



Sectoral Oversight committee on Legal Affairs (anti corruption) & Media

Recommendations Pertaining to the Expeditious and Efficient Administration of Criminal Justice

Wednesday, 20 September 2017

Sectoral Oversight Committee on Legal Affairs (Anti Corruption) and Media

The Sectoral Oversight Committee on Legal Affairs (Anti Corruption) and Media has been appointed to supervise functioning of the Ministry of Justice, Parliamentary Reforms and Media, evaluate the level, productivity and efficiency and to continuous supervision and review.

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Powers

Powers vested on this Committee, which is one of the Sectoral Oversight Committees of Parliament, have been mentioned in the motion passed in Parliament on the 19th December, 2015. Please refer www.parliament.lk for this.

Publications

All the publications of the Committee are published by the Committee office on the order of the Parliament. All the publishing of the Committee (including press communiqué) www.parliament.lk.

Committee Staff

The Committee Staff is consisted with Mr. Tikiri K. Jayatilake – Assistant Secretary to Parliament, Mr. Jagath Gajaweeraarachchi – Director (Legislative Services), Mrs. Indira Dissanayaka – Assistant Director (Administration) – Committee Office, Mrs. Chintha Bulathsinhala, Principal Officer and Mrs. Rupani De Zoysa - Assistant Principal Officer.

Notice

All the documents should be forwarded to Sectoral Oversight Committee on Legal Affairs (anti corruption) and Media, Committee Office, Sri Lanka Parliament, Sri Jayawardenapura, Kotte. For inquiries contact 011 2777100.

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Summary-----

In order to retain the success of the judicature system in Sri Lanka, most accurate and fair court decisions should be given to the people without delay. For that, the responsibility of the present government is to formulate the legal framework to assist the Attorney Generals' Department and Commission to Investigate Allegations of Bribery and Corruption which are functioning as pioneers of the law to function expeditiously. As functioning of these institutions should be expeditious and updated through arranging the environment required by these institutions fit for the need of current society, the aim of submitting this report is to make suitable recommendations by identifying those requirements.

1.) Introduction

The timely need for an efficient Process for Administration of Criminal Justice whereby Justice is accorded to the Victim, Defendants and Citizens

The fundamental reason for undertaking a specific investigation into the above matter by this Sectoral Oversight Committee is its position that justice should be accorded to victims and defendants of crimes as well as the society as a whole by minimizing the delay prevailing in Sri Lanka in terms of administration of criminal justice and by improving the efficiency of the process of administration of criminal justice. The attention of the Sectoral Oversight Committee fell on the strong objection that has arisen in the society regarding the excessive delays in hearing cases of serious crimes such as murders, rapes and child abuses and offences pertaining to public properties, viz. bribery, corruption and money laundering. Therefore, the attention of the Committee has focused on identifying the delays existing in administration of criminal justice and, by addressing the issues unveiled by it, on establishing an efficient process of administration of justice which exercises fairness on defendants as well as victims of crimes.

2.) Ministries, Departments and State Institutions summoned for the Committee

- Ministry of Justice
- Attorney General's Department
- Legal Draftsman Department
- Commission to Investigate Allegations of Bribery or Corruption
- Bar Association of Sri Lanka
- Ministry of Public Administration, Director General - Combined Services

3.) Evidence

The Sectoral Oversight Committee deliberated pertaining to the above matters and obtained evidence and comments of following officers at its meetings held on 11.08.2017, 23.08.2017 and 08.09.2017:

- i. Mr. Jayantha Jayasuriya, PC, Attorney General
- ii. Mr. Sarath Jayamanna, P.C., Director General of Commission to Investigate Allegations of Bribery or Corruption
- iii. Mr. Yasantha Kodagoda, P.C., Additional Solicitor General
- iv. Mr. Padmasiri Jayamanna, Secretary to the Ministry of Justice
- v. Mr. Sujeewalal Dahanayake, Attorney-At-Law, Treasurer of the Bar Association of Sri Lanka as its representative

4.) Reports Considered

In addition to the reports mentioned above, the Sectoral Oversight Committee considered the following reports and documents:

- i. The Second Interim Report dated 09.02.2017 issued by the Special Committee on Amending the Penal Code and the Code of Criminal Procedure Act chaired by the Hon. B.P. Aluvihare, Justice of the Supreme Court appointed pertaining to the amending of the Penal Code and the Code of Criminal Procedure.
- ii. The report presented by the Director General of the Commission to Investigate Allegations of Bribery or Corruption titled "Proposals to make the Commission to Investigate Allegations of Bribery or Corruption efficient" dated 30. 08. 2017.
- iii. The report titled "The Attorney General's report with regard to increasing the productivity of the Attorney General's Department" dated 30. 08. 2017 presented by the Attorney General on the instructions of this Sectoral Committee on 23.08.2017.
- iv. Copies of the letters sent by the Secretary to the Ministry of Justice to the Ministry of Public Administration on 25.08.2015, 19.10.2015 and 30.11.2015 with regard to filling of existing vacancies of the Attorney General's Department.

- v. The report dated 25.08.2017 with regard to filling of existing vacancies of stenographers in the institutions that fall under the purview of the Ministry of Justice.
- vi. The report prepared by Additional Solicitor General, President Counsel Yasantha Kodagoda titled "Criminal Justice System of Sri Lanka, A Pragmatic approach to enhancing its efficiency".

It was evident that expeditious measures should be taken to ensure an efficient administration of criminal justice that serves justice to victims, defendants and all Sri Lankan citizens after considering the views and evidence recorded.

5.) Is there truly a serious delay in administration of criminal justice in Sri Lanka?

Following conclusions have been reached in the report dated 09.02.2017 of the committee headed by Supreme Court Judge B.P. Aluvihare appointed to look into the amendments made to the Penal Code and the Code of Criminal Procedure.

- i. The period between the date of commission of the offence and indictment was filed at High Court (Average) – 4.7 years
- ii. The actual period between the date of the indictment was filed and the date the prosecution commenced (Average) – 3.7 years
- iii. The period between the commencement of recording of evidence and the ruling of the case at High Court (Average) – 1.8 years

Therefore, the average length of time from the date of occurrence of commission of a serious criminal offence that should be prosecuted at the High Court, till the date of the conclusion of prosecution at the High Court is 10.2 years.

Further, as per the said report, it generally consumes seven years (07) for the completion of the two appeals in the Court of Appeal and the Supreme Court

subsequent to hearing of a case at the High Court (Entire criminal justice response to serious crimes seems to consume, on average approximately 17 years). The Committee is of the opinion that it is the responsibility of the government to initiate prompt measures to eliminate this serious and shameful delay in the administration of criminal justice whilst ensuring the accused and the victim of the crime are not deprived of the entitlement for a fair trial during such a process.

Especially, in the light of submissions made before this committee by witnesses, it was revealed that in respect of cases where it is expected to submit a large volume of documents with complex matters and a large number of witnesses such as cases involving allegations of bribery, corruption and money laundering, there is a strong likelihood of cases being inordinately delayed. Therefore the committee is of the opinion that it is imperative to put in place diverse parallel systems to clear the backlog of cases expeditiously, finalize the hearings of indictments relating to serious allegations that may occur in the future and strengthen in general the process of criminal justice administration in Sri Lanka.

6.) Measures to be taken for the strengthening of the process

- i. The Attorney General taking measures required for the holding of mandatory trials at Bar in terms of Section 12 of the Judicature Act No. 2 of 1978 in regard to bribery, assets, corruption, money laundering, fraud, criminal breach of trust and the preparation of forged documents and other similar irregularities amounting to over Rs. Five million and the briefing the Hon. Chief Justice by the Attorney General towards that end.
- ii. In terms of Article 105 (1) (c) of the Constitution, the Parliament should establish a new an Anti-Corruption High Court. The said High Court should hold day to day trials through three benches each comprising three judges of the High Court in respect of offences as defined by the existing laws.
- iii. Increasing the maximum number of High Court judges to 110 and immediately amending the Judicature Act No. 2 of 1978 pertaining to that end.
- iv. Expediting the pre trial process of High Courts and appointing Recorder Judges to create the environment that enables the holding of day to day trials.

- v. Initiating measures for the actual implementation of the order for the hearing of day to day trials continually, once the proceedings are initiated in a case before the High Court in respect of all offences including murders, attempted murder, rapes and child abuse as set out in Section 263(1) of the Code of Criminal Procedure Act.
- vi. Establishing 10 new High Courts with one each in the districts of Anuradhapura, Kandy, Gampaha and Ratnapura where a huge backlog of cases have been identified, one new High Court in Matale and 5 additional High Courts in the Colombo area.
- vii. A High Court dedicated exclusively for hearing cases of child abuses is currently being maintained in Anuradhapura. A similar High Court exclusive for the hearing of cases of relating to child abuses should be established in Colombo.

7.) Enhancing the productivity of duties of the Department of Attorney General

The Department of Attorney General is a pre-eminent public sector institution which has rendered an outstanding service in the process of administering criminal justice in Sri Lanka. It is the responsibility of the Attorney General to appear on behalf of the government in respect of the spheres of both the criminal and civil law. Though the independence of the Attorney General was restored through the 19th amendment to the Constitution, it is observed that the Department has been subject to public criticism owing to the sluggishness of discharging the functions entrusted to the Department of Attorney General. The incumbent Attorney General gave evidence before the Committee regarding this situation and subsequently made written submissions on 30.08.2017 consequent to instructions of the Committee.

This Committee identified issues relating to the inadequacy of human resources, state counsels not being paid salaries commensurate with the duties discharged by them, failure to fill vacancies during the specified timeframe and the lack of office space to discharge their duties conveniently as responsible professionals.

The Committee wishes to record its appreciation of the services rendered by the senior state counsels who carry out a massive load of work despite being paid poor salaries.

The following observations were made with relevance to the Attorney General's Department.

- (a) Slackened pace in the filing of new indictments and the backlog of cases at the Attorney General's Department remaining without change.
- (b) The Senior State Counsel leading prosecution not having sufficient time to prepare for the cases due to be taken up each day.
- (c) The emergence of a tendency among competent new attorneys to avoid applying for the vacancies for Senior State Counsel at the Attorney General's Department.

A number of important proposals to increase the productivity of the Attorney General's Department in performing its duties and to re-establish the dignified status that the Attorney General's Department had acquired within Public Service have been mentioned in the report dated 30.08.2017 submitted by the Attorney General.(The said document is submitted as an annexure to this report.)

The following proposals are submitted by this Committee subsequent to the consideration of the report submitted by the Attorney General, submissions made by the Secretary to the Ministry of Justice on behalf of that Ministry and the submissions made on behalf of the Bar Association of Sri Lanka. This Committee recommends the implementation of these recommendations without delay, considering them as matters of national importance in responding to the criticism that has emerged in the country against the Attorney General's Department and the government in relation to administration of justice.

- i. Salaries and allowances of all legal officers of the Attorney General's Department should be revised immediately and steps should be taken to further retain the competent and experienced officers of the Department and the required attraction should be created within the profession to recruit highly competent new officers. Even though proposals in this regard had been submitted to the government earlier, it is obvious that they have not been implemented.

(It was the decision of the Committee that the starting salary of a person recruited as a Senior State Counsel shall be one step below the Salary Step JS-1 specified for Magistrates in Public Management Service Department Circular 5/2016)

- ii The “approved” cadre for Senior State Counsel shall be increased from 118 to 218. Out of the 100 new officers recruited, 50 should be recruited in January 2018 and the remaining 50 should be recruited in batches of 25 in 2018 May/June and in January 2019.
- iii In addition to the publishing of advertisements to recruit new Senior State Counsel, the Attorney General should notify the Deans of the Law Faculties and the Principal of Sri Lanka Law College to refer the new attorneys who graduate with an Upper Division Class in LLB from each University or those who pass the final examination of Sri Lanka Law College with merit, for interviews for direct recruitment.
- iv For every High Court with over 50 indictments that remain with proceedings not concluded, another Senior State Counsel should be appointed in addition to the Senior State Counsel currently serving.
- v. In addition to the Karyala Karya Sahayaka currently serving at the official rooms for the Senior State Counsel located at High Courts throughout the country, another Karyala Karya Sahayaka, a Stenographer and a Court Clerk should be provided.
- vi. As the new building for the Attorney General’s Department currently under construction is due to be completed around April 2019, a building suitable to house about 100 officers should be provided on rent in an area in close proximity to Hulftsdorp until such time and in such building the necessary environment should be created to enable a maximum of two Senior State Counsel to engage in their duties comfortably in one official room.

- vii. Official vehicle facilities should be provided to all the legal officers of the Attorney General's Department to ensure their safety and to improve the efficiency of service.

- viii. The administrative affairs of the Department should be made efficient through the setting up of an "Information Technology Unit" immediately.

- ix. The service of an officer of the Sri Lanka Administrative Service should be provided to the Administration Division of the Attorney General's Department to serve under the supervision of a Senior State Counsel. Carrying out the currently expanded administrative affairs of the Attorney General's Department smoothly and efficiently and increasing the productivity of the Legal Officers are expected through this.

- x. Steps have to be taken to make formal and sufficient opportunities available for Post Graduate Studies for the officers of the Attorney General's Department.

In addition, it is recommended that the special attention of the Ministry of Justice be paid towards the other matters included in the Attorney- General's report dated 30.08.2017. It should be specially kept in mind that the Department of Attorney-General is not a mere department of the government but that it is the responsibility of the government to provide facilitation and to create the required environment enabling the said department to accomplish the specific responsibilities. We would like to point out the fact that arrangements have been made to add specific allowances to the salaries of officers serving in institutions like the Central Bank of Sri Lanka and the Parliament taking the special responsibilities of those institutions into consideration and that special facilities have been provided to them. It should be emphasized that lifting the Department of Attorney-General to such a special position can easily be justified.

8.) Finding a remedy to the dearth of stenographers which leads to the delay in judicial proceedings in courts and which obstructs the continuous adjudication process of a case.

Unavailability of Sufficient stenographers has become a serious cause for the delay in the proceedings of cases belonging to both civil and criminal courts. Specially, the inability of punctual recording of the testimonies has become a serious obstacle with pertinence to the day to day proceedings of the serious criminal cases which are being adjudicated in the High Courts. A long time has lapsed since the identification of this issue; however the Ministry of Justice and the other relevant public organizations have failed to implement the relevant remedies in this regard. The report dated 25.08.2017 issued by the Secretary to the Ministry of Justice pertaining to this matter is presented herewith as an annex. The following proposals are presented in relation to that and it is recommended that the implementation of these remedies be completed within a period of six months.

- i. The credit pass currently required for Mathematics in the GCE. Ordinary level examination as per the qualifications for recruitment to be altered as a general pass.
- ii. The salary scale of the stenographers to be increased up to MT2 2016 since they can be considered as Skilled Laborers.
- iii. The age of recruitment to be increased up to 45 years.
- iv. Opportunity to be granted for the unskilled laborers to be recruited for the posts of stenographers on contract and daily paid basis and priority to be given to such trained individuals when recruited to the permanent cadre.
- v. Audio Recording and Speech Recognition to be made compulsory pertaining to judicial proceedings in High courts and ensure technical facilitation with regard to the preparation of notes.
- vi. Retired stenographers to be immediately recruited on contract basis with an attractive incentive.
- vii. A course on Stenography to be re-initiated in a government Technical College.

9.) Proposals for the efficient functioning of the Commission to investigate Allegations of Bribery or Corruption

Subsequent to the investigation conducted by the Commission to Investigate Allegations of Bribery or Corruption during the last twenty three years, it was only on three occasions that the defendants have been convicted by a court for the offence of 'Corruption'. It should be noted that this is a regretful indicator of the manner in which the said commission functions at the moment and of the fact that the commission is vested with less powers. Unavailability of competent lawyers within the commission to lead the proceedings has been identified as a serious issue. Further, the local legislation required for the implementation of the provisions of the United Nations Convention against Corruption which Sri Lanka has ratified as per section 156 of the constitution, has not been formulated.

The report dated 30.08.2017 of the Director General of the Commission to Investigate Allegations of Bribery or Corruption towards the efficient functioning of the Commission to investigation Bribery or Corruption is presented herewith as an annex and,

1. It is proposed that the required amendments to the Commission to Investigate Allegations of Bribery or Corruption Act number 19 of 1994 be passed having presented to Parliament within six months.
2. It is proposed that the required legal amendments to update the law on Assets and Liabilities be passed having presented to Parliament within six months.

10.) Reacquisition of wealth acquired through crime

The laws with pertinence to reacquisition of wealth acquired through crimes should be passed expeditiously considering them a national priority. Further, the Ministry of Justice shall take the responsibility of introducing the new laws mentioned above and of expeditiously enforcing the other legal amendments which have been proposed.

The Ministry of Justice shall take the responsibility to assess the provisions required to implement these proposals and to arrange the future proceedings having presented this report to the Ministry of Finance within 2 weeks from its submission to parliament.

The committee shall make arrangements to present this report to the relevant subject Minister, Minister of Justice and to the Prime Minister and H.E. the President.

Similarly, it is the responsibility of the Ministry of Justice to implement the recommendations of this report and the implementation of the recommendations shall be completed within six months from its submission to parliament.

This committee shall fortnightly review the progress of the implementation of the recommendations given by this report.