Theme: Due Process Rights
(ref. Article 14 of ICCPR)

Sub-theme: Campaigning for Legal Reforms

Specific Issue: What people can do to ensure that available money is spent on necessary legal reforms

Example: In Sri Lanka, there is now a lot of money available for Legal Reforms (see News Item below)

In this lesson the following 3 questions will be discussed:

1. What difference can this money make to much-needed reforms?

2. What Can the People do?
   (a) Get to know the government plans for reforms
   (b) Make suggestions and influence the process of reforms; monitor the reform process

3. A Short Reference To The Recommendations Made by the Asian Human Rights Commission and Vigil Lanka Movement On Legal Reforms
THE NEWS ITEM

The following is a news release about funds being made available to the Sri Lanka Legal and Judicial Reforms Project by the World Bank. This and other South Asia news releases can be found on the World Bank Internet site [http://www.worldbank.org/sarprojects].

SRI LANKA IMPROVES LEGAL AND JUDICIAL SERVICES


The World Bank today announced a US$18.2 million credit to the Democratic Socialist Republic of Sri Lanka for a Legal and Judicial Reforms Project, which will support efforts to improve the efficiency, predictability and transparency of the Sri Lankan legal and judicial system. Specific areas targeted for reform are a stronger legal and regulatory framework; enhanced professional development within the legal profession and in the country’s law schools; greater access to the law; judicial reforms and an updated Company Registry.

The Legal and Judicial Reforms Project supports the government’s objective to build an efficient legal system responsive to the needs of the public at large and the private sector in particular. The project provides technical assistance to strengthen legal drafting capacity, the status of legal education within Sri Lanka, and the judiciary. It specifically addresses weaknesses in the legal / regulatory framework; institutions responsible for law reforms; and access to accurate legal information. The project also seeks to ensure that the judiciary is well prepared; judges and court staff will be trained in gender and ethnic sensitivity.

“There is strong sentiment among the key stakeholders that legal and judicial reforms are needed to improve the performance of the state, create an enabling policy environment for private sector development, and to increase access for the poor, thereby building momentum for the government’s broader legal reform efforts” said Maria Dakolias, Legal Counsel and Task Leader for the project.
Other areas supported by the project include updating the commercial law curricula in three Sri Lankan Law Schools, improving case management in the judiciary, and improvements to the Companies Registry, the central repository of key business records and data. This project also finances the modernization of information systems which will enhance access, efficiency, quality and transparency of legal information.

Total costs for the project are US$21.14 million, of which the government of Sri Lanka will contribute US$2.94 million. The US$18.2 million equivalent interest-free credit is provided to the government of Sri Lanka by the International Development Association (IDA), the World Bank’s concessionary lending affiliate, on standard IDA terms with 40 years maturity and a ten-year grace period.

For more information on this or other South Asia Projects, please visit: www.worldbank.org/sarprojects

THE LESSON

1. **What difference can this money make to much needed reforms?**

In the past the government of Sri Lanka has claimed, as many other governments do, that the reason for delaying much needed reforms is that there is no money for such work. With the money becoming available this argument can no longer be made.

Thus, this can be the moment to take the necessary action for correcting some of the problems of the legal system, which has been causing enormous problems for the people.

It is important to note that the funds from the World Bank covers a broad range of issues concerning the
functioning of the legal system and not only reforms relating to commerce. As the details given in the news item show, while part of the money is for commercially related reforms, the broader areas which affect the people’s lives are part of the reforms for which money is available.

2. What Can the People do?

By people here is meant, the organizations, including NGOS and concerned individuals. We particularly mean the human rights NGOS for which legal system issues have a very direct importance.

Two lines of action can be undertaken:
(a) Getting to know the government plans for reforms
(b) Making suggestions and influencing the process of reforms; monitoring the reform process

(a) Getting to know the government plans for reforms

This can be done in following ways
• Collect all news items relating to this issue and any other information and get a good idea of how far the government has proceeded on this matter; What plans does it already have?
• Contact the ministry concerned - Ministry of Justice - and let them know your concern and your wish to have detail information on what are the proposed reforms and at what stage the reforms have proceeded.
• Get to know the implementing officers of the reform programmes and request that you be kept informed of all the developments
• Let the government know your own suggestions for reforms and what you think are the most important reforms that must receive priority.
• Help to initiate a public debate on the issue; This way more people will engage the government on a public discussion
• Continue above mentioned activities on a regular basis;

(b) Making suggestions and influencing the process of reforms; monitoring the reform process

Identify the areas of reforms that you think are essential and urgent;

(for reference, see the Recommendations.... which had been developed at previous workshop of AHRC and Vigil Lanka movement, given in Lesson 3)

The main areas of people’s frustrations with the legal system are quite well known:

• The extraordinary delays in bringing cases to court, which are in fact shameful in terms of modern circumstances;
• Impunity enjoyed by powerful persons and state officers;
• Lack of procedures to implement basic rights;
• The laws which are only in the book but is not implemented;
• Extra-ordinary delays in implementing orders of courts and tribunals;
• Lack of access to laws to the poor;
• Lack of implementation of new laws relating to torture, the rights of children and women;
• Absence of Gender sensitivity spread through the system;
• Race and caste discrimination within the system.

Regarding these commonly felt problems, there are many reflections and comments, which can easily be found in the local publications (such as newspapers), and day to day conversations of the people. If these things are collected and presented properly there will be sufficient material on which many detailed recommendations can be made.

The following activities can be undertaken:

• Start workshops and other discussions for the purpose of identifying commonly felt problems and suggestions for changes.
• Form working committees at various levels to work on these issues.
• Use every form of media to conduct this debate, to achieve clarity of ideas and to spread those ideas
• Influence trade unions, political parties, other social organizations, religious organizations, to take interest in the matter.
• Use posters, pictures and other means to attract attention to this issue.

3. A Short Reference to the Recommendations made by the Asian Human Rights Commission and Vigil Lanka Movement on Legal Reforms:

Dealing With Delays

• Use of electronic communications for all the work in courts; Provisions for use of tape recorders to record evidence, which can then be transcribed; (At present one of the contestant occurrences leading to delays is absence of stenographers). Use of these means requires amendments to some laws.
• Training of judges and court staff to use these devises effectively.
• Establishing co-ordinating systems between higher courts and lower courts, the relevant police departments and courts and prisons to make relationships more efficient.
• Increase of courts and tribunals to deal with over load of work

Regarding IMPUNITY

1. Need for an independent Prosecutor, due to the unsatisfactory nature of present day prosecutions by the Attorney-General’s department and police. The Attorney-General officially is the Government’s lawyer and can for various reasons fail or refuse to prosecute cases. For example, the over 30,000 disappearances cases.
2. The need for legal supervision of police carrying out criminal investigations, as police due to lack of training or other reasons often abuse their powers.
3. Creating mechanisms to implement the Sri Lankan ‘Convention Against Torture and other Cruel, Inhuman or degrading Treatment or Punishment Act’ (Act.No. 22, 1994). This Act has been passed,
but there has been no prosecution under this law as yet.

4. Systems to implement other laws relating to human rights. Laws exist on paper but are not implemented.

**Labour laws**

Need to change the implementation machinery

**Independence of Judiciary**

- The need to improve the quality of judiciary: legal education, exposure to best practices of the outside world; knowledge and sensitivity to human rights
- Review of appointments and promotions and disciplinary procedures processes
- Need to create public confidence in judiciary

**Gender and Ethnic Sensitivity**

- Changes in laws to achieve this
- Special education, trainings and exposure to best practices from other countries.

**References**

The issues regarding the need for and the problems around legal reforms were discussed during 4 consultations facilitated by the Asia Legal Resource Centre (ALRC) / Asian Human Rights Commission (AHRC) on human rights-related law reforms.
The proceedings and conclusions of those discussions are published in four booklets and a report available from ALRC / AHRC.

* Human Rights Related Legal Reforms in Sri Lanka, (Workshop 6-8 January, 1996, Bangalore, India)
* Social Justice and the Judiciary, (Seminar/Workshop 29 Nov.-1 Dec 1996, Sri Lanka)
* Speedy and Just Settlement of Labour Disputes, (Seminar 31 July-2 Aug 1998, Sri Lanka)
* Police Reforms, (Consultation 7-11 April, 1999, Bangalore, India)

Additional References:

Ø Lesson Series No.1- HR School : Human Rights Related Legal Reforms. (available on web-site: www.hrschool.org)


In particular. Article 14:

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.

2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(a) To be informed promptly and in detail in a language which he understands of the nature and cause of the
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charge against him;

(b) To have adequate time and facilities for the preparation of his defence and to communicate with counsel of his own choosing;

(c) To be tried without undue delay;

(d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offence and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.