Adverse Impact of the 18th Amendment on Governance

Position Paper

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TRANSPARENCY INTERNATIONAL SRI LANKA
Building a Nation of Integrity

Adverse Impact of the 18th Amendment on Governance

This Position Paper is issued by Transparency International Sri Lanka (TISL) after analyzing the process and contents of the 18th Amendment to the Constitution but the focus is solely on the vital aspects of accountability and governance.

1. BACKGROUND

Sri Lanka has a written Constitution which permits amendment or repeal. Except identified entrenched provisions[1], the Constitution can be amended by Parliament with a two thirds (2/3) majority. The present Constitution introduced in 1978 was amended 17 times prior to the amendment discussed in this Position Paper. Furthermore, there were five other abortive attempts which also included an attempt to introduce a new Constitution.

1. Provisions dealing with the name of the state, unitary status, sovereignty, national flag and anthem, priority given to Buddhism, freedom of conscience, freedom from torture, period of Parliament and the period of a term of office of the President. Any amendments on these provisions require 2/3rd majority in parliament and approval by people at a referendum. See Article 83 of the Constitution

According to the Constitution, Sri Lanka has an Executive Presidential system which has very limited safeguards against abuse of power, while the President enjoys immunity. The President also has power, among other things, to dissolve[2] and prorogue Parliament without reasons, to retain Ministerial portfolios and to make key appointments. Two of the notable safeguards are (i) the limitation of two terms for an individual to be elected President and
(ii) the introduction of a mechanism under the 17th Amendment to the Constitution, limiting the President's power to appoint people to key positions.

At the Presidential Election held on 26 January 2010, President Mahinda Rajapaksa, the incumbent President and the Leader of the United Peoples Freedom Alliance (UPFA) was elected for the second time, as the country's fifth President with an unprecedented 57.88%[3] of the total number of votes polled. Within three weeks, Parliament was dissolved[4] and on 8 April 2010 people cast their vote to elect the 14th Parliament of the Democratic Socialist Republic of Sri Lanka. The election manifestos of the main political parties promised either to abolish the Presidential system[5] or to convert to a trusteeship suggesting "controls of executive power"[6] , meaning reduction of the powers of the Executive.

As at July 2010, the composition of the 225-strong Parliament was: UPFA 144, United National Party (UNP) 60, Tamil National Alliance (TNA) 14 & Democratic National Alliance (DNA) 7. The UPFA was only six short to obtain the magical figure of 150, which forms 2/3rd of Parliament. On 5 August 2010, two MPs of the Opposition pledged their support to the Government, further strengthening its majority in Parliament.[7]

On 31 August 2010, newspapers reported that an amendment to the Constitution had been approved by the Cabinet certifying that it was "urgent in the national interest".[8] The urgency cannot be understood as the President has not been installed in his second term by this time.

Between 3 and 8 September 2010, seven Opposition MPs[9] crossed over to the Government while eight others decided to vote in favor of the constitutional change (which was not known publicly) while remaining in the Opposition.[10] This was more than sufficient for the Government to obtain the 2/3rd majority to amend the Constitution.

2. See Article 70(1)(a) of the Constitution. The President could dissolve Parliament after one year of such Parliament being elected.
3. Visit http://www.slelections.gov.lk/presidential2010/AIVOT.html (Last visited on 19.10.2010)
4. Parliament was dissolved on 09.02.2010
5. See manifesto of the United National Front
6. See Mahinda Chintana Idiri Dekma, the manifesto of the UPFA (page 59)
7. United National Party (UNP) MPs P. Digambaram and Prabha Ganeshan. See http://www.itnnews.lk/?p=11237 (Last visited on17.10.2010).
8. See Ceylon Daily News of 31 August 2010. Note: The text of the Amendment was not available to the public or political parties.
9. The seven members included 6 UNP MPs & 1 TNA MP - namely, Abdul Cader, Manusha Nanayakkara, Lakshman Seneviratne, Earl Gunasekera, N.Wijesinghe & Upeksha Swarnamali (UNP) and Podiappuhamy Piyasena (TNA)
10.On 27 August 2010 the Sri Lanka Muslim Congress (SLMC) decided to support the Government to effect constitutional changes. See Daily Mirror online version - 27 August 2010 available at http://www.dailymirror.lk/index.php/news/6130-slmc-decides.html (Last visited on17.10.2010)

Although the Constitution provides for the cessation of membership in Parliament on the expulsion from the respective political party, due to the interpretations given by the Supreme Court, such expulsion of an MP from a political party is made almost impossible.[11] Thus the Opposition has been seriously destabilized. In this background, the media reported that a constitutional amendment had been drafted secretly, but information on the proposed amendment was not in the public domain.

On 30 August 2010, the proposed Bill[12] was forwarded by the President to the Chief Justice[13] requiring a determination as to whether the Bill required to be passed by a referendum in addition to 2/3rd majority in Parliament. On 31 August 2010, the Supreme Court consisting of five judges[14] heard the matter where six intervenient petitioners also made submissions. It was apparent that none of the intervenient petitioners had sufficient time to prepare themselves for the case and, in fact, the copy of the Bill that they secured through undisclosed sources was not the same as what was relied upon by the AG or the Court.[15]

On 7 September 2010, the Speaker announced in Parliament that he had received the determination from the Supreme Court and that the Bill could be passed with a 2/3rd in Parliament without reference to the people at a referendum. On 8 September 2010 the Amendment was passed with 161 voting in favor while only 17 members opposing it.[16] The other opposition MPs decided to boycott the debate in protest.[17]

Several organizations, including TISL expressed concern, among other things, for the manner in which such a vital Bill was rushed through, virtually not giving any opportunity for the country to consider the provisions and depriving Parliament and the Supreme Court of sufficient time to consider its implications. Among those who urged the Government not to proceed with the proposed Amendment as an Urgent Bill was the Bar Association of Sri Lanka, the representative body of all the lawyers in the country and the clergy.[18]

Two main issues relating to the process of introducing a Bill were also raised both before the Supreme Court as well as in Parliament; firstly, the introduction of the Bill as an Urgent Bill, when there was, in fact, no urgency having regard to the fact that the next presidential election was six years away; secondly, the Bill had provisions encroaching on the devolved subjects and thus the Provincial Councils should have approved the Bill before being placed on the Order Paper. When the Bill was moved by the Prime Minister on 7 September 2010, it was realized that the Bill had not even been distributed among the MPs.[19]

11. For example, the Supreme Court decided that "standard of review of a decision of expulsion from a political party should be akin to that applicable to the review of the action of an authority empowered to decide on the rights of persons in Public Law" – Rambukwella vs. UNP SC Expulsion No. 1/2006 SCM 6-11-2006
12. The draft statute is called the Bill.
13. Under Article 122 of the Constitution.
14. Hon Justices Shirani Bandaranayaka, K. Sripavan, P.A. Ratnayaka, S.I Imam and R.S.K. Suresh Chandra
15. AG however handed over to the intervenients the copy of the Bill in open court
16. See Daily Mirror 9 September 2010 available at http://www.dailymirror.lk/print/index.php/news/front-page-news/20995-161-in-favour-and-17-against-.html (Last visited on17.10.2010).
17. Id.
18. See http://www.tisrilanka.org/?p=6049. Also see statements issued by the Asian Human Rights Commission at http://www.tisrilanka.org/?p=6032, Civil Rights Movement at http://www.tisrilanka.org/?p=6034, Centre for Police Alternatives http://www.tisrilanka.org/?p=6007 and the interviews given by the Buddhist clergy available at http://www.thesundayleader.lk/2010/09/12/18th-amendment-questioned-by-buddhist-clergy/ (Last visited on 1.11.2010)
19. See Hansard 07.09.2010 Columns 74-86.

2. DUE PROCESS NOT FOLLOWED

2.1 Secrecy and Urgency

Sri Lanka does not have a good track record of being transparent in the legislative process even in the case of constitutional amendments. Since 1978, a large number of Amendments was brought in as urgent bills.[20] There are no criteria or convention in Sri Lanka as to what Bill should be 'Ordinary' and which should be 'Urgent'. In the past, a Constitutional Bill seeking to introduce a new Constitution (which was, however, not passed) was introduced as an Urgent Bill. When the 18th Amendment Bill was introduced, it is reported that even the MPs within the government or the Cabinet of Ministers were unaware of the contents. The Parliament debated the Bill on 8 September 2010 and it was only at the stage of the first reading, that the Bill was circulated among the MPs.[21] There is no doubt that although the Cabinet certified the Bill as urgent in the national interest even the Cabinet did not have sufficient time to examine the provisions of the Bill to subscribe to such certification.

Despite the fact that the Bill was not in the public domain, there was a one-sided campaign orchestrated by the Government in support of the 18th Amendment. In addition to the politicians in the governing party, a set of academics led by the Chairman of the University Grants Commission and Vice Chancellors (appointed by the President) made a public appeal to support the 18th Amendment. Interestingly none of them were clear as to why the 18th Amendment should be supported.[22]

It is also pertinent to note the position of the Government vis-à-vis the urgency of the Bill. It was argued that similar bills of national importance have been brought in as 'Urgent Bills'. TISL is of the view that there is no reason to perpetuate an undemocratic practice and further use of bad precedents to justify such a stance.

2.2. Placing the Bill in Parliament in Violation of Standing Orders

Member of Parliament M.A. Sumanthiran[23] raised the issue of due process and the non-compliance of Standing Orders of Parliament in presenting the Bill. The objection was that certain provisions of the Bill affect the powers of the Provincial Councils and requires the consultation with all Provincial Councils.

20. Once the Cabinet of Ministers certifies a Bill to be "urgent in the national interest", it becomes an 'Urgent Bill'. In such instances, there is no requirement to release the draft Bill to the public and naturally such Bills are never debated sufficiently in the public domain prior to being enacted.
21. See Hansard dated 07.09.2010 volume193 columns 76 and 77.
22. See http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=9104 (Last visited on 19.10.2010)
23. See speech of Hon. M.A. Sumanthiran TNA Member of Parliament - Hansard dated 07.09.2010 volume193 columns 74-87.

The 18th Amendment repeals several constitutional provisions affecting the Provincial Councils and devolution of power, including the provisions empowering the Provincial Councils to make statutes in respect of the Provincial Council list.[24] The Bill also repeals mandatory provisions requiring the assent of the Provincial Councils for provincial (devolved) subjects, and the safeguards provided for the President to give directions to a Governor of a Province instead of the President exercising those powers unchecked.

The effect of the new clauses 28 to 32 is to curtail powers of the Provincial Councils. For Parliament to effect any such law, there is a due process enshrined in the Constitution as well as the Standing Orders of Parliament. Standing order 46A requires a special resolution to be passed prior to the Parliament tabling any Bill in respect of any matter in the Provincial Council list. The Speaker is also required to direct the Secretary-General of Parliament to send a copy of the Amendment to each Provincial Council to report to Parliament about their views within one month. Further, Article 154G (3) specifically states that no Bill in respect of any matter set out in the Provincial Council list shall become law without following the aforesaid procedure. None of these provisions were followed in respect of this Bill.

TISL is of the view that this process has not been followed by the President or Parliament when introducing the 18th Amendment.

3. JUDICIAL REVIEW PROCEDURE & INBUILT CHALLENGES

Sri Lanka does not have judicial review in respect of legislation. However, there is a limited judicial review of a Bill before the Speaker certifies the Bill. Articles 121 and 122 of the Constitution provides for the following procedure for review of Bills:

• An Ordinary Bill is published in the gazette and then placed in the Order Paper in Parliament. There is no such publications for Urgent bills.
• Any citizen interested in challenging such a Bill is required to invoke the jurisdiction of the Supreme Court within 7 days from the date of placing such a Bill in the Order Paper. If the President so wishes, he / she may refer the Bill to the Chief Justice of the Supreme Court for determination.
• If any reference / petition is filed in the Supreme Court, the Court has three weeks from the time of the petition / reference to come to a determination.
• If the Bill is an Urgent Bill, the President is mandatorily required to refer the Bill to the Supreme Court for determination. There is no provision of public petitions in such instances. In such instances, the Supreme Court is required to make its determination within 24 hours (or such longer period not exceeding three days as the President may specify.)

24. Article 155G has been repealed by clause 28 of the 18th Amendment.

• However, the Supreme Court is not required to deliver the determination in open court and only requirement is to forward it to the Speaker and the President.
• If the Bill is to replace the Constitution or to amend the Constitution, then the determination of the court is to ascertain whether the Bill is inconsistent with entrenched provisions.[25]

Except for the provision for challenge of the Bill, the validity of a law cannot be tested in any court of law, even on the grounds of failure to comply with legislative process.[26]

These provisions make it clear that there are no legislative safeguards against abuses of the legislative process under the current constitution. Naturally, there is no neutral umpire to determine whether the legislative process is followed by the Cabinet or Parliament, unless the Speaker becomes a neutral umpire. The only available review through courts is also restricted in terms of time. Further, the Supreme Court is not required to disclose its determinations nor is the public entitled to receive such determinations. Though the Supreme Court is not legislatively prevented from releasing the determination like any other judgment of the court, there is no evidence in the past where the Supreme Court has ever delivered such determinations in open court.

However, all determinations and judgments are made after public hearing. In many instances where Bills are being challenged in the Supreme Court, the courts have permitted the public and lawyers to intervene and make submissions even without filing formal papers.

The main issue faced by lawyers and public spirited citizens is that in the case of Urgent Bills, the Bill is considered a secret document by the Government, Legal Draftsman's Department and the Attorney General. There is no opportunity for lawyers (except the Attorney General) to be present in court adequately prepared.

The public was kept in the dark in the formulation of the 18th Amendment Bill. On 31 August 2010, the Supreme Court comprising of five judges presided over by Hon. Justice Shirani Bandaranayaka sat to determine the Bill. Six petitioners intervened in the case. None of the intervenient petitioners have had the proper copy of the Bill. Nor did they have sufficient time to prepare themselves for the case but came forward to assist court in the determination.

25. The provisions requiring referendum in addition to 2/3rd approval in Parliament.
26. Articles 80(3) read with Article 124 of the Constitution

4. THE 18TH AMENDMENT AND THE PARLIAMENT

Determination having been forwarded to the Speaker, it was tabled on 7 September 2010. On 8 September 2010 the Bill was taken up for debate. Only one date was allocated for this debate.

The people elect Members of Parliament to represent them in their legislature, to voice their concerns and subject government policy to strict scrutiny – all of which are essential elements in any democracy. Parliamentary proceedings and debates are recorded and this is one of the most credible records bringing the debate into the public domain. However, the main Opposition party, the United National Party, boycotted this important debate, objecting to the process. This deprived the House of a meaningful debate, and the people to be adequately represented in Parliament violating the trust the people vest in them to represent them in Parliament. Members of Parliament are naturally expected to debate issues in Parliament, not only for political reasons but also for the purpose of historical importance and for the record.

Participation at such a debate was of utmost importance considering the limited space for such debate at a time when not even a single editorial was dedicated to meaningfully discuss the said amendment.

5. HOW THE 18TH AMENDMENT AFFECTS GOVERNANCE

Primarily, the 18th Amendment was introduced to achieve two main objectives - i) to remove the two-term limitation on the President and ii) to remove the checks and balances placed against politicization of the public service and police. There were also several other consequential amendments and some of them were not conspicuous but had far reaching effects.[27]

Given below are the summary of the main provisions of the 18th Amendment having a bearing on governance in the country.

5.1 Removing the two-term limitation

The President is not effectively answerable to Parliament and is not in any way subject to judicial review. The President enjoys immunity on private and official acts during the tenure of office. With unparalleled constitutional powers, the President may even dissolve Parliament without consulting the Speaker or Prime Minister. In practice and due to the electoral and the political party system, the incumbent President may not lose any election while in power, especially with the supreme control he will have over the elections machinery, public service and police, accruing to him with the 18th Amendment. The only check on the President was the two-term limitation. The removal of the two-term provision amounts to the removal of all remaining lawful safeguards against abuse of power of any President.

27. For example, the repealing of Article 154G changes the fundamental structure of devolution of power. This Article was deleted though it is not a consequential provision of the main Amendments

This also raises the issue of continuation of immunity given to the President for "anything done or omitted to be done by him either in his official or private capacity". This immunity has been given on the basis that the President enjoys two terms and after the completion of two terms, he/she is subject to legal action.[28] The removal of two terms, allowing an incumbent President to continue for unlimited number of terms, has the effect of removing any judicial review of the President's unlawful actions/omissions.

5.2 President attending Parliament

One assumes that the President attending Parliament may give an opportunity for MPs to ask questions and hold the President accountable at least to Parliament. The new provision requires the President to attend Parliament at least once in three months and the President is entitled to "all privileges, immunities and powers of a Member of Parliament except to vote but "shall not be liable for any breach of privileges of Parliament or of its members".[29] This makes the President unique and his immunity already granted is extensively expanded with this. There is no logical reason by any constitutional standards to treat the President as being immune from breach of privileges when attending Parliament and participating in debates.

5.3 Replacing the Constitutional Council (CC) with a Parliamentary Council

The Constitutional Council (CC) established under the 17th Amendment had powers to select members to independent commissions[30] and approve nominees of the President in respect of other appointments, viz. the Chief Justice and Supreme Court Judges, the President of the Court of Appeal and the Judges of the Court of Appeal, the Judicial Service Commission, Attorney General, Solicitor General, Auditor General, Supreme Court and Court of Appeal Judges, Inspector General of Police, the Parliamentary Commissioner for Administration (Ombudsman) and the Secretary-General of Parliament.[31]

Therefore, the 17th Amendment put in place a system of checks and balances to ensure that the power vested in the Executive by the people through the Constitution is subject to scrutiny. It also gave confidence to the officials of the public service and the police, to carry out their duties without fear and upholding the rule of law, as a result of which merit and performance were recognized as key factors in making appointments to top positions in the state and political victimization was reduced.

28. Karunatilaka vs. Dissanayaka (1999) 1 Sri Lanka Law Report 157
29. New Article 32(3)
30. See Article 41B of the Constitution and the Schedule.
31. See Article 41C and Schedule 1.

In comparison, the 18th Amendment has diluted the aspect of checks and balances to the extent that the new Parliamentary Council is only a mere shadow of the Constitutional Council established under the 17th Amendment. The power to appoint persons to key public offices has been absolutely vested in the President and the Parliamentary Council has been relegated to a mere spectator who can comment only if the President "seeks" such observation.[32] Therefore, the Parliamentary Council is only a façade of good governance in Sri Lanka.

5.4 Independence of Public Service & Police

The main purpose of introducing the 17th Amendment to the Constitution in 2001 was to alienate the public service and police out of political interference. The 18th Amendment has now removed the important safeguards that had been so introduced and the most crucial changes are given below:

(a)The selection of members of the independent commissions (National Police Commission, Public Service Commission, and Human Rights Commission etc.) was done by the Constitutional Council[33] (CC) and the President only endorsed the appointments. Under the present arrangement, the CC was abolished. Instead, the President makes all appointments to the independent commissions, but may (not mandatorily) consider the views of Parliamentary Council, consisting of four parliamentarians including the Prime Minister and the Leader of the Opposition.

(a) The police service (now consisting of a cadre of over 75,000 members) comes under the Public Service Commission instead of the National Police Commission. However, the IGP is appointed by the President without any consultation. Whether the PSC has capacity to effectively administer both the public service and such a vast national police remains a question.

(b) Under the 17th Amendment, all heads of Departments were appointed by the Cabinet after obtaining the views of the Public Service Commission. Now the Cabinet is vested with the sole authority to appoint heads of departments, not forgetting the power of the President over the Cabinet.

5.5 Institutional Integrity vis-a-vis Independent Commissions including CIABOC

The members of all the Commissions including the Public Services Commission, Human Rights Commission and the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) are to be appointed directly by the President without any transparent scrutiny of the appointees. However, how the 18th Amendment will affect the working and integrity of the Commissions can best be demonstrated with an analysis of CIABOC.

32. See Article 41A(1) as amended by the 18th Amendment to the Constitution.
33. Consisting of Prime Minister, Opposition Leader, President's nominee, and 5 other eminent persons appointed by Parliament.

The primary anti-corruption body of the country, CIABOC (commonly referred to as the Bribery Commission), does not have its own investigators; it borrows serving police officers from the Police Department to serve as its investigators. Subsequent to the 18th Amendment, the Commissioners themselves can be appointed by the President without any transparent scrutiny. The Commission does not have any disclosed internal integrity checks either on its officials or investigators. There is no guarantee of security of tenure of its chief executive officer (Director General)[34] or any investigators released from the police. The 18th Amendment has given an uncontrollable power to the Executive to directly and indirectly interfere with an investigation of bribery or corruption against powerful individuals. Probably the only safeguard is to appoint persons with proven track record of high integrity as members of the Commission but they too will, however, be powerless over the investigators released from police.

5.6 Adverse Effects on Electoral Process

The experience of all independent election monitors shows that during elections, the party in power abuses state resources for their benefit. The 17th Amendment introduced, among other safeguards, to permit the Election Commission to prohibit the misuse of state resources by the politicians including state officials. Exercising these powers, the Elections Commissioner has, in the past, prevented the Government from using, directly or indirectly, state resources of every description for the benefit of political parties.[35] State resources including state officials are often abused for political party activities indirectly, and in the guise of lawful directives/objectives (such as sudden development activities, exigencies of services and catering to urgent needs of the people). The 18th Amendment has brought in provisions restricting the Elections Commissioner's powers in two ways; firstly, restricting the Commissioner's powers to prohibit government actions unless it is directly linked to elections; secondly, taking away the powers of the Commissioner to interfere with administration of public services including the police. In effect, the constitutional limitations placed on abuse of state officials during elections have been removed and misuse of state resources and media bias will be at their heights.

5.7 Transitional Provisions to Legitimate Appointments Made Outside the Due Process

After the lapse of the term of office of the then CC in March 2005[36], the President did not appoint new members to the CC but top level appointments (such as Attorney General, Auditor General, Judges of Supreme Court and the Court of Appeal and some members of the Monetary Board) have been made by the President. By way of a transitional provision 37 , all such appointments are “deemed to be valid and effectual”.[38]

34. D G Piyasena Ranasinghe was removed by the President on 19.02.2008 without assigning reasons. See TISL Press Release available at http://www.tisrilanka.org/pub/pp/pdf/ciaboc-papaer-final1.pdf (Last visited on 19.10.2010)
35. For example: by directive of the Elections Commissioner dated 7-12-2009 (press release No.10), the Government was prevented from making fresh appointments to state institutions pending elections. It is often seen that these appointments are made as gratifications/bribes to attract votes for the governing party.
36. See Position Paper ‘The Forgotten Constitutional Council” visit http://www.tisrilanka.org/?p=229 (Last visited on 19.10.2010)
37. Clause 36 of the 18th Amendment with marginal note “Avoidance of doubts”
38. Interestingly, at the time of introduction of the Bill, the Attorney General, several judges of the Supreme Court and Court of Appeal, Ombudsman, IGP were among those who had been appointed by the President without scrutiny by the CC

It is interesting to observe that Mr. Dhammika Kitulgoda who was functioning as Acting Secretary-General of Parliament for a considerably long period of time as a result of non-implementation of the 17th Amendment, has been appointed to the position by the President with effect from 28 August 2010 and the said appointment was announced in Parliament on 7 September 2010, just one day before the 18th Amendment was passed.[39]

6. CONCLUSIONS

(a) The vital casualty of the 18th Amendment is governance, which had suffered for many decades due to systemic failures in administrative and political systems. There is little doubt that limited checks and balances that existed prior to the 18th Amendment to control abuse of power have been made redundant, giving virtual unchecked powers to political authorities to decide on all aspects of governance at their will.

(b) The manner in which the 18th Amendment was introduced lacks any standards of transparency and is well short of expected standards in a participatory democracy. It also did not follow the due process.

(c) An analysis of the 18th Amendment shows beyond doubt that none of the provisions of the Bill contained any urgent matters and thus the certification by the Cabinet as 'Urgent' in the national interest lacks any logical foundation or justification.

(d) The 17th Amendment was not in operation since 2005 and a considerable number of key appointments were made by the President directly ignoring the mandatory constitutional provisions. Thus, in effect, the 18th Amendment can be seen as the zenith of consolidation of power by the Executive for political expediency.

(e) The 18th Amendment has strengthened the powers of the President, who is not effectively accountable to Parliament or subject to judicial review. Consolidation of powers in a single individual without any accountability is contrary to basic principles of separation of powers.

(f) The 18th Amendment has an adverse effect on free and fair elections. In particular, it removes some of the vital limited safeguards placed on the political arm of the State to prevent abuse of state resources and state officials.

39. See Hansard dated 07.092010 volume 193 column 13.

7. RECOMMENDATIONS:

(a) Whilst reiterating the need to re-introduce the constitutional checks and balances introduced under the 17th Amendment, all measures should be taken to ensure institutional integrity by appointing persons with high integrity to independent commissions and other constitutional positions. This is by no means an easy task but the time has come for a vital public debate in that direction.

(b) The civil society, media, academics, private sector, political parties, religious dignitaries and international community must be actively engaged in collective actions to prevail upon the government to take progressive steps to ensure independence of public service, police and all institutions.

(c) TISL strongly recommends that the legislative process must be fully transparent with adequate opportunity given for public debate. It is further suggested that the Right to Information statute be introduced requiring all organs of the State to be subject to public scrutiny and that judicial decisions of whatever nature should be delivered in open court.

(d) Selection criteria of all members of independent commissions and other key appointees must be disclosed and consequential provisions must be introduced, requiring public scrutiny of the suitability and integrity of the nominee to any key position.

(e) Provisions must be made in law requiring the Supreme Court to deliver the Determinations on Bills in open court.

- End-