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National Development Strategy

By Kenneth King

The rule of law in Guyana

It will be recalled that in last week's article on the National Development Strategy (NDS) it was pointed out that one of the main characteristics of good governance is the strict adherence, by the administrators of a country, to the rule of law.

The National Development Strategy is quite categorical that the basic features of this fundamental of good governance are that the law must prevail over all persons and all institutions, including even the government; citizens must be shielded from arbitrary and unlawful acts by other persons and by the state; and all citizens should be given equal treatment before the law, and should be subject to the law. For the rule of law to prevail there must be, among other things, an independent magistracy and judiciary, an uncorrupted and incorruptible police force, and the nondiscriminatory application of the law itself.

The authors of the NDS admit that they were unable, themselves, to conduct a comprehensive investigation of the application of the rule of law in Guyana. They therefore found it necessary, in preparing their assessment of the situation pertaining to this aspect of governance in Guyana, to study various reports by these international and bilateral agencies that are interested in the social, economic and cultural development of the country; reports and statements by the government itself; newspaper articles and correspondence; submissions to the Constitutional Reform Committee; and relevant articles in social, political and economic governance.

The picture that emerges from their studies is not comforting. There is strong evidence that many people in the country are of the opinion that the rule of law does not always prevail. They hold the view that the administration of justice is often unpredictable and sometimes biased; and that law enforcement officers often ignore the rights of the population, employ unnecessary force and violence in their dealings with certain classes, and appear either to be unable to solve problems of any complexity or choose not to bring the perpetrators to justice if they are rich or influential. Indeed, many law enforcement officers are considered to be rent-takers.

It must be conceded that these impressions of the ordinary Guyanese are difficult to substantiate to the degree that would be required in a court of law. Moreover, they are generalisations which should not be applied to the entire judiciary, magistracy, and police force. The sad fact is, however, that it is agreed by all objective observers that the

Guyana justice and law enforcement systems have deteriorated severely over the years, and now leave much to be desired.

Consider the justice system: court facilities, although improved in recent times, are still somewhat inadequate; and court staff are depleted in numbers and are not as qualified as they are required to be. Indeed, many of the staff occupy positions that are well beyond their education and capabilities. In addition, it is reported by practising lawyers that law libraries do not possess basic reference documents and reports.

Moreover, as everybody knows, there are inordinate delays in the trying of cases, mainly because court files frequently cannot be found; there are inadequate noticing procedures for litigating parties, attorneys, witnesses and the police; and, as has already been mentioned, there is a dearth of qualified staff. Even more reprehensible is the practice of some judges of handing down their judgements long after the trials over which they have presided have been finished. The combined result of trial delays and late judgements is that, often, innocent persons serve long periods in jail, pending trial; business transactions are stymied; and economic development is hindered. Furthermore, Guyanese courts are not, in general, supported by modern technology. In addition, the organizational structure of the administration which manages the judicial system is, at best, very early twentieth century.

The NDS is at pains to emphasize the great importance of a well-functioning judiciary in the economic and social development of a country such as Guyana. It stresses that it is well-documented that one of the reasons for the persistent underdevelopment of many poor countries has been the failure of their governments to ensure that the basic legal framework of liberalized economies is provided. It urges the administrators of our country to appreciate that the vigour of the marketplace depends in large part on the establishment of an environment in which legal rights, especially property and contractual rights, are enforced and protected.

The problems which beset the police force are similar in many respects to those which so adversely affect the judicial system: poor salaries, a severe shortage of equipment, and the virtual absence of modern aids and technology. Moreover, in addition to being about 30 percent under-strength, a large proportion of the existing force is poorly educated and virtually untrained. This is particularly true of, but not confined to, the lower ranks. On top of all this, although again there have been improvements in recent years, the physical facilities in which the Force operates are frequently inadequate.

It was suggested to the authors of the NDS that the overarching reason for the devastating inefficiency of our judicial system is the uncompetitive salary structure of this important branch of governance. It was pointed out to them that except for a dedicated few, it seems to be simply impossible to attract the best and most experienced to the ranks of the magistracy and the judiciary. It is evident, therefore, that in any national development strategy, provision must not only be made for improving the judicial management system, modernizing its procedures, refurbishing its premises and providing it with relevant equipment, but also for increasing salaries, and for putting in place an organization which

would ensure that the emoluments of the judiciary are not subject to the whims and fancies of politicians, or those who make decisions on their behalf.

In regard to the Police Force, the NDS is positive that in addition to improving salaries and enhancing the quality of equipment and physical conditions, it would be necessary, because of the racial tensions which seem always to exist in Guyana, to devise means of ensuring that the composition of the Police Force would reflect the ethnic diversity of Guyanese society. Because it has been argued that, for one reason or another, certain ethnic groups do not wish to work in the Police Force, the NDS strongly suggests that efforts to recruit them should not only be intensified, but that the processes of recruitment should be transparent and should be publicized.

In the next article in this series, the detailed strategy which has been formulated by the authors of the NDS to ensure that the rule of law prevails.