

THE ERADICATION OF LAWS DELAYS

COMMITTEE APPOINTED TO RECOMMEND
AMENDMENTS TO THE
PRACTICE AND PROCEDURE IN
INVESTIGATIONS AND COURTS

FINAL REPORT

02ND APRIL 2004

Table of Contents

Members of the Committee

EXECUTIVE SUMMARY

Introduction

Recommendations relating to the administration, management and distribution of resources within the Court structure and related State institutions

1.0 The police Force

- 1.1 (a) Lack of human resources
- (b) Lack of logistics and infrastructure
- (c) Lack of material resources
- (d) Personal and psychological problems
- (e) The lack of training
- (f) Inadequacy of scientific support services

- 1.2 (a) Compulsory Court attendance
- (b) Profiling of suspects
- (c) Recognition of performance

2.0 The Government Analyst's Department

3.0 The Attorney General's Department

- 3.1 Lack of cadre
- 3.2 Specialised training

4.0 The publication of a revised CPC

5.0 Lack of resources in Courts

6.0 Creation of additional Courts

Recommendations warranting immediate implementation within the existing framework of the law

7.0 The appointment of High Court Commissioners

8.0 Legal advice in investigations

- 9.0 The judicial management of caseloads/the appointment of recorders
- 10.0 Admission in terms of Section 420 of the CPC
- 11.0 Service of Summons

Recommendations requiring the implementation of minor or non-controversial amendments to existing legislation

- 12.0 Non-Summary Inquiries
- 13.0 Investigations
 - 13.1 Role of a Magistrate
 - 13.2 The taking of blood samples
 - 13.3 Access to statements
 - 13.4 Amendment to Section 110(5) of the CPC
- 14.0 The marking of non-confessional statements
- 15.0 Tendering a plea in writing
- 16.0 Magistrates to visit Police Stations
- 17.0 Firearms (Amendment) Act, No. 22 of 1996

Long-term goals warranting the introduction of new legal provisions

- 18.0 Judicial handling of caseload
- 19.0 Investigations
 - 19.1 Time limitation for the conduct of investigations
 - 19.2 Defence of alibi
 - 19.3 Legal representation
 - 19.4 Proposed amendments to the Bail Act
- 20.0 Fingerprinting of suspects
 - 20.1 Legislative recognition
 - 20.2 Rights of suspects
 - 20.3 Category of offences
 - 20.4 Notaries Ordinance

- 21.0 Day - to - day trial
- 22.0 Victims & Witnesses
 - 22.1 Victim & Witness Protection Authority
 - 22.2 The victim's right to be heard
 - 22.3 Compensation for victims
- 23.0 The right to silence
- 24.0 Proceeds of crime
- 25.0 The video recording of confessions
- 26.0 Dock statements
- 27.0 The photographing of suspects
- 28.0 Mandatory reporting of a discovery
- 29.0 The rehabilitation of drug addicts and the investigation of drug related offences
- 30.0 Conditional Pardon
- 31.0 Punitive powers of Magistrates
- 32.0 Law relating to Control-delivery
 - 32.1 Enabling legislation
 - 32.2 Legal protection
 - 32.3 Legislative definition
- 33.0 Special Court for organised crime

Conclusion

- | | | |
|----|-----------------------------------|----------------------|
| 1) | Mr. C.R. de Silva P.C. (Chairman) | Solicitor General |
| 2) | Mr. Ranji Abeysuriya P.C. | Attorney-at-Law |
| 3) | Mr. N.S. Rajapakse | High Court Judge |
| 4) | Mr. M.N. Burhan | Magistrate |
| 5) | Mr. Dappula de Livera | Senior State Counsel |

- | | | |
|----|------------------------------------|---|
| 6) | Mr. Lal Kuleratne | Attorney-at-Law
(Rep. of HC Practitioners) |
| 7) | Mr. U.R. de Silva | Attorney-at-Law |
| 8) | Mr. E.D.M. Hettiarachchi | SSP Director/Crimes |
| 9) | Ms. Sonali Siriwardena (Secretary) | Attorney-at-Law
(Ministry of Justice) |

The Chairman co-opted the following officers of the Attorney General's Department to serve on the Committee:

- | | | |
|-------------------------|---|----------------------|
| ▪ Mr. V.K. Malalgoda | - | Senior State Counsel |
| ▪ Mr. Sarath Jayamanne | - | Senior State Counsel |
| ▪ Mr. Yasantha Kodagoda | - | Senior State Counsel |

EXECUTIVE SUMMARY:

The Committee was appointed by the Ministry of Justice, Law Reform and National integration to recommend amendments to the practice and procedure in investigations and Court with a special focus on curbing crime and eradicating procedural delays existent in the administration of criminal justice in Sri Lanka

The Final Report is based on recommendations discussed over a four-month period from November 2003 to March 2004. During the course of twelve meetings, the Committee examined the workings of the criminal justice system and identified specific areas of concern that require amendment or improvement. This often involved the recognition of a need to introduce corresponding amendments to existing legislation. However, just as significant was the confirmation that laws delays are inextricably linked to the lack of adequate resources.

The deliberations addressed a broad range of subjects including the workings of the main branches of law enforcement such as the Police, the Government Analyst's Department, the Attorney General's Department and the Judiciary. In this regard senior officers of these institutions were invited to voice their views before the Committee in an attempt to formulate an integrated approach to the administration of justice.

It is the Committee's hope that the recommendations herein contained will form the basis of a Programme of Reform under the aegis of the Ministry of Justice, with due priority been given to its immediate implementation.

Introduction:

Inadequacies in the practice and procedure in the administration of criminal justice have been identified as one of the main factors contributing to delays in the dispensation of criminal justice in the country.

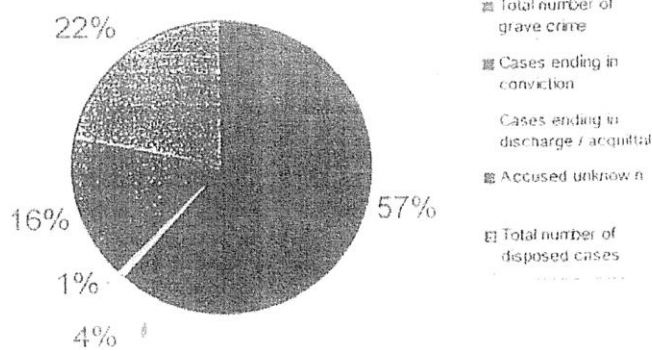
The rapid escalation of crime, increasingly committed in an organised manner with violence, impunity and considerable sophistication, thereby resulting in the loss of public confidence in the criminal justice system, has highlighted the need to review the existing criminal justice framework in Sri Lanka.

It is in this context that the Committee was given the mandate to identify the reasons for laws delays and to propose remedial action that can be taken to overcome the inadequacies in the practice and procedure of courts, so as to establish a credible and effective system with a focus on curbing crime and maintaining public confidence.

It is noteworthy that the present conviction rate in the country stands at a mere 4% (*see graph overleaf*). This trend is inextricably linked to laws delays and highlights the urgent need to rethink procedural mechanisms to assist the efficacious dispensation of justice.

In accordance with its terms of reference, the Committee through this Interim Report hopes to *identify* provisional problems that are seen as obstructing the expeditious and effective dispensation of justice and thereby *recommend* reforms deemed necessary to overcome the procedural and other deficiencies existent in the present criminal justice system.

Disposal of Grave Crimes committed
between 1983-2002



The recommendations contained in this Report also seek to make the practice and procedure of Courts and related crime prevention agencies more adaptive and future oriented and capable to cope with the changing behaviour of offenders and the changing opportunities for crime provided by technological and social change.

The recommendations herein proposed by the Committee are categories as follows:

- 1) Recommendations relating to the administration, management and distribution of resources within the Court structure and related State institutions.
- 2) Recommendations warranting immediate implementation within the existing framework of the law.
- 3) Recommendations requiring the implementation of minor or non-controversial amendments to the existing legislation.
- 4) Long-term goals warranting the introduction of new legal provisions.

Recommendations relating to the administration, management and distribution of resources within the Court structure and related State institutions:

1.0 The Police Force:

The significant role played by the Police Force in the administration of criminal justice makes it an integral component of any strategy aimed at curbing crime. Therefore it is important that the Police Force be geared to perform at its maximum potential. The Police reforms proposed herein are intended to achieve progressive changes in Policing practice and provide a framework for improving standards, reliability, consistency and responsiveness within the Police Force.

In this regard Senior DIG Chandra Fernando was invited by the Committee to discuss and help identify the several problems, which appear to mitigate against the capacity of the Police Force to provide an efficient service with regards to the implementation of criminal justice.

This discussion highlighted the need for a reform programme aimed at improving the performance of the Police Force making it more flexible through diversity and workforce modernization, increasing its capacity, providing better conditions, training and development and investing in communications, IT, forensics and best practice.

1.1 Accordingly the Committee identifies the following areas of concern, which may be effectively addressed through the distribution of adequate resources, namely:

- a) Lack of human resources: It is noted that 42.6% of all recorded crimes are committed with the Western Province, which although containing almost one third of the total number of Police Stations in the island (100 Police

Stations out of an all island figure of 346 Police Stations are situated within the Western Province), is manned by a mere 14% of its total strength. Compounding matters further, the development of personnel for special assignments such as Parliamentary duty, VIP Security etc, is observed to up a considerable percentage of the aforementioned limited human resources available within the Western Province.

In light of imbalance the Committee is of the opinion that the strength of the Police Force should be significantly increased especially in the Western Province with particular reference to Police personnel engaged in investigations and crime prevention etc.

- b) Lack of logistics and infrastructure: The lack of housing and transport facilities.

It is the Committee's view that logistical inadequacies significantly impede the mobility of Police personnel, a majority of who live outside the city of Colombo. Therein it is recommended that immediate measures be taken to provide adequate housing and transport facilities to personnel

- c) Lack of material resources: The lack of technological support and equipment in the context of modern investigative techniques.

The Committee believes that the drive for better performance goes hand in hand with the need to provide new resources, tools and technology to the Police. However, the primitive nature of investigative techniques presently used by the Police i.e. outdated fingerprinting technology and the lack of rudimentary investigative equipment such as Polygraph machines (lie detectors) in Sri Lanka, highlight the urgent need to invest in equipment relating to IT and forensics.

Therein the Committee strongly recommends that scientific and technological support for criminal investigations be significantly improved in order to facilitate a meaningful effort in curbing crime.

- d) Personal and psychological problems: The Committee observes an overall lack of motivation within the Police Force, which is seen to stem from stagnation in service with limited prospects of promotion and the imbalance of ranks within the Force.

The committee also notes the failure on the part of the administrative hierarchy within the Police Force to adequately acknowledge and appreciate the investigative skills of its officers, especially in the context of granting promotions (*Also refer point 1.2 (c)*). Accordingly the members propose that steps be taken to grant adequate recognition to

officers engaged in the area of criminal investigations and crime prevention.

- e) The lack of training: The lack of effective training, commitment and leadership within the Police Force wields a significantly negative impact on the quality of investigations carried out by the Police.

In this regard the Committee recommends that a Panel of officials engaged in training Police personnel be appointed to scrutinise and rethink the effectiveness of existing training programmes and methodology, at both recruitment and promotional levels. It is further recommended that such Panel be invited to submit its observations with a view to maximizing the potential and performance of the Police Force with special reference to criminal investigations.

- f) Inadequacy of scientific support services: The dearth of Crime Scene Officers ("CSO") to assist in the conduct of investigations.

The Committee strongly believes that forensic science has the potential to enhance the efficiency of the Police. The advent of DNA and related technology including the development of new methodology has today introduced the possibility for improving the strategic use of forensic science in the realm of criminal investigations.

However, while the limited financial resources available to import such technology is acknowledged, the Committee nevertheless highlights the importance of developing a clear knowledge base on how forensic science might be used to better support the delivery of justice.

In this regard it is proposed that immediate steps be taken to appoint CSOs from an appropriate rank of Police Officers for every Police District. It is observed that this would also help partially address the lacuna created by the dearth of scientific officers in the Government Analyst's Department (*Refer Point 2.0*).

- 1.2 The Committee makes the following additional recommendations pertaining to the Police in the context of advancing best practice:

- a) Compulsory attendance: The Committee recognises the need to introduce administrative measures requiring Police Officers to attend Court on a compulsory basis, in view of the frequency with which Police Officers obtain leave and abstaining from Court sighting inappropriate grounds, which has been observed to result in unnecessary disruption of Court proceedings in the recent past.

In this regard the Committee recommends that the Ministry of Justice advise the Judicial Service Commission ("JSC") and the judges Institute to educate Judicial Officers on the necessity to take prompt and appropriate action against Police Officers who default on appearances on inappropriate grounds.

- b) Profiling of suspects: The Committee proposes the establishment of a database containing the profiles of criminal suspects on a Divisional or Area basis. This database should be linked to a central repository and the data contained therein should be made accessible to all Police Stations. The Committee believes that the establishment of such a database will be of significant assistance to the Police in identifying suspects.
- c) Recognition of performance: It is recommended that in addition to the existing scheme of rewards, the Police Commission consider the implementation of an additional rewards scheme for Police Officers, in recognition of the outstanding performance of their duties with regard to criminal investigations on specific commendation by the presiding Judge or the Attorney General. It is further proposed that the Police Rewards Fund be utilised for this purpose.

2.0 The Government Analyst's Department:

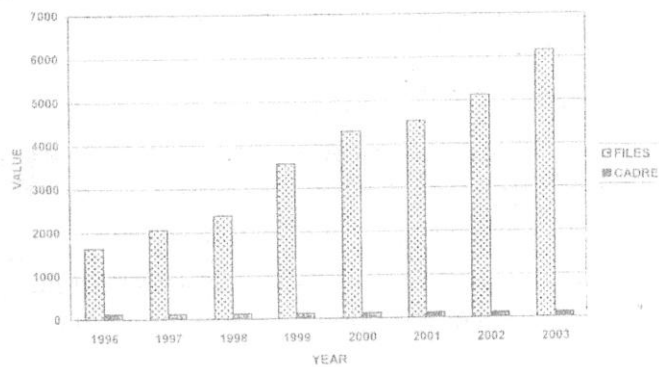
The Committee recognises that the effective and efficient administration of criminal justice can only be effected through the support and partnership of related agencies such as the Attorney General's Department (*Refer Point 3.0*) and the Government Analyst's Department ("GA' Dept"). In this regard representatives of the Police Force have sighted the lack of prompt assistance from the GA's Dept as contributing to existent procedural delays a position confirmed by several Judicial Officers of the Committee.

Senior Government Analyst Dr. W.D.G.S. Gunatilleke, who was invited by the Committee to discuss this issue, informed the members of the Committee that at present, 41.8 % of vacancies in the GA's Dept remain unfilled. Dr. Gunatilleke added that some of these vacancies are not at the level of recruitment thereby further compounding the difficulties involved in recruiting new cadre.

In light of the present dearth of personnel, the Committee proposes a review of the present scheme of recruitment and promotion and recommends that immediate steps be taken to recruit adequate officers to the GA's Dept.

3.0 The Attorney General's Department:

3.0 The Attorney General's Department:



Number of criminal files received by the Attorney General's Department from 1996-2003

- 3.1 Lack of cadre: At present the Attorney General's Department ("AG's Dept") comprises 123 officers out of which over 60 Officers are assigned to the Criminal Division. The last cadre increase at the AG's Dept was in 1996 during which year the number of files received by the Department stood at 1639. However, as at 2003, the number of advice files received by the Department, in addition to those involving Court appearances amounted to over 6000 files (*see above graph*).

The failure to introduce an increase of cadre to correspond with the growing number of files received by the AG's Dept in the recent past has seriously impeded its expeditious dispensation of legal advice. Therefore the Committee strongly recommends that additional cadre be recruited to the AG's Dept with immediate effect, with particular reference to the Criminal Division.

- 3.2 Specialised training: Having regard to the evolving nature of crime and the increased level of sophistication involved in the commission of modern commercial and electronic crime, the Committee recommends that officers of the AG's Dept be provided with adequate local and foreign exposure and training in the aforementioned areas of specialised crime.

4.0 The publication of revised CPC:

The Committee requests that the Ministry of Justice compile and publish a fully revised text of the CPC incorporating all amendments introduced to the main enactment.

5.0 Lack of resources in Courts:

The stark lack of resources in Court and the respective Court Registries is observed to be a significant contributor to the problem of laws delays. For

example it is seen that a majority of Magistrate's Courts lack photocopy machines needed to prepare briefs and Court proceedings. This deficiency has resulted in delaying the preparation of over 2000 briefs.

Therefore the Committee strongly recommends that immediate steps be taken to equip all Courts with basic resources such as photocopy machines without further delay.

6.0 Creation of additional Courts:

The Committee expresses its concern over the Courts being inundated with workloads, which often reach unmanageable proportions especially in High Courts and Magistrate's Courts. For example the High Court situated in Kandy is required to service the entire Central Province, thereby making intervening trial dates approximately one year.

The Committee believes that this situation needs to be addressed with immediate effect and thereby recommends the establishment of additional High Courts and Magistrate's Courts within existing provinces.

For example:

- Central Province – High Courts be established in Nuwera Eliya and Dambulla
- Sabaragmuwa Province – A High Court be established in Embilipitiya
- North-Central Province – A High Court be established in Polonnaruwa

Recommendations warranting immediate implementation within the existing framework of the law:

7.0 The appointment of High Court Commissioners

The Committee recommends that the JSC be requested to consider the appointment of High Court Commissioners as a solution to the growing backlog of cases pending before the High Courts at present.

Accordingly the Committee proposes that in addition to the sitting High Court judges, the JSC be advised to recommend that Her Excellency The President appoint High Court Commissioners from both the official and unofficial bar for designated periods of service in Courts with a backlog of 150 or more cases.

8.0 Legal advise in investigations:

Having regard to the significant number of advice files pending the advice of the Attorney General at present, the Committee recommends that a Senior State Counsel (SSC) or a State Counsel (SC) of sufficient seniority be appointed to provide prompt advice and assistance to the Police in the conduct of investigations on a regional basis. Furthermore the Committee recommends that one such officer be stationed in each Judicial Zone to act in an advisory capacity and to coordinate related matters with the Police.

9.0 The judicial management of caseload – the appointment of recorders

Having regard to the growing workload of Courts, it is the opinion of the Committee that the appointment of Court recorders would considerably reduce the time spent by Judicial Officers on pre-trial and post-trial matters.

Accordingly the Committee recommends that recorders be appointed in particularly heavy courts in consultation with the Chief Justice, in terms of Section 5 (C) (1) of the Judicature Act, as amended by Act No. 16 of 1985 x 16 of 1989.

10.0 Admission in terms of Section 420 of the Criminal Procedure Code:

The Committee expresses its concerns over the failure of Judicial Officers to pay adequate attention to Section 420 (1) of the Criminal Procedure Court Act. No. 15 of 1979 ("CPC"), as amended by Act No. 11 of 1988, which provides for the elimination of unnecessary evidence.

The committee recommends that the JSC be requested to draw the attention of Judges to this particular legal provision and to advise and encourage such Judicial Officers to utilise such provisions in criminal trials.

11.0 Service of summons:

The Committee recommends that in all cases, which are punishable with only a fine, the summons should be served by Registered Post. In the event of an accused not be present upon summons being served by Registered Post, the relevant Magistrate shall be entitled to issue a warrant upon proof of such service.

Recommendations requiring the implementation of minor or non-controversial amendments to the existing legislation:
--

12.0 The contributory role of Non-Summary Inquiries to laws delays:

The Committee is of the unanimous view that Non-Summary Inquiries ("NSI") should be dispensed with, having regard to several concerns voiced by representatives of the Police and the Judiciary including members of the Official and Unofficial Bar. A long drawn NSI is often seen to negatively impact on the case, resulting in the de-motivation of witnesses due to the inconvenience involved in making regular attendance for the purpose of such inquiry.

However, while the total abolition of NSI is not advocated the Committee acknowledges the need to limit its application in cases in which the Attorney General could forward direct indictment. Accordingly the Committee proposes the following amendments to the present CPC and related statutory provisions:

- a) The Judicature Act. No. 2 of 1978 together with Section 145 of the CPC should be amended in order to afford the Attorney General discretion to file direct indictment in appropriate cases at any time. (In particular having regard to the general trend where indictments are filed in almost 95% of all cases committed by the Magistrate).
- b) Magistrates should be encouraged to institute legal proceedings in homicide cases immediately after the conclusion of the inquest if the available and proceed with the NSI while investigations are pending.

While there is adequate provision in the present law to adopt this course of action, most Magistrates fail to follow this procedure thereby contributing to the delay. Therefore the Committee recommends that the JSC be requested to advise Judicial Officers in this regard.

- c) Magistrates should be authorised to record statements on oath of any person acquainted with the facts relating to the incident, which may be subsequently read at the commencement of the NSI and in the presence of the accused. The accused would then be entitled to cross examine the witness.

This procedure would enable the production of depositions in the subsequent trial under Section 33 of the Evidence Ordinance and thereby prevent the prosecution being placed at a disadvantage in the event of the subsequent death of such witness.

- d) Judicial Medical Officers ("JMO") should be required to provide the Post-Mortem Report and all Medico-Legal Reports within one month of the incident, except in instances when permission has been granted by the relevant Magistrate.
- e) The proviso to Section 148 (1) of the CPC should be amended prohibiting the recording of oral evidence of all public officers (including Police Officers) unless directed to do so by the Attorney General. Instead legal

provision must be made to enable the acceptance of official affidavits provided by such witnesses, when so required.

13.0 Investigations:

13.1 Role of a Magistrate: The Committee deems it necessary that Magistrates be required to play a greater role in investigations. In this regard the Committee recommends the incorporation of a statutory obligation in Section 124 of the CPC whereby Magistrates will be required to play a greater supervisory role over the conduct of criminal investigations.

13.2 The taking of blood samples: It is proposed that Section 123 of the CPC be amended to empower a Magistrate to order the taking of blood samples of suspects for purposes of conducting DNA and other scientific tests.

13.3 Access to statements: The Committee recommends that Trial Judges be afforded the discretion to permit witnesses to refresh their memory at any stage of proceedings on an application made for this purpose by such witness or the prosecution. The Judge shall grant such permission after having regard to the complexity of the transaction, the nature of the incident and the intervening period of time.

It is further recommended that in all High Court cases, defence lawyers be permitted, upon application to the Officer-in-Charge ("OIC") of the relevant Police Station, to be granted access (in the form of certified photocopies) to all statements recorded in the course of the investigations including the statements made by unlisted witnesses together with all notes of investigation. It is noted that this would significantly enhance the purity of the investigations carried out by the Police.

13.4 Amendment to Section 110(5) of the CPC: The Committee recommends an amendment to the CPC by way of an addition to Section 110(5) to facilitate a coordinated criminal investigation by the OIC of the relevant Police Station. It is suggested that the OIC be required to coordinate and carry out the investigation with the assistance of the GA/Fingerprint analyst/JMO etc, where their services are deemed necessary.

It is further proposed that the OIC of the relevant Police Station, having considered the complexity of the investigation and the nature of the case, be permitted if necessary, to seek the assistance of an expert who is a Public Servant or who is employed in a statutory authority.

In addition the Committee recommends the introduction of a statutory provision enabling the OIC/Magistrate conducting or in whose jurisdiction an offence is committed, to obtain where necessary, the services of a JMO/GA or any other

expert provided that such expert is a public servant and employed in a statutory authority.

In any event the Magistrate should be empowered to seek the assistance of any other expert subject to the consent of such expert.

14.0 The marking of non-confessional statements:

14.1 The Committee proposes an amendment to Section 110 of the CPC to enable the production of non-confessional admissions contained in statements made by the accused as evidence, provided that such statements are made voluntarily and falls within the parameters of Section 24 of the Evidence Ordinance.

14.2 It is also proposed that at the conclusion of a NSI, a Magistrate may be empowered on his or her own motion or upon an application made by counsel to inquire from the accused as to whether he is prepared to admit in evidence certain facts. Such facts, if admitted may subsequently be led by the prosecution against the accused at the trial.

15.0 Tendering a plea in writing:

The Committee is of the view that in reference to offences, which are punishable with only a fine, the accused should be granted an opportunity to plead guilty in writing through an Attorney-at-Law. Such a plea in writing shall be in accordance to a form contained in a schedule to the CPC, which shall also include a list of offences in respect of which such a plea may be permitted. Accordingly the Committee recommends the introduction of a suitable amendment equivalent to section 164 (5) of the Administration of Justice Law 1973.

However, such a provision shall apply subject to the Magistrate informing the accused that any answer made in consequence of such query may be used against him at the trial. Further the fact of the accused having made such a statement shall be considered by the trial Judge in determining the sentence. This provision shall apply notwithstanding Section 420 of the CPC, which provides that the accused shall be represented by counsel at the time such admission is made.

16.0 Magistrates to visit Police Stations:

The Committee recommends the incorporation of a mandatory legal provision requiring Magistrates to visit Police Station at least once a month for the purpose of ensure the detention and interrogation of suspects according to law. It is also suggested that provision be introduced to empower Magistrates to visit Police Stations at any time, in order to inspect and/or monitor the lawful detention and interrogation of suspects.

17.0 Amendment to the Firearms (Amendment) Act, No. 22 of 1996:

Upon a recommendation made by Senior Government Analyst Mr. W.D.G.S. Gunethilleke, the Committee proposes that the Firearms (Amendment) Act, No. 22 of 1996 (herein referred to as "FA Act"), be amended so as to extend the definition of 'Automatic Gun' to include both auto-find AND auto-loading weapons. The present definition merely provides for auto-firing guns.

On examination of this definition, a pistol would necessarily come within the ambit of an 'Automatic Gun'. However, a revolver, which does not repeatedly eject an empty cartridge, would not fall within this definition. Therefore the Committee observes that with the growing sophistication of crime, organised criminals are in the habit of commonly using automatic weapons in the commission of serious offences. This highlights the necessity to bring both revolvers and pistols into the ambit of 'Automatic Gun'.

In these circumstances the Committee further recommends that the definition of the term 'Automatic Gun' in the FA Act, be redefined to include both pistols and revolvers with corresponding amendments to the statute.

In light of this suggestion, the Committee recommends that the definition of the term 'auto gun' in the FA Act be amended. At present the GA's Dept appears to take the view that an 'Automatic Gun' is a weapon, which is capable of repeated firing by a single pull of a trigger. This approach would not bring a pistol or revolver within the ambit of the 'Automatic Gun'. However, according to the definition provided in Section 2 of the FA Act, an 'Automatic Gun' means an gun which repeatedly ejects an empty cartridge shell and introduces a new cartridge on the firing of the gun.

Long-term goals warranting the introduction of new legal provisions:
--

18.0 Judicial handling of the caseload:

One objectionable procedural practice observed to be followed by several members of the Judiciary is the avoidance of hearing cases in anticipation of an imminent transfer. In light of this situation, the Committee recommends that the names of Court Judges who are appointed to the Court of Appeal be gazzetted and thereby required to conclude all partly heard cases in which the prosecution has concluded its case.

19.0 Investigations:

- 19.1 Time limitation for the conduct of investigations: The Committee deems the 24-hour time limitation specified for the holding in custody of a suspect pending the

conduct of Police investigations in terms of Section 37 of the CPC, highly insufficient and impractical.

In this regard the Committee recommends that the time limitation be extended to a minimum period of 72-hours, especially in relation to cognizable offences, so as to afford the Police sufficient time with which to conduct a proper investigation.

However, notwithstanding the extension of time, the Police should be required to produce the suspect before a Magistrate within the first 24 hours from the time of arrest and upon an application made under the hand of the Assistant Superintendent of Police ("ASP"), be empowered to take back the suspect into custody for a total period not exceeding 72 hours from the time of arrest.

- 19.2 Defence of alibi: With regards to the defence of alibi, the Committee considers it appropriate to require an accused to give notice of an alibi prior to the commencement of the defense, as is the practice in several countries including the United Kingdom.

Accordingly it is proposed that the accused NOT be permitted to take up the defence of alibi if adequate notice has not been given. And that the accused be required to submit a list of his witnesses and set out the purpose for which such witness is to be called together with the list of documents, prior to the commencement of the defence case, especially in cases in which witnesses have not made a statement to the Police during the course of the investigation. However, this should not bar the defence, in exceptional situations, from calling a witness who has not been included in the list upon due notice being given to the prosecution.

Provided however, that in the interests of justice the Court may permit the calling of a witness or the production of a document not listed by the accused.

- 19.3 Legal Representation: The Committee recommends that an accused person should be afforded a statutory right to have access to a lawyer whilst in Police custody.

- 19.4 Proposed amendments to the Bail Act:

- a) The Committee proposes that a Magistrate when granting bail, should first be satisfied of the whereabouts of the person and obtain the address and details of next of kin so as to ensure that the granting of bail will not result in the suspects subsequent absence from court. Furthermore it is suggested that the Police be required to assist the Magistrate in ascertaining and verifying the whereabouts of the suspect.
- b) The Committee observes that a number of magistrates blindly follow the provisions set out in Section 14 of the Bail Act, No 30 of 1997 ("Bail

Act"), thereby remanding and unnecessarily extending the remand of persons accused of both bailable and non-bailable offences.

Therefore the Committee recommends that both the JSC and the Judges Institute be advised to educate the Magistrates in the proper application of the Bail Act with special reference to Sections 5, 7 and 14.

- c) The Ministry of Justice is also advised to take legislative steps to amend the English text of the Bail Act to better reflect the contents of the Sinhala text.

20.0 Fingerprinting of suspects:

- 20.1 Legal provision for the recording of suspects: It is proposed that legal provision be introduced to enable the obtaining of fingerprints from arrested suspects in instances where the whereabouts of such suspects are unknown or where information supplied by them as regards their identity and whereabouts are suspect. (The Police refer to such cases as "A" Report cases).

These fingerprints may then be stored in a repository where they may be used in future criminal investigations for purposes of ascertaining the previous criminal record of suspects. The Committee believes that this would help simplify investigations by effectively preventing a suspect from assuming a false identity.

While it is acknowledged that Sri Lanka presently lacks the resources to implement such a measure, the Committee considers it important to introduce the rudimentary legal infrastructure to facilitate an environment in which technology will play an increasingly critical role in tackling crime.

- 20.2 Rights of suspects: The Committee recommends the introduction of statutory safeguards as have been adopted in other countries, to protect the rights of suspects whose prints are stored in a repository. Accordingly the Committee proposes the enactment of Data Protection laws, *inter alia*, for the regulation of such a repository.
- 20.3 Category of offences: With regards to the category of offences for which the recording of fingerprints is to be made mandatory, the Committee recommends that the Police be permitted to fingerprint all persons who come into adverse contact with the law.

Also recommended is the mandatory recording of prints of all persons involved in offences requiring the remanding of suspects, including those involved in cognizable offences. In relation to non-cognizable offences, the Magistrate should be required to sanction the recording of fingerprints, where an application is made for this purpose by the Police (Such cases are more commonly referred to as "B" Report cases by the Police).

- 20.4 Notaries Ordinance: The Committee proposes an amendment to the Notaries Ordinance, No. 1 of 1907 to require a Notary to record the fingerprints of parties so as to prevent the forging of deeds and other such notarially executed documents.

It is the opinion of the Committee that such a requirement would be in the best interest of the Notary and would also serve to enhance the sanctity of the document. The relevant training in this area may be incorporated to the curriculum of the Practical Training Programme conducted for apprentice year students by the Bar Association of Sri Lanka.

21.0 Day-today trial:

The breakdown in the continuity of trials is observed to be a key factor warranting urgent attention in the context of eradicating procedural delays existent in the Court structure. In this regard the Committee recommends that cases before the High Courts be heard on a day-today basis, so as to maintain the continuity of the trial. Further it is proposed that the Attorney General be empowered to reserve a right to request a Magistrate to take up specific trials and NSIs in the Magistrate's Court without delay.

22.0 Victims and Witnesses:

- 22.1 Victims and Witnesses Protection Authority: The Committee voices its grave concern over the growing reluctance of witnesses to identify and testify against offenders due to threats and various other forms of duress made against witnesses and their families. This is acknowledged as a key contributor to the failure of cases involving organised crime, and highlights the need to implement special measures.

Missing pages

- On the day of passing judgment, the relevant Judicial Officer should be required to notify the victim on the right to be heard. This would effectively require sentencing to be scheduled for a later date.
- In the case of an appeal the victim should be informed of the status of the appeal and its outcome. Furthermore the registrar of the relevant Appeal Court should be required to inform the victim *AND* the original Judicial Officer of its order.
- Where the victim is deceased, his next of kin should be made entitled to the aforementioned right and be heard by the relevant Judicial Officer prior to the passing of sentence.

- 22.3 Compensation for victims: The Committee wishes to highlight the absence of a statutory provision in the CPC for the payment of adequate compensation for victims of crime. Having regard to this lacuna, the Committee recommends the introduction of a legal provision for the awarding of adequate compensation to victims at the conclusion of a trial.

The award of compensation should not bar any victim of crime from seeking a separate civil remedy. However, it is recommended that the compensation awarded by a criminal court be taken into consideration in the computation in a civil suit.

23.0 The Right to Silence:

The Committee's attention has been drawn to the concept relating to the accused's 'Right to Silence' in a criminal proceeding. While the right of the accused to remain silent remains undisputed, an overly rigid adherence to this concept is observed to hinder the effectual workings of the criminal justice system.

In this regard the Committee recommends that the present CPC be amended so as to provide statutory expression to the provisions contained in Section 213 of the Administration of Justice Law, No. 44 of 1973 ("AJL"). This would enable the trial judge to arrive at an appropriate finding where an accused fails to offer an explanation when it is clearly within his power to do so having regard to the circumstances of the case. In such an instance, an adverse inference may be drawn against the accused to enhance the case of the prosecution.

24.0 Proceeds of crime:

The Committee highlights the need to introduce adequate legislative provision to widen investigative powers to recover wealth accumulated through criminal activity and to consolidate and strengthen existing criminal confiscation powers.

In this regard the Committee strongly recommends the Ministry of Justice to take immediate steps to finalise necessary legislation for the recovery of criminal assets as provided for in the draft law on Proceeds of Crime.

25.0 The video recording of confessions:

The Committee recognises the need for a modern, prompt, efficient and effective criminal justice system, which meets the needs of the people whom it serves. In this regard the Committee proposes that authorities consider the possibility of video recording of confessions and Police interrogations. The defence may subsequently access such a recording and this would enable both parties to ensure that confessions are made free of coercion.

Such a provision would enable the admission of confessions, which are made voluntarily to a Police Officer of a gazetted rank. However, this would require a corresponding amendment to be introduced to Section 25 of the Evidence Ordinance enabling such confessions to be admitted in evidence against the accused.

26.0 Dock statements:

The Committee is of the opinion that the law relating to Dock Statements warrants amendment as the present practice permits the accused to lie with impunity.

In this regard the Committee recommends that Courts be barred from attaching any evidential value to such a statement unless they are corroborated by other independent facts and material evidence.

27.0 The photographing of suspects:

The Committee wishes to address the absence of legal provision enabling the Police to photograph suspects for purposes of investigation and identification. In this regard it is proposed that adequate statutory provision be introduced to regulate the photographing of suspects by the Police.

28.0 Mandatory reporting of a discovery of corpse:

The Committee proposes the introduction of a legal obligation whereby a person would be required to provide information to Court upon a discovery of a body or any object used in the commission of an offence or any proceeds of crime, if such body, object or proceeds are discovered within the control of such person or upon such person having knowledge of the existence or whereabouts of such body or object. The failure to provide an explanation regarding such a discovery should invite an adverse inference to be drawn against such a person.

29.0 The rehabilitation of drug addicts and the investigation of drug related offences:

The Committee highlights the necessity to implement a programme to treat and rehabilitate drug addicts. However, as this has been sufficiently addressed in the draft amendment to the Poisons, Opium and Dangerous Drugs Ordinance, the Committee recommends the introduction of amending provisions to facilitate a show of leniency towards a drug addict in an instance where such person assists with the Police investigation. (The re-enactment of Section 236 of the AJL is recommended in this regard).

30.1 It is the opinion of the Committee that the application of Conditional Pardon should be extended to cover the following instances:

- a) *Where the person who is suspected of the commission of an offense extends his cooperation to the Police:*

Where the person accused or suspected of the commission of any offence provides information leading to a successful arrest, a sustainable prosecution and subsequent conviction in connection to any case, the Attorney General may at his discretion make an order for the suspension of the prosecution of the former offender.

- b) *Where a criminal action is pending or proceeding against a person*

The Attorney General may at his discretion apply to the Trial Court to consider imposing a mitigated sentence/punishment.

- c) *Where a person is already convicted and serving sentence:*

The Attorney General may invite Her Excellency the President to act under the Constitution and remit the present sentence in favour of a mitigated sentence.

- 30.2 The Committee recommends that in respect of a conditional pardon in terms of Section 256 (1) of the CPC, the requirement of remanding the person in question until the conclusion of the case be discontinued and that the issue of remand be left to the discretion of the Court.

- 30.3 Furthermore it is observed that the present law permits the granting of a Conditional Pardon only in respect of persons accused of offences which are 'exclusively' triable by the High Court, thereby effectively preventing the granting of Conditional Pardons in respect of offences such as organised robbery.

In view of the increasing number of such offences being committed today, the restriction placed on the granting of conditional pardons, is observed to be a very serious shortcoming in the present criminal justice process. Accordingly the Committee recommends the deletion of the word 'exclusively' as contained in Section 256 (1) of the CPC.

- 31.0 Punitive powers of the Magistrates:

The attention of the Committee has been drawn to the inadequacy of punitive powers wielded by Magistrates at present. Therefore the Committee recommends that punitive powers of Magistrates be increased to an imprisonment term of five years and a maximum fine of Rs. 100,000/-.

- 32.0 Law relating to Control-delivery:

- 32.1 Enabling legislation: The Committee highlights the need to introduce special legal provision relating to control-delivery and organised crime. In this regard it is recommended that enabling legislation be drafted to facilitate the control-delivery of drugs and arms, and to combat organised crime.
- 32.2 Legal protection for officers engaged in undercover operations: The Committee recommends the introduction of statutory safeguards to recognise and regulate undercover operations, which would afford special protection to law enforcement officers engaging in such operations.
- 32.3 Legislative definition: The Committee finds certain provisions contained in the Criminal Procedure Code to conflict with the concept of 'undercover'. For example Section 109 of the CPC requires that all evidence and the method of obtaining such evidence be reduced to writing. Therefore a relevant amendment to the present law is considered necessary with regards to the definitions of terms germane to such operations.
- 33.0 Special Court to hear cases of organised crime:

In light of the rapid escalation in the incidents of organised crime witnessed in the recent past, the Committee recommends the establishment of a special Court mandated to hear and try cases of organised crime notwithstanding territorial jurisdiction.

It is proposed that a separate Court be created in each Province to try persons indicted for the commission of specified offences (grave crime/PTA/serious drug offences etc) as may be specified in a Schedule and such offences which in the opinion of the Attorney General are deemed to generate public interest.

Conclusions:

The Committee recognises that existent delays in the criminal justice process greatly frustrate the law enforcement effort, resulting in the development of a sense of injustice not merely within the victim of crime but also within the offender and citizen of the country alike. The end result is the overall loss of confidence in the criminal justice system of the country.

The recommendations set out above comprise short, medium and long-term measures that are collectively aimed at expediting and modernizing the criminal justice system with an overall focus on curbing crime and eradicating legal delays. It is hoped that these recommendations will rebalance the system in favour of victims, witnesses and communities and deliver justice for all by building greater confidence and credibility.

The Committee notes that the delivery of these outcomes is a joint enterprise involving a wide range of partners across the criminal justice system. It reinforces the need to forge effective links between all law enforcement agencies to form a unified force capable of

eradicating the intractable delays existent in the administration of criminal justice in Sri Lanka.

The final page contains the signatures of the Committee, those being:

Mr. C.R. de Silva P.C. – Solicitor General -- Chaiman

Mr. Ranjit Abeysuriya P.C.

Mrs. V.K. Malalgoda – Senior State Counsel

Mrs. Dappula de Livera -- Senior State Counsel

Mr. U.R. de Silva – Attorney-at-Law

Mr. E.D.M. Hettiarachchi – SSP, Director/Crimes

Mr. N.S. Rajapakse – High Court Judge

Mr. M.N. Burhan -- Magistrate

Mr. Sarath Jayamanne -- Senior State Counsel

Mr. Yasantha Kodagoda -- Senior State Counsel

Mr. Lal Kuleratne -- Attorney-at-Law

Ms. Sonali Siriwardena -- Attorney-at-Law