

Legal and Judicial Reforms

In addition to the efforts of the Ministry of Justice and Law Reform, the Legal and Judicial Reforms Project (LJRP) of the Government, facilitated by the World Bank, was instrumental in carrying out many landmark reforms in the Legal and Judicial spheres. LJRP implemented most of its key reforms in 2006 resulting in a virtual total disbursement of project funds. The overall implementation was guided by a Steering Committee chaired by the Honorable Chief Justice, with the participation of the

Attorney General, Secretary to the Treasury, Secretary to the Ministry of Justice, Secretary to the Ministry of Trade, Secretary, Judicial Services Commission and the Legal Draftsman.

The reform emphasis was on human resource and institutional development, facilitating legislative changes and introduction of Information Technology.

- Human resource development and knowledge enhancement was given priority through foreign and local training.

Table 4.4
Foreign and Local Training

	Judiciary	AG's Dept.	LD's Dept.	Law Schools Staff	Bar Association
Foreign Training	175	120	21	-	
LL.M/ PhD - foreign	12	8	-	18	4
LL.M Local Law Col./ Wales Uni	8	6	-	-	26

Source; Legal and Judicial Reform Project

- Amending legislation and introducing new legislation relating to finance, tax and commercial law were facilitated.

Box 4.7

Finance/Revenue/ Commercial Law Related Legislation (2006 - 2007, April)

Statute	Objective
Protection of Government Revenue (Special Provisions) Act No. 1 of 2006	An act to provide for the protection of public revenue and prevent loss of revenue to the Government.
Prevention of Money Laundering Act No. 5 of 2006	An act to prohibit Money Laundering in Sri Lanka and to provide necessary measures to combat and prevent Money Laundering.
Financial Transactions Reporting Act No. 6 of 2006	An Act to provide for the collection of data relating to suspicious financial transactions to facilitate the prevention, detection, investigation and prosecution of the offences of money laundering and the financing of terrorism, to require certain institutions to undertake due diligence measures to combat money laundering and the financing of terrorism: to identify the authority which will be responsible for monitoring the activities of all institutions to whom this Act applies.
Value Added Tax (Amendment) Act No. 8 of 2006	An Act to amend the rates in the Value Added Tax and to provide exemption for services directly funded by foreign organizations for the relief of human or sudden natural disasters; on import of goods for the relief of human or sudden natural disasters, medical equipment, medical machinery or ambulances through foreign funds and to give benefits to growing sectors of the economy.
Monetary Law (Amendment) Act No. 9 of 2006	An Act to amend the Monetary Law Act enabling the Monetary Board to give directions to licensed commercial banks and licensed specialized banks requiring a minimum percentage of loans be extended to any identified sector of the economy.
Inland Revenue Act No. 10 of 2006	An Act to provide for the impositions of income tax for any year of assessment commencing on or after April 1, 2006, amending and consolidating the Inland Revenue Act and amendments thereto which were in force.
Finance Act No. 11 of 2006	An Act <i>inter alia</i> to provide for the imposition of a motor vehicle concessionary levy on the importation by high and tax payers with a consistent record of tax payment as stipulated in the Act and a tele drama, film and commercials levy and to increase the SRL rate from 0.25 per cent to 1 per cent.
Stamp Duty (Special Provisions) Act No. 12 of 2006	An Act to provide for the re-imposition of stamp duty, on selected categories of documents.
Economic Service Charge Act, No.13 of 2006	The Economic Service Charge (ESC), which was dealt under the Finance Act, was brought under a separate statute for better administration purposes. The new Act <i>inter alia</i> imposes the ESC on the relevant turnover of any person or partnership in respect of every quarter of every year of assessment commencing, April 1, 2006.
Betting and Gaming Levy (Amendment) Act, No.14 of 2006	An Act to amend the Betting and Gaming Levy Act, No.40 of 1988 to revise the amount of the levy payable by a person carrying on the business of bookmaker.

Banking (Amendment) Act No. 15 of 2006	An Act to amend the Banking Act No. 30 of 1988 <i>inter alia</i> to authorize Monetary Board to vary from time to time the amounts specified as the minimum amounts required to be maintained by a licensed commercial bank or a licensed specialized bank as equity capital.
National Enterprise Development Authority Act No. 17 of 2006	To establish the National Development Enterprise Authority to promote, support, encourage and facilitate enterprise development in the country with special emphasis on the small and medium enterprise sector
Electronic Transactions Act No. 19 of 2006	An Act to recognize and facilitate the formation of contracts, the creation and exchange of data messages, electronic documents, electronic records and other communications in electronic form in Sri Lanka; and to provide for the appointment of a certification authority and accreditation of certification service providers
National Insurance Trust Fund Act No.28 of 2006	An Act to provide for the establishment of a fund called the National Insurance Trust Fund to streamline all Government insurance and such other benefit schemes applicable to public servants, provincial public servants and those in more vulnerable segments of the society
Payment Devices Frauds Act No. 30 of 2006	An Act to prevent the possessions and use of unauthorized or counterfeit payment devices, to create offences connected with the possession or use of unauthorized payment devices, to protect persons lawfully issuing and using payment devices and to make provisions for the investigation, prosecution and punishment of related offences.
Banking (Amendment) Act No. 46 of 2006	Since the Banking Act did not permit the transfer of assets and/or liabilities of one Specialized Bank to another, appropriate amendments were made to the Banking Act to provide for the transfer of assets and liabilities of certain failed banks to a State Bank.
Appropriation Act No. 47 of 2006	An Act to serve for the Financial Year 2007, to authorize the raising of loans in or outside Sri Lanka, for the purpose of such service; to make financial provisions in respect of certain activities of the Government during the financial year; to enable the payment by way of advances out of the Consolidated Fund or any other fund or moneys, of or at the disposal of the Government, of moneys required during the financial year for expenditure on such activities to provide for the refund of such moneys to the Consolidated Fund.
Finance (Amendment) Act No.48 of 2006	An Act to amend the rates of the Port and Airport Development Levy providing exemptions and imposition of concessionary rates on items which are regarded as important to the interest of the national economy.
Value Added Tax (Amendment) Act No.49 of 2006	An Act to increase the markup on CIF for charging VAT at the point of customs with a view to minimizing the government revenue loss due to undervaluation of goods being imported.
Excise (Special Provision) Amendment Act 50 of 2006	An Act to increase the markup on CIF for charging Excise duty at the point of customs with a view to minimizing the government revenue loss due to undervaluation of goods being imported.

Regional Infrastructure Development Levy Act No. 51 of 2006	An Act to provide for the imposition of a levy applicable for the motor vehicles, which are liable for payment of Excise duty under the Excise (Special Provisions) Act.
High Courts of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006	High Courts of the Provinces were vested with appellate and revisionary jurisdiction in respect of judgments, orders and proceedings of the district court within the relevant province
Companies Act No. 7 of 2007	An Act to amend and consolidate the law relating to companies. The incorporation process of a company has been made easier and simpler, recognizes single shareholder companies, has introduced provisions for solvency tests and capital maintenance, provides for minority buy-out and exit options, stipulates Directors' duties statutorily, provisions relating to resolutions have been made easier, has recognized Statutory Derivative Action, has introduced Company Disputes/Administrator for reorganization, recognizes the shareholdings of Secretary to the Treasury, sets out provision for electronically stored documents etc.
Control of Insurance (Amendment) Act (<i>being printed to be certified by the Speaker</i>)	To enable the National Insurance Trust Fund which has been establish to streamline all Government insurance activities to venture into reinsurance business.

- An automated document and workflow management system with a Local Area Network was introduced to the Attorney General's Department in 2006 to modernize the Department and to improve the efficiency and quality of work



Automated Colombo Commercial High Court

- LawNet Phase II, Sri Lanka's up-to-date and modern legal database was setup in 2006, through which all laws, by-laws, important judgments, day's list of Superior Courts etc. are available to the public through the World Wide Web. www.lawnet.lk This is to give ready access to legal information to the public, in order to create greater awareness and access to legal information.



LawNet Website

- 8 selected courthouses in Colombo and Kandy were automated in 2006, aimed at avoiding laws delays and reducing possible human intervention to make the judicial system more efficient and transparent In this process an integrated audio and video recording of court proceedings and a centralized record tracking system were introduced to facilitate judicial proceedings.



Kandy Court Complex – Automated in 2006

- Infrastructure was improved and in this effort, 2 new Court Complexes were built in Jaffna and Trincomalee and 28 other existing court houses spread island wide were refurbished / renovated to be able to give better facilities to the public who seek redress at such court houses as litigants.



Jaffna Court Complex - Completed in June 2006

Renovation/Construction of Courthouses 2004 -2006



- Law books were provided to libraries of the judiciary, the AG's and LD's Departments and the law schools and new course manuals were developed for Law schools and the Sri Lanka Judicial Training Institute through local and foreign consultancies. This was to facilitate updating knowledge to be able to better serve the public and to permit research to be able to write quality judgments, opinions etc.

- Alternate Dispute Resolution was promoted with the setting up of a Commercial Mediation Center with the assistance of the Ceylon Chamber of Commerce and by training 35 mediators. This was to facilitate reducing laws delays and cost of litigation of the public seeking redress through the judiciary, specially in relation to minor commercial disputes

Table 4.5
Mediation - 2006

Year	Applications	Mediate	Settled Direct	Declined to Mediate	Settled
2001	6	3	-	3	3
2002	4	-	2	2	-
2003	95	4	29	55	2
2004	163	3	32	128	1
2005	32	4	9	19	3
2006	17	2	12	13	1
Total	317	16	74	220	10

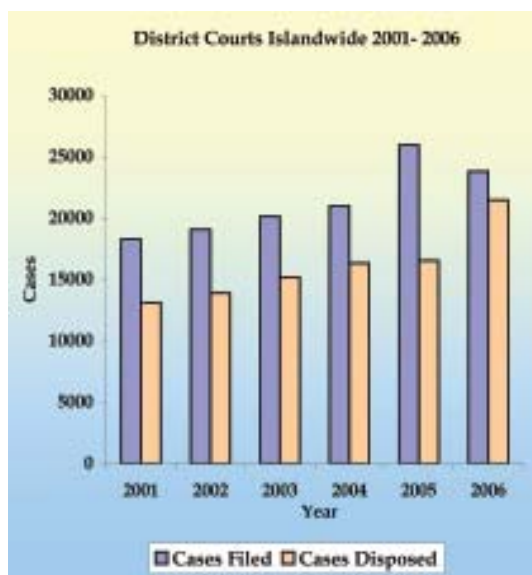
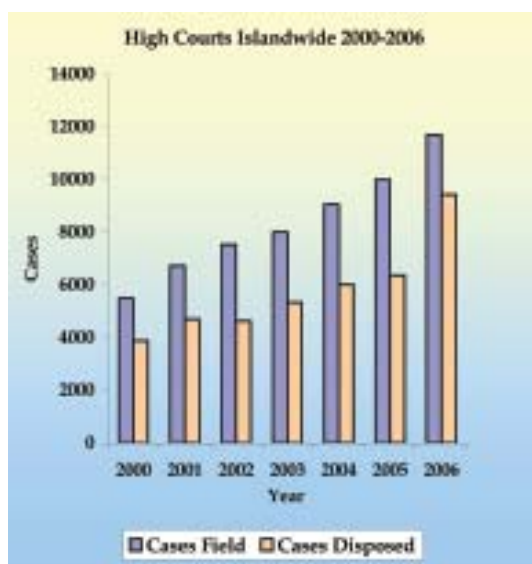
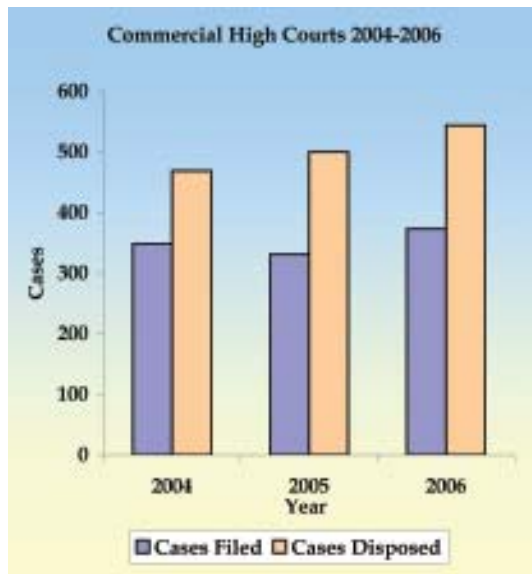
Source: Mediation Centre - Ceylon Chamber of Commerce

The statistics reveals that the number of cases referred to mediation has not been significant. Further, it is also evident many cases have been settled direct prior to being mediated. Cases settled through mediation have been minimal. It appears that there is greater public preference on the judicial process towards settlement of disputes.

- Going further to ensure a total impact, the supports staff of the judiciary were given training on word processing and speed development at the Institute of Government Accounting and Financing (INGAF). English language, communications skills were sharpened through training conducted by the British Council.

An assessment of cases filed and dispensed reveals that there is an increase in the number of cases filed with the judiciary. When considering other factors that have an influence on the need to file cases, such as number of accidents, number of those who seek dispute resolution through mediation etc. which show a downward trend, it appears that there is an increasing reliance on the judiciary for administration of justice. On the other hand the number of cases dispensed also show a declining trend. Focused training accorded to judges, closer monitoring by the Judicial Services Commission on the dispensation of cases and their quality, strengthening of the support staff of the Judicial Services Commission and courts, appear to have contributed to this trend. The impact of automation of model courts and the establishment of Appeal Courts of the Provinces, are yet to be felt since both measures were taken towards the end of 2006.

Chart 4.3
The Trend in Cases Filed and Disposed



An ongoing assessment of deficiencies in the regulatory and legal structures, which can be addressed only through sustained reforms have been undertaken to reduce transaction costs and deepen the investment climate in favour of Small and Medium Enterprise sector development, whilst promoting corporate and foreign direct investments. In assessing areas that warrant further reform, it has been found that regulatory risks, complex administrative and legal procedures, governance deficiencies and the effects of terrorism and crime, have resulted in high transaction costs, thus affecting the global competitiveness of the Sri Lankan economy. There is also an informal economy operating outside the legal system resulting *inter alia* in dead capital. This has caused social and economic exclusions and increased inequality, thereby restraining economic growth and limiting results of anti-poverty efforts.

Although the government has already introduced several initiatives in the areas of banking and finance, capital markets, governance, taxation, procurement, trade, investment, dispute resolution and in the judiciary, the coverage of reforms needs to be expanded and the momentum needs to be sustained. In this backdrop, as emphasized in the 2007 Budget Speech, the Government envisages to proceed with further Legal and Judicial Reforms.

Priority areas that have been identified with the assistance of the Legal Cluster of the National Council for Economic Development that warrant further reforms to facilitate achieving the targeted economic growth, in excess of 8 per cent as envisaged in *Mahinda Chintana - Vision for Sri Lanka: 10 Year Horizon Development Framework*, include the following;

- Develop a judicial strategy recognizing short, medium and long-term priorities of the Sri Lankan Judiciary, adopting a wide participatory approach with the support *inter alia* of the Legal Cluster of the National Council for Economic Development.

- To carry out an assessment of the impact of legal and judicial reforms, develop an appropriate database mainly with the assistance of the existing government network available for data collection and tabulation involving the Department of Census and Statistics.
- Introduce new HR tools for better and more effective human resource management in the judiciary, specially to make the support staff of the judiciary more efficient
- Automate the Companies Registry and introduce measures to reduce the start-up time/ registering a business. Complement the process by taking measures to expedite related EPF/ETF registrations *inter alia* with the Department of Labour, to bring down the time associated with starting -up time/ doing business in Sri Lanka, to set the background to be able to use the Companies Registry as the gateway to ensure registration by companies, for taxation purposes.
- Create an efficient and effective exit mechanism to facilitate investors in the event of a closure of their business, through the passage of appropriate legislation covering insolvency and winding up aspects, in order to promote investor confidence and reduce transaction costs.
- Identify factors leading to the existence of dead / extralegal capital and remove any associated obstacles created through the formal legal system, thereby creating capital to finance development and reduce costs associated with land related disputes.
- Contribute to develop human resources and institutional capacity through appropriate local and foreign training. Facilitate local training with the construction of a modern Judicial Training Center in Colombo with residential facilities.
- Improve the judicial infrastructure through the construction of 4 new Court Complexes at regional level in Galle, Matara, Kalutara and Kurunegala. This is to improve administration of justice at provisional level *inter alia* through better facilities

- Information technology advancements which have been already introduced on the basis of a pilot to be rolled out project, to the Regional Court Complexes proposed to be built in Galle, Matara, Kalutara and Kurunegala. In addition, to introduce a case management system to the already automated 8 Courts Houses in Colombo and Kandy, to make the judicial process more efficient.

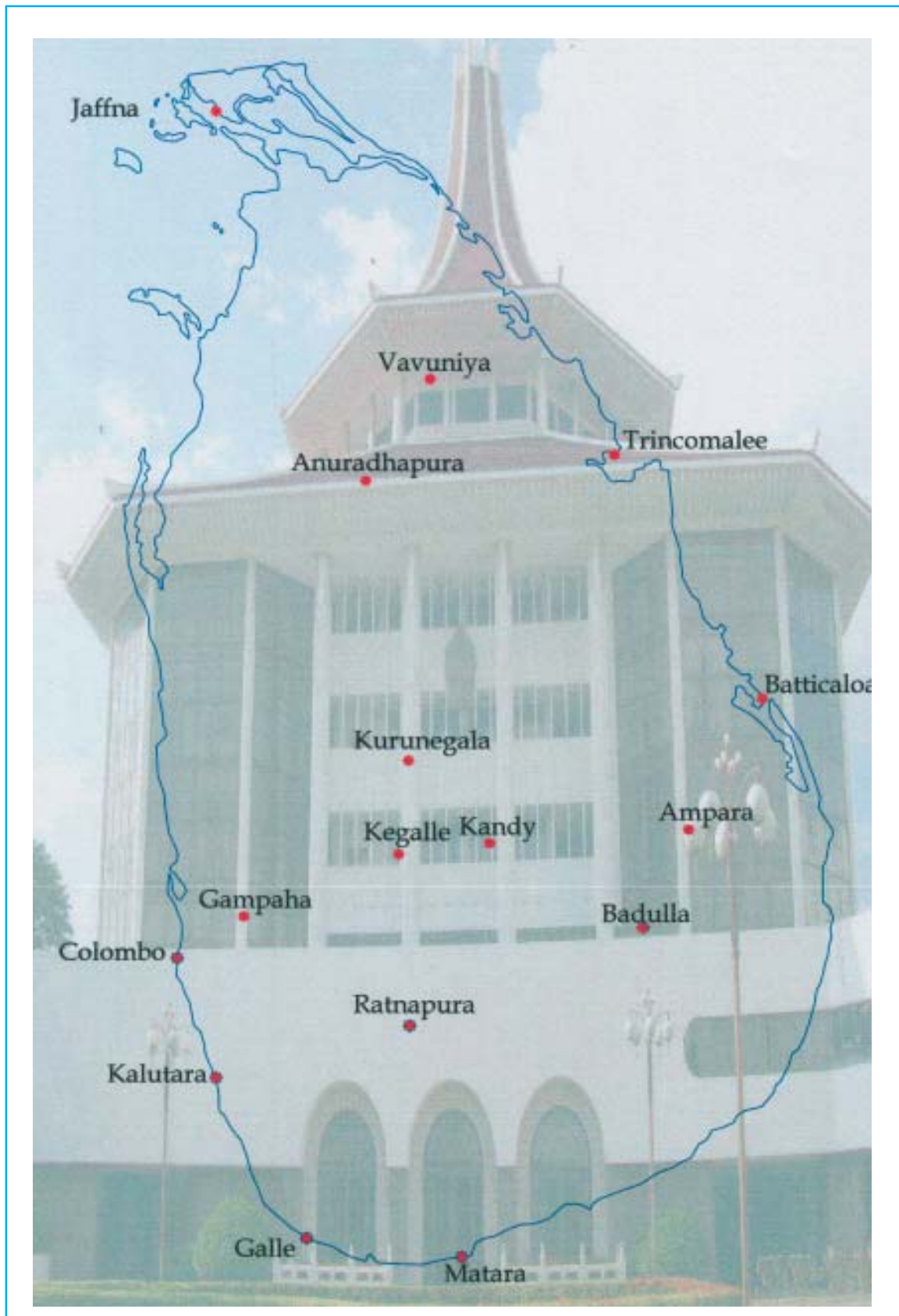
Demonstrating Government's firm commitment to facilitate a sustainable reform process, the Treasury has already allocated funds through the Budget - 2006 for the setting up of the Judicial Infrastructure Maintenance Trust, which is being setup. The Government has also agreed to provide the required land to construct the proposed 4 regional Court Complexes at Galle, Matara, Kalutara and Kurunegala and the Judicial Training Center in Colombo.

High Courts of the Provinces

Addressing a long felt need of decentralizing the Appeal process, High Courts of the Provinces were setup in terms of High Court of the Provinces (Special Provisions) (Amendment) Act No. 54 of 2006. Until the passage of this Act, Civil appeals were heard only by the Court of Appeal in Colombo, resulting in all associated parties having to come to Colombo and also causing a massive backlog of around 15, 000 cases pending in appeal. as of 2006.

With the enactment of this statute, the High Courts of the Provinces were vested with appellate and revisionary jurisdiction in respect of judgments, orders and proceedings of the district courts within the relevant province. The High Courts of the Provinces will hear cases with two judges sitting together and steps have been taken to appoint at least 18 new judges to these Courts. This will take the process of administering justice closer to the people, with people from distant areas not having to travel any more to Colombo for appeals in civil cases. It is also a major step towards reducing laws delays.

Newly Established High Courts of the Provinces are Vested with Appellate/ Reversionary Jurisdiction of District Courts within the relevant Province



A Sustainable Plan to Maintain Judicial Infrastructure

The Government has recognized the need for an ongoing assessment of the deficiencies in the regulatory and legal structures, which can be addressed only through sustained reforms. Further, attention widespread reforms such as legal and judicial reforms show visible results by way of improved infrastructure, better quality judgments, automated surroundings etc., the desired results on reducing laws delays, speedier dispensation of cases etc. would be shown incrementally over a period of time. In this backdrop there is unanimity that legal and judicial reforms need to be sustained.

Another important aspect is that the legal and judicial infrastructure, including those that were built and renovated through the reform initiatives, as well as the Information technology advancements introduced, need to be updated and maintained. Lack of maintenance has been identified as the route cause for the rundown in infrastructure, even at the time the reforms were originally taken on.

Although certain inbuilt measures have been taken such as commitment to maintenance by vendors through maintenance agreements in relation to IT hardware and software, there also must be focused commitment towards the overall maintenance if reforms are to give maximum benefits to the country.

In this backdrop steps were taken to set up a Judicial Infrastructure Maintenance Trust in terms of the Trust Ordinance and in the 2006 Budget an allocation was made to form the initial capital of this Trust Fund. This allocation has been made utilizing a part of funds recovered by the courts by way of fines and penalties. The interesting link is that the Government committed to make this allocation has revised the fines structure in over 85 statutes through the Increase of Fines Act No.12 of 2005, which is also a measure taken through legal reforms.

Judicial Infrastructure Maintenance Trust Fund;

- The Author/ Settlor of the Trust is the Secretary to the Treasury

- The Trustees include Secretary - Judicial Services Commission, Secretary - Ministry of Justice, Director General - Department of Public Finance, Chief Accountant - Ministry of Justice, Registrar - Supreme Court and Registrar - Court of Appeal

- The objects of the Trust;

Provide funding and assistance to maintain Judicial and Legal Infrastructure in Sri Lanka including;

- Court Houses
- Record Rooms/ Production Rooms
- Judges Chambers
- Offices of the Registrars
- Judges Libraries
- Common Areas of the aforesaid premises
- IT Infrastructure, office equipment and furniture of the said premises

- To remunerate the staff carrying out such maintenance and to meet expenditure associated with any such maintenance/ outsourcing arrangements.

- To meet any expenditure to provide lease lines and such other facilities required for the effective use of IT infrastructure and for the procurement of related IT consumables.

- An annual contribution will be made from the Consolidated Fund to the trust account, which will constitute the Trust Property. In addition, the Trustees may receive public contributions, donations or grants in the form of cash, for the furtherance of the Trust.

- The Trustees are expected to make rules or guidelines pertaining to the manner in which work relating to the objects of the Trust are to be executed, including the procedure governing meetings of the Trustees and the manner in which decisions are to be reached.

- The Trustees are expected to work in consultation with the Development Committees, which have been established at regional level to assist in maintaining legal and judicial infrastructure. This is to ensure that an onsite needs assessment is made known to the Trustees, by the regional network of Development Committees, for the Trustees to be able to take need based and fast decisions.
- To ensure transparency and accountability, the Trustees are required to cause proper accounts to be maintained of the Trust funds and to cause such accounts to be appropriately audited at the end of each calendar year, and cause such audited accounts to be published. In the event of a revocation of the Trust, any monies belonging to or lying to the credit of the Trust anywhere is to be, at the earliest, transferred to the Consolidated Fund after which the Trust would stand dissolved, ensuring accountability.

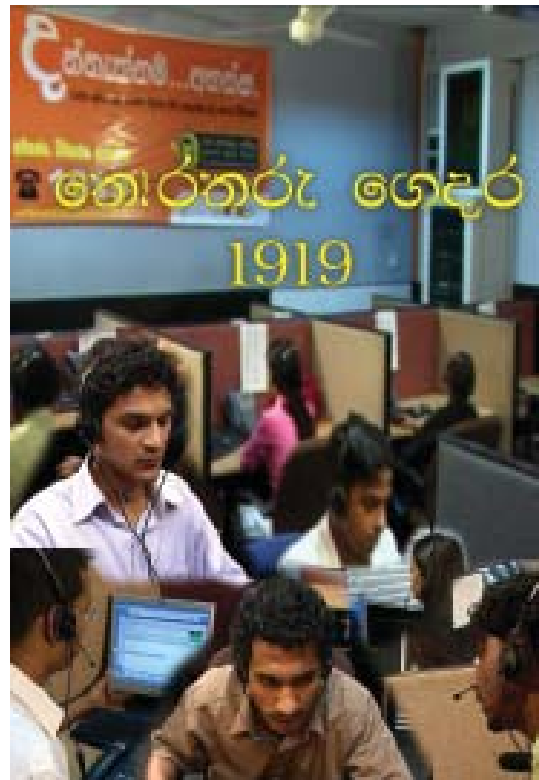
Other Initiatives

E- Governance

There was much emphasis on e-Governance during 2006. The Electronic Transactions Act No.19 of 2006 was enacted setting out the legal parameters. Consequent to the enactment of this Act, Sri Lanka became one of the first three countries in the Asian Region (and first country in South Asia) to sign the *United Nations Convention on the Use of Electronic Communications in International Contracts* (commonly known as the e-Contracting convention).

During 2006, the ICT Agency of Sri Lanka has;

- Setup a Government Information Center (GIC) through which citizens are provided answers to their queries by dialing 1919 or through the website www.gic.gov.lk. This trilingual call center is a single point of contact for information and guidance for citizen services in the government.
- Opened 175 *Nenasalas* throughout the island to bring the total to 368. *Nenasalas* are multi service centers, which address the multiple ICT needs of communities. The adoption of ICT services is expected to improve the lives of the communities through ready access to information communication services.



1919 - Government's Central Information Hotline