. So, they did not come at any time to deal with the fire. In fact, during this same time the vehicles used by the fire department were seen in the roads in Negombo being used for putting up flags for the ruling party.

The police in the area of Negombo also have water bowsers but none of these were sent despite of the information that they had to help in putting out the fire.

After I arrived at the place with several others I received a lot of detailed information about who was involved. It is a member of the provincial council who had given orders to the group of people who attacked my house. According to the information I received they will be protected because he, the provincial council member, received these orders from high above. I have also been told about the names of several of the persons who participated in this attack. I have also got to know the number of one of the vehicles that were used for this attack.

However, there is a big problem. The people who confided in me and gave me this information are mortally scared. They don't want to take the risk of coming forward to give evidence in these matters because it means very serious trouble for them. Of course the fear is real and everybody in the country would understand that kind of fear.

Among those who talked to me were two police officers. They gave me a lot of information about whom and how this attack was carried out. However,

the also told me that they simply have to keep quiet because if they try to do their duty in terms of the information they have received, they will lose their jobs. Once again this is not a surprising revelation.

A complaint about the incident has been made to the police and three witnesses have given statements regarding what they have seen at the initial stages of this incident. The police have said that they will also record a statement from me. I will make that statement. However, I do not have the least amount of faith that there will be any sort of credible inquiry. It is not simply possible for the police to do that kind of inquiry in Sri Lanka now because of the political directions that they have to work under.

So here we have evidence about who did this act and how, but what is the use of that information? The police are not going to do what they are expected to do under the law on the basis of such information. On the other hand these people who come forward to give information would be put at very great and real risk. That is the situation that I am facing about the investigations into this system and regarding that I do not know what to do.

I have no doubt at all that this is a completely political attack directed to ruin me completely, politically and otherwise. Now all that I had is lost. Even the basic equipment I used for my work has been burned down. I do not have any money at all to buy any of these things back.

Now I have been reduced to a position below zero.

The political environment of today is such that opposition politicians are first exposed to such attacks to ruin them from engaging in their political activity. On the other hand there are constant death threats. My possible assassination by this regime is a very real threat. I have been under threat all the time. Earlier there were two occasions on which bombs were planted at my political offices in my electorate. On one occasion as I received information earlier I was able to get the bomb squad to disarm the bomb. However, the second one exploded on the same day.

While such attempts are made to intimidate me as a member of the opposition there have also been constant attempts to buy me over. This has happened at the very inception of my political career nine years back and it has continued until now. Persons coming on behalf of the present regime have offered me huge sums of money and positions if I join the government. A deputy minister approached me and offered me up to Rs. 20-50 million if I joined the government and also offered a deputy minister's post. Then

another politician close to the president approached me with similar terms. Then there is a family known to me in Colombo. The lady who had connections approached me and offered me the same terms. I have informed all this to the leader of the opposition. I have also mentioned these things to some newspapers in the past.

Today, the existing political environment is a very dangerous one. The opposition political party members are not only prevented from doing their jobs but even the media is afraid to give us any space. Several media channels that earlier invited me to attend various public broadcasts no longer invite me. The media does not report what we say properly. Sometimes when the media try to do their jobs properly I was told they are called by someone from the top and severely warned to desist from giving such publicity.

I have a wife and three children. My son is 16 years old and my daughter 14 years old and they are both at school. The youngest child is very small. It is the political culture today to assassinate the wife and children if you cannot destroy the person who is your target. I am afraid that my family will be exposed to serious threats to their lives merely to teach me a lesson. That is how bad things are.

For years I have been writing to the international bodies of parliamentarians and the international bodies of the UN complaining about the threats I have been facing. I have copies of all the letters written to them. The file containing all these letters is now about one and a half kilos in weight. Despite of all such threats I had to face this arson attack and the threats to my family, my supporters and I.

I can do nothing but to appeal to all those people in the international community to come to my assistance and ensure protection to my family and I. There is no one else to appeal to. So I appeal to all persons with good hearts in the international community on this occasion for understanding of this situation and also to take steps for protection.

Another person targeted in 2009 for opposing the government was Stephen Suntharaj, 39, who had been working for the Centre for Human Rights and Development (CHRD) since March 2008 as a program officer. He formerly worked for the Child Protection Authority in Jaffna, where he took up so many cases of child abuse that he was threatened and ultimately had to leave the area.

In early March, a group of armed men in uniform took him from the front of the CHRD office in Aloe Avenue Kolpity, Colombo. A colleague witnessed the event. Immediately, CHRD sent its lawyer to nearby police stations and found Stephen at Kolpity police station. Stephen was kept at the Kolpity station for two months, under a detention order. During this period Stephen's wife and his lawyer had regular access, and he told them that he was treated decently but that the CID had interrogated him. On May 7, the Supreme Court (Halstrup) ordered his release and he went with his lawyer back to the office. Later Stephen's wife and three children joined him there, and a colleague volunteered to take them to her house. Since the Kolpity police had withheld Stephen's passport and national identity card, they went to the station and collected the documents. At this point the lawyer left.

But some minutes later the lawyer got a call from the colleague who had accompanied Stephen that a few men in uniform abducted Stephen in a white van. The car that carried Stephen was stopped by a motorbike just close by the Buddhist Ladies college (near Turret Road junction), with one man holding a pistol at the driver's side, while another man in uniform opened the side door, dragged Stephen out and then pushed him into a white van parked by the side of the car. There were many bystanders and Stephen's 8-year-old son begged the man in uniform not to hurt his father. Stephen's wife and others saw the men's faces, except for the man on the motorbike, whose face was fully covered. All were in uniform and armed with pistols. Despite this, the abduction remains unsolved.

There is no reason to believe that those who abducted Stephen were acting on any other instructions other than those from the people who authorised his detention in the first place. The entire responsibility for this abduction lies with the Sri Lankan government, as with those of tens of thousands of other victims of recent decades.

The zero status of Sri Lankan citizens today is perhaps best illustrated in the detention camps that have been created completely outside the law to house hundreds of thousands of persons whose

lives have been constantly and tremendously disrupted by civil conflict. If detention centres within the framework of the PTA had some form of legality, the new detention centres, by contrast, have no legality of any sort. The internally displaced people are completely outside legal jurisdiction—a fact that even the former chief justice, Sarath Silva, acknowledged in June before a gathering at a new court premises, just prior to his resignation.

Meanwhile, the Sri Lankan ambassador to the United Nations in Geneva responded to international concerns, stating that there was absolutely no problem with humanitarian access to the camps. He added that the high commissioner's offer of assistance would be accepted as soon as her office was "regionally a far more representative and transparent body". He further said that Sri Lanka is a sovereign country and would decide the degree of access it grants.

By the chief justice's own declaration, the people in the camps have been held completely outside the domestic law. By the invocation of "sovereignty" they are also being kept outside the purview of international law.

After the chief justice spoke, members of a Sri Lankan family who lost their home in the fighting and were among those in a tent camp filed a case with the Supreme Court, asking that their rights as citizens—including the right to freedom of movement—be respected. The petitioner claimed that these people had relatives and friends who were willing to take them into their homes, but the Sri Lankan authorities were holding them by force inside the squalid camps. The court granted leave to proceed with the case and posted it for November.

In another case, the AG's department objected in court to an application by a family divided in four camps to be united. The family moved the court to allow a 13-year-old girl suffering from injuries to be examined by a specialist doctor. Despite the AG's claim that she had already been taken to a hospital, the court allowed the girl to be taken to a specialist.

It is not clear on what legal grounds the department objected to the family's application to be united, but what is clear is that refugees and displaced persons are those who choose to leave their homes due to life-threatening dangers. The decision to leave, and later to seek government help for an alternative place to stay, is their choice, though compelled by circumstances. Anyone in such circumstances has the choice to seek refuge or to live by his or her own resources.

No government has the right to keep people forcibly in refugee camps if they choose to leave and find their own means of living. No government has the right to force people to live under conditions to which they do not consent. Just as all citizens have the right of consent regarding what they do, whom they marry and under whom they work, they have the right of consent regarding their living circumstances. The only exception is people who have violated the law. Internally displaced persons are not criminals and therefore no government is entitled to treat them as such.

The Sri Lankan government pledged before the United Nations Human Rights Council that it would resettle internally displaced persons within six months. However, this has not been possible, and nor was it seriously expected to happen, not only because of the lack of means to resettle people but because the government's approach to the people has been to treat them as the enemy. It has continued its militaristic methods, motivated by security fears, even though the security threat that the LTTE formerly posed no longer exists.

More importantly, the chief justice, the highest judicial officer of the sovereign nation of Sri Lanka, stated categorically that the internally displaced people are outside the legal jurisdiction of Sri Lanka. This raises questions on the meaning of the word "sovereignty" as used with regard to these people. The position of the Sri Lankan ambassador to Geneva on sovereignty is problematic, given the chief justice's forthright statement that he and the law he represents have no jurisdiction.

What defines sovereignty is the law. Anything that is outside the purview of law in Sri Lanka and outside the jurisdiction of

the courts is outside its sovereignty. The tent people in Sri Lanka have been, by the very declaration of the chief justice himself, held through naked political power that does not subject itself to the law. The high-sounding claims to sovereignty as a defence against international intervention are nothing more than abdications of responsibility for protection. Protection is guaranteed only within a framework of law. When the law does not exist, claims of sovereignty are nothing but rhetoric to justify neglect.

The neglect of citizens also is not an attribute of sovereignty. If a state claims that it has a sovereign right to neglect its people, if it wishes to treat them as zeroes, this is a corruption of the use of the word sovereignty.

Sovereignty does not exist by the mere counting of heads. It is not within the power of a majority of people, for example, to say by raising their hands that murder or rape will cease to be crimes in their country. The decision to starve or deny facilities to one section of the population also cannot be decided in this way. Perhaps under the present conditions the government may even be able to get the majority of people to say that prosecution for crimes committed against the opponents of the government is unnecessary. Would that be considered an exercise of sovereignty?

The Sri Lankan government has extended its disregard of the law to the international sphere. By arguing that human rights and humanitarian assistance should remain within the purview of sovereignty, it has made a mockery of the international process.

Not only were international monitors and agencies denied access to the camps, but elected politicians have also encountered difficulty in getting access to them. The People's Liberation Party complained that access to the camps was restricted and that even handing over aid donated for people in the camps was proving difficult. The leading opposition party, the United National Party, also repeatedly had to demand access to the camps and it has condemned the continued restrictions on their populaces.

The government argues that when compared to the risk to national security, the sufferings that internally displaced persons may have to undergo are of no importance. This is unsurprising, as it reflects their zero status as citizens in a country where public institutions also have fallen to zero. Whereas for centuries even the poorest people in Sri Lanka had learned to put up safe roofs over their heads when the rainy season arrived and live comfortably with warm cups of tea and homes arranged with their modest means, now even that much has been deprived to those in the camps.

This tragic drama of the camps is also a metaphor for the tragedy of all people in Sri Lanka, living without roof or comfort under a political system that demolishes the institutions that should afford some sort of protection and relentlessly rains down all manner of injustices. Devoid of avenues through which to have genuine complaints genuinely heard, all that Sri Lankans can do is suffer. Abysmal lawlessness is the handmaiden of citizens' zero status; it offers no refuge or relief.

Militarization and human rights in South Asia

Militarization anywhere in the world is a difficult problem to deal with; South Asia is no exception. History tells us that countries in the region have undergone considerable periods of economic exploitation and social repression, whether under feudal or colonial rule. After independence, locally established regimes in these countries also turned to ruthless methods of social control—often relying on the police and military—to maintain power. The region therefore shares a common harsh history in terms of bloodshed and deprivation of civil liberties, although the degree of harshness may vary depending on time and place.

Before we can begin to understand and solve the problems stemming from such violence and militarization, a few preliminary considerations are necessary:

Difficult problems must be seen for what they are

Misconceived notions of hope often mean that frank discussions of difficult problems are discouraged. Instead, it is suggested that discussion focus on positive aspects so as to sustain hope, rather than reveal the complexities of any issue. Attempts to generate positive attitudes detract from our responsibility and participation in solving the problem. They also facilitate looking at the world through rose-tinted glasses. This is not the real world however, which is particularly important when dealing with difficult societal situations. Contributing to the resolution of these requires serious attempts to first understand the problems, which may, at first glance, appear to defy any solution. With regards to militarization, if we are unwilling to look into the difficulties faced by people living in such situations, it is not possible for us to participate in finding a solution. Therefore, no apology is needed in presenting the difficult aspects of South Asian life today.

Experiences of average citizens are important

While it is possible—and even legitimate in certain contexts—to discuss peace, security and development on a grand, theoretical level, when the concern is resolving problems, it is essential to focus on how they affect ordinary citizens. This should, in fact, be the entry point to understanding the problems themselves.

It is therefore appropriate to briefly discuss the difficulties facing one of the participants for this conference, Mr Santha Fernando. Santha is well known to ecumenical and civil society organizations. He was stopped at the Sri Lankan airport on his way to this meeting, and has been detained under anti-terrorism laws for more than five days now. We have learned that a detention order has been issued by the Ministry of Defense to detain him for 30 days, which makes any application for his release in court futile.

Santha Fernando is a person of whom would be said, "He would not hurt a fly". And yet, he has been detained under charges of terrorism. Under ordinary law, any arrest must be based upon a reasonable suspicion of having committed a particular offense. What is the basis of any reasonable suspicion of Santha Fernando committing an act forbidden under the anti-terrorism law? There is obviously nothing of the sort, as those who arrested him are fully aware. We thus have a peculiar kind of arrest; an arrest for which there need not be any reasonable grounds. Only a declaration of the arrest is needed, in the face of which there is nothing the arrestee or his relatives can do. This is an exercise of power in the most absolute sense. Representations have been made by those with high social standing on his behalf, including bishops, lawyers and international organizations, all to no avail.

Santha's place of detention is not any regular prison, which in Sri Lanka are harsh institutions. It is the TID (Terrorism Investigation Division), notoriously known as the 'fourth floor' and infamous for harassment and torture. Even if Santha Fernando himself has not been subjected to torture, he would have heard the screams and stories of others exposed to violence. A young Sinhalese

journalist arrested and held in the TID for a short time was a changed man. He had not been tortured, but he saw and heard what was happening. After his release he did not even want to talk to anybody about his experience, as it had so thoroughly shocked and disturbed him. Detention in such a place is already enough punishment.

It must then be asked, what is the detention for, and what is the punishment for? Through the experience of Santha, someone known to us, we can understand what is faced by the tens of thousands of persons subjected to such arrest and detention, which has become a common occurrence. Everyone knows one or more persons who have faced such situations. It is necessary for us to take note of these experiences and participate in creating a relevant collective discourse. It is from this perspective that we should view the issue of peace, security and development.

South Asia's master-servant relationship, as shaped by the caste system

The common heritage of a unique servant-master relationship within the South Asian culture is another issue that we need to keep in mind during this discussion. What makes this relationship unique, is the lack of physical chains binding South Asia servants, unlike the black slaves of the United States and elsewhere. In contrast, South Asia developed a comprehensive scheme of internalizing servanthood. The chains are inside the minds and hearts of the people themselves. Their instincts have been shaped in such a way as to reproduce habits of faithful service to masters, even with smiling faces. This continues today, mostly through the institution of caste and other modes of internalized branding and degrading of humanity. A recent novel, The White Tiger by Aravind Adiga, portrays this servanthood graphically:

> The greatest thing to come out of this country in the ten thousand years of its history is the Rooster Coop.
>
> Go to Old Delhi, behind the Jama Masjid, and look at the way they keep chickens there in the market. Hundreds of pale hens and brightly coloured

roosters, stuffed tightly into wire-mesh cages, packed as tightly as worms in a belly, pecking each other and shitting on each other, jostling just for breathing space; the whole cage giving off a horrible stench — the stench of terrified, feathered flesh. On the wooden desk above this coop sits a grinning young butcher, showing off the flesh and organs of a recently chopped-up chicken, still oleaginous with a coating of dark blood. The roosters in the coop smell the blood from above. They see the organs of their brothers lying around them. They know they're next. Yet they do not rebel. They do not try to get out of the coop.

The very same thing is done with human beings in this country.

Watch the roads in the evenings in Delhi; sooner or later you will see a man on a cycle-rickshaw, pedaling down the road, with a giant bed, or a table, tied to the cart that is attached to his cycle. Every day furniture is delivered to people's homes by this man — the delivery- man. A bed costs five thousand rupees, maybe six thousand. Add the chairs, and a coffee table, and it's ten or fifteen thousand. A man comes on a cycle-cart, bringing you this bed, table, and chairs, a poor man who may make five hundred rupees a month. He unloads all this furniture for you, and you give him the money in cash — a fat wad of cash the size of a brick. He puts it into his pocket, or into his shirt, or into his underwear, and cycles back to his boss and hands it over without touching a single rupee of it! A year's salary, two years' salary, in his hands, and he never takes a rupee of it.

Every day, on the roads of Delhi, some chauffeur is driving an empty car with a black suitcase sitting on the backseat. Inside that suitcase is a million, two million rupees; more money than that chauffeur will see in his lifetime. If he took the money he could go to America, Australia, anywhere, and start a new life. He could go inside the five-star hotels he has dreamed about all his life and only seen from the outside. He could take his family to Goa, to England. Yet he takes that black suitcase where his master wants. He puts it down where he is meant to, and never touches a rupee. Why?

Because Indians are the world's most honest people, like the prime minister's booklet will inform you?

No. It's because per cent of us are-caught in the Rooster Coop just like those poor guys in the poultry market.

The Rooster Coop doesn't always work with minuscule sums of money. Don't test your chauffeur with a rupee coin or two — he may well steal that much. But leave a million dollars in front of a servant and he won't

touch a penny. Try it: leave a black bag with a million dollars in a Mumbai taxi. The taxi driver will call the police and return the money by the day's end. I guarantee it. (Whether the police will give it to you or not is another story, sir!) Masters trust their servants with diamonds in this country! It's true. Every evening on the train out of Surat, where they run the world's biggest diamond- cutting and polishing business, the servants of diamond merchants are carrying suitcases full of cut diamonds that they have to give to someone in Mumbai. Why doesn't that servant take the suitcase full of diamonds? He's no Gandhi, he's human, he's you and me. But he's in the Rooster Coop. The trustworthiness of servants is the basis of the entire Indian economy.

The Great Indian Rooster Coop. Do you have something like it in China too? I doubt it, Mr Jiabao. Or you wouldn't need the Communist Party to shoot people and a secret police to raid their houses at night and put them in jail like I've heard you have over there. Here in India we have no dictatorship. No secret police.

That's because we have the coop.

Never before in human history have so few owed so much to so many, Mr Jiabao. A handful of men in this country have trained the remaining 99.9 per cent — as strong, as talented, as intelligent in every way — to exist in perpetual servitude; a servitude so strong that you can put the key of his emancipation in a man's hands and he will throw it back at you with a curse.

You'll have to come here and see it, for yourself to believe it. Every day millions wake up at dawn — stand in dirty, crowded buses — get off at their masters' posh houses — and then clean the floors, wash the dishes, weed the garden, feed their children, press their feet — all for a pittance. I will never envy the rich of America or England, Mr Jiabao: they have no servants there. They cannot even begin to understand what a good life is.

Now, a thinking man like you, Mr Premier, must ask two questions.

Why does the Rooster Coop work? How does it trap so many millions of men and women so effectively?

Secondly, can a man break out of the coop? What if one day, for instance, a driver took his employer's money and ran? What would his life be like?

I will answer both for you, sir.

> The answer to the first question is that the pride and glory of our nation, the repository of all our love and sacrifice, the subject of no doubt considerable space in the pamphlet that the prime minister will hand over to you, the Indian family, is the reason we are trapped and fled to the coop.
>
> The answer to the second question is that only a man who is prepared to see his family destroyed — hunted, beaten, and burned alive by the masters — can break out of the coop. That would take no normal human being, but a freak, a pervert of nature.

A few centuries ago, many enlightened persons talked about educating these servants and assisting them to be free from such restraints. Nearly all countries of South Asia saw various movements for education, and even attempts to provide opportunities to break this internalized servitude. Many generations of such work has had its impact. The servants have begun to wake up and to want to walk away from their servanthood. Their masters however, have not had the enlightenment to end the master-servant bondage and begin a mutual relationship on the basis of humanity and equality. Rather, they have turned to their guns to suppress servants who no longer want to be servants.

This situation, in which servants—the larger sectors of society—demand a fundamental change to the traditional political, social and economic relationships, is the essential background to militarization in the region. Any discussion on peace, security and development must give serious consideration to this historical conflict and the present state of contest by the underclass. This contest is likely to continue until an effective solution is found, by way of social and economic rearrangements recognizing the equality of all. Mere legal recognition of equality, while the basic master-servant relationship remains unchallenged, is of little use.

Consequences of militarization

Having discussed some background and relevant factors to today's militarization within the region, let us look at a few incidents that indicate the impact of militarization on collective social behavior in different South Asian countries. These impacts include

kidnapping, the loss of legal protection, the undermining of civilian policing, the loss of importance of the individual and the lack of respect for women, among others.

Kidnappings

Kidnapping is a widespread problem in several countries. The extent of the problem is India is suggested by a photograph of a group of young children holding placards with slogans such as, "Kidnapping Uncles, do not kidnap us". This photo comes from the state of Bihar, known for the complete collapse of its rule of law and basic institutions. As a result, kidnapping for ransom has become a common occurrence, causing much parental anxiety.

The photograph of a six-year-old girl in Sri Lanka, amidst her classmates, was published in the media after she was kidnapped from school. Within hours of her kidnapping, some persons contacted her family in town, as well as her father who was employed in the Middle East. They demanded a ransom of 30 million rupees. Two days later, Varsha's body was found in a drainage ditch with her throat slit.

To make matters worse, although the Sri Lankan police arrested two persons suspected of involvement in Varsha's kidnapping, they both died in police custody, precluding any public trial into the case. Not only did the police fail to protect her, they also failed to find her after the kidnapping, and they denied the rights of the family and the public to know what happened by summarily killing the suspects.

There has been considerable discussion about the frequent practice of kidnapping in Bihar as well as Sri Lanka. Businessmen, professors and many other persons have been kidnapped for ransom. Kidnapping also occurS for revenge or intimidation. It is also used as a political tool to harass or blackmail individuals wishing to leave certain political parties or engage in 'disloyal' activities. Frequent kidnappings of this manner create a certain psychological state amongst society. People become wary of independent thought, free

speech, or even any initiative to assist others, in the fear of being kidnapped.

Frequent kidnappings are a symptom of the breakdown of social relationships as well as the institutions of rule of law and democracy. In these circumstances, kidnappings will be accompanied by extrajudicial killings, physical harassment of all types, the grabbing of private property, and illegal occupation of land.

The loss of legal protection

Under a rule of law system, many safeguards to individual rights are built into the legal structure. The practice of arrest and detention for instance, is subject to specific procedures to prevent any abuse of power. To further ensure that these procedures are followed, lawyers are legally entitled to intervene on behalf of the individual. An individual may not be aware of all relevant legal provisions, or may be afraid to assert their rights in the face of state officers who have the power to use force. Effective interventions by lawyers are therefore an essential component of protection.

When a society becomes militarized, the lawyer's role is minimized and may even completely disappear. This was noted in the March 2009 report of the UN Special Rapporteur on the situation of human rights in Myanmar: "None of the prisoners with whom the Special Rapporteur spoke had been represented in the court by legal counsel. Many of them did not even know the definition of the word 'lawyer'."

Although Burmese lawyers may wear black coats and ties like their counterparts in former British colonies, in reality they have little capacity to protect their clients. In effect, lawyers in Burma are a mere decoration. Their incapacity leaves their clients at the mercy of those who arrest and detain them.

The situation of the role and authority of lawyers in Burma differs only slightly from other South Asian countries, where lawyers complain of being ignored for a variety of reasons. The

increase in militarization drastically reduces the legal space available for consulting lawyers. Emergency regulations and anti-terrorism laws—known by different names in different countries—allow for long periods of detention with limited access to lawyers. Often the possibilities for bail under such laws are also limited, leaving lawyers with little to do by way of applications to courts. Moreover, courts themselves do not have the power to adjudicate on the legality of such detentions.

Not only does militarization increase the possibilities of—and decrease the safeguards against—arrest and detention, it also dispenses with fair trial in large areas of the law. In particular, those charged with offenses under 'special laws' are given no trials at all. Guilt and innocence is decided not by the courts, but by the police, military and other parts of the defence establishment. The disposal of fair trial further limits the space for lawyers to protect individuals, however unfairly they may be treated.

When court powers are diminished, it is made clear that the real decision makers are these other authorities; they are the ones to be approached for necessary matters, not the courts. This realization inevitably leads to widespread corruption. The relatives of a detainee for instance, may try to obtain his release by paying bribes to officers involved in the detention or with relevant connections. In these circumstances, lawyers willing to engage in such behavior become more wanted than those relying on professional abilities. Many lawyers complain that would-be clients first inquire into their connections to the authorities, before seeking their assistance.

It has been said that you know the value of lawyers only when they no longer exist. This is true in many parts of South Asia today; lawyers with real powers ensured by law are largely extinct.

The absence of a legal profession capable of effective protection serves to enhance militarization. Authorities therefore take extraordinary steps to attack and intimidate lawyers. Many lawyers appearing in cases against the ruling regimes are killed or suffer other grave attacks. Lawyers have had grenades thrown into their homes,

their offices set on fire, or their names listed in government websites as traitors for making representations in courts on behalf of alleged terrorists.

Judicial corruption

Complaints about corruption within the judiciary are heard throughout Asia. The increase of such complaints coincides with the increased use of emergency and anti-terrorism laws suspending the operation of normal laws. In fact, the greater the takeover by the military, the greater the possibilities for corruption.

The link between militarization and the increase of corruption among the judiciary is related to the undermining of the separation of powers. Under militarization, not only does the power shift to the executive, but the executive itself begins to come under military pressure. This change undermines the judiciary. Even though externally the courts may exist as before, internally there are substantive changes.

As with lawyers, those judges used to strict professional habits may find themselves making room for more ambitious and adventurous individuals ready to forsake justice for their own interests.

Undermining of civilian policing

Militarization impacts the local policing system in many ways. Most importantly, once the police are called upon to assist the military, civilian policing habits are undermined. Searching a home under normal criminal law for instance, requires police to obtain a warrant from a magistrate, to use minimum force, and to maintain proper reports regarding all events. Military searches are of a different nature however. They include heavy arms and many personnel, and inhabitants are told to surrender or be fired upon. In other instances, the police and military are used as secret death squads. Such operations are carried out with no regard to the law.

Military operations are often accompanied by impunity, while police actions are controlled by the law. When the police begin to work within a military environment though, they also acquire a taste for impunity.

A key function of the police is to investigate crimes, and yet under militarization of the police, routine criminal investigations are among the first to deteriorate. This is because police officers become too busy in other operations, such as providing security to politicians, to carry out criminal inquiries. Furthermore, the police are often required to create obstacles in cases where the state itself is directly or indirectly involved; they are told to disrupt complaint receiving mechanisms, to intimidate witnesses, or to tamper with the official records. They may even receive instructions—from political sources or their own superiors—not to investigate. All this serves to land honest officers in conflict, while generating the attitude that the pursuit of integrity is nothing but a way to get in trouble.

Ultimately, police officers learn to use their uniforms as a means to make money. It is far from uncommon in South Asian societies to learn of illegal arrest, detention and the fabrication of charges by the police, merely to earn some profit. The police begin to associate with criminals, developing shares in brothels and the illicit liquor and drugs trade. They then pose a serious threat to citizens. Security is impossible when the police themselves become instruments of insecurity.

Diminishing respect for women

Militarized environments expose women to serious forms of dehumanization. One of our own conference participants quoted a Tamil woman from Sri Lanka saying, "I don't to be born a Tamil and even more I do not want to be born a woman". The atmosphere is one of male domination, with the corresponding images of men enhancing their power with guns. On the roads and at checkpoints, women are often humiliated by vulgar language and behavior.

Rape also becomes a common feature. The military allows

a permissive atmosphere with regards to women to encourage men and youth to stay put in their assigned locations and duties. Encouragement of sexual adventures is also part of 'keeping up morale' among the armed forces. Many stories of girls abducted for sexual abuse and thereafter killed are thus heard in South Asia.

Apart from such direct abuse suffered by women at the hands of the military, they must also deal with problems affecting their loved ones, such as their husbands, fathers, brothers and sons being killed or attacked. Women heading families are a common feature in militarized societies. Under these circumstances, women face a twofold punishment. Firstly, in a society where economic powers are unfairly vested in men, their loss severely affects the economic life of women. Secondly, they must also bear the emotional loss of arbitrarily losing their menfolk.

Public debates regarding conflict and civil war in South Asia rarely discusses the consequences to women. As a result, a considerable amount of suffering is unrecognized and undocumented, even as it leaves a social impact. Life within society becomes bleak when large numbers of women are exposed to grave suffering, frustration and depression.

The loss of importance of the individual

When the Sri Lankan Secretary of Defence was questioned about the assassination of well-known journalist Lasantha Wickrematunge by a BBC correspondent, his quick response was, "When thousands are being killed, does the killing of one person matter?"

When media reports of killings are heard daily for years, sensitivity is diminished. One more killing does not seem to make any difference. If a society is to remain sane however, a great sense of outrage must be expressed on the issue of life and murder. The loss of such outrage signifies an extremely negative transformation, both morally and psychologically. It also creates further space for killings to occur.

Any rule of law system is formed around the importance of the individual. Every wrong against an individual is of prime importance in the development of civil and criminal law. To define an act a crime means that it is a wrongful act against an individual and society will take notice and offer just retribution. When these crimes are no longer matters of importance, the very foundation of criminology is undermined. This can only signal the abandoning of criminal justice.

Once criminal justice is abandoned, society is left in a situation where no collective control can be exercised on people's behaviour. Individuals can then no longer rely on collective support or protection.

The emergence of extrajudicial punishments is rooted in this loss of collective control and support. Mob justice is one such punishment, where people themselves decide on the punishments for whoever they find as alleged culprits of any offense. Proof of guilt and proportionality between crime and punishment are of little significance in these cases. More important is a sort of psychological satisfaction that something is being done against crime, which will intimidate others.

Another form of extrajudicial punishment is that meted out by the police or military, whereby persons are killed during or after their arrest. In different countries, this practice has different names—encounter killings, crossfire killings or self-defence killings.

Just as the life of an individual ceases to be a matter of importance, so threats to private property are also of no importance. Theft and land grabbing are common complaints in South Asia today. Legal redress for such wrongs is as difficult as redress for personal wrongs.

Obstacles to the realization of contract and tort

Civil law requires that dealings on properties and transactions be based on contracts. For this, it is essential that contracts can be

enforced. When militarization undermines the law and courts can no longer inspire confidence to hold individuals to what they have agreed, the certainty of contracts is in question. The performance of obligations becomes dependent on who has greater force or authority at their disposal; in other words, those with police or military connections.

The same can be said regarding the law relating to tort. The system of compensation for negligent actions on the part of the state or private sector acts as a deterrent when effectively implemented. When those in power are beyond the challenge of the law, negligence cannot help but spread. A public health system left in the control of individuals not subjected to legal scrutiny for instance, can lead to negligence in the purchase of medicine, storage of medicine, the treatment of patients, record keeping relating to treatment and many related matters.

Loss of memory, loss of language and loss of attitudes

Once collective consensus on basic social norms and standards has been destroyed over a lengthy period of militarization, significant damage is caused to society's memory and language. This is well demonstrated in the experience of South Asia.

South Asian societies for instance, no longer have a concept of a public officer who will not abuse power. While this can be somewhat attributed to abuse of power under feudal and colonial rule, significant losses have occurred from achievements made in the 19th and 20th centuries. Many juridical notions developed after enlightenment in Europe were brought to South Asia. The transformation of medieval systems of social control to a process of reason is a significant human accomplishment. The development of jurisprudence and legal practices on the basis of rational principles rather than the whims of those in power is not just 'a western affair', but the triumph of humanity.

Such development requires enormous effort in any society. It involves the education of generations of people on these notions,

as well as the practices required to uphold them; educating civil servants, the intelligentsia and the population as a whole is no small matter. The introduction of these systems in most South Asian countries happened during colonial times, or with colonial influence. Inevitably, colonial interests conflicted with a rational system of justice and rule of law, which meant that only partial transformations occurred.

This meant that post-independence, new ruling regimes had to undertake several unaccomplished tasks if they wanted to see the functioning of effective justice and law systems. However, the new governments in South Asia faced such overwhelming responsibilities that they paid little attention to the development of a rational system of justice. Instead, they were consumed by the need to win popular votes. In the contest for power, they lost sight of society's long term interests.

The first casualty of emerging crises within the new nations was the limited system of justice administration. Modifications to the system in order to deal with immediate problems largely resulted in the removal of basic protection mechanisms and the erosion of rule of law foundations.

Militarization emerged from such a background, and began to undermine weak justice systems that could not withstand the pressures of the military. The narrative of how this happened in different South Asian countries is a sad tale of how the struggle to base the administration of justice on rational notions of jurisprudence was abandoned.

The failure of certain practices in society will inevitably lead to a lack of knowledge about them. When the judiciary no longer stands against the wrongdoings of the executive, people will forget what the independence of the judiciary, or the separation of power means. In the same way, words and concepts lose their original meanings. With the change of relationships, there is also a change in the meaning of words. 'Judge' may begin to signify someone who

rubberstamps the diktats of the government and a cynic who allows justice to be subjected to the rules of the marketplace. A 'policeman' can be seen as a terror and someone who could engage in any kind of immorality without suffering any consequences. A 'trial' can become a mockery; a show trial. Legal procedures, held at one time as strict rules ensuring fair play, are now trivialities to be dispensed with by anyone, at anytime.

The loss of the memory of a rationally functioning justice administration is accompanied by a change in the associated language. This will affect social attitudes. People will begin to lose respect for relationships based on laws. The acquisition of goods and power by whatever means, emerges as a legitimate social ideal. The crudest forms of selfishness cease to be considered socially denigrating.

The meanings of militarization

Politically

If we compare militarism with democracy (even in the third world sense), we find:

- The source of legitimacy in a democracy is a constitution based essentially on the separation of powers. This is true even when it does not abide by any of the basic principles of liberal democratic constitutionalism.
- For militarism, the source of legitimacy is the capacity to use force; the gun itself is the legitimacy. The use of the gun is not subjected to any overriding rules or monitored by institutions. Under militarism, if there is a constitution at all, it is just a paper on which the military ruler or clique can incorporate whatever they wish.

Legally

In a democracy, the entire system is subjected to the rule of law. This implies that:

- Laws arrived at by consensus are above everything else.
- The implementation of the law is subjected to a process laid down in the law itself.
- The rulers, like everyone else, are subjected to this law and process.

In any study of the change from a democratic state to a militarized one, we may notice the following stages:

- Initial resistance in varying degrees towards militarization.
- A lessoning of democratic and legal resistances, and the serious weakening of the voices of the middle class.
- The virtual disappearance of any legal forms of resistance or opportunities for such resistance.

Under militarism, the ruler is above the law. This means that carrying out his orders need not be subjected to any process; the ruler can decide on whatever way his orders are implemented.

Socially

- The military's increasing grip on society is accompanied by a gradual displacement of reason.
- The idea of building consensus on the basis of reason is displaced with blatant forms of propaganda that create the impression of artificial consensus.
- The distinction between truth and the absence of truth is made relative to the extent that all rules of language and discourse to convey meanings become irrelevant. Words can have whatever meaning given to them at a particular moment.
- Facts and figures lose significance, creating a 'no-fact zone'.

Accountability

- Auditing ceases to be a matter of significance in the military context, while in the democratic context almost everything centers on accounting and auditing.
- Militarization gradually removes the distinction between public

and private. This applies to property ownership as well as decision making.

Morally and ethically

- Under militarization, the absolute prohibition against murder ceases to be significant; murder becomes a lesser evil. In this way, murder becomes a way to settle disputes and to threaten individuals.
- The cheapening of life extends to other areas such as personal and family relationships. Moral abuse becomes normal even in relationships where guardianship is involved.
- Reformers who wish to improve things are uncertain of where to begin or whom to rely on for support.
- Distrust towards others is the norm.
- Powerlessness becomes the excuse for compromise, no matter how morally unacceptable.

The way out

The only way out of such militarization is to:

- Develop the capacity to understand the shock and shame suffered under these circumstances, as well as collective shock and shame. In the aftermath of WWII in Germany, people suffered various illnesses, resulting in the famous book, 'The Inability to Mourn – principles of collective behaviour' by Alexander and Margarete Mitscherlich. Individual and social recovery was dependant on the capacity of the people to admit their plight and mourn, and thereby find the path back to recovery.
- Raise fundamental issues relating to public and legal institutions. Although public confidence in justice mechanisms may have been lost, recovery requires bold attempts to discuss these issues.
- Document every incident of abuse and develop databases and information centers for this purpose. Elie Wiesel, the Nobel

prize laureate, recalled the advice of the Rabbis at the height of the holocaust, when they told people to make records of everything they see happening to others or themselves. The literature that survived through this provided the basis for later reflection and helped the recovery process legally, socially and spiritually. One remarkable piece of this nature is the Diary of Anne Frank. There is no alternative to dedicated documentation of injustice and abuse. The night, when it comes, causes havoc—but faithful records of that havoc is an essential component for the recovery of the conscience.

A discussion on Sri Lanka's 1978 Constitution and impunity

The Sirasa Rupavahini Television Service has conducted a series of discussions on the 1978 Constitution of Sri Lanka, which has brought into focus some of the Constitution's fundamental defects. Most of the themes discussed are not in fact new, with several groups reflecting on these defects in the past, as well as a certain amount of literature produced on the issue. The importance of the Sirasa TV discussion however, is that it brought the issue to the nation, and created the possibility for wider debates on this important topic. This article will give a brief overview of the TV discussions, before elaborating on some aspects important to this topic that were not taken into account.

The participants in the TV discussions were Sri Lanka's former chief justice Sarath Nanda Silva, and senior consultant to the Ministry of Constitutional Affairs, Uditha Igalahawa. They were able to clarify some basic constitutional issues, as well as explain the background to the evolution of constitutional provisions. The TV discussions also gave a prominent place to the historical evolution of the 17th Amendment.

The discussions are based on the foundation of the civil administration introduced by Britain in Sri Lanka. Having developed a decent system of civil administration in its own country, Britain attempted to create a similar model in Sri Lanka. In fact, Britain's civil administration is one of its greatest strengths, lasting to the present day with the necessary adaptation and sophistication.

This basic administrative system, adopted and incorporated into Sri Lanka's first constitution after independence, suffered serious interference in 1972. When the Civil Service Commission was abolished in 1971, its functions were incorporated into the functions of the cabinet itself; in 1972, cabinet ministers took over

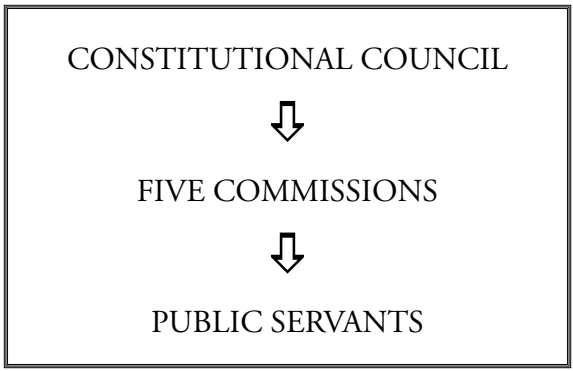
the functions of the previous civil service commission.

The most important of these functions were the appointment, promotion and disciplinary control of all civil servants. The taking up of these by the cabinet resulted in a discontinuity with the traditions of civil service introduced by Britain, in which the position of the permanent secretary of a ministry was key. These permanent secretaries played prominent roles in shaping their ministries. Direct cabinet interference into the workings of the civil service damaged its independence, and led to the problem of politicization.

While the Civil Service Commission was restored in 1978, the position of permanent secretary was not restored. At the same time, the creation of the Executive Presidential system meant that the ministers came under the President's control. The process that began with the cabinet taking over ministerial functions was now continued by the President deciding on appointments, promotions or disciplinary control relating to the civil service.

1947	**1972**	**1978**
CIVIL SERVICE COMMISSION	CABINET	EXECUTIVE PRESIDENCY
⇩	⇩	⇩
CIVIL SERVANTS	CIVIL SERVANTS	CIVIL SERVANTS

The 17th amendment to the Constitution (2001) was an attempt to remove this interference through independent commissions that would oversee the appointments and such of civil servants. Five of these commissions were appointed, and they were to ensure that the civil service had the necessary independence to function well, with no direct interference from the president. In turn, these commissions were to be appointed by an independent Constitutional Council.



While the above overview of the problem facing Sri Lanka's public administration is accurate, the Sirasa TV discussions missed one fundamental factor: the rule of law. The British civil service, like the entirety of the British system, was based on the foundations of the rule of law. In fact, perhaps unlike any other nation, Britain built itself on the respect for rules, which was developed together with respect for rule of law. Its unsurpassed attachment to the supremacy of the law even allowed for the head of a king to be sacrificed to establish this principle. Supremacy of the law rather than supremacy of the ruler was deeply entrenched into the British justice and administrative systems. Any discussions on the British administrative heritage left to Sri Lanka should therefore be discussed within the rule of law framework. This would lead to a different set of implications regarding the country's present problems.

The interference into the country's constitutional framework in 1972 and 1978 led to not just the politicization of the civil service, but the abandonment of the supremacy of the law. The executive presidential system as envisaged by the 1978 Constitution placed the president above the law. Article 35 of the Constitution, as well as many other provisions, should be seen as an attempt to displace the rule of law framework and to give the president power to act without following basic rule of law norms.

Conflict between Judiciary and Executive Presidency

Since 1978, there has been interference not only within

the civil service, but also with regards to the judiciary. While the Sirasa discussions gave the impression that interference towards the judiciary was somewhat mitigated by judges being in charge of the Judicial Service Commission, in fact ignoring the separation of powers between the executive and judiciary was inherently damaging to the judiciary and the entire rule of law system.

The presidential system's impact on the judiciary could have been dealt with by rule of law concepts and the insistence on the supremacy of the law. By adopting this approach, the judiciary could have interpreted section 35 of the Constitution—the absolute prohibition of bringing lawsuits against the president—for instance, as a prohibition limited to lawsuits not dealing with the presidential system's interference with rule of law fundamentals. In other words, the court has the power to entertain lawsuits and address matters regarding the president's interference in issues of rule of law.

Similarly, when the issue of the president's non-appointment of Constitutional Council members came before the court, it should have interpreted the action as interfering with the entire system of the rule of law, in addition to the fact that the president was obliged to make these appointments immediately.

Such a ruling by the court would have led to deeper discussions regarding supremacy of the law; without dealing with the fundamental issue of whether the president is above the law or not, it is not possible to resolve the constitutional problems facing Sri Lanka today.

The issue of the supremacy of law did not come up only regarding the 17th Amendment; in fact, it came up very early on since the adoption of the 1978 Constitution. For that matter, the first appointment of the first president without an election could have been challenged on this basis. The referendum issue before the Supreme Court in 1982 should also have been decided on this basis; if the Sri Lankan president can postpone parliamentary elections for six years by a referendum, surely that is a blow to the supremacy

of the parliament, which is the law making body and thereby a fundamental component of rule of law.

There is no way to ignore that the 1978 Constitution unsettled the very foundations of constitutionalism and dealt a blow to the supremacy of law. Its shortcomings are not related to the Civil Service Commission and independent selection alone, but also to the powers of the executive and the disabling of the rule of law framework. This is a key issue that needs to be addressed when discussing the 1978 Constitution.

Under the separation of powers principle, it is the judiciary's duty to limit executive power within the framework of the law. This may create a conflict if the executive insists it is above the law, but the judiciary cannot avoid such conflict without abandoning the rule of law. If the judiciary dares to face the conflict, people themselves would have an opportunity to intervene, to save the rule of law system. When the judiciary avoids the conflict however, the executive is allowed to stand above the law. In the same vein, Sirasa TV should not avoid dealing with the key problem posed to the country by the 1978 Constitution. Dr Colvin R De Silva did not mention that this constitution is an imitation of the one made by Jean Bedel Bokassa of the Central African Republic in jest.

Executive Presidential System—A constitutional development based on distrust

From 1972 onwards, the development of the country's constitutions was related to the distrust of the previous system of governance, as introduced through the 1947 Constitution. The government that brought about the 1972 Constitution was a coalition government that considered itself to be progressive compared to its description of past conservative governments. The United National Party was seen as the party of the more conservative sections of society, and also the only party representing the wealthy. The three parties that constituted the coalition government saw themselves on the left and as having a programme of development different to previous ones.

The coalition government viewed the government bureaucracy as well as the judiciary with suspicion. Both were seen as conservative apparatuses, and the new progressives feared both may obstruct their goals of rapid development and social change.

These fears and distrust were incorporated into the 1972 Constitution, which removed the Civil Service Commission and the Judicial Review.

Sri Lanka's civil service had certain traditions and rules, as well as positions of prominence and influence. The role of the permanent secretaries of the ministries for instance, was one of the most important civil service positions, usually filled by persons with many years of experience. The new government's distrust of the civil service, viewing its personnel as persons who may deliberately sabotage its development goals, made it keen to ignore civil service rules and procedures in implementing its programmes promptly. Perhaps the government was also concerned with achieving significant development progress so it had a better chance for reelection. For this reason the government abolished the Civil Service Commission, and appointed its own persons to head the various ministries.

The Judicial Review that was abolished by the 1972 Constitution made it possible to examine the legality of any law at any time, and its consistency with the Constitution. Viewing the judiciary as conservative and not so sympathetic to its objectives, the new government worried that the opposition may use the courts to challenge the legality of laws it wanted to pass. It was concerned that the judiciary would declare new laws to be null and void on the basis of inconsistencies with the Constitution, and hence shortened the period of examination of a law's legality.

The constitutional changes brought about with the 1972 Constitution were thus of a fundamental nature, especially compared to the 1947 Constitution, which recognized the independence of the civil service as well as the separation of powers.

Further distrust inbuilt into 1978 Constitution

The constitution of 1978 was written when the United National Party had 80 percent of the seats in parliament. This government's distrust was of a different nature; the president, who had been in politics for a long time, distrusted everyone and every institution except himself. He therefore attempted to disempower everyone else and prevent any challenge to his authority through a new constitution.

Through article 35 of the Constitution, he placed himself in a position where no lawsuits could be brought against him for whatever reason. Meanwhile, by making himself the Executive President, he took upon himself all the powers of the cabinet. The 1972 Constitution took the powers of the civil service and placed them with the cabinet ministers. In 1978, the Executive President took upon himself all the powers of the cabinet. The cabinet ministers could be appointed and dismissed at will while the Prime Minister had no power of any sort.

The Prime Minister could also be appointed and dismissed at will, and the parliament could be dissolved at the behest of the President one year after its election. The capacity of the parliament to interfere with his power was therefore practically nil. Moreover, it is well known that the President obtained letters of resignation from all his party members in parliament. He kept these undated letters to be used as necessary; these persons were all at his mercy.

This was a system based on total suspicion of everyone except for the Executive President himself. The system operates on the premise that anyone who rules the country must be able to do so by himself. Newspaper articles have been published in favor of this system, on the basis that Sri Lankans are culturally incapable of operating as a team.

The underlying principle of the Executive Presidency is that when in power, nobody can be trusted and therefore the ruler should be able to rule alone. This is why there is no constitutional

provision for the office of a vice president; he could assassinate the president and take power for the remainder of the term. Similarly, the parliament is distrusted because a parliamentary majority can be lost if the opposition can poach some of the members to its side. Cabinet members may also shift their loyalties, so the ruler should be able to dismiss his cabinet and keep it in dependence to himself if he wants a stable government.

An argument in favor of a single ruler was developed on the issue of minorities: in a majority Sinhalese population, the parliament will always take the side of the majority so the minorities cannot hope for justice through this avenue. The alternative tacitly agreed on was to rely on the President rather than on parliament. Minority parties thus supported the President for a long time, in the hope of obtaining concessions from him which they might not be able to get from parliament.

The single ruler theory was strengthened by the country's ethnic conflict that developed into a 'war'. The more militant nationalists rallied around the president in order to demand a military solution to the problem, finding that such an objective was not possible through the parliament. Within development discourse as well, it is now argued that one man can work better than a collective leadership.

In essence, the argument in favor of the executive presidency is that Sri Lankans are untrustworthy and can only be led by a single man in power. A system of power built on this basis cannot create the collective leadership needed to deal with the problems of a nation. As long as this one man theory is accepted, the abuse of power, violence and irrationality that has marked the existence of this system will remain as unavoidable consequences.

Litigation

Writing the narratives of justice—The case of Gerard Perera

Litigation aimed at improving criminal justice

Sri Lanka: A murder tolerating nation

Writing the narratives of justice—The case of Gerard Perera

In their pursuit of justice, Sri Lankans will learn that the real problems they face come from the dysfunctional criminal justice system itself. Building a narrative on these difficulties and working to address them is therefore an essential component of seeking redress for rights violations. Before these difficulties can be addressed or redress can be sought, it is necessary to actually know and experience the problems. Collecting ordinary people's narratives is thus essential, not only to provide detailed information regarding relevant issues, but also as a record and testimony.

This article will briefly recount one such narrative, that of torture victim Gerard Perera, and then discuss the lessons learnt from this case.

The case of torture victim Gerard Perera, who was subsequently murdered prior to testifying in court against his torturers, was one of the most challenging cases faced by the Prevention of Torture project in Sri Lanka, and that too while the project was still establishing itself.

Perhaps the biggest lesson that was learnt from Gerard's case, was that all inquiries into police misconduct stop at the level of the Officer-in-Charge (OIC) of the police station. Inquiries into higher ranking officers are usually unheard of, except in special circumstances. This is in fact a major stumbling block in Sri Lanka's criminal justice system.

For this reason, while Gerard's arrest on 3 June 2002 took place on the instructions of an Assistant Superintendent of Police (ASP), this officer was never questioned upon Gerard's murder. This ASP had six officers under his charge, under the leadership of Sub-Inspector Suresh Gunawardena. The specific task of this team was

the investigation of a triple murder. Nearly 10 days after the murder, the investigations were unsuccessful. During the course of these investigations, information regarding Gerard Perera was received, and orders were given for his arrest. These orders would definitely have come from the ASP. Similarly, it would also be with the ASP's consent that Gerard was released on June 4 as an innocent man who has been unnecessarily exposed to harsh treatment.

Despite investigations being conducted into this incident, as well as a high court torture trial, at no stage was a statement recorded from the ASP, nor was he called to give evidence at court. All the six accused police officers gave statements that they were a special team carrying out orders of this ASP. At the end of the trial, Sena Suraweera, the Officer-in-Charge of the police station where Gerard was tortured testified that the investigation into Gerard was not under him, as prescribed in the Criminal Procedure Code, but was rather carried out under the directions of the ASP.

In these circumstances, it would not be unreasonable to expect the ASP to have been made a witness. However, even when the inquiry was taken over by the Special Unit of Enquiry, it did not question the ASP about the circumstances that led Gerard's arrest, detention and assault. In fact, even though there is nothing in the law to stop their investigations into the conduct of an Assistant Superintendent of Police, this is not normally within the purview of their investigations. According to normal practice, officers above the rank of OICs are only investigated if there are special orders given.

Gerard's family and friends sought the assistance of the AHRC's network in Sri Lanka when he was first arrested and tortured. Gerard was well-known in his village and he was also well-known in the harbour where he worked as a cook. His many friends supported his wife when Gerard was unconscious. They brought the relevant information to a young lawyer working with the AHRC, Sanjeewa. Sanjeewa spent a lot of time at the hospital, partly shocked by the incident, and partly keeping in touch with Gerard's friends and family and gathering the necessary information. Sanjeewa would contact the AHRC in Hong Kong through telephone and emails,

where the information would be turned into news dispatches, urgent appeals and affidavits. All the documents that were to be filed in the Supreme Court for this case were drafted in Hong Kong.

The Sri Lankan media responded positively, with this news being carried in major newspapers, as well as on the radio and television. That an innocent man was lying unconscious and may succumb to death due to police brutality was drama enough to get people's attention. International support was also prompt, with interventions from the European Union, the British government and many other sources. The Sri Lankan government was thus was under considerable pressure to conduct a proper investigation.

Despite this pressure, no serious inquiries were made into Gerard's arrest and torture. It was only a year later, after the Supreme Court gave a judgment in favour of Gerard, one of the most outstanding and outspoken judgments on torture up to that point, that any investigation began. Subsequently, charges were filed against those involved in the brutality, and Gerard was to testify against them. Gerard then received several warnings against giving evidence in court, which he ignored. Finally however, he was shot on 21 November 2004 while travelling to work, and he died from his injuries a few days later.

Just a few days before Gerard was shot, a high court judge was assassinated by an accused facing a murder charge in Colombo. This news shook the nation. The Special Unit of Enquiry was therefore saddled with two major cases at the same time, and naturally, the judge's case would have received more attention. We were later told by inquiring officers however, that international pressure on Gerard's case exceeded that of the judge. This was possible due to the AHRC's consistent urgent appeals and news dispatches.

The investigative officers were able to identify and find the person who shot Gerard, after which the entire story came out easily. All the involved police officers were arrested, and due to some kind of agreement, they made voluntary confessions to the magistrate stating the circumstances of Gerard's murder.

From the police arrest and torture, to Gerard's murder, we can see a pattern in the behaviour of the police, who were adamant to make the investigations as difficult as possible, as well as keen to destroy evidence. The ASP should have divulged to his superiors the circumstances under which Gerard was arrested and tortured, but he instead observed complete silence, leaving the investigators to conduct their search. Most importantly, the investigation into Gerard's torture took place nearly two years later.

In a lengthy interview given to a group of women journalists from abroad, Gerard's wife attributed his murder to this delay in the investigation. She noted that either the investigations should have been conducted immediately after the torture and the matter should have been brought to a speedy closure, or the entire incident should have been forgotten. Instead, the investigators waited until the Supreme Court gave a judgment; the outspokenness of the judgment itself inspired fear in the accused. Under these circumstances, Gerard's murder took place.

Engaging the state and civil society

How to engage an unwilling state on the improvement of basic rights protection, and how to engage a demoralized civil society are two questions around which the Prevention of Torture project in Sri Lanka has been occupied with. The Sri Lankan government has been very reluctant to engage with its own people, much less with the international community. This could be due to its preoccupation with security concerns, to the unfortunate detriment of everything else. Regardless of the reason or its validity, what is to be noted here is the government's unwillingness to engage with civil society, particularly regarding the improvement of human rights protection and the elimination of torture.

The failure of the state to engage with its citizens for the development of its own institutions is a basic problem faced by many 'third world' societies. This is not therefore a problem unique to Sri Lanka, and lessons learned from this work can be shared.

Without engagement with the state, it is not possible to achieve an improvement in the quality of life, which under modern conditions, includes the improvement of human rights. It is then unavoidable for civil society and committed individuals to find ways to make themselves heard and engage with an unwilling state.

Life narratives

Under such circumstances, the torture prevention project tried to engage the government by many means, the most important of which was constant publicity of the problems faced by the people. The heavy reliance on publicity was not only because publicity is an important element of change, but also due to the state's peculiar reluctance to engage in a discussion of people's day-to-day problems. By consistently developing detailed narratives of people's experiences at police stations, and publishing them locally as well as internationally, the torture prevention project created a situation in which these problems cannot be ignored.

Life for the people goes on, irrespective of what the state does or doesn't do. The strategic thought behind the torture prevention work was to go beyond the usual human rights model of naming-and-shaming, and to create a faithful narrative of the lives of as many persons as possible, for its own value. The centre point of the work was that the life of the ordinary individual is of ultimate value to democracy. This being the case, individual life narratives are worth recording, even when nothing can be done to correct the wrongs being faced. During this time we even introduced the slogan, 'when nothing can be done, let us try to do something'.

The extent of the state's unwillingness to act was well known; no one was under the impression that the information collected and taken to courts and other places would produce results. Rather, it was presumed that despite the state's unwillingness to act, recording people's experiences is of fundamental value to the person, to democracy and humanity.

If their bitterest narrative has little meaning to the rest of society, people lose interest in their own narratives. When a society

reaches that point, it is a fundamental problem, which can lead to greater problems at the psychological, emotional and societal levels. In addressing societal demoralization, we believed that a reliance on the detailed life narratives of people was the way to begin our work.

State and institutional narratives

Recording the narratives of people facing torture and other acute problems at the hands of the state has indirectly meant recording a narrative of state behaviour. People's narratives thus describe the institutional behaviours of the police, prosecutors, judiciary, as well as policy makers, all of whom would in some way be involved in an individual's pursuit of justice. The narratives include the way police officers talk to them, the way they think, the extent of their education and training. In fact, a wealth of knowledge about the habits and attitudes of state officers can be found within these narratives. This information does not pertain to the extraordinary behaviour of extraordinary individuals, but to the ordinary behaviour of officers. If they beat up someone, it is not because they were angry or drunk, but because such behaviour is very much tolerated and condoned within the policing institution. Seeing the behaviour of state officers in action is essential in understanding how the state works. How these officers are expected to act, in accordance with institutional norms and standards, has little to do with how they do act.

Their actions also reveal their expectations of the institution they work for, as well as their attitudes and prejudices. Be it a police officer or a judge, all of this is indicated in the way they perform their duties; how they deal with witnesses for instance, or how they assess evidence. Their attitudes are so contrary to international norms and standards that it behoves the international community to reconsider the problems involved in the actual implementation of these standards.

Gap between norms and narratives

While considerable success has been achieved by the international community regarding the promotion of international

norms and standards, including the ratification and adoption of various conventions and principles, and even the enactment of corresponding domestic legislation, it would be an illusion to believe that those principles are actually applied in daily life. The narratives collected clearly reveal an enormous gap between the attitudes of state officers engaged in the administration of justice, and the relevant international norms.

This gap between theory and practice is only made worse by the impatience of international experts who come to train local human rights activists. These 'experts' are usually preoccupied with international norms and standards without any genuine understanding of local realities. They assume that once these norms and standards are 'introduced', they will be implemented in no time as well. The problems involved in developing local institutions and mentalities to the extent that they are able to assimilate international principles are entirely overlooked by them.

Understanding how human rights implementation actually occurs (or does not occur) can only be done through a close observation of local human rights stories. How torture happens or does not happen was learnt through the narratives of persons facing torture, or persons who are able to resolve problems without the use of such torture. It is important to appreciate that local experiences do not come in accordance to specific standards. International experts in many cases want to find situations according to the measurements they have in their minds. If reality does not fit these measurements, they would rather deny or reject the reality, than re-examine the method for dealing with the problem. Casual condemnation of this or that institution and the lack of any sustained work to understand why institutions behave in certain ways is common within the human rights field. Such impatient criticism is often made with the expectation that the authorities will soon adjust and instruct their subordinates to conform to international standards. What in fact happens is that the senior officials exposed to such criticism learn to hide local narratives.

Unlike the international experts, local human rights activists

are primarily concerned with understanding why human rights violations take place; why do policemen beat up people they arrest for petty offences, for instance? In this attempt to understand, local activists will confront many problems associated with the elimination of torture, which international experts may not even want to know, in their impatience to solve the problem before understanding it. Local activists cannot afford such methods however, as they are aware that to change local circumstances it is essential to develop a relevant public debate and consensus.

The more narratives that are collected, the more material there is for analysis and understanding. The huge number of stories of persons being assaulted and tortured at Sri Lankan police stations has led to discussions on torture for the purpose of extortion and intimidation. This is very different to the explanations discussed in international seminars and forums, which tend to focus on military torture, or various torture methods developed to extract information by different governments.

Feudal attitudes

The assumption that Sri Lanka's society is a law-based one is very much challenged by the data gathered through local narratives. Rather, the narratives reveal a system of social control, based not on law, but on the constant creation of fear, particularly among the rural population. Though Sri Lanka has experienced a certain amount of modernization, its society is still, by and large, rural-based. In these circumstances, police officers play a big role; while their power may be minimal in terms of total state structure, they exercise enormous power locally.

In fact, much of the local political establishment is itself based on links with the policing institution. For this reason, any changes in the policing institution will affect the country's political terrain as well. At present, Sri Lankan society is ruled by old, feudal methods of social control, where power and feudalism are greatly linked. The way power is exercised within the country is mirrored in the way the police exercise its authority over ordinary folk; through the use of physical force rather than the use of rational laws and procedures.

Sri Lanka's rule of law crisis is therefore not just a question of police officers not conforming to the law. The police are in fact expected to act as a power by themselves; as social controllers, the use of physical force is expected from them. This situation worsens when political or social crises occur. In so called emergency situations, the police are given unlimited power to ensure order and security. With such power, the disappearances plaguing the country were not extraordinary; police officers could now engage in murder and the disposal of bodies with impunity.

Overlooking local realities and narratives, and merely focusing on international standards can only lead to absurdities. These narratives describe not only the difficulties and suffering faced by individuals, but also the nature of various public institutions, the problems within the institutions, the attitudes and mentalities prevalent within the institutions; all of which work to create an abuse of human rights protection. Local facts are therefore the basis of understanding how power is exercised within Sri Lankan society, and how rule of law functions. Human rights studies that ignore these factors only result in being ignored by both the authorities and the people.

Today, the human rights movement in Sri Lanka needs to win back public confidence. International norms and standards cannot be forced down the throat of an unwilling society or authority. The existing system of power needs to be studied and analyzed, and a discourse needs to be created to transform society from a non-rule of law based one into a rule-of-law based society. Only during such a process of transformation can society gain respect for international norms and standards.

Litigation aimed at improving criminal justice

An interview with Basil Fernando, by Lutz Oette, staff member of Redress

Basil Fernando is a Sri Lankan lawyer. He had to leave Sri Lanka in 1989 when the country was in the grip of a state-sponsored campaign of forced disappearances and extrajudicial killings, and he became a target of the Sri Lankan police on account of his human rights activism. Subsequently, he worked for the UN in post-genocide Cambodia and is now director of the Hong Kong based Asian Human Rights Commission (AHRC), one of the leading regional human rights organizations in Asia. Basil Fernando and the AHRC have championed human rights from below, with a strong focus on empowering the people, including the most marginalized. They have also worked vigorously towards strengthening the rule of law at all levels of society, particularly within the policing system. [Further information about Basil Fernando and the AHRC are available from www.basilfernando.net and http://www.ahrchk.net respectively].

What is distinctive about your approach to litigation?

BF: We try to establish a different type of lawyer/client relationship than what usually exists in Sri Lanka. The reason for this is that torture and human rights abuse victims generally come from socially weak sections of society. They do not have the social skills of litigants who can approach lawyers in their chambers, adjust to their time schedules, do preliminary preparation such as collecting documents, and pay their fees.

We have therefore created a solidarity group consisting of people who are close to the victims, but who have better social skills and can do the things that the victims are usually expected to handle themselves. We also expect the lawyers involved in this kind of litigation to take greater trouble to assist the victims.

The protection of both the victims and the lawyers who work on these cases are something we have to consider at all times. There are several well known cases where the victim has been murdered or seriously harassed. Even lawyers have faced threats, including grenade attacks on their houses and arson attacks on their offices. Dealing with cases of human rights has its own peculiar difficulties, including strong societal prejudices which need to be fought against slowly.

Unless those involved in this kind of litigation are motivated by factors other than pure economics, such work cannot be consistently carried out.

What are you seeking to achieve through your case work?

BF: This is a very interesting question; from the viewpoint of developed countries, our work may be perceived as futile. When we undertake a case however, we are fully aware that any positive legal outcome will only occur years later. Delays in the judicial process are so great that the final decision may come at a time when it will likely have lost all social significance. Furthermore, the actual award/compensation may also be insignificant, except in rare instances. When a paltry sum is awarded in a successful fundamental rights case before the Supreme Court, it neither inspires society nor acts as a deterrent for future rights abuse.

In actual fact, the likelihood of success in most criminal cases regarding torture or extrajudicial killing is very low. In the small number of cases where a few perpetrators were sentenced, the long process of litigation and appeals—sometimes 10 years or more—deprives them of any real significance. The cases have almost no deterrence value, while the risks involved in pursuing them include bodily harm, physical and psychological harassment, demoralisation and financial difficulties.

In introducing human rights remedies hitherto unknown to Sri Lanka's legal system however, this initial stage has to be faced. As pioneers in this area, we have been serious and consistent in our

approach. We have to recondition the minds of lawyers, litigants, judges, prosecutors as well as police investigators to accept human rights principles and professional working habits. These can be rooted only with vigorous debate and even occasional conflicts.

The ultimate success for human rights remedies lies in winning public opinion in favour of such redress. For many reasons, previous and existing social attitudes directly or indirectly support various practices of repression by the state. That police torture is necessary for public security and stability for instance, is an inbuilt social prejudice prevalent in Sri Lanka. Another inbuilt perception is that torture victims are bad criminals. Our work and approach attempt to demonstrate that these prejudices are in fact contrary to reality, and that law enforcement without torture can create a far better community spirit, both within the community and the law enforcement agencies. Moreover, the entire society will benefit from a legal system that has adequate remedies for human rights violations.

This kind of social discourse cannot be carried out without practical participation in the litigation process. It is not possible for instance, to introduce adequate legal remedies by merely teaching human rights or enacting new laws. Litigants must go to court to demonstrate the difficulties involved in actually obtaining these remedies. The root causes of such difficulties should also be analyzed and explained. It is only through this process that you can condition sectors of society and the state to appreciate the meaning of adequate remedies for human rights in terms of article 2 of the International Covenant on Civil and Political Rights.

Can you describe how you practically work on cases? How do you identify cases, who is involved, what are the challenges and how do you address them?

BF: In many of our cases, torture victims or their relatives who have heard of the work done by our groups approach them when they have difficulties. Our groups are trained to interview victims in detail, to record what they say and to promptly verify and obtain a

thorough understanding of the actual incidents. This information is then used to help the victims to make formal complaints. Where necessary, the groups will write the complaints to relevant authorities themselves and create documentation on the incident.

To give an example, a person may be undergoing torture and illegal detention at the time his relative or friend narrates the incident. Our group will then immediately write to the relevant authorities, informing them of the details and seeking urgent intervention. The same material is also used by the AHRC in Hong Kong to create urgent appeals on behalf of the victims. These appeals are sent to regional and international networks, seeking intervention. Lawyers associated with the local groups will meanwhile interview the victims and witnesses, prepare the necessary papers and file applications for litigation. They will appear for the victims when the case finally comes to court, and where necessary, will obtain assistance from senior counsel. These interventions may go from the lower courts up to the apex court. The case law that develops as a result of this litigation is widely publicized and made available online so it can be referred to and discussed.

In the meantime, studies are conducted into the circumstances and background of the case and a discourse regarding the circumstances surrounding torture and related problems within the criminal justice system is conducted within the media. Theoretical issues relating to law, legal systems and constitutional matters, as well as practical issues of policy procedures are also constantly discussed through the media to encourage positive opinion towards legal redress for human rights abuses.

Where there are reasons to be dissatisfied with the local litigation process and when litigation defects amount to human rights violations, communications are also filed with the Human Rights Committee [the body in charge of monitoring state compliance to the ICCPR]. Some of these communications have resulted in successes. Submissions are also made to the UN Human Rights Council, the CAT Committee, and relevant UN special rapporteurs. The intervention of all these agencies is sought to

improve the redress available for human rights violations.

The main challenges we face in dealing with these cases are the slow legal process and considerable defects in the constitutional and criminal law, which constantly conflict with attempts to obtain justice. This conflict results in negative attitudes and a sense of demoralization. As a regional organization based outside the country, we try to counteract this by supporting local groups through publicity generation, training, legal advice, finding some financial resources for their work. All of this works to address these challenges at least to a certain extent.

To sum up, our litigation work is a unique collaborative process involving victims, local solidarity groups, lawyers and other individuals together with people from outside, who support and reinforce each other's work.

How does human rights litigation fit in with your advocacy work?

BF: As I already explained, in our approach litigation and advocacy are always combined. The litigation itself brings those involved into a very real legal and societal process as they seek remedies for human rights violations. Advocacy work tries to introduce a broader perspective to the litigation work, providing the necessary motivation to deal with the difficult problems involved.

Advocacy based on real information is powerful; the application of international norms and standards to real situations generates a strong and persuasive narrative. A discourse based on these narratives has a great impact on people. A judge for instance, who is made to see many gruesome cases of torture may begin to challenge his own prejudices and open up to demands for comprehensive remedies. This happens with the international community as well; in fact, one of the biggest problems of international advocacy is that persons living in democratic societies with a well established rule of law system are unable to grasp the problems faced by societies with authoritarian regimes and weak rule of law systems. When they are confronted with detailed information and analysis however, they

are more likely to understand the problems and think of possible solutions and interventions.

What has been the impact of your work?

BF: I think our work has had a significant impact. There is now a widespread acknowledgment of serious defects within the constitutional and criminal law systems that frustrate rule of law. Today, no one will challenge the statement that the policing system in the country has collapsed, whereas when we began our work, such a statement would be considered a gross exaggeration. The same can be said for issues such as the abuse of police powers of arrest and detention, and the inadequate remedies for human rights violations. All this is today very much accepted and even regarded as an understatement rather than an exaggeration.

There is also a greater appreciation of the problems at many levels. Political factors relating to the state are what prevent the necessary changes, and this is something that a human rights group alone cannot address. However, as and when these political problems are addressed, at least the issues of adequate remedies for human rights violations will not be lost in the debate. Sufficient public attention has been paid to these issues, and now there are many people deeply committed to pursuing them.

Can you think of any cases that stand out as a particular success or setback?

BF: There are several cases which are simply unforgettable, such as the case of Gerard Mervyn Perera. He was arrested on mistaken identity and beaten up so badly at the police station that he suffered renal failure. After two weeks in a coma he recovered, and with the help of our group, he filed a fundamental rights application at the Supreme Court. The case was heard in a relatively short time and the judgment was decisive in its stance against torture. The compensation ordered by the three-bench court was the highest amount awarded so far, and significant recommendations for the prevention of torture were also made. After the Supreme Court

judgment, the Attorney General filed criminal charges against several of the responsible police officers under the CAT Act. Gerard was to give evidence before the High Court in this trial, and he received many warnings to alter his evidence or to not appear in court. His refusal to do so led to him being fatally wounded while travelling to work.

Several years later, the accused in the torture trial were acquitted on the basis that the torture victim was not there to identify the perpetrators. This judgement has since been appealed and the Court of Appeal has given leave to proceed. This case expresses all the contradictions of litigation relating to torture and other human rights violations in Sri Lanka.

Then there is the case of Sugath Nishantha Fernando, who was a complainant in a bribery and torture case. Once the Commission for Bribery and Corruption filed a case against a police officer attached to the Negombo police station in which Sugath was a witness, he received death threats demanding that he not give evidence in court. When he refused to comply, about 20 officers surrounded his house and attacked his wife, two children and himself. Sugath subsequently filed a fundamental rights case before the Supreme Court regarding the assault, in which 12 police officers were named as respondents. He then received threats stating that if he didn't withdraw the fundamental rights application within 24 hours he would be killed. Although Sugath made complaints to the Inspector General of Police and other authorities and requested protection, he was not protected. Sometime later he was assassinated in broad daylight by two unidentified persons. One year has passed after this incident, and no one has been arrested. His family suspect the police officers who are respondents in the above mentioned cases as having organized the murder. Sugath's widow and two children have been receiving death threats ever since and are living in hiding. They even had to flee to a neighbouring country for some time. The children have not attended school since their father's murder.

As the local system of litigation and protection has clearly failed, Sugath's family filed a communication before the United

Nations Human Rights Committee. The Committee admitted the communication and also requested the Sri Lankan government to provide protection to the family. However, Sri Lanka has not complied with its recommendation.

The case generated an enormous amount of publicity and discussion. It narrates the enormous problems involved in obtaining adequate remedies for human rights violations when the criminal justice system has been suppressed due to political factors.

Sri Lanka: A murder tolerating nation

What we are facing in Sri Lanka today can be described without any exaggeration as a very crazy situation. There is hardly anything rational that an average Sri Lankan can expect from his society.

The saddest aspect of this craziness is the level of fear spread throughout the society. Nobody wishes to do what would normally be called the right thing or the better thing because of the repercussions that can be expected.

For this reason, a doctor who sees the gross neglect surrounding his patients, such as the lack of medicine or basic facilities, will find it difficult to speak openly about these things. He may discuss them privately, but he will make no visible protest to change things.

It is the same with people in any other official positions. An average policeman may see the utter cruelty suffered by people without any justification, but he will not interfere to do the right thing or to make a complaint. The expectation of a chain of irrational reactions which they cannot turn back makes people withdraw and bear in silence things they would not normally tolerate.

It is common for ordinary Sri Lankans to fear threats to their lives, which is why they take extraordinary precautions to remain safe. This is most visible in the case of parents who no longer trust society's normal protection for the young. People fear awful actions, generating further social distrust.

The most elementary guarantee any society should provide is the guarantee against murder; Sri Lankan society however, has failed to ensure this guarantee for its citizens. People from all walks of life, engaged in various activities feel they are exposing themselves to the threat of murder. Self preservation is within the very essence of the human species, and to constantly fear the threat of murder is a grave predicament.

Under normal circumstances, it is only those engaged in murder or other criminal activities who live in fear of their lives. In Sri Lanka however, the average citizen lives today with the same fear as ordinary criminals; that a law abiding citizen lives with the same fear as a law breaker is the clearest sign of the craziness existing within Sri Lankan society.

The first executive president of Sri Lanka, JR Jayewardene (1978-1989), publically announced that the time has come for each person to look after his own security. Coming from the head of state, such a statement is a glaring abdication of power and responsibility. That the government is doing all it can to protect its citizens' basic right to life is one of the most elementary guarantees holding a society together. When the president says there is no such guarantee in Sri Lanka, this is a betrayal of the very idea of governance.

Subsequent Sri Lankan heads of state have done little to reverse the statement made by president Jayewardene. While national security is constantly talked about, the government shows no concern for the security of ordinary citizens. In fact, according to the prevalent discourse, the security of any individual can be sacrificed for the abstract notion known as national security. The absolute powers given to the security apparatus to deal arbitrarily with citizens' lives is what in essence national security has come to mean. In recent decades Sri Lanka has witnessed the abuse of the national security doctrine so that it can be used for the survival of politicians at the expense of the nation.

The various rebel movements have also played a role in creating the present mentality of insecurity. When the very system of governance goes crazy, the rebel created within that system becomes equally crazy. The rebel movements in Sri Lanka's recent history were not committed to better and more secure transformations of society. Instead, the rebels were marked by their anarchic tendencies and showed a similar lack of concern for the value of human life as the state itself. Murder is thus committed in Sri Lanka by both the state as well as the rebels.

There is a clear connection between the insecurities existing in Sri Lanka and the loss of the guarantee of the security of life. How Sri Lankans came to treat murder as a matter of no great importance needs to be considered carefully.

The decision to kill rather than to detain

A significant issue in discussing the prevalent tolerance towards murder in Sri Lanka today, is the way the law enforcement agencies were used to engage in committing large-scale disappearances. From 1986 to around 1991, the official figure of around 30, 000 persons disappeared, and, according to official records, most of these disappearances occurred after law enforcement officers secured the arrest of these persons. Disappearances have continued after that period up until the middle of 2009, particularly in the north and the east, and there are already records of a large number of such disappearances in the files of the Human Rights Commission of Sri Lanka as well as other commissions appointed to inquire into this matter from time to time.

Killing after arrest

Disappearances in Sri Lanka were incidents of direct murder. The law enforcement authorities began to consider causing such disappearances legitimate and necessary. How did this come about? If the state had wanted to keep these persons alive and punish them for any crimes, it was possible to do so either through special laws such as prevention of terrorism or through the country's normal laws. However, the state chose not to use the procedure of arrest and detention, but instead sanctioned a system of extrajudicial execution and disposal of bodies.

The question as to why the state would have chosen this path is related to many issues of criminal justice in Sri Lanka.

Detentions in 1971 and the prison system

Why the choice was made to kill rather than detaining persons raises questions regarding Sri Lanka's prison system. Could the state not have kept these 30,000 persons who were arrested and who thereafter disappeared in detention?

The arrests after the 1971 insurrection saw thousands of persons being detained, many of whom were kept in detention camps other than regular prisons. Even certain university premises were transformed into detention centers, and people detained there included JVP suspects who surrendered in the call for amnesty following the insurrection. A similar detention attempt was not made during the 1980s. Instead, at that time the resort was to directly kill after arrest. Some detention centers were maintained under military control, and many persons disappeared from these as well. The commissions of inquiry that inquired into these enforced disappearances provided details of the killings that occurred amongst detainees of these centers.

While trials before a special tribunal followed the 1971 insurrection, there was no such attempt after the suppression of the JVP in the late 1980s. Almost everyone that needed to be eliminated was eliminated through forced disappearances after arrest.

Policy to kill

It is thus clear that there was a deliberate policy to kill the arrested persons instead of detaining them. Besides the incapacity to keep large numbers of persons in prisons, there would also have been the political issue of holding large numbers of political prisoners, which would inevitably lead to considerable protest regarding their release. Such demands would come from various political parties and human rights organizations within the country, as well as from the international community. This would create a political problem with several repercussions for the government.

The political strategy of killing arrested persons rather than detaining them was clearly a way to avoid the consequences of holding political prisoners for a long period. The regime at this time wanted to avoid any kind of political protest against itself. The very development of the JVP in the late 1980s was a direct result of the government's strategy to deal with protest movements.

By this time, the country's major leftist movements, such as the Samasamaja party and the communist party, both of which had considerable influence in the trade union movements, had been greatly diminished after their participation in the 1970 coalition government. The large scale victory won by the United National Party itself had lessened the influence of these parties, allowing the new regime to operate without significant political protest. This has also created problems for Sri Lanka's main opposition party, the Sri Lanka Freedom Party, which meant that it was in no position to create strong political protest.

Killing as a means to diminish protests

It was only the JVP which forced the possibility of some kind of protest within the government. The suppression of the JVP was thus directed towards the elimination of political protest against the regime. The natural consequence of holding large numbers of political prisoners inside the prisons would have been for a political movement to arise in defence of these persons. This would have been self-defeating to the government strategy.

Killing Tamil detainees

The government in trying to suppress the early Tamil nationalist movement also engaged in the arrest of many persons. In the early 1980s there were several major cases before Sri Lankan courts against Tamil rebels. The holding of Tamil rebels in prisons was an issue mobilized by the Tamil nationalist movements to campaign for their cause both within Sri Lanka and abroad. The political movement galvanized in Sri Lanka by the holding of Tamil political prisoners suffered a serious setback in July 1983 when a large number of

Tamil prisoners were killed inside Welikada prison and several other prisons in the course of alleged riots.

In actual fact, the killings inside the prisons were well organized, part of a strategy to diminish the political movements utilizing the presence of political prisoners to their advantage locally and internationally. Once the prisoners had been killed, there was no point in protesting for their release. Besides, the killing of prisoners inside prisons would also send a chilling message to other rebels; that they could not expect to become political prisoners and thereafter remain alive.

This phenomenon of killing political dissidents and the consideration that holding prisoners would have adverse consequences for the existing regime is key in understanding the issue of killing prisoners in Sri Lanka.

The government in trying to suppress the early Tamil nationalist movement also engaged in the arrest of many persons. In the early 1980s there were several major cases before Sri Lankan courts against Tamil rebels.

Political killings to killings in civil disputes

This approach of eliminating political opponents paved the way for killings to become common in the society at large. Killing is a pragmatic approach to get away from all legal methods and consequences. If a property dispute is to be dealt with legally for instance, it may require cases to be filed in court and the cases themselves may take a long time.

In this way, even dealing with personal disputes can bypass legal methods. This was the basic message of liberalizing killings and dispensing with the legal process, which is cumbersome and can be full of so many consequences. Killing can be used to deal with these disputes without consequences. The law becomes silenced and then the killing becomes a matter of no consequence. This position has become entrenched in Sri Lanka, virtually destroying all guarantees of life that are normally available within a civilized society.

Rule of law and civil conflicts

Sri Lankan politics, from primary school to kindergarten

Policing in the north and the east

Police reform prerequisite for return to peace

Setbacks in criminal justice due to Sri Lanka's political conflicts

Sri Lankan politics, from primary school to kindergarten

It can be said that the beginning of the twentieth century was a period of primary schooling in Sri Lankan politics. Particularly since 1931 with the introduction of adult franchise, some people emerged from within Sri Lankan society who aspired to play roles of leadership in the political life of the country. None of them were prepared for the role however, as the country had been ruled by foreign powers for a long period. Prior to that, the idea of exercising political power through representatives was not known in Sri Lanka. Politically speaking, all the people who became willing candidates for this role were completely new to the game.

Most came from elite families who had acquired power and positions during the reign of the colonial rulers. If the colonial status had continued for longer, many of them would have played no other role than being civil servants for the British administration. However, the new opportunities that emerged during this period allowed them to rise above being civil servants and to become leaders.

Everything was new, and among these new things the way to get to power through elections meant that everyone had to find out how to encourage the people to vote for them. The problem was that on this issue there was no previous experience, no traditions nor any old practices to go by.

One easy way to popularity was through the family name. The families that had been controlling large areas through feudal ownership of land had the best chance for such popularity. The family name alone was sufficient advertising. A few others established themselves through their businesses and a very few through their professions.

The only group that was to come to some extent from outside that circle, but not completely, was that consisting of people who represented labour, and their popularity depended on their influence among the workers in different sectors. This group was more open to new ideas and the experiences of others outside the country.

These early searches to gain political recognition so as to be able to catch votes constitute the primary schooling of Sri Lankan political life.

Today, looking back into what many of these people did during this time, various theories have been developed as to the causes of the present day problems and conflicts in the country. Sometimes prominent personalities are blamed. However, in judging these personalities it is necessary to consider their confusion as beginners and amateurs in a new field of action. This new field of activity carried with it enormous responsibilities, unlike other fields, such as sport, the theatre and even some businesses. Political action is an area completely different to all other fields of action and perhaps its beginners and amateurs may not have appreciated the consequences of their actions. Many did not have very much time to learn. Politicians of this time had short spans of influence. Only a few lingered for long.

Some dogmas emerged from the statements and actions of early leaders that rather than being dogmas for all time, were only expressions of confusion during this early period. But in recent decades different proponents of various issues relating to racial confrontations have treated the positions from leaders of this early period as authoritative. Various statements and actions of Sinhala and Tamil leaders are cited as being the beginnings of contemporary conflicts. Some of these leaders are even thought of as having deliberately contributed to the development of various political tendencies in later times.

All this ignores the fact that their dogmas consisted of expressions with limited value, coming from new students in the field of politics. As long as history is interpreted in this manner with

quotes and photographs of various actions, giving them far greater significance than the simple expressions of amateurish political leaders who were in that position simply because of the historical times, their confusion will be treated as a permanent legacy in which all others who were to come later also became trapped.

There are further reasons to treat the politics of this early period with even less significance, due to many factors that have changed within Sri Lanka since that period. Most of the early voters were less literate than their successors. Sri Lanka today is a highly literate society and political literacy is enhanced by the fact that most people can interact with society in their own local languages. The emergence of Sinhalese and Tamil as languages used in social communication makes the people who live now so different to those who lived within Sri Lanka before. The magnitude of this change needs to be grasped in relation to all political issues, but particularly in contrasting the early democratic age from the present.

The world today also is witnessing the greatest communication change that has ever been experienced by humankind. There is no way for anyone to push this change back except by way of some global catastrophe like a nuclear war. No political thought of the last century can fail to be reviewed in the context of present-day communications. Certainly the type of political discourse that took place in that early part of the new period took place in a communication context that is far different from today's. Therefore the relevance of all those debates will become even lesser and the greater winds of communicated experience will bear down on what is happening now and what is to come.

It is in the light of these tremendous developments that Sri Lanka's early political experiences, the primary school experience as it were, turned out to be a retreat rather than advancement in the latter part of the century. The paranoid political leaders of the early generation who came to realize their limitations and their failures instead of retiring from politics tried to destroy the very foundations on which they stood. From confusion they walked to chaos. The 1978 Constitution in particular was a regression from the primary

school to the kindergarten. And in that process there were quarrels in which confusion and chaos only contributed to bloodshed, disorder and lawlessness.

While there has been a great deal written and discussed on local political experience in the early part of the 20th century, very little has been written and discussed about the political experimentation that took place at the latter part of the 20th century, particularly since the political experiments of the governments that were elected in 1970 and 1977. Old, disenchanted and frustrated political leaders made new experiments based mostly on the consideration of their failures. The present-day politics is shaped by these latter-day experiences in the last three decades of the 20th century. How did Sri Lankan politics regress from its primary school age to kindergarten? This is an issue that is inescapable, although attempts to come to terms with this period are not adequate.

Today, institutionally Sri Lanka is in a worse position than it was at the beginning of its adventure out of colonial times. Mere brooding on what those political leaders said or did in that early period will not throw very much light with which to find a way out of the present situation.

Policing in the north and the east

The kidnapping of four-year-old Varsha from her school in Trincomalee is a good starting point for discussing policing in Sri Lanka's north and east. Jude Regi Varsha was kidnapped on 11 March 2009 and a ransom demand was made to her family. The kidnappers were aware that her father was working abroad, on the basis of which a sum of Rs 30 million was demanded. While the family was trying to come up with the money, Varsha's body was found in a gutter of Trincomalee.

The incident shook the people of the area and there were even strikes led by family members. What happened next was also a reflection of policing in the area: three persons were arrested, and when all three of them were found dead, the story published was that they were killed while attempting to escape from police custody. It was commonly understood that the three were summarily executed. Whether they were the actual kidnappers or not will never be known.

Subsequently, the kidnapping was reported to be organized by political groups established during the civil war.

Military factor

The issue of policing in the country's north and east is being raised after one of the most intense military conflicts to have taken place in Sri Lanka. Through the Sri Lankan army, the government engaged in a military conflict for nearly 30 years with Tamil rebels, whom eventually came under the leadership of the LTTE. For some time towards the end of the conflict, the Sri Lankan government lost control of the northern and eastern parts of its territory to the LTTE. The north was under the control of the LTTE for a longer period than the east, and was used as a military ground to fight against the government. There was hardly any civilian policing there

at the time, with the sole, overreaching aim being complete control of the territory. Subsequently, after intense battles which went on for some time, the north came under the control of the Sri Lankan armed forces.

According to the assessment of international experts, since then there has been no return to a conflict free environment. Internal stability and control of the area by a civil administration has not yet taken place, with the concentration of internally displaced persons in camps continuing to be a major concern. Political control has been achieved to some degree through what were local paramilitary groups in the past, which have now become major political parties in the east.

Issues such as land mines and the possible existence of remaining elements of the LTTE are used in mainstream political propaganda to justify the delay in returning to normalcy. It is not clear how long de-mining or counterinsurgency controls will take to be over. In all likelihood, the government will claim more time is needed for a return to stable conditions due to the political climate.

Under these circumstances, it is the military who has effective control of the area. While certain elements of this control are being relaxed, such as the monitoring of movement through security roadblocks and check points, any significant shift to civilian control depends on political will.

Policing within the area is then also primarily determined by the military. For this reason, police officers are perceived by citizens to be nothing but an extension of the military. Any attempt to reestablish civilian policing would require not only complete separation between the police and military departments, but also a vote of confidence from the people before they would accept the policing system as a civilian one. There has been little discussion on how this can be achieved, even though this is a critical question.

New political groupings

It is well known that paramilitary groups of various political colorings within the area are also holding arms. Although there have been public declarations about the clearing of weapons held by these private groups, this has obviously not been achieved. Again, without achieving this objective the very idea of a return to civilian policing is impossible. The first precondition of the establishment of a policing system under the rule of law is that all holding of arms by civilians must end. Whether the state has the intention and capacity to bring this about will be tested in the time to come.

The recognition of the supremacy of the law is a critical problem in the establishment of a civilian policing system in Sri Lanka's north and east. All such legal traditions were destroyed during the protracted military conflict. The reestablishment of the supremacy of law and the repositioning of the criminal jurisdiction around the country's criminal laws and procedures will remain key in determining the kind of policing that will emerge in the future.

Rule of law problems

Some initial steps are being taken to reestablish courts and make them function as they did in the past. It is not clear what kind of resources and personnel are being devoted to this project however. The effective reestablishment of the court system will require a considerable amount of financial and human investment. The government needs to clearly state the extent of its financial investment in setting up courts, as well as how they will begin to function; their mere creation will not help the cause of criminal justice in the country, unless they are accompanied by effective and competent judges and magistrates. The establishment of courts in the area is hence also a precondition for the development of policing.

Even the establishment of courts however, is greatly restricted by the grave situation of rule of law in the country. Throughout Sri Lanka there is a major rule of law crisis, which has been admitted by everyone for quite some time. Despite this, nothing significant

has been done to remedy the situation. Any steps to be taken in the unstable regions will depend greatly on the most stable area of the country not under military conflict, the capital of Colombo and southern Sri Lanka. These areas are themselves in need of radical reforms before they can be said to adhere to a rule of law framework.

In summary, strengthening overall judicial independence and authority throughout the country, as well as establishing the rule of law in the policing system in the south, are major prerequisites for the development of rule of law institutions in the north and east.

Crisis of public institutions

Sri Lanka's crisis of public institutions is part of the national and international debate, as reflected in recent times by what happened to the implementation of the 17th Amendment to the country's constitution. The implementation of the 17th Amendment was discontinued from about 2006 by the failure to appoint the required Constitutional Council. As a result, the commissioners to be appointed by the Constitutional Council could not be appointed. This led to the discontinuation of the National Police Commission, among other institutions, which in turn led to a major crisis regarding promotions, appointments, transfers and disciplinary control within the entire policing system.

The major accusation against the country's policing system is its politicization, whereby the entire system is under the control of the executive president. This means that appointments, transfers, disciplinary control and all other matters relating to the police are directly controlled by the executive president, who, it is assumed, makes decisions in the best interests of his political party rather than in the interests of the nation. For meritocracy to become the basis of all such appointments and decisions, a provision similar to the 17th Amendment needs to be brought into operation. This is unlikely however, in a situation where the executive presidency—a system similar to absolute monarchy in feudal times—is in existence. This system conflicts with the emergence of any independent national institutions under the rule of law.

Executive presidential system

The executive presidential system existing in Sri Lanka is responsible for the country's major rule of law crisis. It has affected rule of law in the stable south, and will likewise affect the north and east. It is not possible for any legal or constitutional amendment, including the 13th Amendment, to overcome the problem of the executive presidential system, which operates for the entire country; whatever legal institutions may come even if the provisions of the 17th Amendment are implemented would be subjected to the overreaching control of the executive president. In all likelihood, any measure incompatible with the executive presidential system would be subjected to the same fate as the 17th Amendment. It is therefore not possible to imagine any significant police reform within Sri Lanka, whether in the south, north or east, while the executive presidential system remains in place.

Training a new generation of police officers

From the standpoint of language and culture as well as rational administration, it is necessary that there should be a large number of Tamils to engage in policing work in the north and east. The recruitment and training of such a large group of persons from the Tamil community would not be an easy task however. Firstly, these persons must be confident that policing in the region can be done without fear to their lives. Fear is the most prominent emotion prevalent within the region today, the result of the hardships faced from both the rebels and government forces over a long period of time.

There is also the fear of the new political generation that has arisen in the region. Anyone going against these new politicians runs a risk to their lives, under which circumstances it is almost impossible for young police officers to be confident that they can enforce the law without favoritism. Such confidence in future generations is critical if effective policing is to take place in the region.

These policemen would moreover need to be given police training within a rule of law system. Again, if Sri Lanka's overall policing system is not on par with that of one under a rule of law framework, then what chance is there for this new generation of policemen to competently address law and order issues within the region?

Furthermore, the new generation of policemen will serve under the political leadership developing in the region, which makes it unlikely that the new police cadres would have the opportunity to progress as a policing unit with the required qualities needed to create a climate of peace, law and order.

For these reasons, the mere discussion of the adoption of the 13th Amendment and the granting of special powers to the region will not resolve the key problems hindering the development of a policing system needed to transform this region into a peaceful zone.

Police reform prerequisite for return to peace

There are some vital human rights concerns that need to be addressed before Sri Lanka can truly return to peace. For instance, the transformation of wartime and conflict-related mentalities is today a requirement for peace recognized by Sri Lankans as well as the international community. This article will focus on one particular concern, that of policing throughout the country, which is essential if the rule of law is to recover in Sri Lanka. In turn, recovery of the rule of law is the only basis upon which the lost human rights of this nation can be recovered.

That a rule of law crisis exists in Sri Lanka is acknowledged by all political parties as well as the government. The core of this crisis is the destabilization of the country's basic public institutions: the parliament, the judiciary, the public service, the policing service, the electoral system. This article will not go into the causes of destabilization, but rather focus on measures to strengthen these institutions so that the functioning of the rule of law will become possible. The country is known today, inside and outside, as a dysfunctional democracy with a dysfunctional rule of law system.

Particular emphasis should be made on the recovery of rule of law and the policing system in Sri Lanka's south, which was not directly subjected to military conflict during the many years of civil war. Nevertheless, its institutions suffered greatly during the long period of emergencies, anti-terrorism laws, extrajudicial activities such as disappearances, torture and illegal detention.

Special Problem of North And East

While such institutions and systems, however dysfunctional, exist in the south, the north and east do not even have any institutions, due to the prolonged conflict between terrorist organizations and the military. Now that the conflict is over, the

recovery of the system itself will prove enormously difficult in this region. The dispersion of the population, particularly the middle and educated classes, will affect the development of basic institutions greatly. It is inevitable that the instability brought about in the region due to the collapse of public institutions will give rise to lawless elements in society. As a result, the life, liberty and property of citizens in these areas will remain threatened for a considerable time.

The rebuilding of public institutions such as the judiciary and the police in the north and east will depend on the vitality reacquired by similar institutions in the south. If the judiciary and police in the south remain in the disabled state they are in now, it is unlikely that the same institutions can be rebuilt in the north and east. The recovery of the south's public institutions is therefore the strategic cornerstone upon which recovery of public institutions in the north and east is based.

Recovering basic public institutions in the south

The police department is among those public institutions vital for recovery in the south. It is commonly accepted that the Sri Lankan policing institution has suffered an enormous collapse, due to its politicization. Politicization refers to the fact that internal control of the institution is largely in the hands of politicians, either at the government or local levels. Political interference is in fact so glaring that there is a severe loss of public confidence in these institutions.

This crisis is seriously reflected in the higher ranks of the policing system, particularly from the ranks of Assistant Superintendent of Police (ASP) to the Deputy Inspector General (DIG). The Inspector General of Police (IGP) position has become an extremely politicized one in recent times. Like other public posts of importance, the chief of police is chosen not on the basis of seniority or proven achievements, but in terms of close political connections. As this is a well known fact within the police hierarchy, it has a deeply corrupting influence on officers, who compete in

currying favors with various politicians. Tackling such politicization and corruption remains the most daunting challenge in any process of institutional recovery.

Widespread use of torture

Even in times of peace, Sri Lankan police are known for their widespread use of torture in the normal course of their duties. Due to underdeveloped criminal investigation methods, there is a reliance on torture during investigations. Significant documentation by local and international human rights organizations exists on the grave forms of torture suffered by persons arrested for petty theft or other small crimes. The documentation suggests that severe forms of torture are often used to extract information from persons brought in on minor suspicions. There are a large number of cases where arrested and tortured victims are in fact innocent. Many such persons have even died in police custody due to torture.

The elimination of torture as a means of criminal investigation is therefore a preliminary step in the creation of rational policing within the country. It is the first step to be taken, much before concepts such as community policing can have any real meaning in the country.

Widespread extortion

The Sri Lankan police are also known for extreme extortion. The ultimate aim of exercising violence against persons is usually to extract bribes. The perception of the police as willing to resort to violence and extrajudicial killings urges people to spend whatever they can to secure some form of relief if anyone is arrested. The abuse of arrest and detention procedures for the purpose of extortion is well known. Cases before the Human Rights Committee of the United Nations demonstrate the extent to which the police resort to violence as a means to extortion.

Breakdown of discipline

The natural result of all this is a breakdown of discipline within the police, which is acknowledged by senior police officers themselves, as well as retired officers who frequently make public statements on the issue.

The 17th amendment to the constitution

The National Police Commission, appointed by the Constitutional Council, was created to deal with the above mentioned problems. It was expected to undertake appointments, transfers, promotions and disciplinary measures of police officers purely on the basis of merit. After the initial start of this body however, it was discontinued due to the government's failure to appoint the Constitutional Council. The only measure taken with near unanimity in the parliament in order to restore the policing institution was thus abandoned in 2006.

The policing institution is also made use of heavily by politicians during elections. This leads to a reluctance to deal with the policing crisis and resolve problems, as it would adversely affect local politicians.

Major areas of reform

While details of police reform need to be worked out in the course of public debate, the following areas of concern are well known.

Establishing discipline among high-ranking officers

The merit based appointment of the IGP and other high-ranking police officers, from the grade of ASP upwards, is the primary requirement of any meaningful police reform. The 17th Amendment attempted to achieve this to some extent, by the creation of the Constitutional Council, which in turn had the duty

to appoint the Commissioners for the National Police Commission. These commissioners, appointed on the basis of their competence and integrity, had the task of ensuring proper appointments to the position of the IGP and other senior posts. This constitutional provision is no longer in operation and it is quite unlikely that it will be reactivated in the future. Stronger measures than those envisaged under the 17th Amendment however, are necessary if the Sri Lankan policing system is to recover from its present crisis. It is the duty of Sri Lanka's policy and opinion makers to reflect on this important issue and make the necessary recommendations to establish a proper appointments process within the policing system.

Improving departmental orders

Together with proper police appointments is the need for the development of a disciplinary process to ensure the accountability of police officers, particularly of higher ranks. Police departmental orders were created over a century ago to deal with the disciplinary process relating to police from the ranks of Officers-in-Charge (OICs) of police stations and below, and they have not been significantly updated. The departmental orders do not provide disciplinary measures for officers above the rank of ASP however. This vacuum has prevented proper supervision of higher-ranking officers, leaving them practically outside the purview of law. Except for serious criminal offences, it is most unlikely that any of these officers would be subjected to criminal or disciplinary investigations. Being able to stand above the legal and disciplinary processes, these officers may circumvent the law as well as departmental procedures, even on behalf of other officers. This vacuum relating to disciplinary orders of senior officers is a major reason for the breakdown of the policing system. This should be discussed seriously, and public debate should ensue, in order to develop measures to hold these officers accountable.

Disciplining of Officers-in-Charge of police stations

Another important aspect relating to the restoration of law and discipline within the police force is to improve the selection

and discipline of Officers-in-Charge. As the system operates today, these officers play a major role in their particular localities. The OIC of a police station is in an extremely powerful position within his jurisdiction, and this power is often used to generate personal wealth. These officers often acquire land and properties within a short period of their appointments. Individuals are willing to offer considerable bribes to gain such positions, particularly in police stations close to city centers, where there are greater opportunities for advancement. The position of the OIC is also politically abused by local politicians. The lack of discipline within police stations is also greatly dependent on the negligence of OICs. The criminal procedure code gives significant power to OICs during the criminal investigation process. For the most part, they are meant to overlook the investigation process into crimes within their jurisdiction. Any shoddy investigation work is therefore their responsibility.

It is thus critical to develop measures to ensure the proper selection of OICs, and also to ensure that they are kept within the discipline of the policing system, if effective reform within the Sri Lankan police force is to be achieved.

Improving the relationship between the police and the courts

Another crucial area for reforms is the relationship between the courts and the police, which has significantly deteriorated. The commission appointed by the Ministry of Justice to enquire into adjudication delays identified the failure of police officers to show up for their court duties as a key reason for delays. The problem of delays has become such that the commission even recommended developing serious criminal action to ensure police officers attend courts as required. Together with their failure of attendance, are their failures to file reports on time and carry out court orders. Strict measures for proper police compliance with judicial orders need to be enforced, particularly as supervision by senior officers has not proved adequate to ensure cooperation with the court. It is therefore important that both internal disciplinary measures as well as judicial

measures must be developed to end a problem that creates serious lapses in the adjudication process.

Ending torture and custodial deaths

Since torture and custodial killings are among the major crimes committed by police officers throughout the country, effective measures to end such brutal and illegal behavior need to be developed. Custodial deaths, including disappearances, had become common over several decades. The use of police officers in counter-insurgency operations led to their direct involvement in large scale disappearances, particularly since the early 1970s. This is a phenomenon that has taken place in the south, north and the east. Extraordinary measures must now be taken to ensure that such use of the police is brought to an end and the impact of past practices erased.

Ensure independent inquires into complaints under the CAT Act

While Sri Lanka's Convention Against Torture Act No 22 of 1994 (CAT Act) makes torture a serious crime in Sri Lanka, it has not resulted in deterring widespread torture within the country's police stations. Strict enforcement of the CAT Act is therefore essential both for the prevention of torture as well as ending the criminal behavior of police. An important tool for the implementation of the CAT Act is an independent investigation unit for torture complaints. Investigations made under the DIGs or the ASPs have proved to be ineffective and biased towards police officers. Subsequently, torture complaints were investigated by special teams from the criminal investigation unit based in Colombo. These investigations were conducted with a high degree of competence, however, referrals to them had to be made by either the Attorney General's department or the IGP. Recently both of these authorities have stopped referring torture cases to that unit, except in exceptional cases of public scandal or political pressure.

It is necessary for there to be an independent investigation unit, directly under the control of the IGP himself, not under the Area

Deputy Inspector General of Police or other officers of particular localities. It should be a permanent unit composed of competent and honest officers. Its procedures should include compulsory investigations into torture complaints without the need for special orders from any other authority. Measures need to be developed for the proper monitoring of investigations into all complaints, and the investigations should be conducted with speed and efficiency. Such measures will make it possible for the practice of torture to be reduced within a short time, and to ensure proper prosecutions into all torture allegations. The education of judicial officers about the CAT Act and international principles relating to torture is essential for the Act to be implemented. Many of the cases brought under the CAT Act in the past demonstrate that most judicial officers do not have sufficient knowledge regarding the gravity of torture and the principles upon which the Act is based. Developing better judicial education and cultivating attitudes towards the elimination of torture could also compel investigating officers to do a better job in torture investigations.

Exclude police officers from corruption inquiries

As already mentioned, extortion is widespread throughout the country, with police powers of arrest and detention often abused for this purpose. Extracting money from the relatives of victims is one of the purposes of torture. This practice often leads to the fabrication of serious charges against innocent persons purely with the view to extract money, or to protect the actual criminal. Unless serious measures to deal with this practice are developed, the entire criminal process will remain in jeopardy. In particular, higher ranking officers must be held responsible for the extortion taking place in their police stations. The judiciary should also play a more proactive role in ending police practices of extortion.

Protection of documents

One result of such corruption is the tampering of official documents and registers to be maintained by the police, which has been commented on by the country's Supreme Court as well

as lower courts. There has been no significant measure developed within the police hierarchy to deal with this problem however. It is possible to make use of current technology for this; for instance, all documents can be computerized for better protection. At the same time, serious disciplinary actions together with judicial supervision can also be looked into.

Setbacks in criminal justice due to Sri Lanka's political conflicts

Sri Lanka's southern, northern and eastern parts have undergone about 40 years of civil conflict. In the south, the JVB political uprising of 1971 began a period of continuous internal conflict. The clash led to an estimated 10,000 young people being killed, as well as further conflicts arising from the late 1980s until the early 1990s. During this time an estimated 30,000 persons disappeared on the island, according to the country's Commissions Appointed to Investigate Forced Disappearances in Sri Lanka. Meanwhile, from the late 1970s there was serious conflict between the Sri Lankan government and liberation groups in the country's north and east. Among these, the Liberation Tigers of Tamil Eelam (LTTE) eventually became the most prominent group in a ferocious struggle against the military. The latter part of this conflict, from 2006, was extremely brutal, and finally ended with a victory for the Sri Lankan military in 2009.

What is important for the purpose of this paper are the problems faced by the country's criminal justice system by the emergence of these groups and movements, usually referred to by the government as terrorist movements. These movements and conflicts resulted in unique criminal issues, and the manner in which such problems were resolved.

Killing of suspects

The criminal justice system of Sri Lanka is based on British common law. The British introduced this system when they captured part of the country at the end of the 16th century. They captured the whole country in 1815 and their dominance continued up to 1948 when Sri Lanka was declared independent.

The method of dealing with crime was based on common law concepts relating to fair trial. These concepts consider the

distinction between a suspect and a convicted prisoner of enormous importance. A person can be a criminal suspect if there is some evidence suggesting that he may in some way be connected with a crime. To be labeled a suspect is not in any way proof of guilt: the person is considered to be innocent and the suspicion of his connection to the crime may be found to be wrong at any time. The suspect is then subjected to investigation in order to assess whether there is adequate evidence to charge him with a crime recognized in the penal code.

It is necessary to emphasize here that a criminal suspect refers to an individual suspected of a crime recognized by the state; a crime laid down in the country's penal code or special law subsequently introduced. The law will define the crime and the possible punishments. The crime of murder for instance, refers to an act amounting to murder committed intentionally; the fact that a death has taken place will not itself lead to the conclusion that a murder was committed. In any case, the definition of a crime within the penal code or other law is the essential beginning of any enquiry into crime.

During the inquiry evidence is collected to see whether there is adequate evidence against the suspect to proceed further. If adequate evidence is found, the case is submitted to court with a charge relating to a particular crime. In the case of a minor crime the charge will be made by the police, whereas a serious crime will be charged by the attorney general's department. At this stage the suspected person is called an accused; even now, he is not considered a convicted prisoner however. The presumption of innocence still operates and the case has to be proved against him beyond reasonable doubt before a court decides that he is in fact guilty of the crime.

The decision regarding guilt belongs entirely to an impartial tribunal. A fundamental assumption of the system is that the judges are completely impartial and competent, and will judge solely on the basis of the evidence submitted. Judges are not guided by any kind of prejudice; the thought that 'this crime is a very big one, therefore

someone needs to be punished' is not a consideration befitting a judge. Only at the stage of deciding punishment—which comes later—will the seriousness of the crime be a matter of consideration. Judges also will not be persuaded by public opinion, inevitably expressed regarding various crimes. It is essential that judges view the evidence in a rational manner and on the basis of reasoning acceptable to a court of law. Even at this stage there is a right to appeal to the final court of the country.

Once guilt has been decided, the court decides upon the punishment. Again, the court will only take into consideration matters acceptable to the law in deciding the punishment, and not be moved purely by public sentiment.

The next stage is the carrying out of the sentence, which is done through the prison authorities. Whether the person is imprisoned for a certain period or whether the death sentence is imposed, both are carried out within the supervision of the prison authorities (in Sri Lanka death sentences are not usually carried out since the early 60s and death sentences are usually commuted to life sentences).

The above narrative of the trial was necessary to demonstrate the distinction between a suspect and a convicted prisoner. This distinction goes to the very root of criminal justice and needs to be kept spotlighted for the subsequent discussion.

From 1971 to 2009, Sri Lanka's criminal justice system was faced with a serious problem: crimes committed by movements for political reasons. Initially investigations into these crimes were conducted like any other criminal inquiries. Political crimes are more complex than crimes by private individuals however. In particular, political movements have the capacity to retaliate against investigators. The killing of investigators was experienced from 1971, but particularly prevalent in the late 1980s with the JVB and Tamil movements.

The funding of Sri Lanka's criminal justice system had never been treated as a great priority. Unlike countries with developed legal

systems, there was hardly any investment in providing protection and other resources for investigators. Under these circumstances, dealing with crimes of political movements in the same manner as those committed by common criminals began to be considered a difficult or even impossible task. Gradually, the establishment accepted the view that following the criminal justice process with regard to crimes committed by persons belonging to political movements should not and could not be done.

One of the results of this was the elimination of the inbuilt distinction between suspects and convicted criminals with regard to those suspected of committing political crimes. These persons were then marked as 'terrorists', with the label developed and propagated to connote that the ways of dealing with such persons was different to those of ordinary criminals.

The removal of the distinction between suspects and convicted criminals wrought a fundamental transformation within the criminal justice system: the emergence of the idea that a person can be punished on the basis of suspicion alone. In turn, assessing such suspicion, deciding on and carrying out the punishment (usually death sentence by a process of abduction, interrogation, torture, killing and disposal of the body) were carried out by one agency. While the agency may still be referred to as an investigation body, it was now undertaking several other functions aside from 'investigation'.

From crime investigations to political investigations

As mentioned earlier, the investigation function in Sri Lanka's criminal justice system was entirely defined by the crimes laid out in the law. When dealing with unacceptable political behavior however, there was a change in this process of dealing with crimes. Pasting a poster on behalf of a political party, distributing a pamphlet or participating in political education sessions for instance, were not crimes according to Sri Lanka's penal code or other laws. These are in fact legitimate acts that any citizen may participate in. If any such act is done violently, the person may be prosecuted for violence but

not for participation in a political activity. This situation changed beginning 1971, with the view that so-called terrorist movements could not be contained purely by criminal investigations and regular criminal process. The new understanding was that certain political tendencies had to be eliminated by the removal of the persons who were leading or connected to these organizations. This led to a new understanding of crime and criminal inquiry. Firstly, anything that would connect a person to any kind of political activity conducted by such terrorist organizations would be considered for punishment. Secondly, the end aim of any inquiry was elimination. Among the 30,000 disappearances that occurred in the late 1980s, it would be difficult to point to even 1,000 persons who may have been involved in an act which would be considered any form of crime, such as possession of firearms, making of or use of bombs, or anything of that kind. However, the disappearances took place on the consideration that it was necessary to eliminate everyone with any kind of unsavory political linkage. The identification of any such linkage was sufficient for punishment. The common form these punishments took was that of secret disappearances, where persons were abducted by unidentified personnel and never seen again. The large scale of the disappearances at this time brought a transformation of thinking within establishments such as the police, military and various paramilitary groups, as well as within the political establishment regarding which activities could be punishable purely on the basis of suspicion. It is obvious from the documentation of the Commission on Forced Disappearances that the majority of disappeared persons were in fact innocent; they were victims of persons alleging that they were in some way connected to the JVB. The root assumption here was that there was neither the time nor the resources to make distinctions about who was in fact guilty and who was not. What is important to note here is that the state sanctioned such punishments not for crimes defined by the penal code and other laws, but by political considerations.

Suppression of complainants and witnesses

As in most criminal justice systems, criminal investigations in Sri Lanka are to be conducted by obtaining evidence for the

proving of charges. Within a system of fair trial all charges have to be proved through evidence placed before the court. Criminal investigations are thus essentially the gathering of evidence from witnesses. Complainants and witnesses are therefore at the heart of the criminal trial; without witnesses there is no basis for a trial. Encouraging complaints of crimes individuals may be victim or witness to is hence an essential aspect of the criminal justice process. In fact, the criminal procedure code prescribes the manner in which complainants can make complaints to the police station, and police regulations prescribe the manner in which these should be recorded.

The transformation within the last 40 years in dealing with political groups considered to be terrorists resulted in the loss of importance of complainants and witnesses. When punishments are given purely on the basis of suspicion, without any need of proof, there is no longer any place for complainants or witnesses.

There was thus a complete mentality change within the police and others who were earlier involved in criminal investigations. This included a new problem: when punishments are meted out on the basis of suspicion, the officers involved are committing several offences themselves, such as abducting persons instead of arresting them, interrogating persons by violent methods, assassinating suspects and arbitrarily disposing of their bodies (making up the ingredients of a forced disappearance). It was therefore necessary to commit these acts secretly.

This is contrary to normal criminal investigations, where beginning from the time of arrest until the trial, the process is open. People are arrested openly, they are told what they are arrested for, they are brought to police stations for interrogation, brought before the court for trials and finally sent to prison for punishment. When the whole process becomes secretive, the officers need to be protected from detection by others while engaged in illegal behavior.

All those suffering as a consequence of these illegal actions inevitably become opponents of the establishment. The mother of a disappeared person for instance, will be treated as a hostile person by

those who carried out the crime. Any complainants and victims thus become a threat to those carrying out operations outside normal legal boundaries with a view to suppressing terrorism.

Various methods are then adopted to discourage persons from making complaints. Often a complainant who goes to complain about any of these matters to a police station will be sent from pillar to post over a long time until she is too weary to pursue the complaint further. In the worst instances complainants and their families are physically threatened or implicated in false cases.

During the period of disappearances in the late 1980s the mother of two missing boys went to various police stations to complain about the loss of her children. She suspected that her children were kept at a particular police station and when she went there to enquire, she was told they were not there. However, by some means the two boys learned that their mother was outside and they started shouting saying that they were inside and asking her to save them. When the police continued to prevent her from seeing her sons, she claimed she would not leave the police station without meeting her sons and sat in front of the police station for hours, until the morning shift ended and the evening shift officers arrived. In response to their enquiries as to why she was sitting there, she explained the matter. Thereafter, one officer came and asked her to accompany him to see her sons. She went inside the police premises and was gang raped by six officers. Such harassment and abuse were commonly experienced as a consequence of pursuing complaints.

From investigations into political and terrorist activities, this way of harassing complainants and witnesses also spread to ordinary criminal investigations. Police officers guilty of accepting bribes or who failed to carry out investigations in a proper manner would often treat any complainants against them in a similar manner for instance. Two most well known such cases are those of Sugath Nisantha Fernando and Gerald Perera. Sugath was a complainant in a corruption case against a police inspector, who was charged with taking bribes from Sugath by the Commission against Bribery and Corruption. Subsequently, about 20 police officers arrived at

Sugath's house and assaulted him, his wife and two teenage children severely, warning him not to give evidence in court. Sugath filed a torture complaint at the Supreme Court against the police officers, after which he was threatened with the death of his entire family if the compliant was not withdrawn in 24 hours. Sugath refused to give in and spent some time in hiding. When he came out in the open on 21 September 2008, he was shot dead by two unknown gunmen. No one has been arrested for his murder.

Gerald Perera was an innocent citizen arrested regarding a triple murder purely on mistaken identity. Immediately on arrest he was taken to a police station where he was beaten so severely that the next day he suffered renal failure. After undergoing medical treatment, he complained against the police officers who tortured him, as a result of which the attorney general's department filed a case against several of the police officers. Gerald Perera then received many threats stating that if he proceeded to give evidence he would be killed. A week before he was to give evidence in court, he was shot while traveling in a bus and died from the injuries. Subsequently, a police inspector and accomplice were charged for this murder.

Similarly, in cases relating to terrorism and political activities, thousands of people have noted that they are pressured to abandon their complaints. People who live in areas where military operations are carried out are often afraid to make complaints regarding abductions, rape and other abuse they are faced with.

During the 40 years of political conflicts, the general intimidation of witnesses became a common phenomenon throughout the country, discouraging complaints against state officers such as the police and military.

One consequence of the fear on the part of complainants and witnesses to come forward and make complaints is that the state authorities use the lack of complaints as a defense to deny that any of these events have ever taken place. When human rights organizations within and outside the country—including UN organizations—report human rights abuses, the government often

answers that no one has complained to the government about such human rights violations. The intimidation of complainants and witnesses then becomes part of the official policy of denying human rights violations.

Prison system

Another factor that contributed to the transformation of the criminal justice system within the last 40 years is the prison system in Sri Lanka. The laws relating to prisons and prison structures were enacted during the British colonial era, and there have been no major changes in the law or in the prison structures until today.

Even in normal times, when the majority of crimes are common crimes, the prison system is overcrowded and its administration plagued with problems. The development of political conflicts and associated crimes posed new problems for the prison system. The 1971 insurrection was followed by the holding of a large number of political prisoners awaiting their trial by the criminal justice commission. The holding of such large numbers of political prisoners was a new experience for Sri Lanka's prison authorities. Unlike common criminals, political prisoners make various demands and are supported by lobbies outside. Their own political parties campaign not only for their release, but also for their better treatment inside the prisons. International lobbies also create discussions about the persons being held in prisons.

The holding of political prisoners becomes a source of agitation against the government as well. On both the local and international levels, questions are constantly being asked regarding these prisoners. Political prisoners can also become popular; some acquire a sort of hero status, which can impact electoral politics as well as the popularity of various anti-government movements. For these reasons, political prisoners are perceived to be a threat to the state.

The investments into the developments of the prison system have not received much attention in the making of budgetary allocations in Sri Lanka. Therefore the development of high security

prisons where political dissidents can be held has always remained a problem. There have been many prison escapes where members of political parties have sent various groups to get their leaders released from prisons. Thus it became a new burden on the limited prison budget to provide security for political prisoners. In July 1983, when there were race riots, about 26 prominent members of Tamil rebel groups were killed inside Sri Lanka's prisons.

Given the extent and spread of various political movements, the possibility of having to deal with large populations of political prisoners posed new problems. There was an underlying assumption that not bringing these persons into prisons but dealing with them in other ways was a better option. This factor relating to political prisoners and the limitation of Sri Lanka's prison system was a contributing factor to the development of large scale disappearances in the country.

Elimination of corruption and the creating of conditions for transparency, integrity and accountability

Statement of participants at the Regional Consultation on Anti-Corruption Mechanisms in Asia, 11-15 January 2010, Hong Kong

We the participants of the Regional Consultation on Anti-Corruption Mechanisms in Asia held at the Asian Legal Resource Centre in Hong Kong from 11 to 15 January 2010 express our deep concern about the acute problems that people of our countries face, particularly for the large majority of people who still live in relatively poor conditions, which affect economic, social and cultural rights as well as civil and political rights.

In areas of food and water, education and health, employment and so forth people across Asia face extremely serious problems of corruption. When attempting to gain the basic services to which they are entitled as members of society, corruption remains a serious obstacle.

While budgetary allocations are inadequate to meet legitimate public expectations, state authorities misuse the allocations themselves. Apart from this, foreign aid for socio-economic development projects often ends up in the hands or pockets of corrupt politicians and those in authority, defying all attempts at accountability.

Corruption is also playing a role in stimulating violence and internal insecurity, as it shrivels the prospect of government supplying people with basic services, opportunities, rights and entitlements. As a result, people choose to remain silent on internal conflict and do not support the state in handling crises. Further, people also opt not to participate in governance. In this sense corruption weakens people's democracy and creates space for authoritarian rule.

There are also problems associated with the planning and allocation of resources that are conditioned by the institutional gaps and defects associated with systems of power in society. In the development of policies and their implementation, serious inequalities in the distribution of basic resources often affect the structural issues that engender conditions enabling corruption. On the other hand, in the struggle for the eradication of corruption, obstacles arise due to political and social factors that are associated with inequalities imbedded in society. Therefore, realisation of the basic human rights of persons, promotion of the rule of law and achievement of democratic rights in countries of the region are all very much linked to the problems of eradication of corruption.

Eradication of corruption as a human rights issue

The treating of eradication of corruption as a human rights issue speaks to the fundamental indivisibility of socio-economic rights and civil and political rights. In all problems associated with corruption, whether in the form of land grabbing, corrupt development projects, deaths caused by corrupt practices in health institutions or otherwise, our countries lack good policing, independent investigative agencies and well-functioning justice institutions that can meet the needs and expectations of people.

Questions of illegal arrest and detention, denial of access to justice and denial of fair trial are often associated with the unaffordability of justice, which is also associated with problems of corruption that beset institutions for the administration of justice, particularly the police, prosecution services and judiciary. The right to life is deeply affected by problems created through institutional malpractices that are the result of deeply corrupt practices within society. Among the people who face these problems in the most acute way are more vulnerable groups such as women and children, and minorities.

Historical and contemporary causes of corruption

The root causes of corruption are the histories of our society's feudal social structures as well as the problems created during long periods

of colonial rule. The development of a basic institutional framework for our societies has been affected by these historical problems and in many of our countries these problems need to be resolved in an attempt to deal with the demands of the times and in order for the societies to develop with a framework of rule of law and democracy. The realisation of people's aims in modern circumstances requires attempts to understand these historical problems and find strategies to deal with them by developing institutions that are relevant to the conditions of our societies in order to ensure equality among all sections of the population and stability through the practice of democratic norms and standards.

Feudal traditions are continued through patronage politics, which are a feature of many countries in the region. Party political systems are often organised on the basis of patronage of one or a few powerful persons. The party systems are often controlled without any kind of observance of democratic norms relating to the relationship between party members and the development of party leaderships. Often there is an inherent system of corruption within the party structure itself. Within the party often there is no transparency in relation to funds and power relationships. Top party leaders are not accountable to their party members and to the inner structure of the party. The inner structure of the party is often developed in a manner to eliminate fair competition. The leadership of some is protected for a lifetime, and family members or very close associates whom the leaders nominate often become their successors.

The absence of democracy within the political party system affects the political system as a whole. The lack of healthy development of leadership within political parties also denies fair competitive practices between parties. The denial of fair competition between political parties is often the source of violence in the political life of a country. This violence also leads to the cooption of the law-enforcement agencies in favour of ruling regimes. Discrimination against those who keep out of party political loyalties develops and often penetrates into the total system of the public service. Thus, the absence of internal democracy within political parties ultimately develops into violence between political parties and corruption within the public service itself.

The absence of democracy within political parties is often the basis upon which authoritarian forms of rule develop. Such authoritarianism in turn destroys whatever freedom may have existed within a political party. Naturally authoritarian rule destroys the capacity for the emergence of other political parties. The internal violence inherent in authoritarian rule develops into societal violence, which suppresses all freedoms. The absence of freedom makes corruption easier. Critics of corruption fail to find supporters within political parties. Thus, the development of organsised resistance to corruption through party-based democratic mechanisms becomes difficult and sometimes even impossible.

In recent history, neo-liberal policies have also been considered a source of corruption in state and social services. Increasing privatization is reducing the role of states in governance and provision of services and is functioning to favour profit-based functions and systems, reducing the space for public entitlements. State functions, policies and policy formation processes are under the control of capital and market forces, which decide how to distribute revenue for specific sections of society, not for the protection of the economic, social and political rights of the people. In a sense states are subsidizing private profits through use of constitutional powers and public resources.

Public institutions and prevention of corruption

One of the major institutional aspects that must be understood and dealt with in the process of achieving equality among all sections of society is policing. Policing systems developed in the past reflect the social contradictions of those times and also the inequalities inbuilt into earlier societies. In most societies policing systems have been used for the suppression of the poorer sections of society as well as other sections that consist of vulnerable groups. Careful studies into the nature of policing in contemporary societies and the development of new strategies to develop policing systems in keeping with democratic norms and standards to safeguard the dignity of all persons are vital for the eradication of corruption.

People are obliged to interact with the police in dealing with their problems and therefore dealing with this institution in terms of the goals of modern democratic societies is a precondition to dealing with most problems in our societies. The capacity of a population to make complaints against authorities without fear is conditioned by the nature of policing. Therefore in creating effective mechanisms for complaint-making into all aspects of the lives of citizens it is essential to ensure that the policing system acts to assist in complaint-making, to prevent it from becoming an intimidating factor within society.

In the development of complaint mechanisms to prevent intimidation there is a need for a law to protect witnesses and complainants. In most countries of the region laws relating to witness and complainant protection do not exist. The same forces trying to maintain corruption are preventing the development of such laws. Those who are fighting against corruption need to make strenuous efforts to build social consensus to ensure the development of law in this direction. The payment of adequate salaries for law-enforcement officers is also a necessary component in developing proper protection for witnesses and complainants.

Democratisation within any society requires that citizens have the capacity to make their voices heard on all occasions without fear and in a spirit of freedom. Therefore freedom of expression and publication are essential in providing for participation in a democracy. Unfortunately, in many countries legislative processes lack transparency. People's participation and accountability are defeated by corrupted party politics. The lack of access to information also adversely affects the capacity of people to participate in the legislative process.

People's participation requires not only participation by way of representatives but also direct participation, with the capacity to make grievances heard on all occasions. Therefore a climate needs to be fostered where all citizens irrespective of their social positions feel confident that they are able to express their grievances freely. Confidence-building is a necessary pre-condition for the developing of such a climate, through well-resourced organizations, which must

take initiatives to instill confidence by involving isolated voices and making them into a community of strengthened voices so that elected representatives have to take serious note.

The development of machinery for the administration of justice in a manner that legal remedies are made available to people is also an essential component of a strategy against corruption. Where there are inordinate delays relating to the administration of justice these are exploited by corrupt elements. Corruption often feeds on inefficient systems for the administration of justice. Therefore the elimination of inefficiencies and incompetence in the administration of justice at all levels is essential in dealing with corruption.

Often impediments in justice are caused by the insufficient allocation of funds. Due to insufficient allocations sometimes the salaries of officers involved in the administration of justice are affected. This creates an excuse for corruption among these officers. Therefore, providing sufficient funding for the proper administration of justice is a further precondition to deal with corruption. The salaries of officers should be adequate based on the job analysis and related to the work performance. Towards this end, not only the salaries for the higher judiciary but also the salaries of lower judges must be protected constitutionally and paid out of a consolidated fund.

Specific institutions to eliminate corruption

The development of institutions specifically devoted to the elimination of corruption is a necessity for the maintenance of the rule of law as well as democratic institutions within the countries of Asia. Institutions that are specifically devoted to the elimination of corruption are found in most countries of the region but they have not been designed to achieve their purported ends. Most agencies have very limited powers and work on small budgetary allocations. These agencies often create the impression of the existence of initiatives for the elimination of corruption but in fact these are only cosmetic. This is due to the absence of political will to create effective institutions to eliminate corruption. In the absence of political

will, purely rhetorical statements are made about the elimination of corruption while ruling regimes in fact want to continue with the corrupt practices inherent within the system. The will to change among people who are the victims of corrupt practices is strong, but unless people who have the will to change express their will in a forceful manner and replace political leaderships which want to continue with corrupt practices, change for the better will not take place.

Institutions specifically designed for the elimination of corruption should have the following characteristics:

a. Independence in mandate, powers and appointments—not only for those who are in charge but also for all other employees. Personnel must be provided with security of tenure—if their independence in executing statutory functions is to be a reality—by making provisions in relevant legislation that they are not liable to be removed from office other than for misconduct or bad behaviour. Constitutional safeguards are needed to ensure the integrity of persons appointed to hold public positions in these institutions.

b. Adequate budgetary allocations to carry out investigation, prosecution, prevention, education and all other associated functions required for effectiveness. An effective law-enforcement component to combat corruption must include an investigation wing with sufficient training and resources. In Indonesia, a special court was set up to adjudicate corruption cases.

c. Accessibility for people to make complaints through various means, including through branches around the country.

d. Answerability to parliament and accountability through proper procedures that have been designed to prevent interference by the executive or any other branch of government.

e. Design within the framework of the rule of law and the UN Convention against Corruption.

Learning from successful ventures for elimination of corruption: Hong Kong ICAC

There are successful attempts at the elimination of corruption that need to be studied and replicated with suitable adjustments. The example of the Independent Commission Against Corruption (ICAC) in Hong Kong is one of the more successful in Asia. This legal initiative has transformed Hong Kong, where there was rampant corruption prior to the introduction of the law establishing the ICAC in 1974, into one of the societies where there has been considerable success in the elimination of corruption. The ICAC is fully independent and protected by effective measures to prevent executive interference, or that of any other authorities, in the implementation of its objectives.

The ICAC has played a role in improving the discipline of the public services as well as the private sector in Hong Kong. In the public sector it has been able to improve discipline within the police. This has been achieved by the complete independence of the ICAC from the policing system, with powers to control investigations into corruption of police as well as any other public service. The ICAC also has powers to investigate all citizens, including judicial officers. No one has been excluded from the jurisdiction of the ICAC. The ICAC concentrates on education as an important component in the elimination of corruption and much of its resources are devoted to this purpose. The internal checks and balances within the ICAC have measures against the possible abuse of powers within the institution. Therefore this model for the elimination of corruption needs to be studied comprehensively and introduced into other countries with suitable adaptations

People's movements for elimination of corruption

The creation of effective anti-corruption agencies as well as the maintenance of these agencies depends on the extent of public involvement and interest in the elimination of corruption. Public movements are essential for the emergence and success of these institutions. Therefore all civil society organisations should carefully

examine their strategies for involvement in the creation and maintenance of institutions for the elimination of corruption within our societies.

Public movements for the elimination of corruption should constantly articulate the problems of corruption for people, particularly those who do not belong to the privileged sections of society, and more specifically for the poorer sections of society. Constant articulation of these problems can create the necessary ethos as well as popular support for the creation of agencies to eliminate corruption, and their sustenance. In this respect, the media has a huge role in highlighting issues and increasing public awareness. Utilizing the Internet too we can disseminate a huge amount of information that can reach a large audience.

Some NGOs need to be developed to serve as corruption watchdogs, to get people to complain when they experience or see corruption, to investigate and take cases to the public, and to anti-corruption institutions. These NGOs have to maintain high accountability and credibility to build public trust.

The role of the legal community in the elimination of corruption needs to be emphasised. The legal community can play an enormous role in educating a population on legal safeguards against corruption and also in providing the necessary services to victims of corruption, as well as to movements fighting against corruption, so that their interventions can be enhanced with a proper understanding of the law. Labour unions and professionals such as medical doctors can play positive roles in fighting corruption in business and the public sector, such as in the public health sector.

In recent times there have been positive developments in the civil society organisations of some countries that have contributed to the possibility of more effective intervention for the creation and sustenance of attempts to eliminate corruption, and these movements need to be closely studied and replicated. Among these are groups that have worked for the right to information. Comprehensive laws on the right to information can provide citizens

with the powers necessary to obtain information with which to deal with their problems and those relating to their communities. The poorer sections of society in particular have to depend on public services, and the right to information given to a citizen can reveal details of the entitlements that they have under law and the means by which to obtain them. Thus initiatives to demand such laws could be an effective means of developing strategies to deal with the elimination of corruption. Where such laws already exist, citizens' movements can assist in their implementation, so that people are enabled to fight against corruption through all means available.

About the book

Despite the success achieved by the international community regarding the promotion of international human rights norms and standards in countries other than developed democracies, it would be an illusion to believe that these principles are actually applied in daily life.

In their pursuit of justice, Sri Lankans will learn the difficulties they face come from their dysfunctional criminal justice system. Building a narrative on these difficulties is therefore an essential component of seeking redress for rights violations. These narratives describe not only the difficulties and suffering faced by individuals, but also the nature of various public institutions and the problems within them.

This book makes an attempt to understand the obstacles to the realization of human rights norms in Sri Lanka, relating to the constitution, criminal justice system or local traditions. The ideas discussed in the book are the result of practical interventions by way of litigation, providing assistance to victims, and through debates conducted on these issues over a considerable time.

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