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Sri Lanka Justice Sector Review

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ACRONYMS AND ABBREVIATIONS

ADB	Asian Development Bank
AGD	Attorney General's Department
CCC	Ceylon Chamber of Commerce
CCHC	Colombo Commercial High Court
CoA	Court of Appeal
CPC	Civil Procedure Code
CPS	Sri Lanka Country Partner Strategy
DBI	Doing Business Index
DC	Districts Court
GDP	Gross Domestic Product
GoSL	Government of Sri Lanka
HC	High Court
IP	Intellectual Property
JSC	Judicial Service Commission
JTI	Judicial Training Institute
MC	Magistrates Court
MoJ	Ministry of Justice
NCED	National Council for Economic Development
SC	Supreme Court
SL	Sri Lanka
UNDP	United Nations Development Programme
USAID	United States Agency for International Development
USD	United States Dollars
WB	World Bank

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Sri Lanka Justice Sector Review

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Comments from the Ministry of Justice on the initial draft have been reflected. The JSC declined to comment, citing precedent that it refrains from commenting. The JSC subsequently provided additional case statistics which were incorporated into the final draft.

EXECUTIVE SUMMARY

Introduction

1. **Improvement of the performance of the judiciary is an important part of a growth agenda for Sri Lanka as it moves to middle income country status.** The present Government has set ambitious targets to double GDP per capita by 2016 and has cited the need for a more efficient judicial sector as a means of reducing poverty. This is consistent with the broad historical evidence that a well-functioning judicial sector is the most effective long-term instrument for securing property rights and enforcing contracts, which in turn are critical factors for investment and commerce, and hence poverty reduction and economic growth. Sri Lanka ranks 133rd in the 2013 Doing Business's sub-index on enforcement of contracts, a level that is comparable to other South Asian countries but lower than other middle income comparators such as Thailand (ranked 23rd) and Malaysia (ranked 33rd). Identifying the contributing factors to inefficiency in Sri Lanka's courts in hearing commercial cases is the main purpose of this review. The findings in the report are based on available statistics on court performance and interviews with key stakeholders in the justice sector. The team notes that there were significant limitations in available data.

The Court System

2. **Sri Lanka has a three-tiered court system consisting of the apex Supreme Court and Court of Appeal; 54 High Courts, 117 first instance District and Magistrate Courts and 32 Labor Tribunals.** It established Provincial High Courts by Act in 1996, including the specialized Colombo Commercial High Court (CCHC), which consists of three courts (benches). There are a total of 306 judges which are appointed by the President in the case of apex and High Courts and by the Judicial Service Commission in the case of lower courts. Sri Lanka has a ratio of 1.5 judges per 100,000 population; although jurisdictions differ, this appears quite low against comparators such as Australia, England and Wales, Thailand, and Malaysia where ratios are respectively 4.4, 3.5, 6.8, and 1.5-2.4. First instance judges' caseloads in general range from several hundred to 2000 for civil cases and between 1000 and 6000 for criminal cases.

3. **Overall management of the courts is carried out by a combination of the Judiciary through the Judicial Service Commission (JSC) and the Ministry of Justice (MoJ).** The JSC is chaired *ex officio* by the Chief Justice joined by two other Supreme Court judges appointed by the President and is served by a 65-person secretariat. It sets the rules for and executes the transfers of High Court judges as well as appointment, promotion, transfer, discipline, and dismissal of judges of first instance Courts and most public servants fulfilling supporting roles in the adjudication process courts, The MoJ is responsible for logistical support in the operation of the courts, including all budgeting and asset management. It also oversees several other justice sector institutions such as the Judicial Training Institute and Legal Aid Commission. The duality of management oversight by the JSC's and MoJ's functions has not presented practical difficulties in the courts' operations.

4. **Personnel policy is guided by a convention of rewarding seniority subject to considerable discretion exercised by the Judicial Service Commission for higher and first instance courts and the President for apex courts.** The system for evaluating performance of judges is not formalized, nor are there personnel incentives which would link career progressions to professional development measures and training. Many appointees to the Supreme Court are not career judges but rather are prominent attorneys. A total of 10 of the 12 present Supreme Court judges have considerable experience working in the Attorney General's Department.

5. **Greater access to information about the judiciary's operations as well as substantive law and judgments may be warranted.** Performance information (e.g. case disposal rates disaggregated, reporting by the JSC on its activities) is not publicly available. There also is a lack of a comprehensive, updated searchable database comprising Acts, implementing regulations, and court decisions. The lack of this database is an inconvenience for stakeholders to use and benefit from Sri Lanka's judicial system. In many countries the provision of legal database services are commercially viable and hence self-sustaining and such an approach may be considered in Sri Lanka.

6. **Training capacity, particularly on commercial matters, is very limited.** The Judicial Training Institute is able to train about 25 'trainee judges' per year and provide one-day seminars for another 25 judges per year. It is underfinanced and a key component of past and present donor-financed programs for the judiciary is to meet this financing gap. Stakeholders noted that judges outside of the Commercial High Court often lacked sufficient background in commercial matters.

7. **There are moderate infrastructure constraints being addressed by Government efforts, though the use of existing court buildings is not intense.** The Government has undertaken several efforts to refurbish buildings or construct new courthouses over the past decade. Many of the refurbished buildings are old bungalows and aren't well-suited to serve as courthouses. At the same time, the practice of one judge for each court has meant that most courtrooms are effectively not used for as much as half of the day. Facilities for keeping records are inadequate. The finding of files can contribute to delays in trials as well as providing an opportunity for rents to low level staff. There is no automation outside of a small case tracking system tested in Colombo and Kandy District Courts and no plans to initiate automated case management.

Courts Performance and Backlog

8. **Caseloads are high, but long term backlog is driven primarily by partition and to a lesser degree land and commercial (money matters) cases.** A total of 91% of criminal cases and 70% of civil cases have been in court for less than five years as of 2012, a small increase from 2011. Therefore, despite high caseloads ranging from several hundred to 2000 and more cases per judge it appears that the court system is not sustaining an increasing level of cases in the system. While five years is a long time for cases to be in the system and it would appear likely that disposition rates for many cases is substantially less than five years, though statistics are not available to provide more detailed analysis of average clearance rates. The main type of cases which remain in the courts for more than five years are partition cases followed by land and money matters cases. Limited available data on conclusions of trials in 2011 shows little increase in the overall number of pending commercial cases, including in the CCHC.

9. **Businesses and attorneys praise the CCHC as providing timely, predictable adjudication for commercial matters but more can be done to improve performance.** There is widespread praise for the CCHC in terms of quality of adjudication and relative efficiency in handling cases. It is viewed as much more competent and efficient than district courts which handle money matters. It is processing cases at roughly the rate the rate of new filings, with no significant backlog. Concerns were raised regarding poor infrastructure for record-keeping, lack of automated case management, and possible rotation of judges thereby losing the expertise gained on the job by current judges.

10. **Procedural law provides for a large number of steps and opportunities for stalling in commercial cases, but experience suggests that delays are primarily due to a systemic lack of discipline in conducting trials.** Procedures for admission of evidence and cross examination of witnesses allow for a drawn out process. However, observers stressed that exerting greater discipline under existing procedure would reduce the time for carrying out pre-trial and trial procedures. By one practitioner's estimate, the reduction would be over 60% from the current assessment of 1318 days using the Doing Business methodology. Greater discipline would require more effective, pro-active management of trials by judges. It would also require cooperation among attorneys to adhere to such management and conduct their business in a timely manner.

11. **Despite being a last resort, courts are substantially used by businesses and therefore their efficiency is of importance...** As much as 10% of all loan recoveries are taken to (usually District) court and other commercial matters eventually require court decisions. While the CCHC provides a higher degree of reliability in hearing cases, relatively poor performance of District Courts is of concern. This is particularly true in Kandy and Colombo District Courts where there were as of 2011 about half of all pending commercial cases. The infrastructure and personnel capacity constraints that allow are therefore a hindrance.

12. **... Though court performance overall is not viewed as a major obstacle to conducting business.** Though courts are used, businesses nonetheless appear to have factored in the inefficiencies into their business planning. Enterprise surveys conducted by the World Bank in 2011 and 2012 found businesses rank the courts as the least important among 15 constraints to business. While this should not be equated with satisfaction with the courts, the relatively low importance given to court inefficiency suggests that there is weak demand for improvements in courts' handling of commercial matters.

13. **Achieving major improvements in the court system's performance will require support/engagement of all stakeholders in the justice sector.** These stakeholders include: judiciary management and individual judges, the Ministry of Justice, the bar and individual attorneys, training institutions, and litigants. While the President has stated his desire for improvement and there are efforts to improve the capacity, major improvements will need a concerted effort from all stakeholders in actual trials. Judges will need to enforce discipline better, attorneys will need to be prepared to respond to such discipline, and litigants and the public will need to maintain higher expectations of better performance. Other countries' successful judicial reform efforts have required leadership from the judiciary, but buy-in from all stakeholders has been a crucial ingredient to achieving lasting results.

Elements of a Potential Reform Program

14. **The findings of this review point to a menu of interventions which could be undertaken in the justice sector** to reduce the time and cost in adjudication of commercial cases while maximizing quality of judgment and confidence in the system. Such an approach would focus on having the courts' play a more prominent role in facilitating economic development. It would not address other issues in the justice sector which are only partially or not at all covered in this review, including the persistent large backlog of cases which appear most likely driven by criminal cases. While any reform program should ultimately be the product of consultations and consensus among stakeholders, the review points to several possible elements of such a program:

- Enhanced performance management for courts involved in the reform effort, underpinned by rigorous, regular data collection on courts' performance, establishment of performance standards and targets, and proactive management oversight and initiative for underperformance;
- Introduction of procedural changes to the Civil Procedure Code, in particular introducing more disciplined pre-trial procedure;
- Issuance of practical directions or updated Judge's Manual with respect to commercial cases
- Improving access to all legislation, including implementing regulations and court judgments;
- Modest investment to increase the number of commercial courts as well as improving the record-keeping systems and infrastructure for existing courts;
- Development of automated case management system for the targeted courts;
- Changes in the use of human resources, including adding judicial assistants (and associated infrastructure changes) to free up time for judges to hear cases;
- Targeted training on commercial transactions, business practices, and specifics of for commercial court judges and District Court judges in courts handling a high volume of money matters cases;

15. **Management of such a reform effort would involve an enhancement of current management information systems.** More comprehensive, verifiable data is needed to equip the JSC with information to understand the causes of performance issues, monitor trends, and make management actions to improve performance. In particular, in addition to the current monthly reports, information on case disposal rates by type of case, clearance rates, backlog by types of case and time in the court system, and tracking of rates of appeals would be useful. This in turn would place additional requirements on judicial management to monitor, set standards, and provide feedback to courts on performance. Finally, more comprehensive and timely data will allow for setting targets for results to motivate performance as well as increase public confidence in the justice sector's efforts to improve.

16. **Engagement with multiple stakeholders and the public around a reform program is critical.** Consultations with stakeholders regarding priorities and sequencing is key to formulating a sustainable program. Enforcing greater discipline in court proceedings requires the participation of all stakeholders. Agreement on changes in procedural law necessarily requires the support of stakeholders as well as engagement with Parliament. Building expectations of higher levels of service by the courts will be served by greater transparency and signaling of the justice sector's drive to improve performance. Extensive communication among various actors will be critical to developing and carrying out reforms.

CHAPTER 1: INTRODUCTION

17. **Sri Lanka is addressing a set of policy challenges as part of its transition to middle income country status.** The end of its decades-long military conflict in 2009 has brought new opportunities for increased investment and greater participation of the North and East in the economy. Peace contributed substantially to a jump in the annual real GDP growth to over 8%, albeit with moderate slowing in late 2012. Sustaining this growth in order to meet the Government's policy objective of doubling per capita GDP to \$4000/year will require concerted efforts to build the economy. This in turn hinges on building an environment conducive to foreign and domestic investment and innovation.

18. **It is broadly accepted that the security of property rights and certainty in enforcement of contracts are critical factors for investment, commerce, and hence economic growth.**¹ Certainty of property rights and contract enforcement provides predictability in utilization of one's assets and facilitates reliable expectations of others' actions, thereby stimulating longer-term productive behavior. Instruments to obtain such certainty can vary, but the most common long term way to provide the greatest number of market participants with such certainty is a well-functioning justice system². Alternative approaches to enforcing contracts and ensuring property rights through personal force or through use of the State's power are difficult to sustain and hence provides less certainty. A justice system is effective when (i) it adjudicates and is perceived to adjudicate fairly and consistently on the basis of rules and not the wishes of individuals and (ii) is efficient³ in so doing. A consistent rules-based system is important in providing for secure property rights as it protects against entities with otherwise greater power, most notably the State itself. At the same time, country's justice systems are infrequently called upon to protect such rights against infringement. Other regulatory agencies such as real property registers play a role in day-to-day regulation of such matters. State expropriation of property is a rare occurrence while redress against seizure of property by others often does not require intervention by the courts.

19. **Enforcement of contracts is a key frequent function of justice systems.** Efficiency in carrying out this role is of primary importance: from the days of the Magna Carta delays in adjudication have been recognized as undermining the value of redress eventually provided. This logic of "justice delayed is justice denied" as being critical for commerce underpins the inclusion of a sub-index to measure the time and steps taken to enforce contracts by courts as one of ten factors making up the World Bank/International Finance Corporation Doing Business rankings of countries.

20. **The Government of Sri Lanka wants a justice sector that promotes business development.** President Rajapakse in his speech presenting the 2011 Budget cited the problem of slow dispensation of justice and case backlog of some 650,000 cases as a cause of poverty owing to time and resources lost for regular citizens. The Government has taken several measures to improve its Doing Business ratings (e.g.,

¹ Montesquieu (1746), Smith (1776) , Weber (1922), North (1990) .

² Djankov, La Porta, Lopez-de-Silanes, Shleifer (2003)

³ Efficiency in courts can refer to many dimensions of court performance, including accessibility, quality of judgments, and equality for litigants. For the purposes of this report efficiency refers to administrative efficiency, i.e. the minimization of unnecessary effort, including time expended in the process, or expense among participants in the resolution of disputes by the courts.

in time taken to register businesses), but the one area where there has been no progress in contract enforcement. Sri Lanka is lagging behind nearby middle income country competitors in this dimension (see Table 1). This in turn undermines its attractiveness for foreign investment. The Ministry of Finance as well as justice institutions and the Ministry of Justice approached the World Bank about engaging in the sector in order to improve its performance and especially its efficiency in handling commercial cases.

Table 1: 2013 Doing Business Sub Index on Enforcement of Contracts

Economy	Overall Doing Business Rank	Enforcement of Contracts			
		Rank	Time (days)	Cost (% of claim)	Number of Procedures
Sri Lanka	81	133	1,318	22.8	41
India	132	184	1,420	39.6	46
Pakistan	107	155	976	23.8	46
Malaysia	12	33	425	27.5	29
Korea	8	2	230	10.3	33
Singapore	1	12	150	25.8	21
Indonesia	128	144	498	139.4	40
Thailand	18	23	440	15	36
Vietnam	99	44	400	29	34
S. Asia Average			1075	27	43

21. **This review is in response to the Judiciary's and Government's requests.** It provides an overview of how the justice sector functions with reference to commercial cases and analysis of what factors contribute to delays in the adjudication of commercial cases. While parts of the study likely have relevance for the justice sector as a whole, the review's scope is limited to the courts' capacity, efficiency and effectiveness in handling commercial cases. The remainder of this review is divided into six sections:

- Organization and Management of the Courts
- Data on Case Handling in Courts
- Private Sector Approaches to Dispute Resolution and the Courts
- Legal and Procedural Issues in Commercial Cases
- Past Reform Efforts
- Conclusions and Recommendations

Box 1. Commercial Cases – A Definition

The definition of what is a ‘commercial case’ in Sri Lanka for this review are cases involving commercial transactions drawn from the definition of such cases in the High Court of the Provinces (Special Provisions) Act No. 10 of 1996 which defines the jurisdiction of the specialized Colombo Commercial High Court (CHCC). The CHCC hears cases only above a level set by the Minister of Justice, which is currently 5 million SL rupees (about USD 40,000). Cases involving commercial transaction below that value are heard in district civil courts and are classified in those courts as “money matters”

Commercial cases per the 1996 Act are:

“(1) All actions where the cause of action has arisen out of commercial transactions (including causes of action relating to banking, the export or import of merchandise, services affreightment, insurance, mercantile agency, mercantile usage, and the construction of any mercantile document)...”

(2) All applications and proceedings under sections 31, 51, 131, 210 and 211 of the Companies Act, No. 17 of 1982 (note: dealing with liquidation)

(3) All proceedings under the Code of Intellectual Property Act, No. 52 of 1979”

In addition, enforcement of arbitration awards and admiralty matters are heard at the CCHC. District courts do not hear cases involving intellectual property, arbitration, and admiralty matters.

22. **The review is a rapid assessment of Sri Lanka’s justice sector with a focus on performance in adjudication of commercial cases and the factors underlying the courts’ performance.** The purpose of conducting such an assessment is to provide an overview of how the judiciary operates and where are potential areas for improvement. The review is based on documentation made available to the team and interviews with key stakeholders in the Judicial Service Commission, Ministry of Justice, a small number of courts, the Judicial Training Institute, private attorneys involved in commercial cases, and corporate lawyers in businesses. It draws upon limited statistics provided for the first half of 2011 for all first instance courts, 2012 statistics for the Colombo Commercial High Court, and published statistics on apex courts’ performance in Ministry of Justice annual reports. The team was unable to carry out a court user survey though this would have been valuable for identifying in detail the state of affairs in the courts and perceptions and priorities of stakeholders. Nonetheless, the information gathered in the analysis provides insight into how the courts carry out their functions. The team hopes that the analysis in the review will feed into discussion and actions undertaken by different justice sector stakeholders to improve the handling of commercial disputes and thereby contributing to Sri Lanka’s growth agenda.

CHAPTER 2: ORGANIZATION AND MANAGEMENT OF THE COURTS

2.1 The Court System

23. **Sri Lanka's 1978 Constitution establishes a three-tiered court system consisting of the apex Supreme Court and Court of Appeal; Provincial High Courts for civil and criminal matters; first instance District and Magistrate Courts and Labor Tribunals.** The Constitution directly establishes jurisdiction and organizational features for the two apex courts and provides Parliament with exclusive prerogative to establish all other courts, tribunals, and other institutions for adjudication and settlement of disputes. The Supreme Court has exclusive jurisdiction over constitutional matters, fundamental rights, as a final appellate body, and other powers. The Court of Appeal is the chief appellate body, though most civil appeals (including low value money matters commercial cases as defined in Box 1) are now resolved in the Provincial High Courts. First instance District Courts (hearing civil cases) and Magistrate Courts (hearing criminal cases) operate as per the 1978 Judicature Act, subsequently amended 11 times.

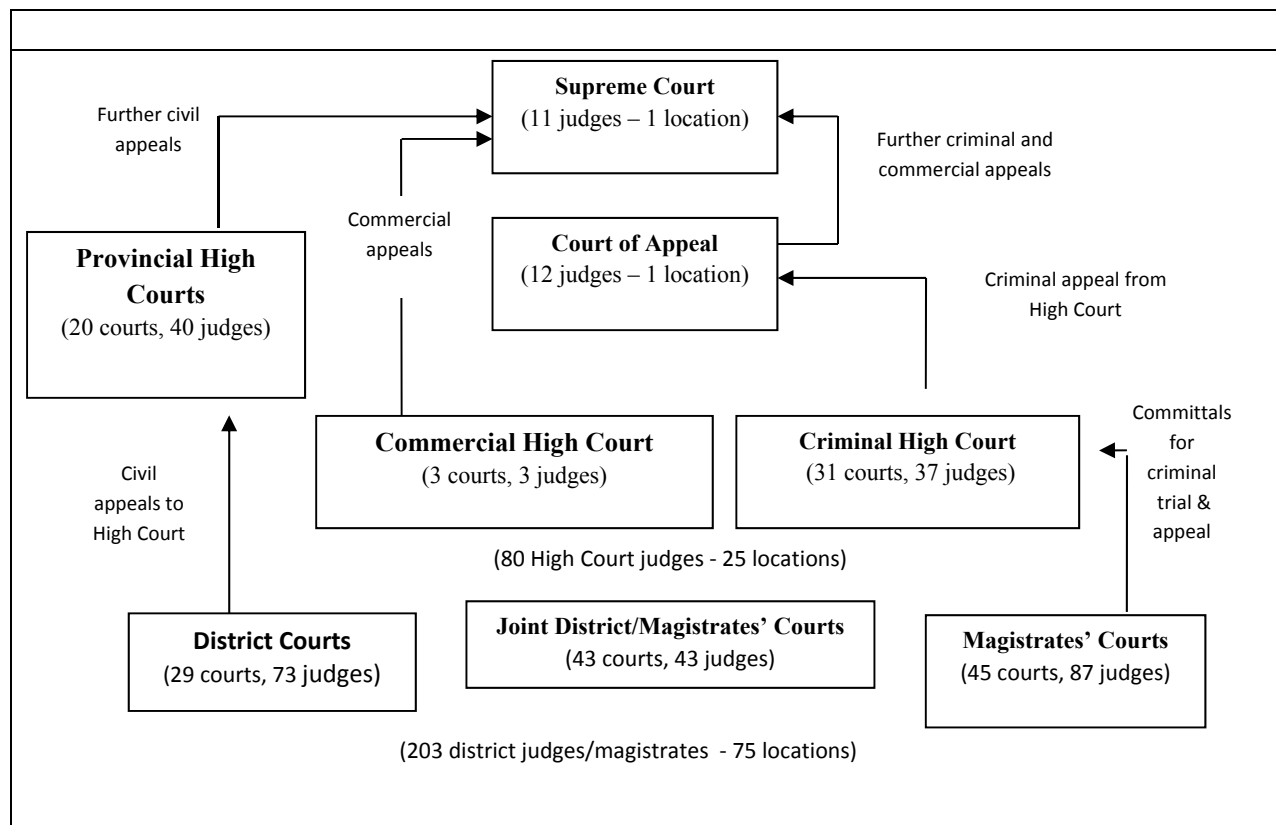
24. **A major change in the organization of the courts was effected through the passage of the High Court of the Provinces (Special Provisions) Act of 1996.** This legislation operationalized Constitutional provisions to establish Provincial High Courts to hear appeals. It also established a specialized Commercial High Court in Colombo (the CCHC) to serve as a court of first instance for cases involving commercial transactions and, through later legislation and convention, matters of company law, intellectual property disputes, and admiralty issues. This reform targeted the problem of backlog of appeals and important commercial cases as well as providing convenience to litigants. Appeals from the Provincial High Courts can then be further appealed to the Supreme Court. According to commentators in the Ministry of Justice, large value commercial cases usually involved litigants from the commercial hub Colombo and hence a single specialized court in this location was adequate. The judiciary and Ministry of Justice are now considering establishing additional commercial courts in Kandy and Galle. In particular with a concerted effort to establish Provincial High Courts over the past decade, there has been a reduction in backlog in the Court of Appeal from over 10,000 in 2008 to just over 5000 appeals as of the beginning of 2013.⁴

25. Following passage of the Act the Government built or converted old buildings (often older residences for judges maintained by the Ministry of Justice) into court houses throughout the country. The Court of Appeal then transferred cases to corresponding Provincial High Courts as they have been built.

26. There are now 20 Provincial High Courts of Civil Appeal spanning all nine provinces (inclusive of one Commercial Court), 29 District Courts, 45 Magistrate Courts, 49 combined courts (where the court operates as a Magistrates court on certain days of the week and as a District court on the balance days) and 31 Circuit Courts. Circuit Courts are buildings located in more remote areas which will house periodically visiting judges from District Courts. There are also 32 specialized labor tribunals as well as mediation commissions appointed by the Ministry of Justice to which all civil cases involving an amount less than 250,000 Rupees (about USD \$2000) are mandatorily referred.

⁴ Figures from Office of Registrar, Court of Appeal.

Figure 1: The Judicial System in Sri Lanka



Source: Judicial Service Commission Statistics and Ministry of Justice interviews, 2012

27. **Sri Lanka has a total of 306 judges.** The Constitution sets out a limit of six to 10 judges plus the Chief Justice (maximum 11 in total) to comprise the Supreme Court and a limit of six to 11 judges plus a President of the Court (maximum 12 in total) for the Court of Appeal. These two apex courts have always had their maximum complement of judges. Provincial High Courts hearing civil matters are to have two judges while High Courts for criminal matters have one judge. The Colombo Commercial High Court in Colombo is an exception insofar as it is composed of three judges one of whom is the court chair. The Commercial Court is divided into three individual “courts” or benches, of which two predominantly hear commercial cases and a third hears admiralty, intellectual property, and arbitration award cases as well as a smaller number of commercial cases. There is usually a single judge per District and Magistrate Court, though the Judicature Law allows for additional judges. In several jurisdictions there are multiple judges/courts (e.g. Colombo has seven District Courts), while in 43 less populous areas one judge presides over a combined District and Magistrate Court. Sri Lanka’s judiciary also has a provision for Commissioners – specially designated judges serving temporarily in extraordinary situations. As of the writing of this report in the first half of 2013 there are three judges serving as Commissioners (temporary judges) serving in the High Courts in the North and East where there is a deficit of Tamil-speaking judges.

28. There are no judges in reserve with academic or other functions who might replace a judge who might become absent while serving in any of the courts. In addition, nine judges presently serve in the courts of Fiji (including two Supreme Court judges). While drawing conclusions from a comparison of judge-to-population ratios across varying legal systems, nonetheless the total number of judges is relatively low for a population of 21 million people. The issue of low numbers of judges is compounded by the practice of having one judge per court except for a few major urban centers where additional judges have been added. There will be uneven workloads among the judges of various courts. The challenges of adequate staffing are heightened by the high caseloads and frequency of appeals of decisions to higher courts.

Table 2: Judges per Population Ratios

Country	Number of Judges per 100,000 population
Argentina	11.2
Australia	4.4
Malaysia	1.5-2.4
Thailand	6.8
England and Wales	3.5
Russia	24.2
Germany	23
Sri Lanka	1.5

Sources: for Sri Lanka World Bank calculations, for other countries cited in World Bank, Progress Report on Malaysia Court Backlog and Delay Reduction Program (2011)

29. **There is a large number of cases per judge in District and Magistrates' Courts as well as considerable variation in caseloads.** Statistics for district court caseloads broken down by province show a range of 179 to 2151 civil cases per judge in 2011 and 250 to 1943 civil cases per judge in 2012 (See Table 3). Similarly, Magistrates' Courts showed a range of 953 to 6721 cases per judge. By way of comparison, there were also reported wide discrepancies within provinces in terms of the number of cases. In all cases this does not take into consideration the relative complexity and hence burden of different types of cases. In addition, the high numbers of cases per judge suggests that many cases are not actively being heard and are 'stuck' in the system (see discussion of the types of cases and respective length of time in the court system in Chapter 3). The ratios varied year on year, with Central Province having a 27% drop in the number of civil cases while Western Province saw an increase of 56% from 2011 to 2012 (though this may be a statistical anomaly – see discussion in Chapter 3). The number of cases per judge per year in the Colombo Commercial High Court was about 721 cases per judge as of the beginning of 2012.

Table 3: District and Magistrates Courts Caseloads

		2011		2012			2011		2012	
Province	No. of District Judges*	No of Civil Cases	Ratio	No. of Civil Cases	Ratio	No. of Magistrates*	No of Crim. Cases	Ratio	No. of Crim. Cases	Ratio
Central	12	25816	2151	18957	1580	13	34771	2675	47079	3621
Eastern	10	2612	261	2794	279	15	22323	1488	19452	1297
Northern	9	1613	179	2254	250	11	10486	953	20336	1849
North Central	5	3548	710	4358	872	7	47045	6721	41257	5894
North-western	13	9791	753	9599	738	18	56267	3126	61781	3432
Sabara-gamuwa	10	12667	1267	14053	1405	9	53919	5991	65277	7253
Southern	15	19771	1318	19336	1289	15	94647	6310	81029	5402
Uva	6	5186	864	4118	686	7	27639	3948	42082	6012
Western	36	44827	1245	69960	1943	38	221811	5837	182141	4793
Total	116	127842	1102	147441	1271	133	568908	4278	560434	4214
*Inclusive of 46 judges serving as both District Judge and Magistrate Source: Judicial Service Commission, World Bank calculations										

2.2 Appointment of Judges

30. **The President directly appoints all apex court judges and appoints High Court judges upon recommendation of the Attorney General and the Judicial Service Commission (JSC), a Constitutional judicial governance body headed by the Chief Justice.** The JSC appoints, transfers, and disciplines judges of first instance courts. Apex court judges may be removed by the President after a Parliamentary finding of misconduct, while High Court judges may be removed by the President upon recommendation of the JSC. Supreme Court judges mandatorily retire at age 65, Court of Appeal judges mandatorily retire at age 63, although there is no mandatory retirement age for other judges.

31. Convention in the past was that judges from the Court of Appeal would fill a vacancy that emerged in the Supreme Court, while the Chief Justice would be judge with the longest tenure on the Supreme Court bench. However, there are many exceptions to this convention, with superior court appointments coming from the ranks of attorneys, and particularly the Attorney General's Department. Most notably, Attorney General Silva was directly appointed Chief Justice in 1999 (though he had earlier been a Supreme Court judge) and in 2013 the President appointed the recently retired Attorney General Peiris to be Chief Justice. Of the 11 present Supreme Court justices, two are career judges while nearly all others are senior state counsels with significant experience from the Attorney General's Department. The President makes a determination of the candidate suitable for the apex courts at his own discretion. There has also recently been some experience of retired judges taking up government positions, most notably in the case of former Chief Justice de Silva becoming a Cabinet Legal Advisor.

2.3 Management of the Court System

32. **General management of the court system is carried out by a combination of the Judiciary itself through the JSC and the Ministry of Justice (MoJ),** which is part of the Executive. The JSC is chaired *ex officio* by the Chief Justice joined by two other Supreme Court judges appointed by the President. The JSC selects a Secretary and Deputy Secretary from among senior judges of the Courts of First Instance; when appointed, both these judges suspend the service as a judge and work full time for the Commission. The JSC has a supporting Secretariat comprised of 65 persons. The JSC is also empowered to set the rules for and execute the transfers of High Court judges as well as appointment, promotion, transfer, discipline, and dismissal of judges of First Instance Courts and most public servants fulfilling supporting roles in the adjudication process courts, with the exception of apex courts which directly handle their support staff. The public servants under JSC purview are registrars, clerks, fiscals, interpreters, stenographers, typists, and case file binders. The JSC also sets requirements for training of judicial officers, though the Judicial Training Institute is administratively run by the MoJ. The three-judge commission generally meets once a week. The JSC is to operate autonomously, with Article 115 in the Constitution declaring interference in its affairs to be a crime.

33. **The JSC monitors courts' performance and has the right to exercise substantial discretion in taking action to reward or sanction performance.** Judges in the past few years have been submitting monthly reports on the status of their caseload, including number of cases filed, processed, the amount of backlog, and a brief summary of the type of case as well. With the recent renewed focus on addressing backlog of cases prompted by the President's 2011 Budget speech, the JSC has reportedly called upon those judges where disposal rates are low to seek to redress the problem. However, the JSC has not gone beyond monitoring individual judges' performance through these reports. It also stresses that it must exercise caution in demanding performance while respecting the autonomy of individual judge's handling of cases. Yet the uneven distribution of backlog of cases in certain courts (outlined in Section III) suggests that a more proactive stance to ascertain the reasons for low performance and address these reasons is merited.

34. A Commercial High Court judge noted high level of interaction with the Chief Justice (meeting at least monthly) and with the JSC (weekly meetings on Monday). There has been close communication and support for the Commercial High Court's operations. There is also a Commercial High Court Practitioners Committee composed of judges and attorneys which meets monthly.

35. **Sri Lanka's judiciary does not have codified rules for evaluating performance or conduct of judges according to which sanction or rewards might follow.** There is also no formal Code of Ethics. The Constitution refers to judges sitting while maintaining good behavior, but there is no further clarification of what would constitute misbehavior (though Parliament is empowered to determine this with regard to Supreme Court judges). Recent Court Rules issued by the Supreme Court and applicable to other courts provide guidelines for the operation of courts and thereby how judges should run their trials, but they do not spell out management or oversight issues. There is also a judge's manual from the 1950s that relates to handling of cases in court with a planned update that has not been formally sanctioned.

36. **Rotations and promotion of staff outside of the apex courts are carried out on an annual basis by the JSC, with judges and court public officers usually serving three-year terms in a given position and/location.** There are no published criteria or rules governing rotation or promotion of judges and public officers. Convention has been to assign more junior persons to more remote courts handling lower volumes of cases with gradual progression towards courts handling a larger volume and eventually serving in Colombo. There have been some cases over the past 12 years where this convention has not always been followed in JSC personnel decisions.⁵

37. **The Ministry of Justice is responsible for logistical support in the operation of the courts as well as running several other justice sector institutions.** The MoJ oversees: hiring, discipline, transfer of administrative staff such as accountants; operations of the Judicial Training Institute; the Government Analyst Department (dealing with material evidence); the Legal Aid Commission providing legal services to the poor; Debt Conciliation Commissions; some 350 civil mediation boards handling low value cases; and 38 labor tribunals. The MoJ plans and executes all spending related to the building and upkeep of all courthouses except for the apex courts as well as equipment, supplies, and vehicles. There is a separate Board of Management headed by the Chief Justice for the Supreme Court and Court of Appeal building complex. The MoJ also oversees the maintenance of record-keeping systems for all courts including the Supreme Court and Court of Appeal though registrars themselves do not fall under the MoJ. Finally, MoJ manages all budgeting and accounting for all courts, including all salaries, through 23 accounting centers around the country (usually co-located with Provincial High Courts).

38. Annual expenditures on court administration in 2011 were 3.7 billion rupees (approximately USD 31 million), of which about 20% was for capital expenditures⁶. These figures have experienced almost no fluctuation since 2008 (including for 2012, though there was an announced program for increased construction). There are slightly over 6000 regular employees and roughly 2000 part time workers in the justice sector in total falling under the Ministry of Justice's mandate.⁷

39. **The interlocking nature of the JSC's and MoJ's functional responsibilities for courts' operations requires close communication and cooperation between the two entities.** For instance, the recent intensive establishment of the new Provincial High Courts over the past five years has required capital expenditure to refurbish and equip buildings by the Ministry of Justice as well as increasing the number of judges and senior staff and appointments of these persons, a task overseen by the JSC. There are no formal mechanisms for ensuring this coordination but in practice communication is constant.

40. **The duality of management oversight is not viewed as a pressing concern by justice sector practitioners in Sri Lanka.** A few MoJ employees noted that the Ministry needed to exercise care in waiting for decisions by the JSC related to the organization of the courts out of respect for the JSC's independence. At the same time, others noted the MoJ's role in handling almost all budgetary issues was a limitation on the judiciary's capacity to manage its affairs. Yet persons interviewed for this study did

⁵ International Crisis Group (2009)

⁶ Combined figures for court administration and the Supreme Court Complex Board of Management. Ministry of Justice (2012). Excludes amounts for MoJ administration and other institutions (Mediation Boards, Government Analyst, etc.)

⁷ Ministry of Justice 2010 Estimates Report.

not cite the question of split oversight as a factor impeding the work of the courts. There were no reports of differences on management issues leading to problems in organization of the courts.

2.4 Court Operations

41. **Judges are responsible for managing their own individual courts.** Judges provide input in preparation of budgets and make minor payments within small cash allocations provided on a short term basis by their respective accounting offices. The typical allotment of total staff per District Court is between 20 and 30 persons; for instance Colombo's relatively busy seven district courts have a total of 186 staff serving in them, while the Mt. Lavinia District Court (serving the southern outskirts of Colombo) has a total of 30 staff. Judges of the apex courts have personal secretaries, but judges at all other levels do not have clerks or personal assistants, which means that the writing and researching of all decisions must be undertaken by the judges themselves. Judges are responsible for overseeing fiscal officers who enforce judgments. All fiscal officers are public officers. Interviewees noted that the greatest problems with staffing issues were relatively weak skills of stenographers in courts, particularly when dealing with the English language.

2.5 Infrastructure

42. **Sri Lanka's courts continue to face physical capacity constraints but these are easing following intensive effort to improve infrastructure over the past dozen years.** The Ministry of Justice carried out refurbishment or construction of some 24 courts under a World Bank-financed project from 2000-2007. In addition some 18 other court buildings were refurbished without external financing over the past 12 years. With the defeat of the LTTE in 2009, there has been intense activity to build or refurbish courthouses in the North and East. The Government further committed to setting up 60 new courts over the period 2011-2013, with an additional programmatic allocation of 400 million rupees (slightly more than USD 3 million) for this period in addition to loan financing support received from the Asian Development Bank for three courts in the North and East. Several of the new courts are refurbished buildings which had previously been managed by MoJ. There are preliminary plans to build a new court complex in Colombo to house the Commercial High Court, district courts, and several labor tribunals.

43. **The use of existing court buildings is not intense.** Given the practice of one judge per courthouse, whenever that judge is not presiding, the courtrooms are not used. Moreover, several stakeholders noted that common practice in all courts was to begin at 9:30 am and conclude all hearings by 2:00 pm despite JSC circular requiring courts to be in session from 9:30 to 3:30 with a break for lunch. The less than fulltime use of the courtrooms is justified in part by the need for judges to attend to the rest of their work such as writing judgments. However, it would appear possible to reallocate duties among personnel, including perhaps adding judges, in order to more fully utilize the available courthouse infrastructure to hear cases.

44. **With the exception of a piloted project started in 2006 to automate case processing in the Colombo and Kandy District Courts, there is no use of computer technology to handle case management in Sri Lanka's courts.** The pilot project itself encompassed a case tracking system, but did not address digitization of records or other elements of case management that might be automated.

The system continues to operate but no rigorous assessment of its utility and possible expansion as a system or utilization by other courts has been carried out. There are no immediate plans or allocations to automate other courts. At the same time, the MoJ is keen for assistance to implement automated case management.

2.6 Availability of Information

45. **Publicly available and accessible information about the courts' operations is limited.** In terms of management information, the data on court cases and disposal rates that is gathered by the JSC is not publicly available. The Ministry of Justice produces an annual report which captures some performance data of the apex courts, as well as its own work in meeting logistical needs. Scheduling of hearings is done manually through the mail and by daily postings in the courts in question, with the exception of the Supreme Court, which publishes this information on line and in national newspapers.

46. **Information about trends in the practice of law in Sri Lanka's courts is also not consolidated or automated.** There is a Government run database of Acts with search capability (Lawnet), but it does not contain important implementing regulations by agencies. Lawnet publishes law reports with judgments, but these are not searchable beyond the alphabetical names of litigants in cases. These constraints pose a difficulty for businesses to keeping up to date, particularly on issues related to customs and taxation that were governed by regulations.

2.7 Training

47. **MoJ operates a Judges Training Institute (JTI) which carries out training programs approved by the JSC.** Batches of 15 to 20 trainee magistrates and district court judges are trained annually for with the numbers fluctuating as per JSC requirements. There are 4 distinct course programs: a trainee judges course (conducted 5 days a week with a dedicated practical court training course); a short 'in service' judges course for appointed judges who need capacity building (on Saturdays only); a labor tribunal course for presidents of labor tribunals; and a course for enhancing report writing and IT skills. The JTI does not conduct any long-term training for Appellate court judges. The Institute also has carried out a number of specialized courses (e.g. on human trafficking) as per separate agreements with interested donors which finance the courses. It also runs occasional weekend seminars for up to 40 judges. Finally, MoJ also established a training institute for non-judicial officers (registrars, assistants, etc.) in 2010, offering roughly 20 short courses for various support staff per year.

48. **The amount and breadth of training of judges and staff is cited by several stakeholders in the justice sector as inadequately resourced and substantively insufficient.** The JTI develops its content subject to JSC approval and has a corporate development plan. However, it has lacked the resources to conduct detailed needs assessments or develop programs based on evaluations of court performance. In terms of content, persons contacted for this review cited the lack of training on application of law in District Courts for changing and new business practices. Indeed, better training for judges was viewed by members of the judiciary as a key strategy to address the problem of case backlog and insufficiently quick adjudication in the courts. The course manual for trainee judges contains an extensive section on using differentiated case management techniques and suggests time standards. However from the information provided by stakeholders these methods are not followed often in practice.

CHAPTER 3: DATA ON CASE HANDLING IN COURTS

49. **There are significant limitations in data available regarding courts' operations which allow tentative conclusions about performance.** Available statistics for this review were: (i) Statistics on the number of cases per District Judge and Magistrate broken down by province, and numbers of cases by type and number of years in the respective courts for 2011 and 2012 provided by the JSC ('JSC composite data'); (ii) January-June 2011 statistics for criminal high courts, district courts, and magistrates courts; (iii) published data in annual reports from the Ministry of Justice for the years 2010 and 2011 regarding types of cases, cases pending, and cases concluded by the Supreme Court and the Court of Appeal; and (iv) data and estimates provided on site about the cases filed, pending, and concluded at the Commercial High Court. Pending cases may include cases which may be dismissed owing to case filing deficiencies that will result in the case being removed or set aside if it fails to comply with procedural requirements.

50. Other data reported by courts is not readily available in aggregated form. The JSC has for a number of years required reporting on total numbers of cases by judge on case management statistics from first instance courts under its supervision. This data is not aggregated and does not record pending and concluded cases. The team also lacked information on the number of cases which are in provincial High Courts; anecdotal comments from stakeholders gave a rate of appeal on civil cases ranging from 10% to as much as 50% of all cases.⁸ In addition, aside from estimates in the CHCC, there is no data on clearance rates and average time of disposition for various types of cases. Nonetheless, this review records such data as is available in order to provide for some conclusions about the general operations of the court system as a whole and particularly in the CHCC. Observations about the court system as a whole provide context for the performance of the District Courts and the CHCC in handling commercial cases.

3.1 Case Statistics

51. **The number of cases pending in the Supreme Court has increased from 1345 at the end of 2008 to 3256 as of August in 2012.** The number of pending appeals in the Supreme Court from Provincial High Courts has increased from 139 in 2008 to 1105 in the 3rd quarter of 2012. This is a reflection of an additional burden placed on the Supreme Court to serve as a final court of appeal after the Provincial High Courts were established. The number of pending fundamental rights applications has also doubled from 574 in 2008 to 1088 as of the 3rd quarter of 2012 even though the number of new cases being filed annually has decreased from 1010 to 508 in the same period.

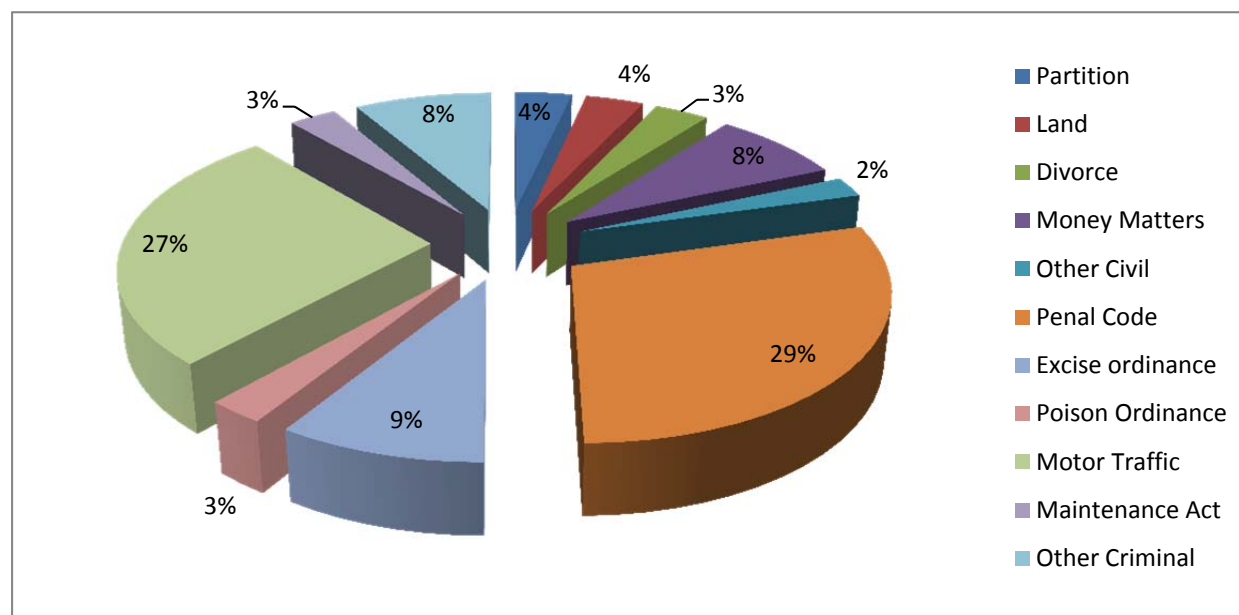
52. **The number of pending cases in the Court of Appeals declined from 10,821 in at the beginning of 2008 to 5,740 as of the beginning of 2013.** This is largely as a result of transfer of cases to Provincial High Courts which have been recently established. The number of cases being registered annually has come down from 1658 in 2008 to 943 in 2012 (see Annex 1 for tables of case data).

⁸ This estimate does not factor in the relatively successful use of mediation (around 60% resolution rate) for low value civil cases.

53. **District Courts and Magistrates Courts have between 650,000 and 735,000 cases pending as of early 2013.** JSC data on pending cases show that as of January 31, 2013, there were a reported 650,670 criminal and civil cases pending in first instance courts, of which 119, 964 were in trial. However, JSC composite data for 2012 yields a sum of 705,863 cases in first instance courts, including 145,429 cases in District Courts as of the end of 2012 (over 19,000 more than the 125,831 pending as of the end of 2011) and 560,434 in Magistrates Courts (a small decline from 568,908 as of the end of 2011). Finally, the January-June 2011 JSC report shows a total of 735,591 cases pending in District Courts and Magistrates Courts as of January 1, 2011. The differences may be due to the varying dates or inconsistencies in the compilation of statistics. None of the data available capture whether a concluded case that was subsequently appealed (thereby still remaining in the court system, but at a higher court).

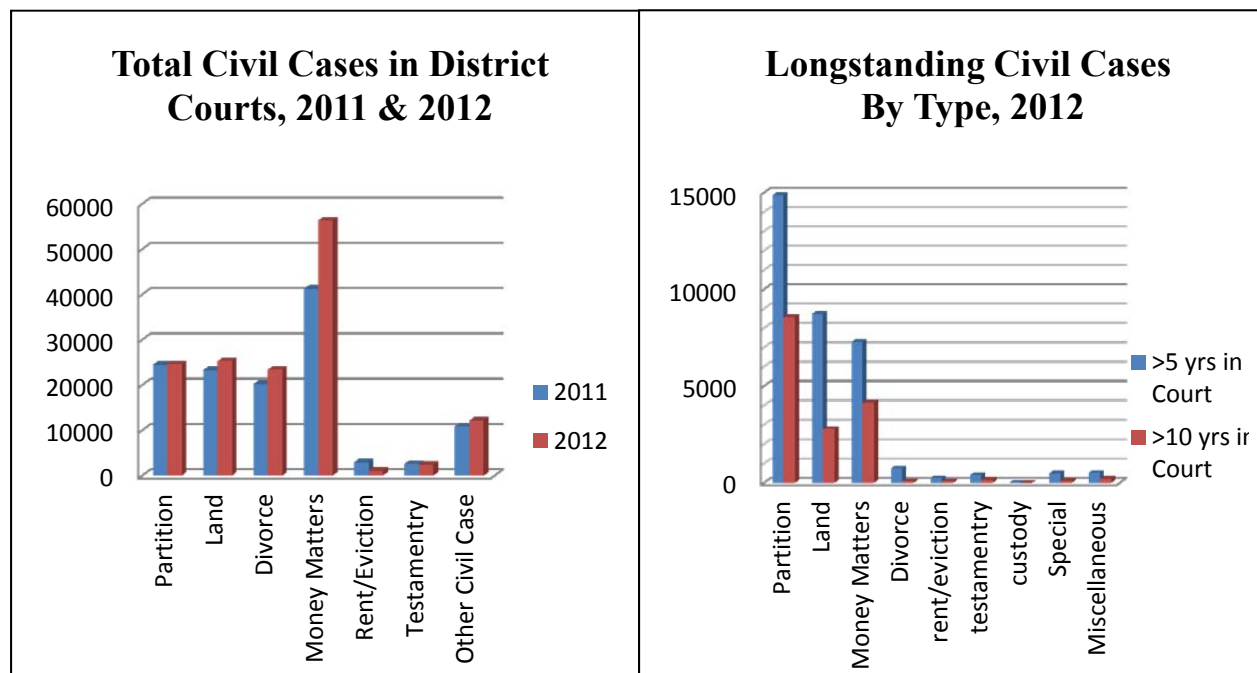
54. **The Magistrates Courts account for the lion's share of cases pending in the court system.** The aggregate data from individual courts shows that nearly 79% of pending cases in first instance courts were in the Magistrates' Courts, while 21% were in District Courts in 2012 (see Figure 2 for breakdown). The breakdown of new filings in January-June 2011 is similar: 93% of new filings were in Magistrates' Courts, 6% in District Courts, and only 1% in the Criminal High Courts.

Figure 2: Breakdown of Cases in District and Magistrate Courts, 2012



55. **Money matters are the most common type of civil case in the District Courts, but partition cases and to a lesser extent land cases contribute most to cases which are not disposed quickly.** In 2012, money matters accounted for 33% of all civil cases, while land, partition, and divorce cases account for between 15% and 20% of all cases in District Courts. There was a 25% increase of money matters cases in 2012 compared to 2011 (though this may be a statistical anomaly since it is prompted by unusual figure in just one district court), and small increases in land, partition, and divorce cases. Partition cases account for 45% of cases in District Courts for more than five years and 54% of cases in such courts that are more than 10 years old.

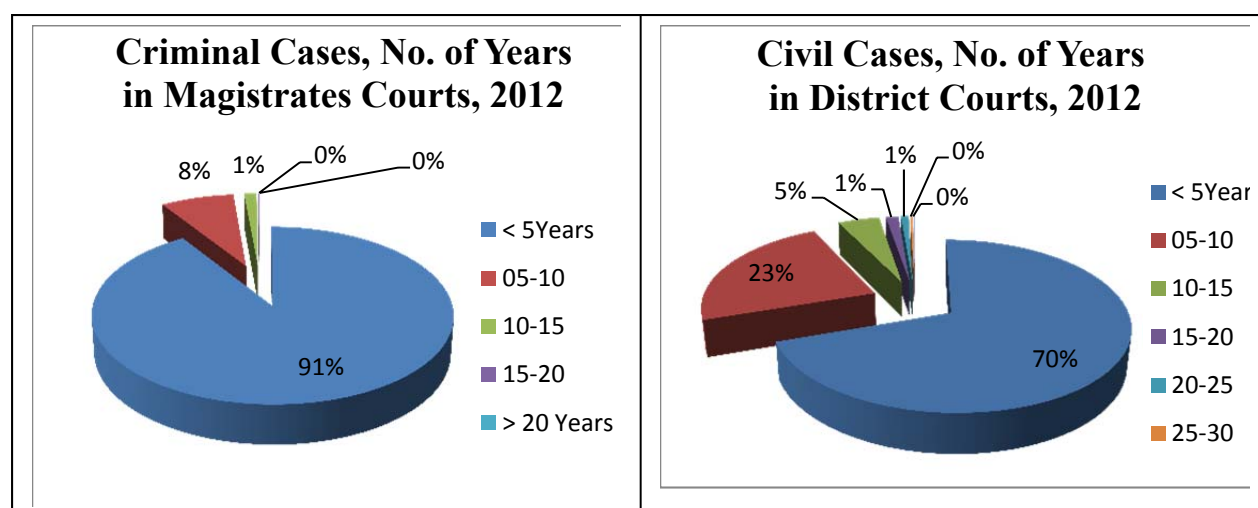
Figure 3: Civil Case Statistics



56. **Most cases in first instance courts are less than five years old.** A total of 70% of all civil cases have been in courts for less than five years in 2012 (correspondingly 74% in 2011); 87% of money matters cases are in District Courts for less than five years (83% in 2011). A total of 91% of all criminal cases in Magistrates Courts are less than five years old and only 1% of criminal cases are more than 10 years old. Unfortunately, more precise statistics on the length of time cases are in court (e.g. one, two, or three years) are not available.

57. **The high proportion of cases under five years in the system suggests that the backlog problem has stabilized, but is not improving.** While the overall caseloads per judge are high, it appears that overall disposition of cases is keeping pace with the influx of new cases being filed. There was virtually no increase or decrease in the total numbers of criminal and civil cases over five years old in the dataset for 2011 and 2012. The data does not provide insight as to how judges are processing caseloads which for must first instance judges number in the thousands.

Figure 4: Cases in Magistrates and District Courts, Number of Years



3.2 Processing of Commercial Cases

58. **The District Courts of Kandy and Colombo have the most activity overall for civil and criminal cases, in particular with regard to money matters.** In 2012 the nine Colombo District Courts accounted for 29,616 money matters cases (53% of all cases) while the three Kandy District Courts accounted for 5,659 money matters cases (10% of all cases). No other District Court account for more than 4% of money matters cases. As noted earlier, there was a 25% increase of money matters cases in 2012 compared to 2011. However, this increase appears traceable to having 23,694 new cases under five years old in 2012 in one specific Colombo District Court (and thus may be the result of an anomalous report). Without this one court the total number of money matters cases dropped in 2012 when compared to the prior year.

59. **The Colombo Commercial High Court (CCHC) handles much fewer cases overall with 971 cases filed in 2012.** Of course, as the court of first instance for higher value cases, the significance of its operations is greater than the number of cases which it handles. There is no data regarding the aggregate value of cases which are heard, but the existence of the Court and the benefits of a more specialized venue with judges having greater technical qualification were noted by stakeholders interviewed for this review. Based on 2012 data compiled from registrars' logs for the three benches, a total of 916 cases were concluded. The 1st and 2nd benches each had 225 new cases while 515 new cases were brought before the 3rd Bench. A total of 85% of the cases heard by the 1st and 2nd benches relate to money recovery matters while 60% of the cases heard by the 3rd bench concerned enforcement of arbitration. CCHC staff estimate that in most cases of debt recovery, lease defaults that cases are concluded within two years or less (leading law firms noted that the CCHC would usually resolve cases within 18 months).

Table 4: Case Disposal in the Colombo Commercial High Court, 2012

Nature of case	Type of case	Estimated avg. time of disposal (years)	Total Pending* cases as of end 2011			Total new cases in 2012			Total Concluded cases in 2012		
			Court 1	Court 2	Court 3	Court 1	Court 2	Court 3	Court 1	Court 2	Court 3
Money recovery	breach of contract	4	739	624	155	194	194	139	152	211	125
	defaulting on leases	2 - 2.5									
Company matters	liquidations	2-4	84	71	17	22	22	15	17	24	15
	shareholder agreements	2									
	enjoining orders	1 week									
	board resolutions	1-2									
Intellectual property	Trademarks & patents	1-4	46	39	29	12	12	26	9	13	24
	Unfair competition	1-4									
	Copy right infringement	1-6									
Arbitration (enforcement of awards)		2	–	–	344	–	–	309			300
Admiralty matters	Actions in rem	3	–	–	29	–	–	26			25
	Actions in personam	3									
Combined Totals for All 3 Courts			2177			971			915		
*Pending cases do not include laid by cases, i.e. cases registered but not admitted for trial owing to procedural matters which must be rectified. There are nearly 3000 such additional cases, of which 60% are estimated to concern arbitration enforcement. Source: Colombo Commercial High Court staff and records											

60. **Enforcement of arbitration are the single most common type of case filed with the CHCC and this trend will likely continue.** In addition to the 344 pending cases there are a large number (over 2800) of such cases which have been laid by until the parties filing the cases take necessary procedural steps. Even with these frequent delays, enforcement of arbitration awards are estimated by CHCC court staff to take three years or less. Furthermore, the last decade has seen more frequent incorporation of arbitration into all leasing agreements which has increased the number of applications for either enforcement or challenging awards. There are also numerous applications dealing with relatively small

consumer related claims. More rigorous application of relevant sections of the Arbitration Act (specifically Sections 31(6) and 32(2)) to screen cases might discourage the filing of frivolous applications.

61. **The available data on court performance indicates that commercial cases are not the major contributors to backlog in the courts.** Pending criminal cases outnumber civil cases by about four to one in Sri Lanka's court system. Slightly commercial (money matters) cases are not processed quickly. Partition and land cases contribute substantially to cases lasting over five years. The increase in backlog for the period for which data is available is almost entirely due to criminal cases, albeit that within civil cases the rate of influx of specific money matters cases is higher than disposition rates. However, the available information does not allow for several important assessments, such as known how much time money pending and concluded money matters had been in the system. For instance, while Kandy District Court contributes considerably to overall civil case backlog, its disposition rate in January-June 2011 was relatively good, contributing to a small reduction in backlog. The reasons for this improvement compared to past performance warrant further investigation.

62. **Commercial case disposal in the CHCC appears to be fairly expeditious.** Conclusion of cases in 2012 (915 cases) was only slightly less than the influx of new cases (977), with a constant of slightly more than 2000 cases that are in process. Staff estimates and comments by practicing lawyers indicate that most cases take about two years to process, keeping the amount of cases taken up by the CHCC roughly constant at around 2000 for at least the past few years. District Courts also have disposal rates for civil cases that are comparable to new filings, though there are fewer disposals than new filings of money matters cases. At the same time just 'treading water' in concluding the same number of cases with those that will not address the problem of a large backlog of cases in the District Courts.

CHAPTER 4: PRIVATE SECTOR APPROACHES TO DISPUTE RESOLUTION

4.1 Private Sector Experience with Courts

63. **The private sector's behavior in using the court system is important in assessing how well the courts play their role in providing for a better business environment.** The team conducted interviews with representatives from three commercial banks, two leasing companies and over 10 corporations to gauge the experience and views of the private sector in dealing with the legal system⁹. Financial institutions and leasing companies are particularly important users since most commercial cases coming up before the District Courts are money matters involving recoveries on loans and leases. Furthermore, outside of enforcement of arbitration decisions, money recovery cases by these institutions also represent the second largest number of cases in the CHCC.

64. **Going to court to settle disputes in commercial cases is, as is true in most systems, only a last resort.** Delay in handling of cases was the main reason cited to avoid the legal system. Multiple interviewees cited various kinds of delays: cases taking years to be listed for trial, trial dates being set six months or more apart, arbitrary case postponements due to the court allowing postponement on frivolous

⁹ The information was provided on condition of the sources remaining anonymous.

reasons or judges delaying judgments, and delays by court registrar and fiscals in conducting auctions. Another issue cited was the cost of lawyers' fees and costs incurred to ensure the enforcement of judgments were also cited as issues. Both time and cost are increased due to procedural inefficiencies.

65. **Limited survey results suggest that the qualitative findings noted here are systemic problems, though their impact on businesses is not viewed as significant.** The results of the last large survey conducted of the judicial sector's performance highlight these same issues (See Box on Marga Survey). At the same time, a 2010-11 survey of nearly 600 manufacturing and service enterprises found that the courts were viewed as the least significant obstacle to business out of 15 choices. This ranking may reflect avoidance of the courts or that the performance and time delays are on balance acceptable.

66. **The establishment of the Commercial High Court was consistently described by interviewees as a significant step in the right direction.** Interviewees felt that the time taken for the disposal of cases was acceptable, though could be improved. Several interviewees noted that the CCHC suffered from poor infrastructure, particularly its record room and filing system. A major source of delay cited by lawyers working in businesses was the difficulty at times of locating files within the Court.

67. **Banks generally resort to a lengthy internal recovery process that can last up to two years.** Only 5 to 10% of money recovery actions eventually go to court, and nearly 50% of such actions are then settled at the trial stage with the debtor agreeing to pay at least some part of the loan. Interviewed Bank lawyers stated that they recovered less than 2% of the outstanding non-performing advances in 2012 via the courts, and even then after lengthy proceedings. Financial institutions still suffer a significant loss even after redress to courts but often agree to settle in order to prevent costs from escalating.

68. **Private Commercial Banks generally obtain realizable assets as security on loans.** A key issue they face is that customers defaulting on loan repayments seek redress by way of injunctive relief through enjoining orders. This procedure on average takes about nine months and generally results in the enjoining order being refused after the bank files an objection and court reviews the application. Financial institutions complain that judges often grant such injunctions with a view to giving the debtor more time to settle notwithstanding the fact that a lengthy settlement procedure has already been followed and legal redress is being sought only as a last resort. Other delaying tactics include engaging creditors to initiate liquidation proceedings and thereby delay the bank from recovering.

69. **Recently introduced legislation regarding loan recovery has caused alarm among banks.** The Recovery of Loans by Banks (Special Provisions) (amendment) Act of 2011 prevents the initiation of *parate* auctions¹⁰ where the loan is less than 5 million rupees. Financial institutions are forced to recover the loans using other procedures. Interviewees believed that this could result in the court system being flooded with such cases involving lower value loans.

70. **Leasing companies also use lengthy internal processes and enlist private recovery agents for the recovery of leased vehicles.** For high value cases such as those involving leases for heavy vehicles, leasing companies expressed general satisfaction with the time take for case disposal in the Commercial

¹⁰ Extra Judicial sale of property mortgaged for the recovery of debts defaulted without an order of court in that behalf.

High Court. However, the companies noted that low value cases which must be taken up in District Courts are subject to significant delays.

71. Usage of the CCHC in instances where liquidations and winding up procedures are taking place have been described as satisfactory in terms of timeliness and quality of judgments. Corporations noted that they had far less confidence in the speed and quality of service in District Courts. There is a perception that the judges in these courts often lack sufficient background on commercial matters and company law, which in turn created delays.

Box 2. Marga Institute Survey: Another Assessment of Court Performance

The only available survey regarding justice sector performance was undertaken by the nongovernmental Marga Institute in 2002. The survey was conducted among 1606 respondents including litigants, remand prisoners, judges, lawyers, court staff and legal officers from the corporate sector. The survey reviewed confidence in the judicial system and various aspects of performance. Though the information is dated and reflects perceptions beyond just that of business, nonetheless it is a useful set of assessments of aspects of court performance. Key findings of this survey were:

- A minority of court users and stakeholders (and only half of judges surveyed) had a high level of trust in the system;
- Nearly 62% of the respondents also believed that political pressures influenced the judicial system to some degree;
- A majority of the respondents, including judges themselves, described the quality of services provided by the legal system as average (on a scale of bad, average, and good);
- 41 members of the judiciary who responded to the portion of the survey on corruption described 226 incidents of bribery of which the three highest beneficiaries were court clerks, police officers and fiscals. There were few reports of bribes in connection with delivery of judgments were remote.

The survey also asked court users to rank 11 obstacles to using the court system. The top three problems were:

1. Legal representation is too expensive
2. Judicial process is too long, and
3. Procedure too complex.

Respondents from the corporate sector, judges, court staff and the legal profession were asked to indicate which would be the most effective steps to improve judicial performance. These were in order of importance:

1. Judicial training programs
2. Training programs for court staff
3. Arrangements for better case management including effective registry and file maintenance systems
4. Immunity from political interference and higher salaries to judicial officers (tied)

Source: Marga Institute (2002)

4.2 Alternative Dispute Resolution

73. **Arbitration within Sri Lanka can be either institutional or *ad hoc*, with two local centers for arbitration in operation.** The Arbitration Act made comprehensive legal provisions for the conduct of arbitration proceedings and for the enforcement of arbitration awards and gave effect to the principles of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Although community mediation is viewed as largely successful, commercial mediation has not been practiced despite an attempt to establish a commercial mediation center in the Ceylon Chamber of Commerce.

74. **Arbitration has been described by wide array of stakeholders as being slower than the courts themselves.** Arbitration hearings are characterized as being very similar to court sessions, with arbiters almost always being retired judges and parties to the arbitration retaining lawyers to represent their interests in the arbitration. Arbitrations never have continuous sessions and often with considerable delays between them. Because of the role for lawyers, arbitrations typically take place the last two hours of a workday after attorneys representing clients have finished their work in courts during the earlier part of the day. Full day sittings and sittings on consecutive days was virtually unknown, except in the rare instances of domestically held international arbitration. There is also the perception of a significant number of arbitration awards subsequently being contested in the Colombo High Commercial Court, which undermines the basic principle of arbitration¹¹. Some financial institutions interviewed for this report state that they now avoid using arbitration clauses in agreements and rely instead on clauses that describe the settlement steps involved where disputes may arise.

75. **The Arbitration Act was intended to provide the courts with a supervisory role.** Party autonomy was foremost and parties have the discretion to invoke the jurisdiction of court only in certain limited occasions. However application to court can be made according to seven out of 13 provisions in the Act¹². These provisions are in addition to those which invoke the Court to enforce the award or to set aside the award. However courts have been reluctant to order that any award be made payable shall be brought into Court or otherwise secured pending the determination of the application. Arbitration proceedings can be continued when an application has been made to court to determine whether the arbitration tribunal has jurisdiction¹³. Using a court order to show that the tribunal does not have jurisdiction is another ploy used by the party against whom the final award is made, to circumvent proceedings irrespective of the time taken to have several sittings (spanning over years in some cases), and the expenses borne by the parties and other stakeholders in the process.

76. **Arbitration proceedings can be continued when an application has been made to court to determine whether the arbitration tribunal has jurisdiction¹⁴.** Using a court order to show that the tribunal does not have jurisdiction is another ploy used by the party against whom the final award is

¹¹ Over 300 cases of enforcement of arbitration were filed in 2012. There are no estimates of the total number of arbitrations that may have taken place in the same year.

¹² Section 7: Appointment of Arbitrators, Section 10 : Grounds for challenge, Section 11 : Competence of Arbitral Tribunal, Section 13 : Interim measures of protection, Section 20 : Parties may obtain summons, Section 21: Refusal or failure to attend before Arbitral Tribunal, Section 30 : Award not to be withheld.

¹³ As per S. 11

¹⁴ As per S. 11

made, to circumvent proceedings irrespective of the time taken to have several sittings (spanning over years in some cases), and the expenses borne by the parties and other stakeholders to the process. The Act specifies that arbitration proceedings can continue notwithstanding the application made to court on the jurisdiction of the tribunal. The Act¹⁵ also provides that the Supreme Court may make Rules¹⁶ that set out the manner in which the procedure of the Court is conducted. Even though these rules have been drafted and approved of by the Law Commission several years ago, they are yet to be implemented up to date.

CHAPTER 5: LEGAL AND PROCEDURAL ISSUES IN COMMERCIAL CASES

77. **Sri Lanka's legal system is derived from several sources which reflect its history over the past four centuries.** Its system is based on British Commonwealth legal principles but with incorporation of some Roman-Dutch legal norms and in a few cases prior Kandyan law. In particular, Roman-Dutch legal tradition informs certain transactions, notably contracts for land.¹⁷ Commercial litigation, like all civil litigation, is governed primarily by the Civil Procedure Code (CPC) of Sri Lanka enacted in 1889 (with amendments) with the exception of the Companies Act No. 7 of 2007 which provides that litigation under the Companies Act is *sui generis*. The Evidence Ordinance No. 14 of 1895 (as amended) specifies the evidence that can be admitted to court and the procedure that must be followed in producing such evidence. Provisions in the Evidence Ordinance which deal with the admissibility of documents are particularly important for commercial cases.¹⁸ Substantive law with regard to commercial transactions are found in the respective Acts which deal with the subject matter, notably the Debt Recovery (Special Provisions) Act No. 2 of 1990, Companies Act No. 7 of 2007, Intellectual Property Act No. 36 of 2003, Arbitration Act No. 11 of 1995, and Admiralty Jurisdiction Act No. 40 of 1983.

78. **There are both substantive legal issues and actual practices which contribute to long processing times of commercial cases, though observers tend to stress that most problems lie in the practical application of existing law in the courts.**¹⁹ The following procedural issues stand out as contributing to delays by providing grounds for one or more parties to take action that will draw out court proceedings:

- CPC provisions provide for the cross-examination of all witnesses. The Companies Act stipulates that all actions stemming from the Act must be disposed of by way of Petition & Affidavit and the Intellectual Property Act provide for affidavit evidence. But all other commercial cases are subject to time-consuming cross examination which, though not required, must be granted if the litigants demand it. Parties often request additional dates for cross-examining a witness without doing so after the conclusion of the examination in chief.

¹⁵ As per S. 43

¹⁶ With respect to any application or appeal made to any Court under the Act, and the costs of such applications or appeals and the payment of money into and out of Court in satisfaction of a claim which the arbitration apply and the manner in which money is to be invested.

¹⁷ Cooray (1972)

¹⁸ The discussion of legal and procedural issues is adapted from an overview of commercial litigation commissioned for this review by Dr. Harsha Cabraal.

¹⁹ Report of Justice Raja Fernando Committee (2007)

- The CPC allows for challenging of each document submitted by the other party with the ultimate requirement of an oral hearing of the document with written submissions after which the presiding judge will issue an order. There is substantial latitude with regard to the timeliness and completeness of submission of documents.
- There is no procedural legislation that would provide for a reliable system of electronic submission and exchange of documentation as part of the pre-trial and trial process. Emails are permitted as evidence, but their authenticity may be challenged requiring oral hearings as noted above. Procedural steps effectively require the physical presence of litigants or their representation. This in turn is a cause of frequent adjournments in order to accommodate both parties and/or their representation.
- Summons can be drawn out. The CPC allows for up to 3 different ways of the serving of summons (Via registered post, in person or by substituted service) if previous attempts fail.
- A judge's order during the trial may be appealed if there is a question of law to be considered (to Provincial High Courts in the case of District Courts, but to the Supreme Court directly in CHCC cases). The appellate court has to make a grant to leave as to whether an appeal will be heard by the same court and then the actual hearings would be determined. Trial proceedings are laid by (discontinued) until a determination is made with regard to the appeal.

79. **There are also a number of scheduling practices that cause unwarranted delays.** Trials are never scheduled on a day-to day basis and often large gaps between trial proceedings (often up to four months) are granted by the bench. Of course, there may be legitimate and necessary reasons for taking more time to hear a case. There are physical limitations in terms of the courthouses, numbers of available judges and competent staff, and management of records. However, the consensus among all stakeholders consulted for this review was that overall practice, with some exception in the CHCC, was to tolerate slow trials. Indeed, the Bar had consistently raised objections to introduce more streamlined pre-trial procedures.

80. **Changes in substantive and procedural law can close some loopholes that afford opportunity to delay cases, but enforcing greater discipline in carrying out trials under existing legislation will contribute most to tacking the issue of slow justice being served.** Achieving such improved discipline will require a concerted effort to change the way in which both the bench and the bar approach trials. This in turn will require consensus among all parties involved, as well as expectations more generally of a better performing court system.

Box 3. A Practitioner's View: Possible Efficiency Gains in Adjudicating Commercial Cases

The 2013 Doing Business survey found that enforcement of contracts involves 41 steps taking an average of 1318 days in Sri Lanka. Practicing lawyers concurred with these figures with the two qualifications. One is that the methodology tracks a typical case of a value of 200% of the country's per capita income or about 4000 US dollars. Such a case would be heard in a District Court as opposed to one heard in the CHCC, which hears cases for a value of over 40,000 US dollars. The CHCC is considered more efficient. The second is that the figure of 256 days for enforcement would apply for enforcement of a foreign judgment, an unusual occurrence. Enforcement of local judgments is estimated to take from 30 to 70 days.

For this review a prominent practicing commercial attorney, analyzed the process for the purposes of identifying where from a practitioner's eye shortening of the process might be obtained.

Filing and service is delayed by the lack of rigor and convenience in carrying out pre-trial procedure, especially on the admission of documents. Another cause of delay in this stage is the issuing of interrogatories by the Plaintiff which the Defendant needs to answer. A practice direction for the CHCC without amending the CPC can achieve a reduction of 30 days from the current period of 62 days.

Trial and judgment experience significant delays due to the bar taking advantage of provisions to delay trial for strategic reasons and lenience by the bench in controlling the trial process. Generally two dates (each spaced between 45 days to 60 days apart) are given by court to file answer as counsels generally aren't prepared, nor are they required by judges, to file answer on the first day. A further 60 days are usually provided for counsels to frame issues and admissions after the date of filling answer for the matter. Adjournments to prepare further are routinely awarded in cases. The judge may require a further 60 days from the date of filing the final written submissions to deliver the judgment. On occasion the judge may require a further 45 days later on the date fixed for judgment. A reduction in such delays through stricter discipline could reduce the number of days to 365 days from the current figure of 1000 days.

Appeals can be a source of major delays. An appeal from a judgment of the District Court goes to the corresponding Provincial High Court of Civil Appeal and takes an estimated 1000 days from the date of the judgment to be listed in the court. The hearing takes a further 300-500 days.

The Supreme Court only grants leave to appeal of a judgment of the Provincial High Court (including the CHCC) only when there is a serious question of law to be considered. Generally matters fixed for Argument in the Supreme Court are not taken until the 'Leave to Proceed' and 'Granting of Leave' matters have been taken up. Practitioners note that a matter listed for argument is often re-scheduled for argument 60 to 90 days later. A final appeal from the Commercial High Court might take between 700-1000 days for it to be listed in the Supreme Court. The Supreme Court would further require a period of 365- 500 days to inquire into the matter. Therefore entire appeal process is estimated to take between 1065- 1500 days.

If the two tier appeal process described above is utilized the estimated total time is between 1990 days - 2590 days (6-7 years). In a commercial case this severely hinders a litigant from obtaining speedy relief unless the remedy of a Writ Pending appeal resorted to. For the trial process in the court of first instance the standard that could be aimed at is a lowering of the number of days 585 days (inclusive of 3 months calculated for interim relief¹) from 1318 days.

Enforcement of domestic judgments is relatively straightforward and disciplined, taking between 30 and 70 days.

CHAPTER 6: PAST REFORM EFFORTS

6.1 Initiatives by the Government

81. **Sri Lanka has expended significant effort to improve the justice sector's performance and in particular to address delays and backlog.** The Government has sought to provide for sufficient court infrastructure and to increase physical proximity of courts. The creation of the Commercial High Court is perhaps the most notable attempt to provide for better judicial services to the population.

82. **Concomitant with infrastructure the Government has sought to address procedural and management shortcomings that cause delays.** A committee headed by President's Counsel de Silva submitted a report in 2004 with recommended amendments to the practice and procedures in investigations and courts on curbing crime and eradicating procedural delays. Apart from recognizing the need to introduce amendments to the existing legislation the report also confirmed that laws delays were inextricably linked to the lack of adequate resources especially cadre. However even though significant recommendations such as day to day trials were incorporated into amendments to law²⁰ subsequent review committees²¹ found that such provisions were only implemented in a few courts owing to practical difficulties.

83. A separate committee headed by former Supreme Court Justice Fernando Committee submitted a report which identified the delays in the administration of justice. The committee suggested a series of reforms to procedural and substantive law that would have led to a significant reduction in delays in both the short and medium term. The focus of those recommendations was to improve pre-trial procedures.

84. A committee headed by a previous Secretary of Justice was subsequently appointed in 2007 to implement the recommendations in the Justice Raja Fernando Committee. This committee specified the implementation of six key reforms. The reforms included the introduction of a pre-trial procedure, the provision of necessary human resources and logistical support to court houses, the implementation of available provisions in existing law, the provision of systemic training to judicial officers, the introduction of an incentive scheme for better performance of judicial officers and the introduction of speedy and advanced mechanisms for court houses. Most importantly, this committee emphasized the primary importance of a shared vision endorsed and enshrined in all activities carried out by the various stakeholders in the justice system that strived to achieve the target of 'no delays'. The committee also called for an SWOT assessment of the institutional capacity of the partners in the justice system prior to the introduction of major reforms.

85. **Despite considerable analysis and drafting work, no changes to procedural law or practice have been effected.** Corresponding amendments to the Civil Procedural Code, as well as to Supreme Court Rules for courts have been drafted, they have not yet been promulgated. The reasons for this appear to be lack of full consensus among stakeholders, particularly the Bar, and lack of urgency or pressure to make the changes within Parliament and the Government.

²⁰ Criminal Procedure Code Act no. 15 of 2005

²¹ Committee appointed to implement recommendations in the Justice Raja Fernando committee

6.2 Donor Supported Efforts

86. **The World Bank financed a Legal and Judicial Reform Project from 2000 to 2007.** The Project supported capacity development for commercial law development (which played a role in the drafting of the sound Companies Act passed in 2006), the creation of an online database of Acts (Lawnet), launching of commercial mediation, and professional development of judiciary staff as well as other stakeholders such as the Attorney General's Department and the Office of the Legal Draftsman. The project also supported construction of new court houses in war affected provinces of the country, provision of equipment and a case tracking system in the Colombo and Kandy District Courts. The project was governed by a Steering Committee (later turning into the Legal Cluster under National Council for Economic Development) composed of the Chief Justice, Attorney General, Secretary of the Finance and Justice Ministries and other stakeholders including from the private sector. The project encountered several problems in implementation including uneven ownership among justice sector officials and dropped of some of its intended reform elements. The Project was not successful in making major changes with regard to internal administration and increased transparency.

87. **UNDP launched an Access to Justice Project after the 2004 Tsunami.** The project focused its interventions on disadvantaged groups such as conflict-affected groups, IDPs, estate sector workers, pre-trial detainees, female-headed households and victims of gender based violence. It also sought to promote human rights based approaches and ensure the effectiveness of the legal aid services provided. Mobile legal and documentation clinics in conflict affected areas and in the estate sector were conducted along with Capacity development of community-based duty-bearers. UNDP is planning a second phase focusing on trust/confidence-building, gender-equity, conflict resolution and community mediation.

88. **USAID closed a recently launched \$4.5 million dollar technical assistance project entitled "Increased Responsiveness in the Legal System Program."** The project was to implement an introductory curriculum and a continuing education program for judges at the Judicial Training Institute, training for other court staff, and capacity building for planning and administration for Ministry of Justice and Judicial Service Commission officials. USAID closed the project soon after its launch in late 2012.

89. **Past reform efforts have succeeded in providing infrastructure and training for judicial personnel that reportedly was helpful on professional grounds as well as 'widening mindsets.'** Other projects to support legal aid commissions and community mediation (support provided by the Asia Foundation) successfully provided capacity for these institutions to operate effectively. Access programs have improved transparency in local courts. The record on legal changes outside of the Companies Act is discouraging with long planned changes to the CPC still not being acted upon. Reforms aimed at performance management within the judiciary remain at a rudimentary stage. There is much that still could be done to promote greater transparency in terms of courts' performance as well as access to law.

90. **The most important lesson has been the challenge of bringing disparate stakeholders together to support a reform package to make lasting change.** Project design has tried to ensure this broad engagement but in practice this has been difficult to achieve. This is of particular concern with regard to addressing inefficiency in processing commercial cases since the major issues lie in the behavior of multiple stakeholders in this process that continues to frustrate quick dispensation of justice.

CHAPTER 7: CONCLUSIONS AND RECOMMENDATIONS

7.1 Conclusions

91. The preceding review of available data and comments from stakeholders lead to several conclusions about key features in the courts' operations in Sri Lanka. In keeping with the scope of this review, these features are in relation to the courts' role in fostering economic development, primarily through the efficient, fair adjudication of commercial disputes. At the same time, likely several of the conclusions are broadly relevant for the court system overall. These conclusions can be grouped around three key areas:

- (i) What are the characteristics of case backlog and delays in court proceedings?
- (ii) How does the organization of the courts contribute to the courts' capacity?
- (iii) What are present business community practices in resolving disputes? and
- (iv) What are lessons from past reform efforts?

These conclusions provided the basis for recommendations on areas in which court performance in Sri Lanka may be improved in order to best contribute to providing certainty in efficient contract enforcement and protection of property rights.

(i) What are the characteristics of case backlog and delays in court proceedings?

92. **Backlog is driven primarily by partition and to a lesser degree money matters cases.** A total of 91% of criminal cases and 70% of civil cases have been in court for less than five years as of 2012, a small increase from 2011. Therefore, despite high caseloads per judge it appears that the court system is not sustaining an increasing level of cases in the system, as most cases appear to have been handled in a five year period. Of course, five years is a long time for cases to be in the system and it would appear likely that disposition rates for many cases is substantially less than five years. In terms of longer term cases in the system, the main cause are partition cases, followed by land and money matters cases. Limited available data on conclusions of trials in 2011 shows little increase in the overall number of pending commercial cases, including in the CCHC.

93. **Appeals in the Supreme Court are a minor, but important and growing source of backlog.** The establishment of Provincial High Courts unburdened the Court of Appeal's backlog, reducing its backlog by nearly 50% between 2008 and 2013. At the same time, the change created a new requirement for the Supreme Court to serve as a second tier of appeal. This has led to a growing backlog of appeals cases in the Supreme Court's docket in addition to its continued handling of other types of cases.

94. **Procedural law provides for a large number of steps which create opportunities for stalling in commercial cases, but experience suggests that delays are primarily due to a systemic lack of discipline in conducting trials.** Procedures for admission of evidence and cross examination of witnesses allow for a drawn out process. However, observers stressed that exerting greater discipline under existing procedure would reduce the time for carrying out pre-trial and trial procedures. By one estimate, the reduction would be over 60% from the current assessment of 1318 days using the Doing

Business methodology. Greater discipline would require more effective, pro-active management of trials by judges. It would also require cooperation among attorneys to adhere to such management and conduct their business in a timely manner.

95. **The courts' physical capacity is a modest constraint that contributes to delays.** Despite the addition of courts and judges in recent years, nonetheless the judge-to-population ratio remains quite low. Record-keeping facilities are usually inadequate; this area of weakness is noted as a particular constraint for the CCHC. There is virtually no use of ICT in case management or record-keeping.

(ii) How does the organization of the courts and management of resources contribute to the courts' capacity?

96. **Management functions in the courts are split between the Judicial Service Commission and the Ministry of Justice, requiring a high degree of coordination but also sensitivity in ensuring the judiciary's independence.** The JSC handles personnel issues for all judges and other senior staff while the MoJ oversees support staff, buildings and movable property, and budgeting for the courts except apex courts. Judges are individually responsible for managing their courts, but functions related to the physical operation of the courts are carried out by MoJ staff. Stakeholders including judges did not identify problems with the management oversight arrangement.

97. **There are promising initiatives to improve performance management but much more can be done.** The JSC has instituted a monthly reporting requirement for judges to get a better sense of dynamics of court performance. However, it is not gathering data on disposal and clearance rates for different types of cases, and existing data on time of cases in courts is not broken down by number of years or months. The JSC is not able to check the information in the monthly reports, does not routinely aggregate information beyond a judge by judge breakdown, and information is only partially automated. The JSC of course has a good sense of what is occurring with its regular interaction with judges and meetings, but formalizing information collection methods would provide it with stronger analysis to address performance issues.

98. **Personnel policy is guided by a convention of rewarding seniority subject to considerable discretion exercised by the Judicial Service Commission for higher and first instance courts and the President for apex courts.** Decisions on the rotation, discipline, and promotion of judges and senior staff in the court system are not governed by an explicit set of rules. Similarly, the system for evaluating performance of judges is not formalized, nor are there personnel incentives for judges to undertake training. Convention has been for judges and other staff to progress from lower courts with smaller caseloads in more remote areas to courts in urban centers and in some cases to high courts. All decisions on personnel matters for first instance and higher courts are taken by the three-member Judicial Service Commission headed by the Chief Justice. Appointments to the Court of Appeals and the Supreme Court are the President's prerogative. Many appointees to the Supreme Court are not career judges but rather are prominent attorneys. A total of 10 of the 12 present Supreme Court judges have considerable experience working in the Attorney General's Department.

99. **Training capacity, particularly on commercial matters, is very limited.** The Judicial Training Institute is able to train about 25 ‘trainee judges’ per year and provide one-day seminars for another 25 judges per year. It is underfinanced and a key component of past and present donor-financed programs for the judiciary is to meet this financing gap. Stakeholders noted that judges outside of the Commercial High Court often lacked sufficient background in commercial matters, an area of dynamic change. There have been no courses delivered on commercial law by the JTI.

100. **The Colombo Commercial High Court is viewed as a success, though more can be done to improve performance.** There is widespread praise for the CCHC in terms of quality of adjudication and efficiency in handling cases. It is viewed as much more competent and efficient than district courts which handle money matters. It is processing cases at roughly the rate the rate of new filings, with no significant backlog. Concerns were raised regarding poor infrastructure for record-keeping, lack of automated case management, and possible rotation of judges thereby losing the expertise gained on the job by current judges.

101. **Greater access to information about the judiciary’s operations is warranted.** There is very little performance information about the courts (e.g. case disposal rates disaggregated, reporting by the JSC on its activities) available to the public. Making such information available provides for increased accountability to the public, which over the long run sustains both demand for performance and confidence in the judiciary.

102. **A comprehensive, updated searchable database comprising Acts, implementing regulations, and court decisions is needed.** The lack of this database is an inconvenience and often an impediment for all stakeholders to use and benefit from Sri Lanka’s judicial system. These documents should be easily available to all. In most countries the provision of legal database services are commercially viable and hence self-sustaining; Sri Lanka’s authorities should welcome and facilitate access to these documents to the public.

(iii) What do businesses’ approach to dispute resolution show about what is needed from the courts?

103. **Businesses note little difference in timeliness or quality between arbitration and court adjudication while mediation outside of low value “community mediation” has never been effectively promoted.** Many businesses expressed dissatisfaction with alternative dispute resolution methods. Arbitration tends to recreate court conditions but with the downside of usually very short days and the worry that grounds can be found to challenge the arbitration ruling in court. The Ceylon Chamber of Commerce no longer advises firms to include arbitration clauses in contracts. Commercial mediation was earlier piloted but funding was lacking to sustain the effort and win confidence among businesses.

104. **Despite being a last resort, courts are substantially used by businesses and therefore their efficiency is of importance...** As much as 10% of all loan recoveries are taken to (usually District) court and other commercial matters eventually require court decisions. The CCHC provides a higher degree of certainty of efficient, fair adjudication for higher value disputes, but the continued poor performance of District Courts is of concern. This is particularly true in Kandy and Colombo District

Courts where there were as of 2011 about half of all pending commercial cases. The infrastructure and personnel capacity constraints that allow are therefore a hindrance.

105. **... Though court performance overall is not viewed as a major obstacle to conducting business.** Though courts are used, businesses nonetheless appear to have factored in the inefficiencies into their business planning. A 2012 enterprise survey found businesses rank the courts as the least important among 15 constraints to business. This suggests that there is little user engagement or pressure to prompt improvements in courts' handling of commercial matters.

(iv) What are lessons from past reform efforts?

106. **Achieving major improvements in the court system's performance will require support/engagement of all stakeholders in the justice sector.** These stakeholders include: judiciary management and individual judges, the Ministry of Justice, the bar and individual attorneys, training institutions, and litigants. High level commitment has been stressed in the *Mahinda Chintana* Vision for the Future and other prominent statements by the President. The Government has signaled readiness to invest to provide capacity. Investments in more judges, court facilities, better case management, and more comprehensive, frequent training should plausibly lead to some improvements. But major improvements will need a concerted effort from all stakeholders in actual trials. Judges will need to enforce discipline better, attorneys will need to be prepared to respond to such discipline, and litigants and the public will need to maintain higher expectations of better performance. Other countries' successful judicial reform efforts have required leadership from the judiciary, but buy-in from all stakeholders has been a crucial ingredient to achieving lasting results.

107. **Building larger scale consensus on improving court performance may take time.** There is little pressing demand from the business sector or others to change the status quo in courts' performance. Many attorneys are believed to be supportive of the ability to bring about procedural delays and degree of flexibility in drawing out trial schedules. Such delays are part of litigation strategy. At the same time, the Bar itself is in a state of flux with internal divisions becoming apparent during the 2012-13 impeachment process of the Chief Justice. The judiciary itself faces a period of internal reassessment following the impeachment process and the installation of a new Chief Justice.

7.2 Elements of a Potential Reform Program

108. **The findings of this review point to a menu of interventions which could be undertaken in the justice sector to reduce the time and cost in adjudication of commercial cases while maximizing quality of judgment and confidence in the system.** Such an approach would focus on having the courts' play a more prominent role in facilitating economic development. It would not address other issues in the justice sector which are only partially or not at all covered in this review, including the persistent large backlog of cases which appear most likely driven by criminal cases. While any reform program should ultimately be the product of consultations and consensus among stakeholders, the review points to several possible elements of such a program:

- Enhanced performance management for courts involved in the reform effort, underpinned by rigorous, regular data collection on courts' performance, establishment of performance standards and targets, and proactive management oversight and initiative for underperformance;
- Introduction of procedural changes to the Civil Procedure Code, in particular introducing more disciplined pre-trial procedure;
- Issuance of practical directions or updated Judge's Manual with respect to commercial cases
- Improving access to all legislation, including implementing regulations and court judgments;
- Modest investment to increase the number of commercial courts as well as improving the record-keeping systems and infrastructure for existing courts;
- Development of automated case management system for the targeted courts;
- Changes in the use of human resources, including adding judicial assistants (and associated infrastructure changes) to free up time for judges to hear cases;
- Targeted training on commercial transactions, business practices, and specifics of for commercial court judges and District Court judges in courts handling a high volume of money matters cases;

109. **Management of such a reform effort would involve an enhancement of current management information systems.** More comprehensive, verifiable data is needed to equip the JSC with information to understand the causes of performance issues, monitor trends, and ultimately make management actions to improve performance. In particular, in addition to the current monthly reports, information on case disposal rates by type of case, clearance rates, backlog by types of case and more precise time in the court system, including tracking of rates of appeals would be extremely useful. This in turn would place additional requirements on judicial management to monitor, set standards, and provide feedback to courts on performance. It would necessitate the development of objective evaluation systems. Finally, more comprehensive and timely data will allow for setting targets for results to motivate performance as well as increase public confidence in the justice sector's efforts to improve.

110. **Engagement with multiple stakeholders and the public around a reform program is critical.** Consultations with stakeholders regarding priorities and sequencing is key to formulating a sustainable program. Enforcing greater discipline in court proceedings requires the participation of all stakeholders. Agreement on changes in procedural law necessarily requires the support of stakeholders as well as engagement with Parliament. Building expectations of higher levels of service by the courts will be served by greater transparency and signaling of the justice sector's drive to improve performance. Extensive communication among various actors will be critical to developing and carrying out reforms.

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ANNEX JUSTICE SECTOR DATA

Source: Judicial Services Commission compilation of individual monthly reports of Magistrates and District Courts. Aggregation of totals by World Bank.

Number of Judges, Magistrates Courts 2011 - 2012

Province	Number of Judges	Of Which also Preside in the District Court
Central	13	6
Eastern	15	5
North	11	7
North Central	7	3
Northwest	18	7
Sabaragamuwa	9	3
Southern	15	6
Uva	7	3
Western	38	6
Total	133	46

Number of Judges, District Courts 2011 - 2012

Province	Number of Judges	Of Which Number of Judges who also Preside in the District Court
Central	12	6
Eastern	10	5
North	9	7
North Central	5	3
Northwest	13	7
Sabaragamuwa	10	3
Southern	15	6
Uva	6	3
Western	39	6
Total	119	46

Magistrates Court Cases for 2011 - 2012

Province	Year	Penal Code						Excise Ordinance						Poison, Opium & DD Ordinance					
		< 5Years	05-10	10-15	15-20	> 20 Years	Total	< 5Years	05-10	10-15	15-20	> 20 Years	Total	< 5Years	05-10	10-15	15-20	> 20 Years	Total
Central	2011	12104	744	77	5	5	12935	2112	222	3	0	0	2337	1229	108	3	330	0	1670
	2012	15838	844	116	5	1	16804	3510	109	8	0	0	3627	1094	33	2	0	0	1129
	y-o-y diff	3734	100	39	0	-4	3869	1398	-113	5	0	0	1290	-135	-75	-1	-330	0	-541
Eastern	2011	7084	242	8	1	0	7335	1872	34	2	0	0	1908	610	8	1	0	0	619
	2012	6645	266	18	2	0	6931	1352	47	1	0	0	1400	417	8	0	0	0	425
	y-o-y diff	-439	24	10	1	0	-404	-520	13	-1	0	0	-508	-193	0	-1	0	0	-194
North	2011	3837	177	13	0	0	4027	435	2	0	0	0	437	172	1	0	0	0	173
	2012	7156	676	121	46	25	8024	871	39	0	0	0	910	71	6	0	0	0	77
	y-o-y diff	3319	499	108	46	25	3997	436	37	0	0	0	473	-101	5	0	0	0	-96
North Central	2011	15805	979	152	1	0	16937	2909	313	16	0	0	3238	293	24	5	0	0	322
	2012	18377	1190	75	5	3	19650	3395	156	4	0	0	3555	525	22	0	0	0	547
	y-o-y diff	2572	211	-77	4	3	2713	486	-157	-12	0	0	317	232	-2	-5	0	0	225
Northwest	2011	20033	1014	77	1	3	21128	8778	1314	36	0	0	10128	676	36	1	0	0	713
	2012	22999	1096	103	1	0	24199	9637	242	4	0	0	9883	1261	24	1	1	0	1287
	y-o-y diff	2966	82	26	0	-3	3071	859	-1072	-32	0	0	-245	585	-12	0	1	0	574

Province	Year	Penal Code						Excise Ordinance						Poison, Opium & DD Ordinance					
		< 5Years	05-10	10-15	15-20	> 20 Years	Total	< 5Years	05-10	10-15	15-20	> 20 Years	Total	< 5Years	05-10	10-15	15-20	> 20 Years	Total
Sabaragamuwa	2011	12428	1799	552	19	185	14983	5642	3247	753	12	91	9745	651	231	20	0	2	904
	2012	17449	5468	1477	31	82	24507	5680	4077	1163	16	63	10999	564	252	1	0	0	817
	y-o-y diff	5021	3669	925	12	-103	9524	38	830	410	4	-28	1254	-87	21	-19	0	-2	-87
Southern	2011	26573	2156	290	15	0	29034	6191	1140	41	2	0	7374	2742	304	22	0	0	3068
	2012	25532	2728	271	7	1	28539	4491	711	58	0	0	5260	2292	304	27	0	0	2623
	y-o-y diff	-1041	572	-19	-8	1	-495	-1700	-429	17	-2	0	-2114	-450	0	5	0	0	-445
Uva	2011	4886	313	11	0	0	5210	3959	135	0	1	0	4095	691	21	0	0	0	712
	2012	10873	964	113	3	0	11953	4504	1331	144	0	0	5979	787	80	16	0	0	883
	y-o-y diff	5987	651	102	3	0	6743	545	1196	144	-1	0	1884	96	59	16	0	0	171
Western	2011	51156	5642	566	356	50	57770	20065	2934	2342	693	64	26098	10999	1421	980	401	34	13835
	2012	59024	5912	534	24	2	65496	18371	3552	469	1	0	22393	9921	330	34	0	1	10286
	y-o-y diff	7868	270	-32	-332	-48	7726	-1694	618	-1873	-692	-64	-3705	-1078	-1091	-946	-401	-33	-3549

Province	Year	Penal Code						Excise Ordinance						Poison, Opium & DD Ordinance					
		< 5Years	05-10	10-15	15-20	> 20 Years	Total	< 5Years	05-10	10-15	15-20	> 20 Years	Total	< 5Years	05-10	10-15	15-20	> 20 Years	Total
Total	2011	153906	13066	1746	398	243	169359	51963	9341	3193	708	155	65360	18063	2154	1032	731	36	22016
	2012	183893	19144	2828	124	114	206103	51811	10264	1851	17	63	64006	16932	1059	81	1	1	18074
	y-o-y diff	29987	6078	1082	-274	-129	36744	-152	923	-1342	-691	-92	-1354	-1131	-1095	-951	-730	-35	-3942

Province	Year	Motor Traffic Act						Maintenance Act						Primary Court Procedure					
		< 5Years	05-10	10-15	15-20	> 20 Years	Total	< 5Years	05-10	10-15	15-20	> 20 Years	Total	< 5Years	05-10	10-15	15-20	> 20 Years	Total
Central	2011	10805	786	4	0	0	11595	853	174	78	7	3	1115	707	3	0	0	0	710
	2012	17740	137	6	1	0	17884	1372	144	84	8	5	1613	278	1	1	0	0	280
	y-o-y diff	6935	-649	2	1	0	6289	519	-30	6	1	2	498	-429	-2	1	0	0	-430
Eastern	2011	5753	19	0	0	0	5772	2294	132	20	9	0	2455	73	1	0	0	0	74
	2012	4582	13	0	0	0	4595	1865	154	48	24	1	2092	35	0	4	0	0	39
	y-o-y diff	-1171	-6	0	0	0	-1177	-429	22	28	15	1	-363	-38	-1	4	0	0	-35
North	2011	3674	214	1	0	0	3889	754	65	17	0	0	836	152	0	0	0	0	152
	2012	6859	112	0	0	0	6971	1504	187	33	4	2	1730	159	5	0	0	0	164
	y-o-y diff	3185	-102	-1	0	0	3082	750	122	16	4	2	894	7	5	0	0	0	12
North Central	2011	19765	900	1	0	0	20666	1465	382	46	3	0	1896	17	0	0	0	0	17
	2012	12432	159	1	0	0	12592	2072	192	23	4	1	2292	54	2	0	0	0	56
	y-o-y diff	-7333	-741	0	0	0	-8074	607	-190	-23	1	1	396	37	2	0	0	0	39
Northwestern	2011	16570	584	9	0	0	17163	2267	295	48	27	7	2644	202	60	7	0	0	269
	2012	18855	209	4	0	0	19068	2071	469	116	27	5	2688	188	1	0	0	0	189
	y-o-y diff	2285	-375	-5	0	0	1905	-196	174	68	0	-2	44	-14	-59	-7	0	0	-80

Province	Year	Motor Traffic Act						Maintenance Act						Primary Court Procedure					
		< 5Years	05-10	10-15	15-20	> 20 Years	Total	< 5Years	05-10	10-15	15-20	> 20 Years	Total	< 5Years	05-10	10-15	15-20	> 20 Years	Total
Sabaragamuwa	2011	17331	2482	323	32	123	20291	1162	401	123	17	19	1722	222	315	14	0	0	551
	2012	19073	2814	421	33	86	22427	1324	380	88	17	19	1828	179	16	5	1	0	201
	y-o-y diff	1742	332	98	1	-37	2136	162	-21	-35	0	0	106	-43	-299	-9	1	0	-350
Southern	2011	43210	287	14	0	0	43511	1874	374	181	38	17	2484	619	21	1	0	0	641
	2012	31209	104	8	0	0	31321	1674	437	126	47	20	2304	313	2	1	0	0	316
	y-o-y diff	-12001	-183	-6	0	0	-12190	-200	63	-55	9	3	-180	-306	-19	0	0	0	-325
Uva	2011	12166	62	1	0	0	12229	1069	240	69	11	5	1394	65	0	0	0	0	65
	2012	16193	323	38	0	0	16554	1330	497	147	16	12	2002	57	1	4	1	0	63
	y-o-y diff	4027	261	37	0	0	4325	261	257	78	5	7	608	-8	1	4	1	0	-2
Western	2011	92396	2289	622	208	1	95516	4292	750	128	18	7	5195	461	6	0	0	0	467
	2012	57734	1211	291	5	0	59241	3240	735	137	35	11	4158	284	2	1	0	0	287
	y-o-y diff	-34662	-1078	-331	-203	-1	-36275	-1052	-15	9	17	4	-1037	-177	-4	1	0	0	-180

Province	Year	Motor Traffic Act						Maintenance Act						Primary Court Procedure					
		< 5Years	05-10	10-15	15-20	> 20 Years	Total	< 5Years	05-10	10-15	15-20	> 20 Years	Total	< 5Years	05-10	10-15	15-20	> 20 Years	Total
Total	2011	221670	7623	975	240	124	230632	16030	2813	710	130	58	19741	2518	406	22	0	0	2946
	2012	184677	5082	769	39	86	190653	16452	3195	802	182	76	20707	1547	30	16	2	0	1595
	y-o-y diff	-36993	-2541	-206	-201	-38	-39979	422	382	92	52	18	966	-971	-376	-6	2	0	-1351

Province	Year	Miscellaneous						Combined Total for Magistrates Court Cases					
		< 5Years	05-10	10-15	15-20	> 20 Years	Total	< 5Years	05-10	10-15	15-20	> 20 Years	Total
Central	2011	4307	92	9	1	0	4409	32117	2129	174	343	8	34771
	2012	5647	83	11	1	0	5742	45479	1351	228	15	6	47079
	y-o-y diff	1340	-9	2	0	0	1333	13362	-778	54	-328	-2	12308
Eastern	2011	4118	41	1	0	0	4160	21804	477	32	10	0	22323
	2012	3933	35	2	0	0	3970	18829	523	73	26	1	19452
	y-o-y diff	-185	-6	1	0	0	-190	-2975	46	41	16	1	-2871
North	2011	951	20	0	1	0	972	9975	479	31	1	0	10486
	2012	2031	269	150	10	0	2460	18651	1294	304	60	27	20336
	y-o-y diff	1080	249	150	9	0	1488	8676	815	273	59	27	9850
North Central	2011	3638	325	6	0	0	3969	43892	2923	226	4	0	47045
	2012	2423	134	8	0	0	2565	39278	1855	111	9	4	41257
	y-o-y diff	-1215	-191	2	0	0	-1404	-4614	-1068	-115	5	4	-5788
Northwestern	2011	3952	251	19	0	0	4222	52478	3554	197	28	10	56267
	2012	4292	151	24	0	0	4467	59303	2192	252	29	5	61781
	y-o-y diff	340	-100	5	0	0	245	6825	-1362	55	1	-5	5514

Province	Year	Miscellaneous						Combined Total for Magistrates Court Cases					
		< 5Years	05-10	10-15	15-20	> 20 Years	Total	< 5Years	05-10	10-15	15-20	> 20 Years	Total
Sabaragamuwa	2011	4455	957	225	8	78	5723	41891	9432	2010	88	498	53919
	2012	3411	667	363	6	51	4498	47680	13674	3518	104	301	65277
	y-o-y diff	-1044	-290	138	-2	-27	-1225	5789	4242	1508	16	-197	11358
Southern	2011	8236	249	49	1	0	8535	89445	4531	598	56	17	94647
	2012	10350	253	62	1	0	10666	75861	4539	553	55	21	81029
	y-o-y diff	2114	4	13	0	0	2131	-13584	8	-45	-1	4	-13618
Uva	2011	3845	85	3	1	0	3934	26681	856	84	13	5	27639
	2012	4221	399	27	1	0	4648	37965	3595	489	21	12	42082
	y-o-y diff	376	314	24	0	0	714	11284	2739	405	8	7	14443
Western	2011	19370	2059	1042	430	29	22930	198739	15101	5680	2106	185	221811
	2012	19458	735	79	8	0	20280	168032	12477	1545	73	14	182141
	y-o-y diff	88	-1324	-963	-422	-29	-2650	-30707	-2624	-4135	-2033	-171	-39670
Total	2011	52872	4079	1354	442	107	58854	517022	39482	9032	2649	723	568908
	2012	55766	2726	726	27	51	59296	511078	41500	7073	392	391	560434
	y-o-y diff	2894	-1353	-628	-415	-56	442	-5944	2018	-1959	-2257	-332	-8474

District Court Cases

Province	Year	Partition						Land						Divorce					
		< 5Years	05-10	10-15	15-20	> 20 Years	Total	< 5Years	05-10	10-15	15-20	> 20 Years	Total	< 5Years	05-10	10-15	15-20	> 20 Years	Total
Central	2011	570	589	410	190	215	1974	2265	1064	560	161	114	4164	2682	165	1	1	0	2849
	2012	825	581	525	204	186	2321	2513	1215	235	86	54	4103	3205	57	2	2	1	3267
	y-o-y diff	255	-8	115	14	-29	347	248	151	-325	-75	-60	-61	523	-108	1	1	1	418
Eastern	2011	34	13	1	0	2	50	827	75	12	10	4	928	516	6	0	0	0	522
	2012	36	12	1	0	1	50	982	88	22	7	6	1105	567	4	0	1	0	572
	y-o-y diff	2	-1	0	0	-1	0	155	13	10	-3	2	177	51	-2	0	1	0	50
North	2011	34	17	2	0	13	66	423	188	21	1	11	644	365	5	0	0	0	370
	2012	29	18	3	0	12	62	639	320	30	2	8	999	646	16	0	0	0	662
	y-o-y diff	-5	1	1	0	-1	-4	216	132	9	1	-3	355	281	11	0	0	0	292

Province	Year	Partition						Land						Divorce					
		< 5Years	05-10	10-15	15-20	> 20 Years	Total	< 5Years	05-10	10-15	15-20	> 20 Years	Total	< 5Years	05-10	10-15	15-20	> 20 Years	Total
North Central	2011	28	22	11	11	3	75	554	202	50	9	7	822	953	12	1	0	0	966
	2012	14	17	11	7	0	49	668	264	64	14	8	1018	1305	85	2	0	0	1392
	y-o-y diff	-14	-5	0	-4	-3	-26	114	62	14	5	1	196	352	73	1	0	0	426
Northwestern	2011	584	350	168	86	80	1268	1352	362	91	41	20	1866	2603	31	6	0	0	2640
	2012	709	277	100	105	106	1297	1381	382	98	18	17	1896	2596	39	10	0	0	2645
	y-o-y diff	125	-73	-68	19	26	29	29	20	7	-23	-3	30	-7	8	4	0	0	5
Sabaragamuwa	2011	1453	1001	680	468	577	4179	1787	807	355	167	136	3252	1702	96	4	2	0	1804
	2012	1569	936	641	389	578	4113	2013	937	490	179	161	3780	2355	160	11	8	0	2534
	y-o-y diff	116	-65	-39	-79	1	-66	226	130	135	12	25	528	653	64	7	6	0	730

Province	Year	Partition						Land						Divorce					
		< 5Years	05-10	10-15	15-20	> 20 Years	Total	< 5Years	05-10	10-15	15-20	> 20 Years	Total	< 5Years	05-10	10-15	15-20	> 20 Years	Total
Southern	2011	3303	2731	1450	720	836	9040	2175	952	311	112	55	3605	2438	47	5	0	0	2490
	2012	3165	2507	1297	771	997	8737	2270	909	309	117	47	3652	2302	72	2	0	0	2376
	y-o-y diff	-138	-224	-153	51	161	-303	95	-43	-2	5	-8	47	-136	25	-3	0	0	-114
Uva	2011	179	134	67	41	54	475	811	289	86	34	38	1258	1027	36	2	0	0	1065
	2012	159	105	66	30	42	402	723	228	123	26	21	1121	1095	20	1	0	0	1116
	y-o-y diff	-20	-29	-1	-11	-12	-73	-88	-61	37	-8	-17	-137	68	-16	-1	0	0	51
Western	2011	2999	1881	1120	690	675	7365	4604	1415	611	119	60	6809	7157	344	41	3	1	7546
	2012	3261	1832	1067	690	753	7603	5364	1614	415	150	73	7616	8638	218	25	6	1	8888
	y-o-y diff	262	-49	-53	0	78	238	760	199	-196	31	13	807	1481	-126	-16	3	0	1342
Total	2011	9184	6738	3909	2206	2455	24492	14798	5354	2097	654	445	23348	19443	742	60	6	1	20252
	2012	9767	6285	3711	2196	2675	24634	16553	5957	1786	599	395	25290	22709	671	53	17	2	23452
	y-o-y diff	583	-453	-198	-10	220	142	1755	603	-311	-55	-50	1942	3266	-71	-7	11	1	3200

Province	Year	Money						Rent & Ejectment						Testamentary (Relating to Wills)					
		< 5Years	05-10	10-15	15-20	> 20 Years	Total	< 5Years	05-10	10-15	15-20	> 20 Years	Total	< 5Years	05-10	10-15	15-20	> 20 Years	Total
Central	2011	10797	3809	203	1	0	14810	32	12	2	0	0	46	210	71	3	6	2	292
	2012	6440	1228	97	1	0	7766	39	35	1	1	4	80	212	46	49	1	4	312
	y-o-y diff	-4357	-581	-106	0	0	-7044	7	23	-1	1	4	34	2	-25	46	-5	2	20
Eastern	2011	739	16	2	0	0	757	44	4	0	0	0	48	41	1	0	0	0	42
	2012	751	8	1	0	1	761	29	0	0	1	0	30	23	1	0	0	0	24
	y-o-y diff	12	-8	-1	0	1	4	-15	-4	0	1	0	-18	-18	0	0	0	0	-18
North	2011	134	18	1	0	1	154	96	72	7	0	7	182	49	10	1	0	4	64
	2012	200	24	1	0	1	226	8	0	1	0	0	9	43	2	0	0	4	49
	y-o-y diff	66	6	0	0	0	72	-88	-72	-6	0	-7	-173	-6	-8	-1	0	0	-15
North Central	2011	1149	135	25	3	1	1313	4	14	1	2	0	21	32	3	3	1	1	40
	2012	1118	312	6	3	0	1439	2	11	1	2	1	17	30	4	3	2	0	39
	y-o-y diff	-31	177	-19	0	-1	126	-2	-3	0	0	1	-4	-2	1	0	1	-1	-1
Northwestern	2011	2798	250	22	3	3	3076	52	20	8	2	5	87	128	23	12	2	7	172
	2012	2390	217	51	7	2	2667	62	14	5	2	6	89	106	21	10	4	9	150
	y-o-y diff	-408	-33	29	4	-1	-409	10	-6	-3	0	1	2	-22	-2	-2	2	2	-22

Province	Year	Money						Rent & Ejectment						Testamentary (Relating to Wills)					
		< 5Years	05-10	10-15	15-20	> 20 Years	Total	< 5Years	05-10	10-15	15-20	> 20 Years	Total	< 5Years	05-10	10-15	15-20	> 20 Years	Total
Sabaragamuwa	2011	2436	213	54	11	2	2716	56	5	1	0	1	63	60	4	0	6	1	71
	2012	2231	416	127	3	1	2778	57	5	0	0	1	63	65	6	3	0	0	74
	y-o-y diff	-205	203	73	-8	-1	62	1	0	-1	0	0	0	5	2	3	-6	-1	3
Southern	2011	2747	279	37	8	2	3073	52	13	7	3	0	75	102	14	7	0	4	127
	2012	2792	333	67	8	3	3203	38	41	5	0	1	85	108	64	4	1	7	184
	y-o-y diff	45	54	30	0	1	130	-14	28	-2	-3	1	10	6	50	-3	1	3	57
Uva	2011	1753	210	32	12	0	2007	13	7	0	2	0	22	37	5	5	2	1	50
	2012	972	112	21	5	0	1110	13	2	3	0	2	20	22	8	4	1	2	37
	y-o-y diff	-781	-98	-11	-7	0	-897	0	-5	3	-2	2	-2	-15	3	-1	-1	1	-13
Western	2011	11893	1176	241	33	10	13353	2254	120	47	0	1	2422	1673	72	8	9	16	1778
	2012	32210	2457	1745	13	4	36429	613	70	23	5	0	711	1406	103	13	11	12	1545
	y-o-y diff	20317	1281	1504	-20	-6	23076	-1641	-50	-24	5	-1	-1711	-267	31	5	2	-4	-233
Total	2011	34446	6106	617	71	19	41259	2603	267	73	9	14	2966	2332	203	39	26	36	2636
	2012	49104	5107	2116	40	12	56379	861	178	39	11	15	1104	2015	255	86	20	38	2414
	y-o-y diff	14658	-999	1499	-31	-7	15120	-1742	-89	-34	2	1	-1862	-317	52	47	-6	2	-222

Province	Year	Custody						Special						Miscellaneous					
		< 5Years	05-10	10-15	15-20	> 20 Years	Total	< 5Years	05-10	10-15	15-20	> 20 Years	Total	< 5Years	05-10	10-15	15-20	> 20 Years	Total
Central	2011	221	0	0	0	0	221	352	131	0	0	0	483	869	105	0	0	3	977
	2012	133	1	0	2	0	136	171	69	0	0	0	240	628	79	16	8	1	732
	y-o-y diff	-88	1	0	2	0	-85	-181	-62	0	0	0	-243	-241	-26	16	8	-2	-245
Eastern																			
	2011	24	0	0	0	0	24	121	1	0	0	0	122	110	3	6	0	0	119
	2012	16	0	0	0	0	16	106	5	0	0	0	111	121	4	0	0	0	125
	y-o-y diff	-8	0	0	0	0	-8	-15	4	0	0	0	-11	11	1	-6	0	0	6
North						0						0						0	
	2011	5	0	0	0	0	5	26	3	2	0	0	31	77	16	2	0	2	97
	2012	14	0	0	0	0	14	95	5	3	0	0	103	111	14	2	0	3	130
	y-o-y diff	9	0	0	0	0	9	69	2	1	0	0	72	34	-2	0	0	1	33
North Central						0						0						0	
	2011	9	0	0	0	0	9	56	9	0	0	0	65	229	7	0	1	0	237
	2012	86	0	0	0	0	86	151	15	3	0	0	169	149	0	0	0	0	149
	y-o-y diff	77	0	0	0	0	77	95	6	3	0	0	104	-80	-7	0	-1	0	-88
Northwestern																			
	2011	44	1	0	0	0	45	195	11	2	0	0	208	424	4	1	0	0	429
	2012	58	2	1	0	0	61	294	14	2	0	0	310	475	8	1	0	0	484
	y-o-y diff	14	1	1	0	0	16	99	3	0	0	0	102	51	4	0	0	0	55

Province	Year	Money						Rent & Ejectment						Testamentary (Relating to Wills)					
		< 5Years	05-10	10-15	15-20	> 20 Years	Total	< 5Years	05-10	10-15	15-20	> 20 Years	Total	< 5Years	05-10	10-15	15-20	> 20 Years	Total
Sabaragamuwa	2011	59	2	0	0	0	61	96	6	1	1	0	104	394	21	1	1	0	417
	2012	107	5	0	0	0	112	104	7	3	1	0	115	450	23	10	1	0	484
	y-o-y diff	48	3	0	0	0	51	8	1	2	0	0	11	56	2	9	0	0	67
Southern	2011	120	1	0	0	0	121	352	49	16	3	0	420	693	110	15	2	0	820
	2012	192	0	0	0	0	192	413	75	12	0	0	500	398	5	2	1	1	407
	y-o-y diff	72	-1	0	0	0	71	61	26	-4	-3	0	80	-295	-105	-13	-1	1	-413
Uva	2011	44	1	0	0	0	45	92	20	1	0	0	113	136	14	1	0	0	151
	2012	21	0	0	0	0	21	71	26	37	0	0	134	148	3	5	0	1	157
	y-o-y diff	-23	-1	0	0	0	-24	-21	6	36	0	0	21	12	-11	4	0	1	6
Western	2011	104	8	0	1	0	113	801	101	24	5	3	934	4119	293	89	3	3	4507
	2012	158	4	0	0	0	162	1105	153	40	16	0	1314	5366	181	138	0	7	5692
	y-o-y diff	54	-4	0	-1	0	49	304	52	16	11	-3	380	1247	-112	49	-3	4	1185
Total	2011	630	13	0	1	0	644	2091	331	46	9	3	2480	7051	573	115	7	8	7754
	2012	785	12	1	2	0	800	2510	369	100	17	0	2996	7846	317	174	10	13	8360
	y-o-y diff	155	-1	1	1	0	156	419	38	54	8	-3	516	795	-256	59	3	5	606

Province	Year	Combined Total for District Court Cases					
		< 5Years	05-10	10-15	15-20	> 20 Years	Total
Central	2011	17998	5946	1179	359	334	25816
	2012	14166	3311	925	305	250	18957
	y-o-y diff	-3832	-2635	-254	-54	-84	-6859
Eastern	2011	2456	119	21	10	6	2612
	2012	2631	122	24	9	8	2794
	y-o-y diff	175	3	3	-1	2	182
North	2011	1209	329	36	1	38	1613
	2012	1785	399	40	2	28	2254
	y-o-y diff	576	70	4	1	-10	641
North Central	2011	3014	404	91	27	12	3548
	2012	3523	708	90	28	9	4358
	y-o-y diff	509	304	-1	1	-3	810
North- western	2011	8180	1052	310	134	115	9791
	2012	8071	974	278	136	140	9599
	y-o-y diff	-109	-78	-32	2	25	-192
Sabara- gamuwa	2011	8043	2155	1096	656	717	12667
	2012	8951	2495	1285	581	741	14053
	y-o-y diff	908	340	189	-75	24	1386
Southern	2011	11982	4196	1848	848	897	19771
	2012	11678	4006	1698	898	1056	19336
	y-o-y diff	-304	-190	-150	50	159	-435
Uva	2011	4092	716	194	91	93	5186
	2012	3224	504	260	62	68	4118
	y-o-y diff	-868	-212	66	-29	-25	-1068
Western	2011	35604	5410	2181	863	769	44827
	2012	58121	6632	3466	891	850	69960
	y-o-y diff	22517	1222	1285	28	81	25133
Total	2011	92578	20327	6956	2989	2981	125831
	2012	112150	19151	8066	2912	3150	145429
	y-o-y diff	19572	-1176	1110	-77	169	19598

Judicial Services Report All Island Calling Report for January 31, 2013

No	Station	Court	Type Of Cases	Trials	Calling	Total
1	Akkaraipattu	Combine Court	Civil	85	133	218
	Akkaraipattu		Criminal	247	647	894
2	Ampara	Combine Court	Civil	304	910	1214
	Ampara		Criminal	488	1324	1812
3	Angunakolapelessa	MC	Criminal	117	754	871
4	Anuradhapura	DC	Civil	2128	2012	4140
5	Anuradhapura	MC	Criminal	1296	8676	9972
	Anuradhapura	Addl. MC	Criminal	752	10359	11111
7	Attanagalla	Combine Court	Civil	406	1267	1673
	Attanagalla		Criminal	1704	10155	11859
8	Avissawella	DC	Civil	721	1363	2084
	Avissawella	Addl. DC	Civil	491	1462	1953
9	Avissawella	MC	Criminal	652	19058	19710
10	Baddegama	Combine Court	Civil	47	445	492
	Baddegama		Criminal	537	3052	3589
11	Badulla	DC	Civil	211	607	818
12	Badulla	MC	Criminal	878	18986	19864
13	Balangoda	Combine Court	Civil	270	1379	1649
	Balangoda		Criminal	451	5857	6308
14	Balapitiya	MC	Criminal	1036	6613	7649
15	Bandarawela	MC	Criminal	397	5350	5747
16	Bandarawela	DC	Civil	405	871	1276
17	Battaramulla	Juv. MC	Criminal		625	625
18	Batticaloa	DC	Civil	148	1676	1824
19	Batticaloa	MC	Criminal	556	2938	3494
20	Bibile	MC	Criminal	226	1375	1601
21	Chilaw	Combine Court	Civil	442	588	1030
	Chilaw		Criminal	895	5097	5992
22	Colombo	DC	Civil	370	206	576
	Colombo	Addl DC	Civil	485	141	626

No	Station	Court	Type Of Cases	Trials	Calling	Total
	Colombo	Addl DC	Civil	1555	2437	3992
	Colombo	Addl DC	Civil	587	187	774
	Colombo	Addl DC	Civil	203	377	580
	Colombo	Addl DC	Civil	34	13869	13903
	Colombo	Addl DC	Civil	263	317	580
	Colombo	Addl DC	Civil	323	218	541
	Colombo	Sup. Num Addl. DC	Civil	25	96	121
23	Colombo	MC Chief	Criminal	378	1992	2370
	Colombo	Addl. MC	Criminal	146	3785	3931
	Colombo	Addl. MC	Criminal	361	126	487
	Colombo	Addl. MC	Criminal	120	2658	2778
	Colombo	Addl. MC	Criminal	71	1147	1218
	Colombo	Addl. MC	Criminal	270	8227	8497
24	Chavakachcheri	Combine Court	Civil	7	252	259
	Chavakachcheri		Criminal	86	795	881
25	Dambulla	Combine Court	Criminal	435	2064	2499
26	Dehiattakandiya	MC	Criminal	511	1314	1825
27	Deiyandara	MC	Criminal	408	1764	2172
28	Elpitiya	MC	Criminal	932	3846	4778
29	Elpitiya	DC	Civil	312	840	1152
30	Embilipitiya	DC	Civil	492	539	1031
31	Fort	MC	Criminal	276	2021	2297
32	Galgamuwa	MC	Criminal	291	1747	2038
33	Galle	DC	Civil	550	1060	1610
	Galle	Addl. DC	Civil	714	1524	2238
	Galle	Addl. DC	Civil	527	1676	2203
34	Galle	MC	Criminal	2308	5128	7436
	Galle	ADDL. MC	Criminal	644	3684	4328
35	Gampaha	DC	Civil	446	746	1192
	Gampaha	Addl. DC	Civil	365	595	960
36	Gampaha	MC	Criminal	773	960	1733
	Gampaha	Addl. MC	Criminal	395	4195	4590

No	Station	Court	Type Of Cases	Trials	Calling	Total
37	Gampola	DC	Civil	436	1196	1632
38	Gampola	MC	Criminal	482	3166	3648
39	Hambantota	Combine Court	Civil	196	331	527
	Hambantota		Criminal	595	2949	3544
40	Hatton	Combine Court	Civil	258	463	721
	Hatton	Combine Court	Criminal	753	1486	2239
41	Helboda	Circuit		213	654	867
42	Hettipola	MC	Criminal	947	1300	2247
43	Homagama	Combine Court	Civil	644	860	1504
	Homagama		Criminal	1450	3704	5154
44	Horana	MC	Criminal	2508	2176	4684
45	Horana	DC	Civil	650	1185	1835
46	Jaffna	DC	Civil	194	371	565
47	Jaffna	MC	Criminal	256	3787	4043
48	Kaduwela	Combine Court	Civil	393	838	1231
	Kaduwela	MC	Criminal	1168	4025	5193
49	Kalmunai	DC	Civil	114	256	370
50	Kalmunai	MC	Criminal	194	1926	2120
51	Kalutara	DC	Civil	387	547	934
	Kalutara	Addl. DC	Civil	188	551	739
52	Kalutara	MC	Criminal	792	3755	4547
	Kalutara	Addl. MC	Criminal	274	1062	1336
53	Kandy	DC	Civil	847	2271	3118
	Kandy	Addl. DC	Civil	868	3157	4025
	Kandy	Addl. DC	Civil	1112	3361	4473
	Kandy	Addl. DC	Civil	1149	1979	3128
54	Kandy	Addl. MC	Criminal	584	7529	8113
	Kandy	Addl. MC	Criminal	1128	1588	2716
55	Kantale	Combine Court	Criminal	184	1305	1489
56	Kebithigollawa	Combine Court	Civil	33	30	63
	Kebithigollawa		Criminal	159	151	310
57	Kegalle	DC	Civil	771	920	1691

No	Station	Court	Type Of Cases	Trials	Calling	Total
	Kegalle	Addl. DC	Civil	338	438	776
58	Kegalle	MC	Criminal	1022	3817	4839
59	Kekirawa	Combine Court	Criminal	798	3574	4372
	Kekirawa		Civil	173	302	475
60	Kesbewa	Combine Court	Civil	487	90	577
	Kesbewa		Criminal	4309	756	5065
61	Kilinochchi	Combine Court	Civil	50	113	163
	Kilinochchi		Criminal	146	1571	1717
61	Kuliyapitiya	MC	Criminal	1481	13594	15075
62	Kuliyapitiya	DC	Civil	699	1429	2128
63	Kurunegala	DC	Civil	469	834	1303
	Kurunegala	Addl. DC	Civil	397	1152	1549
64	Kurunegala	MC	Criminal	631	931	1562
	Kurunegala	Addl. MC	Criminal	598	3602	4200
65	Mahara	MC	Criminal	945	1138	2083
66	Mahiyanganaya	Combine Court	Civil	49	175	224
	Mahiyanganaya		Criminal	874	2541	3415
67	Maho	Combine Court	Civil	143	351	494
	Maho		Criminal	329	997	1326
	Maho	Addl. DC	Civil	132	234	366
68	Maligakanda	MC	Criminal	1502	330	1832
	Maligakanda	Addl. MC	Criminal	3045	264	3309
69	Mallakam	DC	Civil	111	818	929
70	Mallakam	MC	Criminal	137	960	1097
71	Marawila	Combine Court	Civil	544	779	1323
	Marawila		Criminal	1150	2492	3642
72	Matale	Combine Court	Civil	554	1391	1945
	Matale		Criminal	1795	14470	16265
73	Matara	DC	Civil	1439	1058	2497
	Matara	Addl. DC	Civil	1065	647	1712
	Matara	Addl. DC	Civil	623	621	1244
74	Matara	MC	Criminal	785	20645	21430

No	Station	Court	Type Of Cases	Trials	Calling	Total
75	Matugama	DC	Civil	639	1021	1660
76	Matugama	MC	Criminal	2159	2689	4848
	Matugama	Addl. MC	Criminal	421	768	1189
77	Mawanella	Combine Court	Civil	43	215	258
	Mawanella		Criminal	835	3003	3838
78	Mannar	Combine Court	Civil / Criminal	237	2006	2243
79	Minuwangoda	Combine Court	Criminal	641	5672	6313
	Minuwangoda		Civil	231	480	711
80	Monaragala	Combine Court	Civil	302	271	573
	Monaragala		Criminal	402	721	1123
81	Moratuwa	Combine Court	Civil	190	369	559
	Moratuwa		Criminal	590	3145	3735
	Moratuwa	Addl. DC	Civil	142	228	370
	Moratuwa	Addl. MC	Criminal	205	1190	1395
82	Morawaka	MC	Criminal	538	5510	6048
83	Morawaka	DC	Civil	259	744	1003
84	Mt. lavinia	DC	Civil	325	655	980
	Mt. lavinia	Addl. DC	Civil	343	621	964
85	Mt. lavinia	MC	Criminal	1253	2784	4037
	Mt. lavinia	Addl. MC	Criminal	648	3467	4115
86	Muttur	Combine Court	Civil/Criminal	163	1617	1780
87	Mulativ	Combine Court	Civil	37	120	157
	Mulativ		Criminal	145	980	1125
88	Naula	MC	Criminal	422	2146	2568
89	Nawalapitiya	DC	Civil	135	336	471
90	Nawalapitiya	MC	Criminal	406	1002	1408
91	Negombo	DC	Civil	533	1552	2085
	Negombo	Addl. DC	Civil	639	1051	1690
92	Negombo	MC	Criminal	685	4371	5056
93	Nikaweratiya	Combine Court	Civil	80	313	393
	Nikaweratiya		Criminal	186	2634	2820
94	Nugegoda	MC	Criminal	1672	36145	37817

No	Station	Court	Type Of Cases	Trials	Calling	Total
95	Nugegoda	DC	Civil	390	3076	3466
96	Nuwara Eliya	Combine Court	Civil	344	630	974
	Nuwara Eliya		Criminal	268	4467	4735
97	Panadura	DC	Civil	410	390	800
	Panadura	Addl. DC	Civil	383	746	1129
98	Panadura	MC	Criminal	1698	4263	5961
99	Pelmadulla	Combine Court	Civil	363	1171	1534
	Pelmadulla		Criminal	971	2420	3391
100	Pilessa	MC	Criminal	406	1780	2186
101	Point Pedro	Combine Court	Civil	192	243	435
	Point Pedro		Criminal	285	803	1088
102	Polgahawela	MC	Criminal	355	1537	1892
103	Polonnaruwa	Combine Court	Civil	114	451	565
	Polonnaruwa		Criminal	1767	3694	5461
104	Potuvil	Combine Court	Civil/Criminal	473	1777	2250
105	Pugoda	Combine Court	Civil	553	462	1015
	Pugoda		Criminal	619	1639	2258
106	Puttalama	Combine Court	Criminal	1614	17082	18696
	Puttalama		Civil	393	561	954
107	Rambadagalla	MC	Criminal	157	1394	1551
108	Ratnapura	DC	Civil	573	1924	2497
	Ratnapura	Addl. DC	Civil	920	1776	2696
109	Ratnapura	MC	Criminal	1187	3395	4582
	Ratnapura	Addl. MC	Criminal	550	4029	4579
110	Ruwanwella	Combine Court	Criminal	837	8608	9445
	Ruwanwella		Civil	65	528	593
111	Samanturai	MC	Criminal	253	1262	1515
112	Tangalle	Combine Court	Civil	343	763	1106
	Tangalle		Criminal	883	5021	5904
113	Teldeniya	Combine Court	Criminal	494	2634	3128
	Teldeniya		Civil	89	403	492
114	Thambuttegama	MC	Criminal	685	2542	3227

No	Station	Court	Type Of Cases	Trials	Calling	Total
115	Tissamaharamaya	Combine Court	Civil	210	627	837
	Tissamaharamaya		Criminal	440	1695	2135
116	Trincomalee	DC	Civil	208	262	470
117	Trincomalee	MC	Criminal	405	884	1289
	Trincomalee	Addl. MC	Criminal	445	1624	2069
118	Valachchanai	Combine Court	Civil	76	204	280
	Valachchanai		Criminal	290	2570	2860
119	Vavuniya	Combine Court	Civil	108	394	502
	Vavuniya		Criminal	1204	5104	6308
120	Walapane	Combine Court	Civil/Criminal	84	2380	2464
121	Walasmulla	Combine Court	Civil	241	701	942
	Walasmulla		Criminal	615	1136	1751
122	Wariyapola	Combine Court	Civil	201	268	469
	Wariyapola		Criminal	412	2981	3393
123	Warakapola	Combine Court	Civil/Criminal	879	3554	4433
124	Wattala	MC	Criminal	450	5521	5971
125	Welimada	Combine Court	Civil/Criminal	351	541	892
126	Wellawaya	Combine Court	Civil	205	391	596
127	Wellawaya	Combine Court	Criminal	700	5467	6167
Total				1199 64	530706	65067 0

128 Kayts Not Contact
129 Higurakgoda Not Contact

Pending Cases

Total figures for Magistrate 's Courts and District Courts

Trials	Calling	Total
119964	530706	650670

SRI LANKA

- SELECTED CITIES AND TOWNS
- ⊙ PROVINCE CAPITALS
- ⊛ NATIONAL CAPITAL
- RIVERS
- MAIN ROADS
- RAILROADS
- PROVINCE BOUNDARIES
- · — INTERNATIONAL BOUNDARIES

