

# Sri Lanka Governance Report 2009



TRANSPARENCY  
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SRI LANKA  
Building a Nation of Integrity



# **SRI LANKA GOVERNANCE REPORT**



**2009**

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“There is a cancer that must be removed in order to facilitate the advancement of this nation; it is none other than waste and corruption. You and I need to commit ourselves to the eradication of corruption and fraud not only in the public sector, but also in the private sector.”

President Mahinda Rajapaksa  
*Keynote address at the Institute of  
Chartered Accountants of Sri Lanka  
23.11.2009*

“Power tends to corrupt, and absolute power corrupts absolutely.”

Baron Acton (1834–1902)

## Foreword

Transparency International Sri Lanka's (TISL) mission is to enhance integrity and curb corruption in all sectors. We do this by engaging all stakeholders in constructive dialogue, with the aim to devise joint strategies to overcome institutional, legal, and attitudinal obstacles to good governance. We strongly believe that a collective effort is needed to reduce corruption and mitigate the negative effects that it has on our society. Policy makers, the business community, and civil society must work hand in hand to strengthen Sri Lanka's governance framework, and create an environment that does not tolerate the abuse of power and corruption. Much work needs to be done.

As in previous years, the Governance Report 2009 aims at stimulating the debate on governance in Sri Lanka by providing an overview of key events that occurred between November 2008 and October 2009. In addition, it includes detailed analysis on a wide range of selected topics. Without a doubt, the end of the armed conflict was the hallmark event in the past year. To bring about lasting peace, however, governance issues need to be urgently addressed. Other important events in the past year include the crisis in the finance sector and the deterioration of media freedom. While this report cannot be exhaustive, it does attempt to cover the most important trends and developments and, in so doing, to provide fact-based information that is needed to support a constructive debate on governance. Indeed, Sri Lanka needs more space for open debates—debates that are based on accurate and relevant information. We hope that the Governance Report 2009 contributes to this goal.

The chapters of this report have been written by both TISL staff and external subject experts. I wish to express my gratitude to the authors of the articles, who delivered excellent texts despite working under tight time lines. A great thank you goes to the editorial panel—Prof Arjuna Parakrama, Nilhan de Mel, Ramsey Ben-Achour, and Bettina Meier—that has with great dedication and diligence ensured the quality and accuracy of this report. Thanks to Aiman Rasheed for competently co-ordinating the process of writing. And finally, a big thank you to the external reviewers Nelum Gamage, Chandra Jayaratne, Dr Saravanamuttu, and the many other experts who wished to remain anonymous.

J.C. Weliamuna  
Executive Director





## **Introduction: Post-War Governance Requires Real Changes of Attitude and Process**

Definitions of “governance” are notoriously slippery. It is clear that an all-encompassing mandate under the rubric of governance is often counter-productive because it leads to vagueness and impracticability. The UN-supported trend to be more inclusive and integrative in describing this concept, however, is gaining wide acceptance because it seeks to address the inter-related concerns that confront us in the complex societies that we live in today. We no longer have the luxury of artificially separating the economic from the social and political. This is especially true in terms of governance, as the consequences and ramifications of each impinge so crucially on the others.

The UNDP’s policy document on good governance and sustainable development provides an excellent over-arching framework and lens through which the diverse yet related essays in this Report should be viewed.

“Governance can be seen as the exercise of economic, political and administrative authority to manage a country’s affairs at all levels. It comprises the mechanisms, processes, and institutions through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations, and mediate their differences.

Good governance is, among other things, participatory, transparent, and accountable. It is also effective, equitable, and promotes the rule of law. Good governance ensures that political, social, and economic priorities are based on broad consensus in society and that the voices of the poorest and the most vulnerable are heard in the process of decision-making over the allocation of development resources.

Governance has three legs: economic, political, and administrative. Economic governance includes decision-making processes that affect a country’s economic activities and its relationships with other economies. It clearly has major implications for equity, poverty, and quality of life. Political governance is the process of decision-making to formulate policy. Administrative governance is the system of policy implementation. Encompassing all three, good governance defines the processes and structures that guide political and socio-economic relationships.

Governance encompasses the state, but it also transcends the state by including the private sector and civil society organisations.”

TISL’s 2009 Governance Report seeks to progress beyond minimalist and exclusively statist definitions of governance. Indeed, it is important to grasp the multiple, yet inter-connected, foundations of good governance which include issues of participation, transparency, accountability, gender sensitivity, and anti-corruption to name but a few. The report attempts to address these issues in pro-active and people-empowering ways, as opposed to the usual passive defaults that are demonstrably inadequate due to hierarchies of power and hegemony in fraught contexts such as Sri Lanka.

Thus, the chapters in this report describing the year's performance of COPE, the Central Bank, and the Bribery Commission share a common underlying theme. That is, accountability must not be confined to specialists and privileged interlocutors who are able to demand information from responsible and crucial state regulatory institutions. Instead, accountability should be proactively transparent towards all sections of society. The analysis of post-conflict governance in the North and East articulates the view that, irrespective of the motives of government, legitimacy can only be derived through meaningful participation and ownership of projects, which must include serious input into decision-making and periodic review. This also applies to the analysis of governance concerns regarding the politicization of the education and foreign affairs ministries.

The relationship between fundamental rights/freedoms and good governance is less clearly defined in the literature, though it is implicit in the chapters discussed above. It needs to be stressed that in the Sri Lankan context specifically, but also in general, an enabling environment or safe space for dissent, difference, and discussion is a key pre-requisite of good governance. This is because the mere existence of avenues for participation, redress, and so on will do nothing to enhance accountability and transparency if other forces and realities deter the general public from asking questions and seeking remedies. In situations where there is no safe space, public discussions will yield no tangible results in relation to holding government officials accountable, and in ensuring that government processes are transparent and user-friendly.

Many of the contributors to this report have identified this mismatch between the existence on paper of good practice and the non-use of remedies available to the public to seek redress. This is invariably because such remedies are costly, time-consuming, not well-known, or beset with negative repercussions that may be even worse than the problem for which redress is sought. Further, as has been noted in this and previous reports, the absence of a Freedom of Information Act is both debilitating and unacceptable from even the narrowest of governance perspectives.

This is nowhere more clear than in the case of the Government's record on human rights and media freedom. Without a doubt, this report documents a sad tale of missed opportunities and short-sightedness that has led to the failure to realize the potential that the end of the three decade long conflict could have brought. To be sure, there is an urgent need to implement reform measures if we are to avoid a repetition of history.

This concern is borne out by the analysis of international indices such as the Corruption Perception Index which shows Sri Lanka declining further to rank 97 out of 180 countries, while the Failed State Index lists it as the 22nd most vulnerable out of 177 countries. The Worldwide Governance Indicators identifies, for instance, "Control of Corruption" as an area where Sri Lanka is around the 50% range globally. The end of the conflict will surely help raise Sri Lanka's status in future indices. Nevertheless, core issues that adversely affect governance such as corruption and the breakdown in the rule of law need to be urgently addressed.

What is significant about the studies found in this report when taken as a whole is the clear overlap and mutual influence that they demonstrate in regard to core governance issues. The government's apparent lack of respect for media freedom and the public's right to know has had a direct bearing on the quality of democratic political governance. It has further negatively affected

the post-conflict rehabilitation of the North and East, and has significantly exacerbated some consequences of the financial sector crisis. Finally, it has raised serious concerns relating to the continued militarization of our society, the recent upsurge of police brutality and the seeming impunity that has come along with it.

The latter half of 2009 marks a period of hope and potential for Sri Lanka. Yet, as the cliché has it, winning the war seems to have been easier than winning the peace. The contributions to this report acknowledge positive changes made by the State as well as real obstacles that need to be overcome by all stakeholders. From government, this requires a change of emphasis and focus as much as a new regimen of accountability and transparency, which replaces military logic with public legitimacy and empowerment.



# Governance in Times of War and Peace

Suzie Beling

The year 2009 has been a significant one for the island nation of Sri Lanka. It will go down in the annals of history as the year in which the Government of Sri Lanka (GOSL) finally gained control over the whole of the territory, effectively having ended a protracted ethnic conflict of almost three decades. As is usually the case, however, the victory came at a price. Sri Lanka, which has been under a state of emergency since the 1970s, was overshadowed by a heightened sense of need for security at the cost of liberty. It is, indeed, difficult to discuss the state of Governance during the past year without referring to the direct impact that the armed conflict had on governance during this time. For this reason, this Chapter will firstly and separately deal with the governance issues caused by, or directly linked to, the armed conflict. It will then address the separate issue of democratic governance with a particular emphasis on the division of power, the freedom of expression, the rule of law, and the adherence to international laws and norms.

## Governance and the Armed Conflict

The last year has been characterized by an overarching sense of fear and a preoccupation with “national security.” The general consensus seems to have been that no expense whatsoever should be spared in the conduct of the armed conflict. The “price of war” however has been much more than mammoth defence budgets and an ailing economy. The values of truth, accountability, transparency, and honesty have also been sacrificed in the cause of “national security.”

## The State of Emergency and the Prevention of Terrorism Act

The state of emergency, which has been in force since the 1970s in Sri Lanka more or less continuously,<sup>1</sup> was again extended during the last year. This stands in stark contradiction to the very concept of the state of emergency, which is by definition an exception to the norm and a temporary measure intended to deal with an urgent crisis. The emergency regulations promulgated under the Public Security Ordinance combined with the Prevention of Terrorism Act (PTA), No. 48 of 1979, has effectively allowed for the bypass of constitutional and other legal safeguards on the basis of the alleged over-arching national security interests<sup>2</sup>. Under the PTA it was possible to arrest and detain a person suspected with any unlawful activity for a period not exceeding 72 hours without a detention order.

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1. Welikala, Asanga “The State of Emergency in Peacetime” The Sunday Leader, Sunday June 7, 2009

2. Some of these include prolonged detention without any conviction or a court order, the acceptance of ‘confessions’ signed in the presence of an Assistant Superintendent of Police, the shifting of the evidentiary burden on the Defendant and disproportionate penalties.

The Emergency Regulations of 13th August 2005, however, permitted the Secretary of the Ministry of Defence, in instances where national security interests or the maintenance of public order was in question, to order the detention of persons for up to a period of one year.<sup>3</sup> The said regulations specified that the detention under regulation 19 could be in a place other than that under the Prisons authorities only for a period of 90 days and that any further detention must be in a prison under the prisons ordinance.<sup>4</sup> In August 2008, by a Gazette notification,<sup>5</sup> an amendment was sought to these regulations that would extend the period of detention by a further six months and permit the executive itself to nominate the place of detention without any scrutiny by the courts. The proposed amendment further sought to deny any person detained under these laws the basic safeguards set out in the Code of Criminal Procedure. However, pursuant to the regulations being challenged before the Supreme Court<sup>6</sup> the State conceded to amending the said Regulations.

A state of emergency necessarily undermines transparency and accountability by restricting the freedom of expression, and granting extra powers to the police, the military, and the executive. By extension, therefore, a continuous state of emergency implies a continuous undermining to democratic ideals and thus serves as a major impediment to good governance in Sri Lanka.

A further development during the course of the year was the case of the journalist, Tissainayagam who was arrested on the 7th of March 2008 and charged with offences under the PTA,<sup>7</sup> and the Emergency Regulation in August 2008.<sup>8</sup> The initial charge of bringing ‘disrepute to the government’ was struck off, but Tissainayagam was accused under the PTA to have conspired or committed an offence by causing/intending to cause the commission of acts of violence through inciting communal disharmony through the printing or distribution of the publication North Eastern Monthly magazine.

Tissainayagam’s trial began with the acceptance of a confession despite his repeated assertion that the confession was dictated to him by others and written under duress. His trial was hurriedly concluded and he was convicted under the PTA and sentenced to a total of 20 years rigorous imprisonment. The judgment is presently under Appeal.

The trial and the conviction of Tissainayagam have set a new precedent in regard to the treatment of journalists by the State. While journalists with a critical view of the government have always been a target, this was the first time that a journalist had been charged under the PTA for alleged offences caused in the course of carrying out one’s function as a journalist.<sup>9</sup> Indeed, the overly-harsh punishment appears to set a new standard.

The continuous existence of laws and regulations that allow for the conviction of journalists for instigating communal disharmony by simply doing their job is a development that does not bode

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3. Regulation 19 of the Emergency Regulations published in the Government Gazette on 13th August 2005

4. Regulation 21 of the Emergency Regulations published in the Government Gazette on 13th August 2005

5. Gazette Notification No. 1561/11 dated 5th August 2008

6. SCFR 351/2008

7. Section 2(1) (h) and 2 (2) (ii) of the Prevention and Prohibition of Terrorism and Specified Terrorist Activities

8. Regulation No. 7 of 2006 published in Gazette Extraordinary No. 1474/5 of 6th December 2006

9. Defamation in Sri Lanka is no longer a criminal offence since 1996.

well for the freedom of expression and accountability. Many of the writings in question dealt directly with the “ethnic issue” and the conduct of the armed conflict. The freedom of expression itself has often been recognised as the foundation of democracy. Without the freedom of expression, a person’s freedom of information and therefore his/ her freedom of thought and conscience is hampered, thus removing the decision-making ability from citizens. Such laws pose a serious and unwarranted threat to the media, and thereby to the very notion of democracy, the supremacy of the constitution, and the sovereignty of the people.

## The Demonization of Dissent

Another salient feature of the year under consideration was the trend of demonizing dissent under the guise of patriotism. A classic example of this was the Defence Secretary’s acceptance of the statement that “criticism in a time of war is treason.”<sup>10</sup>

In January 2009, the Defence website carried an article naming certain lawyers as “the team of lawyers who regularly appear for the detainees charged with terrorist activity.” Thereafter in July 2009, the same website carried an article titled “Traitors in black coats flocked together?” portraying the lawyers who appeared in defence of the Sunday Leader, in a defamation case filed against the Sunday Leader by the Defence Secretary, as ‘unpatriotic’ and as ‘traitors to the nation’.

When this matter was taken up in Parliament on the 21st of July 2009, the Prime Minister refused to withdraw the above articles and stated that the Defence Secretary was a true patriot; and that the website had correctly named the said lawyers as traitors as they had violated the constitution. However, the Prime Minister did not specify the manner in which the lawyers had allegedly violated the Constitution.

These statements, directed towards professionals carrying out their duty of providing people with legal representation - a constitutional entitlement of all citizens – were made at the height of the armed conflict, when the country at large was disproportionately concerned with “national security,” and when the common man in an euphoria of patriotism could well have reacted violently against anyone portrayed as traitor or a defender of the enemy.

There obviously is a high level of sensitivity to any kind of dissent or criticism. Diplomats and UN officials are not spared from retaliatory action by the GOSL: In June this year, UNICEF spokesperson, James Elder commented that “The nutritional situation of children [in the camps] is a huge concern for the UNICEF, and restriction on access hinder our ability to save lives”.<sup>11</sup> Elder, who continued to voice his concerns regarding the child victims of the war, had his visa revoked within two weeks and had to leave the country. However an official reason was not given.<sup>12</sup>

Additionally, senior UN diplomat, Peter Mackay, an Australian citizen, was expelled for providing detailed rebuttals of government “wartime propaganda” during the final battles against Tamil Tiger rebels. In July, Mackay was given two weeks to leave the country, despite possessing a visa valid until the following year.<sup>13</sup>

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10. [http://www.bbc.co.uk/mediaselector/ondemand/worldservice/meta/dps/2009/02/090202\\_rajapaksa\\_nh\\_s](http://www.bbc.co.uk/mediaselector/ondemand/worldservice/meta/dps/2009/02/090202_rajapaksa_nh_s)

11. [www.timesonline.co.uk/tol/news/world/asia/article6824039.ece-0ELDER](http://www.timesonline.co.uk/tol/news/world/asia/article6824039.ece-0ELDER)

12. *ibid*

13. <http://www.guardian.co.uk/world/2009/sep/11/sri-lanka-tamil-tigers-un>

## The Role of Independent Observers

Sri Lanka's armed conflict has killed an estimated number of 70,000 people, both Tamil and Sinhalese in the past 25 years.<sup>14</sup> In the last months of the war, a large number of Tamil civilians trapped in the war zone were killed, with estimates ranging from between 7,000 and 20,000 civilian deaths.<sup>15</sup> However, facts are hard to come by because of the lack of independent observers.

One of the key criticisms with regard to the armed conflict has been the lack of transparency and lack of access for independent observers. During the final stages of the armed conflict, NGOs, media, members of Parliament, representatives of international organisations and the UN were only provided limited—if at all—access to the operational areas. Today, independent observers are only denied arbitrarily access to the camps for internally displaced persons, and many are denied access on the basis of “national security.”

However, the GOSL has an obligation to comply with the United Nations Guiding Principles on Internal Displacement and to ensure that the basic human rights standards and legal rights of the internally displaced are protected. The principles of accountability and transparency demand that United Nations organizations such as the UNHCR are given access to the conflict zone, or at least to places where the internally displaced are housed, in order to assess need and to ensure compliance with the relevant international law. Further, in terms of the MoU between the ICRC and the Government of Sri Lanka, the ICRC should be given access to the camps.

While many visits from many United Nations workers and other dignitaries were received in the final stages of the war and thereafter<sup>16</sup>, others were denied entry to the country.

In June 2009 Bob Rae, a liberal member of Parliament in Canada and an outspoken critic of Sri Lanka's military offensive was detained at the airport and subsequently deported on the basis that he was a threat to the national security of Sri Lanka and a supporter of the LTTE despite being in the possession of a valid visa.<sup>17</sup>

When allowed into the country, international dignitaries and observers apparently are not always given free access to information. When Sir John Holmes, United Nations Under Secretary General of Humanitarian Affairs and Emergency Relief Coordinator, met with civil society activists in August in Jaffna, the meeting was marred by the heavy military presence. In an open letter, a number of civil society groups referring to the meeting held in the public library wrote that:

*“Our colleagues in Jaffna have also conveyed to us that on the day before your visit to Jaffna, the military commander called for a meeting at Palaly military headquarters, at which NGOs and civil society representatives were instructed not to refer to human rights issues and to restrict themselves to issues of humanitarian assistance during their meeting with you.”<sup>18</sup>*

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14. [http://www.unicef.org/infobycountry/files/UNICEF\\_SRI\\_LANKA\\_HAU\\_28\\_April\\_2009.pdf](http://www.unicef.org/infobycountry/files/UNICEF_SRI_LANKA_HAU_28_April_2009.pdf)

15. "Slaughter in Sri Lanka". The Times. 29 May 2009. Retrieved 5 Nov 2009.

16. Eg Sir John Holmes, United Nations Under Secretary General of Humanitarian Affairs and Emergency Relief Coordinator; Navanethem Pillay, United Nations High Commissioner for Human Rights, Ban Ki Moon, United Nations Secretary General; Walter Kaelin, Representative of the United Secretary General on Human Rights of Internally Displaced Persons, David Milliband, British Foreign Secretary.

17. <http://www.rabble.ca/comment/1026159/bob-rae-denied-entry>

18. An Open Letter to Mr. John Holmes regarding military interference in matters relating to civil society in Sri Lanka-  
[http://www.imadr.org/statement/human\\_rights\\_in\\_sri\\_lanka/an\\_open\\_letter\\_to\\_mr\\_john\\_holm/](http://www.imadr.org/statement/human_rights_in_sri_lanka/an_open_letter_to_mr_john_holm/)



## Tension with the West

The continued refusal of the GOSL to permit independent international observers access to the war zone and the camps appears to have strained the relations between the GOSL and the international community, particularly the Western countries. This split became obvious when in May 2009 the UN Human Rights Council rejected a resolution by a group of Western Nations<sup>19</sup> that called for 'rapid and unhindered access' for humanitarian aid groups including the ICRC and UN agencies to the war zones, and for the GOSL to investigate alleged human rights violations during the fighting. Instead, a counter resolution was passed praising the government of Sri Lanka for its commitment to Human Rights while also condemning the LTTE. The resolution<sup>20</sup> allows the government to let aid agencies have access to camps for the internally displaced "as may be appropriate." This was subsequently hailed in Sri Lanka as a victory by the government who were said to have acted as plucky minnows fighting the hypocrisy of large Western powers.<sup>21</sup> The government further reiterated that the conflict was a domestic matter that didn't warrant any outside interference.

However, Navi Pillay the UN High Commissioner for Human Rights in June 2009 repeated her earlier call for investigations into alleged violations of Human Rights. Additionally, the United States Department of State issued a report on the 22nd of October detailing 'incidents that may constitute violations of international humanitarian law or crimes against humanity' committed by both the GOSL and the LTTE.<sup>22</sup>

Despite heavy reliance on foreign funds, mostly from the Western countries, in the running of the camps, the demining of the former LTTE areas, the resettlement of IDPs and the reconstruction of the North, the GOSL has put in place very restrictive policies in regard to visa for foreign aid workers, and – as described earlier - expels dissenting foreigners.

In June 2009 the Norwegian head of FORUT, an Oslo-based NGO was deported, as she had stopped staff from raising a Sri Lankan national flag in their office to celebrate the defeat of the LTTE. Her basis was that FORUT should remain neutral.<sup>23</sup>

In July the International Committee of the Red Cross was forced to shut down two offices. Of these, the Batticaloa office, had been providing protection services, including following up allegations of abductions and extrajudicial killings.

The Government also recently announced new rules that prevent aid workers from staying in the country for more than three years and has allegedly refused visa extensions to scores of aid workers. Workers for several humanitarian groups, including Save the Children and Care International, have been forced to leave. Some of the International Human Rights organizations including Amnesty International have not been granted access to Sri Lanka at all.<sup>24</sup>

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19. Including the European Union Members, Canada, Argentina and Mexico

20. The resolution was tabled by Sri Lanka itself and other nations, including Brazil, China, Cuba and Egypt.

21. 'Sri Lanka forces West to retreat over 'war crimes' with victory at UN'

[http://www.timesonline.co.uk/tol/news/world/us\\_and\\_americas/article6375044.ece](http://www.timesonline.co.uk/tol/news/world/us_and_americas/article6375044.ece), May 28, 2009

22. The report is available at <http://www.state.gov/documents/organization/131025.pdf>

23. Aid workers forced to leave Sri Lanka under strict new visa rules. Times online June 3, 2009

<http://www.timesonline.co.uk/tol/news/world/asia/article6418015.ece>

24. Letter dated 2 June 2009 (Ref.: IOR 40/2009.099) written to the members of the Security Council by Yvonne Terlingen, Head of Amnesty International Office at the United Nations

These policies and incidences, together with the non-compliance with international law, risk to further strain the relationship with many Western countries. The tacit disregard for statements made by the international community, especially Western countries, and the stance that 'national security' trumps all other claims, illustrates an attitude of 'no accountability.' This stands in stark disharmony with the ideas of democracy and good government.

Thus the end of the conflict has left us with many loose ends, people to resettle, wounds to heal, reconciliation and rehabilitation to be facilitated, and the need for a tangible means of redress that have suffered as a result of the war. At the time of writing of this article, close to 170,000 people from the war zones were still being detained in 'welfare centres'. Others had been dropped with relatives or other places, without a perspective for the future, many unaware of the whereabouts of their family members. The grievances of these war victims need to be addressed, so that future conflicts do not arise.

## **Further Issues of Governance**

2009 has seen the continuation of trends that were observed in last years' TISL Governance Report. No decisive steps were taken to bring to end the prevailing culture of impunity and lawlessness. The President continued to directly appoint officers to the important commissions whose independence is crucial to the effective functioning of the public administration, judiciary and law enforcement agencies. In the legislative, parliamentarians continued to cross over, and in elections, misuse of state property was observed. 2009 saw the further strengthening of the already strong executive, and a standoff between the executive and the judiciary. As mentioned, the refusal to fulfil obligations under international conventions strained relations with the international community. Threats to the media and civil society continued unabated, and space for civil society and open debate shrunk to unprecedented lows. This part of this Chapter will attempt to examine some of the structures in place for ensuring good governance and consider the progress or regress made by Sri Lanka during the past year.

## **The Culture of Violence, Impunity and Lawlessness**

Most countries that have experienced protracted conflicts or have come through war generally see a rise in the trends of violence and lawlessness. Sri Lanka does not seem to be an exception. In the past year, specifically there has been a rise in abductions,<sup>25</sup> the modus operandi generally being the use of a white van. Despite heavy security and streets lined with checkpoints, none of these unmarked white vans have yet been apprehended. In this regard it is interesting to consider the case of the arrest of Nadesapillai Vithyatharan the editor of the Sudar Oli newspaper.

On the 26th of February 2009, the Editor of the Sudar Oli magazine, Vithyatharan was arrested by the police after attending a funeral. No warrant of arrest or reasons for arrest, were provided at the time of arrest. Although initially the Police spokesperson accepted that the Sudar Oli editor had been abducted, he subsequently issued a statement saying he had been arrested and was being detained for questioning. Thereafter the Defence Secretary in an interview with the

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25. [http://www.thesundayleader.lk/20080217/NEWS.HTM#Mysore\\_](http://www.thesundayleader.lk/20080217/NEWS.HTM#Mysore_)

Australian SBS TV channel on the 26th February 2009 stated, “Vithyatharan is a terrorist. If you try to safeguard him, you will have blood in your hands. He is the person who coordinated LTTE air attacks in Colombo.” The police subsequently produced Vithyatharan before a magistrate and released him on the 24th of April 2009, after two months detention, stating that they had no charges against him.

After the conclusion of the armed conflict the government embarked on a ‘war on the underworld’, resulting in numerous extra judicial killings of alleged members of underworld gangs.<sup>26</sup> These killings by the police are often said to be done in self-defence. Many of these killings allegedly occurred when underworld members were taken to a site by police to point out evidence, managed to “free themselves” and obtain the use of firearms or grenades and attempted to attack the police, thus occasioning retaliatory fire. None of these allegations however has been investigated.

The 29th of October saw one of the most brutal and public displays of police brutality to be captured on tape. Balawarnan Sivakumarto, a 26 year old mentally ill man was beaten and forced to drown to death by police in Bambalapitiya. He pleaded for his life as a crowd of over 100 looked on in horror. He had been throwing stones at a train. While this case is now being investigated, many believe that the investigation will result in a white wash, as has happened many times before.<sup>27</sup> Sivakumarto was the 23rd individual to die in police custody this year.<sup>28</sup> This does not count any deaths that occurred while the police were in viewing distance.

Violence against journalists continued and worsened in 2009.<sup>29</sup> Thirty-four journalists have been killed between 2004 and March 2009. None of these cases have been resolved, and no perpetrator has been brought to book yet. Murders such as that of Lasantha Wickrematunga, editor of the Sunday Leader have occurred in broad daylight in the close proximity of police and military checkpoints. In this case, typically, although investigations have commenced, no tangible progress has been made.

Another point in case is the dissolution of the Presidential Commission of Inquiry (COI)<sup>30</sup> that had been appointed in 2006 to investigate human rights violations. On the 16th of June 2009, the Sri Lankan President Mahinda Rajapakse dissolved the commission without the COI having completed the relevant investigations.

As reported in the TISL Governance Report 2008, the Commissions of Inquiry were making slow progress and the International Independent Group of Eminent Persons chaired by Justice Bhagwati, appointed to monitor the COI, had ceased to monitor them, stating that the COI’s were not being conducted in an impartial manner.<sup>31</sup>

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26. Charles Haviland, BBC News, Colombo, ‘Sri Lanka outcry over police brutality’ [http://transcurrents.com/tc/2009/10/post\\_445.html](http://transcurrents.com/tc/2009/10/post_445.html)

27. <http://www.wsws.org/articles/2009/nov2009/slkl-n11.shtml>

28. *ibid*

29. please see chapter entitled “Media Freedom in an Age of Fear”

30. The Commission of Inquiry To Investigate and Inquire into Alleged Serious Violations of Human Rights Occurring since 1st August 2005

31. Sri Lanka: Domestic Inquiry into Abuses a Smokescreen, UN Secretary-General Should Establish International Investigation, <http://www.hrw.org/en/news/2009/10/27/sri-lanka-domestic-inquiry-abuses-smokescreen>

## **The 17th Amendment to the Constitution and the Appointment of the Chief Justice**

The 17th Amendment to the Constitution, passed in 2001 intends to depoliticize the public sector by creating a Constitutional Council that nominates the members of the Election Commission, the Public Service Commission, the National Police Commission, the Human Rights Commission, the Bribery Commission, the Finance Commission, and the Delimitation Commission. These commissions are key pillars of the institutional framework for public sector governance in Sri Lanka. The Constitution through its 17th Amendment relegates the President to play the role of rubber stamping and approving the nominations to the Constitutional Council made by Parliament. However, in the period under review, the Constitutional Council remained defunct because the President consistently refused to appoint its members, despite the fact that all of the relevant nominations have been made this year. Instead, the President appointed individuals to the commissions and other key positions by himself. More specifically, appointments to high posts such as the Auditor General, the Attorney General, the Chief Justice, the Secretary General of Parliament, the Inspector General of Police, and the Ombudsman have been made in violation of the 17th Amendment.

The most significant appointment made this year by the President in contravention of the 17th Amendment was that of the current Chief Justice. By compromising the judiciary, it has now become unlikely to expect justice or a proper forum for investigating the legality of the appointments made by the President. An application was filed in the Supreme Court in August 2008 challenging the non-appointment of the Constitutional Council.<sup>32</sup> After much discussion and bargaining between the parties, the case has finally been taken up on the question of leave to proceed<sup>33</sup>, which is currently being opposed by the Attorney General on the basis of the Presidents immunity from suit. One year later, we still await a decision on this important constitutional issue.

## **Appointment of Unelected Members of Parliament**

In keeping with the current electoral system in place in Sri Lanka, Sri Lankans, when voting for their elected representatives in parliament, vote first for the party of their choice and then for the candidate of their choice. Accordingly, seats are allocated to parties and filled with the candidates with the highest preferential votes.<sup>34</sup> Bonus seats<sup>35</sup> are traditionally filled by members of the national list, which must be submitted to the Elections Commissioner within the nomination period<sup>36</sup> and should be displayed at the time of elections.<sup>37</sup> Thus, the current electoral system is based on the understanding that at the time of voting, the voters make an informed choice about the party they are voting for. This decision is based on the stated objectives and policy of the party, the list of candidates put forward by the party, and the people and policies they are voting against.

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32. SCFR 297/2008

33. Before arguing this case, the Petitioner has to be given 'leave to proceed'. It is only after this threshold stage is passed that the real issues are looked into. In giving leave to proceed, the court has to look at whether there is a serious question worth consideration and whether all necessary procedure has been complied with.

34. Welikala, Asanga 'Representative Democracy, Proportional Representation and Plural Society in Sri Lanka' The Electoral Reform Debate in Sri Lanka CPA 2008, Colombo

35. After the one hundred and ninety six members of Parliament have been declared elected at a General Election of Members of Parliament, the Commissioner of Elections shall forthwith apportion the balance twenty nine seats among the recognized political parties and independent groups contesting such General Election in the same proportion as the proportion which the number of votes polled by each such party or group at such General Election bears to the total number of votes polled at such General Election

36. Article 99A of the Constitution of the Democratic Socialist Republic of Sri Lanka

37. Welikala, Asanga 'The Principle of Nominated Legislative Membership and the National List: Developing Issues' The Electoral Reform Debate in Sri Lanka CPA 2008, Colombo

In the past few years, however, Sri Lanka has witnessed a flaw in this system of representative democracy, as seen through the phenomenon of 'crossing over'. Over the past few years a number of elected members of parliament have stated that they no longer agree with the policies of the party on which platform they had been elected and stated that they now wished to side with the other party. The electoral laws clearly state that in the event of any such member of parliament resigning from the party, on whose ticket he was elected, he would automatically lose his seat in Parliament.<sup>38</sup> However, this has not been the case, as these parliamentarians have not resigned from their party. Thus, those who voted for one party, either in the hope of giving that party a majority or of denying the other party a majority, suddenly find that their vote has been abused and that they have unintentionally voted for parliamentarians whose views or policies they do not support. It is interesting to note that no action has been taken against these errant parliamentarians by their respective parties.<sup>39</sup>

This easy switch of allegiances has resulted in the buying of Parliamentarians by the parties in the house in order to obtain a majority. The 2008 Governance Report<sup>40</sup> reported on many instances of ministry portfolios and high posts being given to 'crossing over' parliamentarians. One example of violation of voters' rights is the appointment of Vinyagamurti Muralidharan alias Karuna to Parliament, on the 6th of October 2008<sup>41</sup> made as a result of the resignation of a member of the Janatha Vimukthi Peramuna (JVP). The ruling party coalition, the United Peoples Freedom Alliance (UPFA) is a coalition of a number of parties including the JVP and the SLFP. The JVP joined the UPFA on the basis of a private agreement whereby five of the national list seats awarded to the UPFA would be given to the members of the JVP nominated by the JVP General Secretary.<sup>42</sup> The UPFA was elected on the promise of war against the LTTE.

At the time of the election, Col. Karuna was a commander of the Eastern arm of the LTTE. He was clearly not on the nationalist list submitted to the Commissioner of Elections ahead of the election and was therefore not eligible for appointment in terms of Article 99A of the Constitution.

Despite the above, however, and despite protests by the JVP, Col. Karuna was appointed as a Member of Parliament.<sup>43</sup> A few months later Col. Karuna was appointed as the vice president of the SLFP.<sup>44</sup>

This action flies in the face of representative democracy and highlights serious flaws in the electoral system. Voters will lose their trust in the electoral system and representative democracy, knowing that voter preferences come second to private interests.

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38. Article 99 (13) (a) of the Constitution

39. This is not to be confused with Members of Parliament who exercising their conscience vote, decide to vote in a manner different to that of their parties policy. This issue arises in instances where Parliamentarians decide to crossover in Parliament and to vote with the opposite side on all issues regardless of the view of the electorate they represent.

40. See Beling, S.A. 'Cracks in the Foundation' Sri Lanka Governance Report 2008, TISL, Colombo

41. Gazette Extraordinary No. 1570/1 dated 06.10.2008

42. Memorandum of Understanding between the JVP and the SLFP dated 20th January 2004

43. Gazette No. 1570/1 dated 06.10.2008

44. His appointment was challenged in the Supreme Court in SCFR 429/08 but was held to be permissible

## Provincial Councils Elections

Provincial Council Elections are scheduled to be held once in 5 years, unless a Provincial Council is dissolved by the Governor. This power is granted by the Constitution and qualified<sup>45</sup> with the statement: “The Governor shall exercise his powers under this paragraph [including the power of dissolution] in accordance with the advice of the Chief Minister, so long as the Board of Ministers commands in the opinion of the Governor, the support of the majority of the Provincial Council.”

Provincial Councils of the North Western Provincial Council and the Sabaragamuwa Provincial Council were prematurely dissolved by a proclamation of the Governor on the 9th of May 2008<sup>46</sup> and the 9th of June 2008<sup>47</sup> respectively (almost 14 months before their term expired). No reasons were given for the hasty dissolution of these Provincial Councils. Thereafter the Central<sup>48</sup> and North Western Provincial Council<sup>49</sup> was dissolved in December 2008 (approximately 8 months ahead of the expiry of the provincial council), followed by the dissolution of the Southern Provincial council in August 2009 (one month ahead of schedule).

The staggering of these elections resulted in great costs to the State. A lot of influence was exercised by the centre.<sup>50</sup> The Provincial Council elections were held in the absence of an Elections Commission as mandated by the 17th Amendment to the Constitution and were tainted by the illegal use of state resources and a biased state media.<sup>51</sup> In the run up to most of the elections People’s Action for Free and Fair Elections (PAFFREL) reported the abuse of the state media and, in certain provinces, the use of state owned buildings and vehicles for the ruling coalitions election campaigns.<sup>52</sup>

This premature dissolution of Provincial Councils and the undue influence exercised from the centre has left the Provinces with little faith in the devolution, as it is seen as the centre reinforcing its control over the Provincial Council. This is manifest in the Governments refusal to give land and police powers to the Eastern Provincial Council. In the past year, the Eastern Provincial Council has grown increasingly impatient about the non-implementation of the devolution of power, as stipulated in the 13th Amendment to the Constitution. In January 2009, Eastern Provincial Council Minister M.L.A.M. Hisbulla complained that he did not “have powers to appoint even a peon.”<sup>53</sup> Tensions between the Eastern Provincial Council and the Government heightened in August 2009 with the Chief Minister demanding (unsuccessfully) the removal of Governor Wijewickrema.<sup>54</sup>

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45. Section Article 154B(8) (c) and (d) of the constitution

46. Gazette Extraordinary No. 1553/6

47. Gazette Extraordinary No. 1553/7

48. Gazette Extraordinary No. 1579/1 – Monday December 2008

49. Gazette Extraordinary No. 1579/2 – Monday December 2008

50. [http://www.paffrel.lk/pdf/Letter\\_to\\_HE\\_President\\_\(Eng.JPG\\_PAFFREL\\_letter\\_to\\_the\\_President\\_of\\_Sri\\_Lanka,\\_written\\_by\\_Mr\\_Kingsley\\_Rodrigo,\\_Chairman\\_of\\_PAFFREL,\\_dated\\_25th\\_May\\_2008](http://www.paffrel.lk/pdf/Letter_to_HE_President_(Eng.JPG_PAFFREL_letter_to_the_President_of_Sri_Lanka,_written_by_Mr_Kingsley_Rodrigo,_Chairman_of_PAFFREL,_dated_25th_May_2008)

51. See the Final Report on the Elections for the North Central and Sabaragamuwa Provincial Councils, 23rd August 2008, PAFFREL

52. *ibid* and the Final Report on the Election for the Eastern Provincial Council, July, PAFFREL

53. [http://www.thebottomline.lk/2009/01/07/asiseeit\\_col.htm](http://www.thebottomline.lk/2009/01/07/asiseeit_col.htm)

54. [http://sundaytimes.lk/090823?News?nws\\_01.html](http://sundaytimes.lk/090823?News?nws_01.html)

## The Tussle between the Executive and the Judiciary

With the appointment of the new Chief Justice, a new area has started. The judiciary under the leadership of the previous Chief Justice Sarath N. Silva had been considered to be highly political. The International Bar Association Human Rights Initiative (IBAHRI) in their May 2009 report stated that: "The IBAHRI is saddened to hear that in 2009 the politicization of the judiciary continues. Indeed the IBAHRI found that the judiciary is currently vulnerable to two types of political influence, from the Government and from the Chief Justice himself. The extent and type of influence oscillates between the two and depends on the relationship between the Chief Justice and the Government at any point in time."

The IBAHRI report further pointed to the excessive influence of the Chief Justice over other members of the judiciary who were reluctant to give any dissenting opinions. Indeed, 2009 did not result in any judgments that dissented with Chief Justice Sarath N Silva. As reported by the IBAHRI however, 2009 did witness many populist judgments being given, some of which were in conflict with the objectives of the executive and were blatantly ignored by the latter.

In this regard it is important to consider the cases of *Wegapitiya v Fowzie and Others*<sup>55</sup> (the hedging case) and the case of *Vasudeva Nanayakkara v K.N. Choksy*<sup>56</sup> (the LMSL case).

In the hedging case, the petitioners petitioned court on the basis that oil-hedging agreements entered into between the state-owned Ceylon Petroleum Corporation (CPC) and Standard Chartered Bank, CitiBank, Deutsche Bank and two local banks were one sided and heavily in favour of the banks. As a result, the CPC owed these banks more than 800 million US dollars in hedging payments.

In November 2008, the Supreme Court stayed payments by the CPC to the banks and suspended the CPC chairman pending the completion of the case. Subsequently, on the 17th of December 2008, the Court ordered the Government to reduce petrol prices to Rs 100 (0.8 US dollar) per litre from Rs 122 (1.07 dollars) a litre after the petitioners complained that the CPC had not reduced prices despite world crude prices falling.<sup>57</sup>

When the case was taken up thereafter, the Treasury Secretary informed the court that the Cabinet of Ministers, having considered the court ruling, had taken measures to grant concessions to a wider section of consumers by reducing the price of diesel and kerosene as well as to bring down the petrol price by Rs 2. The Treasury appeared not to show any willingness to comply with the order of court.

Subsequently, Chief Justice Sarath N. Silva stated that an order of court must be complied with in terms of Article 118 of the Constitution, and granted further time until the 27th of January, stating that if the Government wants to grant concessions to a wider section of the consumers, it should make submissions before the court for such consideration.<sup>58</sup>

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55. SCFR 536/2008

56. SCFR 209/2007

57. <http://www.ipsnews.net/news.asp?idnews=45594>

58. The Financial Times, Sunday 18th 2009

When the case was taken up on the 27th of January, however, the State sought further time. This resulted in the Supreme Court terminating proceedings stating that the Government was no longer implementing court orders on the issue.

This stand off between the executive and the judiciary resulted in huge financial loss to the country. In particular, as a result of the absence of a judicial order staying the hedging agreement, Sri Lanka was obliged to make payments to the relevant banks. More seriously, however, it precipitated a further loss of trust in the government.

## **The Usurpation of Power by the Judiciary**

A question has often arisen as to how unelected judges are given power to make pronouncements on the acts of elected officials. This question is traditionally answered by stating that the power given to judges is by virtue of the Constitution and that judges merely evaluate laws, and executive administrative action to ensure that such actions are in line with the Constitution. Judges are, therefore, not expected to lay down policy or to usurp the functions of the executive or administration, but merely to ensure that their actions comply with the law.

As reported by the IBAHRI, the Sarath Silva court tended to be somewhat populist towards the end of his tenure. Locus Standi (the right to address the Court on a matter before it) was extended to include any executive or administrative action that is considered irrational, which permitted the Supreme Court to look into and pronounce on many popular executive or administrative issues. A few examples are the cases dealing with Sand Mining and the Disposal of Garbage.<sup>59</sup> Although these cases were filed by the Petitioners seeking relief on specific issues, the Supreme Court proceeded to inquire into and monitor the functioning of the relevant authorities after granting the relief sought by the Petitioner. Thus in the case regarding the disposal of garbage, the Supreme Court continues to monitor the selection of alternate garbage disposers, the criteria set out by the Colombo Municipal Council, and also to evaluate subsequent complaints made by residents.

This is also seen in the Ceylinco Cases<sup>60</sup> where the court proceeded to consider and indeed facilitate settlements between parties, even going so far as to grant bail in the Supreme Court itself, and to create a Special Purpose Vehicle for the transfer of assets and liabilities of private companies; all in the course of a fundamental rights application.

While the motivation behind these orders seems to be the best interests of the public and a genuine desire to avert a financial crisis, questions can be raised as to whether the steps taken by the courts are within the judicial powers of courts.

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59. SCFR 218/09

60. SCFR 191/09 and SCFR 317/9



## **A Landmark Judgment on Privatization**

During the past year many complaints regarding corruption in the process of privatization of state owned institutions have been canvassed in court. A significant judgment delivered, during the period under review, in this regard was the judgment relating to the Privatization of the Sri Lanka Insurance Corporation (SLIC). In this case it was held that the Secretary to the Treasury in selling the shares of the Insurance Corporation had bypassed the mandatory Cabinet Appointed Tender Board and had constituted a tender board without Cabinets concurrence. Further the Insurance Corporation had in fact been sold to a company that was not in existence at the time of the bidding for privatization. Court, therefore, held that due to the corruption and fraud involved the Share Purchase Agreement for the sale of 90% of the shares of SLIC was null and void. This attitude of non-tolerance of corruption by the Supreme Court has sent a clear message to public officers in general. Further, the Supreme Court's insistence on holding public officials personally responsible for decisions taken or approved by them has resulted in establishing a much needed sense of accountability in the public sector.

## **The Asoka de Silva Court and Judicial Reviews**

With the retirement of Chief Justice Sarath N. Silva many litigants sought to have decisions given by the Sarath Silva court reviewed. Many of these were refused. A significant case in relation to the concept of good governance however is the case of Vasudeva Nanayakkara v N.K. Choksy P.C.<sup>61</sup>

The case surrounded the illegal sale of land to the Lanka Marine Services by Sri Lanka's Ports Authority. In terms of the judgment given in the said case, the Secretary to the Treasury P. B. Jayasundera who had facilitated the deal was criticized and sanctioned for wide scale corruption<sup>62</sup> Thereafter the said Secretary to the Treasury tendered an unreserved apology to court for continuing to hold public office after the judgment was delivered,<sup>63</sup> and filed an Affidavit in court stating that he would not hold public office thereafter.

After the retirement of Chief Justice Sarath N. Silva, the former Secretary to the Treasury filed papers in the Supreme Court seeking to withdraw his Affidavit and to be released from the undertaking given to court. The case was heard on the 24th of September 2009 by a seven-judge bench on the question whether the former secretary could withdraw the previous affidavit submitted to court. By a majority decision, an order was made stating that as the President was the appointing authority in terms of Article 52 of the Constitution he would be free to appoint Jayasundera to the post of Treasury Secretary and Finance and Planning Ministry Secretary.<sup>64</sup>

Chief Justice Asoka de Silva stated "I am disturbed by the fact that the so called affidavit was prepared and filed at the instance of the Supreme Court. Not only the petitioner was directed to file an affidavit, but the Supreme Court also dictated its contents. It seems to me that the order to file an affidavit, the contents of which are at the dictates of court, amounts to an order made in excess of jurisdiction..."<sup>65</sup> P.B. Jayasundera was subsequently appointed to the aforementioned

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61. SCFR 209/2007

62. SCFR 209/2007 judgment dated 21st July 2008

63. SCFR 209/2007 journal entry of 8th October 2008

64. SCFR 209/2007 journal entry of 24th July 2009

65. SCFR 209.2007 SCM 29.09.09- per de Silva CJ at page 6

post by the President on the 28th of September 2009. The issue that remains is thus not whether there was a legal impediment for his appointment but whether a person whose integrity has been questioned and who has been found guilty and paid a fine for fraud while in public office by the Supreme Court should be appointed by the Head of the State to the position of Secretary to the Treasury, which is a post that naturally requires a high level of trust and integrity.

## **Conclusion**

Clearly, the end of the armed conflict is the one event in the last year that has made a big difference to all Sri Lankans. For the first time in decades, there is a chance for peace and development. However, when it comes to governance, most of the outstanding issues of the previous year have not been addressed. The Constitutional Council remains un-appointed, the independence of public institutions has continued to be compromised and the lack of faith in representative democracy continued. Additionally, there seems to be a growing trend of an overall lack of accountability. This has resulted in the judiciary overstepping its boundaries and in the Executive refusing to be controlled by the Judiciary and a general disregard for the Constitution.

With the increase in abductions and killings in public, the rise of police brutality and the lack of fruitful investigations, civil society has been cowed into silence. Furthermore, the media freedom is at greater risk than ever, and draconian laws such as the Prevention of Terrorism Act have been used to stifle dissent.

Accountability mechanisms do exist—the system in which they are meant to function, however, does not. Now that the war is over and the obsession with security should be waning, it is time that the country makes a concerted effort to give effect to the accountability mechanisms that already exist and to strive to achieve higher standards.

Sri Lanka is at the crossroads. We are at a time when there is still hope for rebuilding and reconstructing this island in all its glory. But this task cannot be left to politicians and the Executive alone. Indeed, it will require the active participation of civil society. If we do not hold our government accountable, and do not participate in the governance of our own affairs then we cannot expect honesty, integrity, and a corruption free society. Civil society has been sidelined and has been taught to believe that dissent is akin to treason and non-patriotism. We have lived so long in a time of war that we are unsure how to proceed in a time of peace. But Sri Lanka can only be saved by the emergence of an active and participatory civil society that holds its government accountable. We must be mindful that as so aptly articulated by Mark Twain “Patriotism is supporting your country all the time, and your government when it deserves it.”

# Transparency and Accuracy of Central Bank and Treasury Data

## Transparency International Sri Lanka

Accurate and timely information is crucial to decision making. In theory, asymmetry of such information, where one party has the information while the other does not, leads to suboptimal, and in some instances, disastrous outcomes. In a market economy like Sri Lanka's it is critical that information is made publicly available so that the private sector, which drives the economy, can make the right decisions. It is equally important to households for making decisions on a range of topics, including taking a housing loan or a pensioner investing income in a long-term security. In practice, the absence of any statutory compulsion in provision of necessary and relevant information to the public has led to delinquency and selectivity in reporting crucial activities. This has adversely affected the public's right to know, leading to numerous negative consequences for the stakeholders of the economy. Furthermore, observers have raised serious allegations that the Central Bank (CB) and the Treasury have not only restricted information, but purposefully altered data so as to deceive the Sri Lankan public. It is crucial that these errors of omission and commission are remedied in the future. In this way, Sri Lanka has an urgent need for a public information act where the government is compelled to reveal information to the people.

### Data Disclosure has Improved

With the reforms implemented by the former governor A S Jayawardena (1995-2004), the Central Bank made a significant shift towards disclosing monetary policy related data. The weekly 'economic indicators' has made available not only CB data but also data from fiscal authorities—revenue and expenditure data is available, for instance. This process increased the usefulness and credibility of the data. However, the CB can do better by publishing a monthly balance sheet as done by the Bank Negara Malaysia.<sup>1,2</sup> Publishing such a balance sheet would greatly add to transparency of the CB and raise levels of trust in the public. A serious point of departure from the above, however, was seen during the 2008 balance of payments crisis when the CB seemed to have delayed and created confusion regarding external reserve data. Specifically, when foreign reserves (external assets) were falling, loans given by the Central Bank to domestic banks were reported as part of the external assets stock. This was far from standard practice.

### Standards can be Followed for Better Transparency

Adherence to the International Monetary Fund's (IMF) special data dissemination standard (SDSS) requires the publication of a monthly foreign reserve liquidity position—something that other East Asian countries such as Singapore and Malaysia do.<sup>3</sup> Adhering to such a standard would help improve the quality of reserve data in the future, and again bolster confidence.

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1. [http://www.mas.gov.sg/data\\_room/reserves\\_statistics/International\\_Reserves\\_Foreign\\_Currency\\_Liquidity.html](http://www.mas.gov.sg/data_room/reserves_statistics/International_Reserves_Foreign_Currency_Liquidity.html)

2. <http://www.bnm.gov.my/index.php?ch=12&pg=293>

3. <http://dsbb.imf.org/Applications/web/sddshome/>

## **Exercising Moral Suasion of a Different Type**

In April 2008 the Colombo Consumer Price Index (CCPI) compiled by the Department of Census and Statistics, which measures the effectiveness of CB monetary policy in terms of inflation and the stability of the price levels in the economy, was abruptly discontinued after inflation reached 29.9 percent. Then a revised index was released to the public called the new CCPI. While the new CCPI did take in to consideration changes in the consumption basket of the selected population, it strangely and unprecedentedly dropped the standard consumption group "Alcoholic beverages, tobacco and narcotics" under the United Nation's 'Classification of Individual Consumption by Purpose' or COICOP.<sup>4</sup>

According to media reports, officers of the Census and Statistics Department have given the excuse that the expenditure group was dropped due to a government policy against the use of intoxicants. Critics have countered saying that dropping the standard consumption category such as alcohol and tobacco (which attract high government taxes and tends to increase year on year) will tend to understate the reported inflation number.

## **The Oil Hedging Fiasco**

Leading up to the now infamous oil hedging fiasco where the Ceylon Petroleum Corporation (CPC) is reported to have lost several hundred million dollars, the CB played a leading role in publicly encouraging the CPC to use risky derivative instruments to hedge or fix oil price import costs. This was done even though the CPC did not have a pricing policy that allowed it to match the fixed costs, exposing it to price risk and the subsequent massive losses. In addition to exposing the CPC to losses, this transaction also created a large external liability to the country.

## **IMF Funds for Development?**

Having found the economy in an unsustainable balance of payments crisis due to accommodating monetary policy to support a profligate fiscal program which had been worsened by the faltering external environment, the government approached the IMF for a bailout amounting to a USD 2.6 billion stand-by facility. This loan was requested (and later granted) specifically for balance of payments support and not for any development activity.

However, the CB was involved in a controversy over statements it made after entering into negotiations with the IMF for creating the impression that the money would be used for reconstruction in the North and East, something this money was never intended for.

One particular statement dealt extensively with reconstruction needs of the Northern and Eastern provinces. Specifically, indicating that there was an "immediate need for a large quantum of external financing," which was an essential expenditure and that global financial conditions were not conducive to mobilize the required level of external financing. The statement said the IMF's facility for balance of payments support would supplement the government's efforts to stabilize the external sector performance. "Such funds would be used to finance the new needs as well as to bridge any gap that may arise due to the global financial crises," the statement said.<sup>5</sup>

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4. <http://unstats.un.org/unsd/cr/registry/regcst.asp?Cl=5&Lg=1>

5. CB Press Release. 2009-03-04

In addition, the Governor of the CB is on record saying the same. For instance the BBC reported on July 3rd 2009 "the Sri Lankan Central Bank Governor said the money would also be used for post-war reconstruction of [the] Northern and Eastern Provinces."<sup>6</sup>

## **IMF Reports Suppressed**

A very serious suppression of information has started from last year with the authorities suppressing economic reports issued by the International Monetary Fund. The 2008 economic report following the annual Article IV consultations have not been revealed to the public. Neither have the IMF staff economic reports that explain the rationale for a recent 2.6 billion rupees stand-by loan. Similar reports have been released in other countries, including in South Asian countries such as Pakistan. At a press conference in September 2009 the head of an IMF mission to Sri Lanka confirmed to the press that the report was suppressed by a government decision.<sup>7</sup> It is clear that established norms of transparency are being reversed which is a serious concern.

## **Data Transparency at the Finance Ministry is Poor**

Besides the CB, information from the Treasury is very poor, though a greater volume of information has been made available to the public under the Fiscal Management (Responsibility) Act. For instance, in the 2008 annual report (which was started as per the Fiscal Management Responsibility Act) there is no mention of the losses from Mihin Lanka, a new state airline that is known to have lost billions, though enterprises that made smaller losses were listed.

## **Are Budget Numbers Fudged?**

The budgets, particularly revenue, have been very much off target in recent years. So much so that it raises questions about whether the data is deliberately presented to mislead the public and Members of Parliament.

Under the monetary law governing the Central Bank, the government can obtain a 'provisional advance' of central bank credit from the monetary authority up to 10 percent of the government's projected revenue. By projecting higher than expected revenue numbers, the government has been able to get larger 'advances' or Central Bank credits. Separately this provision in Sri Lanka's monetary law has been criticized as a source of high inflation and economic instability.

For example, the budget for the year 2007 projected 599.8 billion rupees as revenue. Surprisingly, in November 2007, with weeks to go to end the year, Parliament was told that revenue would be higher than projected or 605 billion rupees. Such practices can help the government avoid criticism. However, the later data revealed that only 565.05 billion rupees of revenue was collected.

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6. [http://www.bbc.co.uk/sinhala/news/story/2009/03/090307\\_imf.shtml](http://www.bbc.co.uk/sinhala/news/story/2009/03/090307_imf.shtml)

7. <http://www.lankabusinessonline.com/fullstory.php?nid=1503133493>

Notwithstanding this situation, the 2008 budget projected revenues of 750 billion or an incredible 32 percent higher than the previous year. Again in November 2008, with just weeks to end the year, Parliament was told that revenues would be 709.3 billion rupees, or about 40 billion rupees off target.

But the final out turn was later revealed to be 655.2 billion. This was 95 billion rupees off the original target presented a year earlier, and 45 billion rupees off the target presented to Parliament with just three weeks of the year to go.<sup>8</sup>

While this miscalculation most probably occurred as a result of the unrealistic revenue projections made by the government, it still seems incredible that the technical competency of the Treasury could be so bad that they were incapable of discovering a 45 billion rupee discrepancy—especially with only three weeks to end the year.<sup>9</sup> More importantly perhaps is the question of who should take responsibility for such glaring lapses, as well as what remedies should be put in place to ensure that history does not repeat itself.

### **Tax by Midnight Gazette**

Sri Lanka has also evolved a process where taxes on various goods and services, especially foods that affect the nutrition of children are changed without debate in Parliament by midnight gazette. An important issue of democratic governance is to let people know the burden of their taxation. Sri Lanka's tax laws also actively promote hiding the burden of taxes from the people. Sales taxes such as value added tax (VAT) are not required to be shown to the general public but only to businesses registered for VAT. Other sales taxes such as Business Turnover Taxes are also not shown in invoices. Provisions which create the deception that a government can raise money to spend without taxing the people should be removed.

There should also be an urgent requirement to publish changes in import taxes in the newspapers. Thereafter, the current practice of raising import duties by gazette overnight, particularly on food items, without any debate in Parliament must be reviewed.

### **Public Information Act**

It is in this context of asymmetry, deliberate misinformation and even fudging the data that Sri Lanka needs legislation towards creating a compulsion where the government has to reveal information to the people. A Public Information Act will certainly go a long way in reducing the existing inefficiencies in the market and help individuals, households and businesses make informed decisions in a transparent environment.

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8. Budget figures from Ministry of Finance and CB Annual Reports 2007 and 2008

9. *ibid*

# Governance Crisis in the Financial Services Sector

## Transparency International Sri Lanka

Sri Lanka's financial services sector was engulfed in crisis during 2008-2009 as glaring weaknesses in the regulatory framework and its implementation triggered the collapse of deposit-taking institutions that had for years mobilized funds from the public without Central Bank oversight.

The crash of these companies, including some owned and managed by one of the country's largest and most prestigious corporate houses, Ceylinco Consolidated, destroyed public confidence in the entire sector and caused a liquidity emergency for finance companies that confronted an avalanche of withdrawal requests from investors. Even at the end of 2009, customers of failed Ceylinco companies said they were unable to redeem the totality of their savings despite wanting to do so.<sup>1</sup> It appears that this crisis could have been averted if the Central Bank had carried out its functions more effectively. These functions include the maintenance of the financial system to ensure stability by establishing the required legal framework, regulating and supervising key categories of financial institutions, maintaining stability in key financial markets, overseeing the payments and settlements system, and acting as lender of last resort.<sup>2</sup>

Thousands of investors lost their money and financial system stability was seriously compromised, affecting the country as a whole. Finance companies regulated by the Central Bank serve small and medium scale entrepreneurs with money raised from public deposits. Their role in the economy—lending to the subprime sector which banks ignore due to small loan sizes and their inability to present clear plans—is vital especially for the small and medium scale sector.<sup>3</sup>

Errant deposit-taking entities, it was found, had run their businesses by exploiting loopholes in the Finance Companies Act of 1988 to evade Central Bank directives. Among other stipulations, these regulations require every finance company to maintain a ten percent (it was 15 percent before the crisis) minimum holding of liquid assets—government Treasury Bills, bank deposits or cash—at any given time. They also mandate companies to furnish monthly to the Central Bank a statement certifying their total deposit liabilities and liquid assets.<sup>4</sup>

The most significant shortcoming of this regulatory framework is that directives issued by the Central Bank apply only to finance companies registered under Section 2 of the Finance Companies Act and not to others. When unregistered companies collapse, however, the negative consequences are suffered by the entire sector including those that complied with legislation.

This is what transpired in 2008-2009. Owing to a ripple effect, finance companies around Sri Lanka grappled with a massive loss of public confidence. Customers lined up to take out their savings and to place them with banks. The withdrawal rate of finance companies rose. Where usually 90 percent of existing deposits of finance companies were renewed, this rate dropped to

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1. Author interviews with two investors of Ceylinco Grameen and Golden Key on November 21, 2009.

2. Central Bank of Sri Lanka. [http://www.cbsl.gov.lk/info/05\\_fss/fss.htm](http://www.cbsl.gov.lk/info/05_fss/fss.htm)

3. Kulamannage, Shamindra. "Cash Management", *Lanka Business Online*. Mar. 20, 2009.

<http://www.lbo.lk/fullstory.php?nid=859376516>

4. Central Bank of Sri Lanka. [Http://www.cbsl.gov.lk/pics\\_n\\_docs/09\\_lr/\\_docs/directions/snbfi/L\\_D\\_1\\_2009.pdf](Http://www.cbsl.gov.lk/pics_n_docs/09_lr/_docs/directions/snbfi/L_D_1_2009.pdf)

60 percent and was even lower for some. According to Shirley Perera, Chairman of the Finance Houses Association (FHA), the health of a finance company can be measured by its rate of renewal – the higher the rate of renewal and the lower the rate of withdrawal, the steeper the level of public trust in that company.<sup>5</sup>

As confidence plummeted and withdrawals rose, finance companies, both registered and unregistered, faced severe liquidity constraints. It became difficult to meet the demands of customers who wanted their money back quickly. The small and medium-sized companies were particularly affected. The finance company sector was in serious trouble and the indicators were proof of it.

One of the main parameters by which a finance company measures its stability is the deposit base. High intake of deposits ensures that the company is able to make sizeable investments. Another important aspect is good cash flow management, for which deposits and loan recoveries must be high. A company with a healthy cash flow is able to handle withdrawal requests in an immediate manner. In general, non-performing loans must be maintained at less than six percent. Meanwhile, net income could vary due to reasons such as return on investment and the manner in which management costs are handled.<sup>6</sup> The financial data of The Finance Company (TFC) during the period under review shows how it was affected by the crisis.

In a statement issued in October 2009, TFC said its public deposit base, which stood at 30 billion rupees on December 31, 2008, fell to 27 billion rupees as of March 31, 2009. Net income was down by a whopping 69.5 percent to 984 million rupees and net revenues shrunk almost 6.0 percent to 10.6 billion rupees from 2007. Loan loss provision had shot up 232.4 percent to 635 million rupees compared with the same period the previous year. The management said the real estate sector, a key contributor to the company's trading income, decreased by 52 percent. Loan recovery was affected by the economic downturn and “unsettled” conditions in the company during the last quarter of the financial year ended March 31, 2009. A former unit of Ceylinco Consolidated, TFC was acquired in October 2009 by the Merchant Bank of Sri Lanka. Earlier, MBSL was appointed by the Central Bank to restructure the company.<sup>7</sup>

The turmoil prompted President Mahinda Rajapaksa to intervene. In January 2009, he summoned a meeting of the heads of registered finance companies and assured them of state assistance. In February, the Central Bank announced a 4.2 billion rupee stimulus package to relieve the stress in regulated finance and leasing companies.

Among other things, the stimulus package aimed to assist registered finance companies with their liquidity issues by making provisions for Lankaputhra Development Bank to acquire any property these institutions wanted to dispose of at 67% of the market value. The government also undertook to provide a guarantee for licensed banks and approved funding institutions in respect of any facilities provided to registered finance companies. The Central Bank also said it would request all licensed banks to continue their business with registered finance companies in a “normal manner”. The regulator hoped that these and other measures envisaged by the stimulus plan would help ease liquidity pressures.<sup>8</sup>

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5. Author interview on November 23, 2009.

6. Author interview with Premakumar Fernando, former Director CEO of Commercial Credit Ltd, on Nov. 24, 2009

7. “Big Number”, *Lanka Business Online*. 21 Oct. 2009 <http://www.lankabusinessonline.com/fullstory.php?nid=1827494080>

8. Central Bank of Sri Lanka. Apr. 22, 2009. [http://www.cbsl.gov.lk/pics\\_n\\_docs/09\\_lr/\\_docs/directions/snbfi/D\\_D\\_3\\_2009.pdf](http://www.cbsl.gov.lk/pics_n_docs/09_lr/_docs/directions/snbfi/D_D_3_2009.pdf)



The last time the Central Bank had to step in to stabilize the non-banking financial sector was in the 1980s when a number of finance companies were subjected to severe financial distress. State intervention in the form of re-financing facilities extended to 12 failed companies in the period 1987-1994 amounted to 2.3 billion rupees.<sup>9</sup>

But despite wide publicity being given to the 2009 package, FHA Chairman Shirley Perera said not a cent was disbursed.<sup>10</sup> Calling it a “myth,” he explained that there were so many conditions attached to the bailout that nobody used it.

As far back as March 2009, Perera was quoted in the *Sunday Times FT* as predicting that most finance and leasing companies, particularly large institutions like Central Finance and Lanka Orix Leasing Company (LOLC), are unlikely to avail themselves of the stimulus package. He said most companies were not as heavily involved in real estate as Ceylinco companies were and would rather sell their property on the market and get full price as opposed to the 67% being offered in the package. He also pointed out that companies who may want to avail themselves of certain parts of the plan would still be subject to all the conditions including remuneration cuts for the board of directors. This showed, in effect, that the stimulus package offered by the government was neither practical nor useful to the affected parties.

The FHA says it was only towards the second half of 2009 that the financial sector started recovering from the battering it had received. Perera asserted that this was not directly connected to the stimulus package but due to the public slowly regaining confidence in the sector.<sup>12</sup>

In November 2009, Perera also told *Sunday Times FT* that “things are improving” because banks had dramatically cut interest rates to around eight percent and, with finance companies offering seventeen or eighteen percent interest on deposits, senior citizens and depositors dependent on interest income were likely to invest in finance companies again. He also said the Central Bank’s announcement that it intends to introduce a deposit insurance scheme will build trust levels.<sup>13</sup>

## The Sakvithi Fiasco

Sri Lanka's unauthorized deposit-taking firms were able to attract large volumes of cash after 2004, when interest rates in the formal banking system fell below inflation as the government printed money to finance an expanding budget deficit. Financial intermediation in Sri Lanka is governed by two statutes, the Banking Act of No. 30 of 1988 and the Finance Companies Act No. 78 of 1988. Finance business cannot be carried out without a license issued by the Central Bank’s Monetary Board.

The crisis first erupted in September 2008 when a fraudster named Sakvithi Ranasinghe fled the country after defrauding thousands of people of their money. For several weeks following his

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9. Special Report – Finance Companies in Sri Lanka. Fitch Ratings Lanka Ltd. Oct. 26, 2007.

[http://www.fitchratings.lk/doc\\_view.php?doc=21\\_1](http://www.fitchratings.lk/doc_view.php?doc=21_1)

10. Interview with author on Nov. 13, 2009

11. Gunaratne, Natasha. “Ceylinco assets sales restrained by court”, *The Sunday Times FT*. Mar. 15, 2009.

<http://sundaytimes.lk/090315/FinancialTimes/ft300.html>

12. Interview with author on Nov. 23, 2009

13. “Finance Cos. expect better times after banks cut rates”, *The Sunday Times FT*. Nov. 15, 2009.

<http://www.sundaytimes.lk/091122/FinancialTimes/ft03.html>

unexpected departure, depositors queued up at the Mirihana Police Station to lodge their complaints at a dedicated desk. Ranasinghe's primary business was conducting English tuition but he had illegally mobilized deposits from the public promising a monthly interest of seven percent. This worked out to an impossible 84% annual interest; to remain viable he would have had to made a return of more than 90%.<sup>14</sup>

It was found that Ranasinghe had run five different businesses from housing construction to car rental. None of them were "finance" companies but he had collected millions of rupees in deposits without registering this operation with the Central Bank.

## More Irregular Financial Institutions Exposed

The Monetary Board of the Central Bank reacted to criticism over poor regulation by immediately declaring six more finance companies as illegal for engaging in unauthorized transactions with depositors. Ironically, one of them was Sakvithi House Constructions which by then had already collapsed.<sup>15</sup>

Clients swamped the offices of these financial institutions, demanding their deposits back. Some unregistered institutions were even found to be operating under the cover of cooperative societies. Among the deposit-takers blacklisted by the Monetary Board was a financier in Hungama named Piyadasa Ratnayake who went by the colourful moniker 'Danduam Mudalali' which literally translates as 'punishment businessman'.<sup>16</sup>

Ratnayake became the next big story in financial scams in 2008. He had started out by lending money to fish retailers on a daily interest rate. As his business grew, he mobilized deposits from others and re-lent this money, also promising seven percent a month as interest to his depositors. At the time he was put on notice by the Central Bank, he had accepted deposits of more than Rs 50 million.

Attracted by the apparently easy manner in which he was getting deposits, Ratnayake had also spawned several copycat financiers. In October 2008, he was arrested on complaints made by his investors and charged with operating an unauthorized financial institution by receiving cash deposits from the public promising high interest rates. In May 2009, while out on bail, Ratnayake was abducted and killed by an armed gang.

## Ceylinco Owned Financial Institutions Tumble

In December 2008, there was a run on the unregulated Golden Key Credit Card Company, a member of Ceylinco Consolidated. The company's downfall came when an increasing number of anxious depositors—starting from the Sakvithi scandal and 'word of mouth' information that Golden Key was also in trouble—triggered a large-scale fund withdrawal which the company could not meet.<sup>17</sup>

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14. Wijedasa, Namini. "Central Bank lethargy helps Sakvithi bolt", p. 6, *Lakbimanews*. Oct. 5, 2008.

15. Conduct of Finance Business by Unauthorized Persons. Central Bank of Sri Lanka. Sept. 25, 2009. [http://www.cbsl.gov.lk/pics\\_n\\_docs/02\\_prs/\\_docs/notices/notices%20to\\_public\\_20080925e.pdf](http://www.cbsl.gov.lk/pics_n_docs/02_prs/_docs/notices/notices%20to_public_20080925e.pdf)

16. Sirimanne, Asantha. "Danduam Fever: Protests in Sri Lanka Ponzi capital", *Lanka Business Online*. Sep. 26, 2008. <http://www.lankabusinessonline.com/fullstory.php?nid=629165733>

17. Sirimanna, Bandula. "Ceylinco to sell Seylan shares to pay Golden Key depositors", Dec. 28, 2009. [http://sundaytimes.lk/081228/News/sundaytimesnews\\_02.html](http://sundaytimes.lk/081228/News/sundaytimesnews_02.html)

It was found that Golden Key had bypassed the Central Bank's Monetary Board by setting up an operation that fell outside the purview of the Finance Companies Act. The company had accepted money and issued credit cards to the depositors on the premise that they could use those cards up to the value of their investment. The depositors were paid high interest on the money they did not utilize through their credit card. The monies invested with Golden Key had been grossly mismanaged, leading to a crisis that reopened the debate on unregulated deposit-taking.<sup>18</sup>

In January 2009, the Attorney General's (AG's) Department informed the Mount Lavinia Magistrate's Court which was hearing into the action filed by Golden Key depositors that fourteen billion rupees had been misappropriated while five billion rupees had gone missing from the company. It was also revealed that, out of 26 billion rupees—said to be the amount of money deposited at Golden Key Credit—six billion rupees had been invested in other related companies while one billion rupees were used for "illegal payments".<sup>19</sup>

Within weeks of the Golden Key collapse, a string of other deposit-taking Ceylinco firms defaulted on payments. Pressure grew on Ceylinco Consolidated Chairman Lalith Kotelawala to refund Golden Key investors. On December 27, 2008, he announced unexpectedly that he was divesting the stake of his Ceylinco Consolidated in Seylan Bank as he needed the money to settle depositors at his credit card company.<sup>20</sup> This compounded uncertainty in the financial sector, forcing the Central Bank to take over Seylan Bank through fears of a run on that institution. Seylan was later handed over to the state-run Bank of Ceylon for management, its board of directors dissolved and a new board installed.<sup>21</sup>

F&G Property Developers (Pvt) Ltd and F&G Real Estate Co. Ltd, two more Ceylinco companies, fell into a liquidity crisis due to the increased number of withdrawals. Both were unregulated by the Central Bank, though the parent firm, Finance and Guarantee Company (F&G) Ltd, was a registered finance company. Despite not being authorized by the Central Bank to do so, F&G Property Developers and F&G Real Estate had also accepted fixed deposits under a 'return on investment' scheme. Officials of the F&G Group, when contacted by *Daily Mirror Financial Times*, said they had been accepting funds from people as both F&G Real Estate and Property Developers. Related entities were operating mega scale apartment projects and real estate projects which they claimed had been "a solid investment opportunity for the last 20 years".<sup>22</sup>

As investor confidence hit new lows, emotions ran high. In one incident on February 18, 2009, around 100 depositors of Finance & Guarantee Co Ltd (F&G) stormed its office at Duplication Road, Colombo 3, demanding the repayment of their deposits. Some were so angry they smashed the glass doors. Depositors interviewed by *The Sunday Times FT* said they had visited the F&G office several times to collect their interest payment but the company staff had asked them to return on another date.<sup>23</sup>

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18. Wijedasa, Namini. "Danger: More money scams as Monetary Board sleeps", p. 10. *Lakbimanews*. Jan. 4, 2009.

19. Fernando, Susitha R and Weerasuriya, Ananda. "Shocking disclosure in Golden Key case". *Daily Mirror*. Jan 31, 2009. [http://www.dailymirror.lk/DM\\_BLOG/Sections/frmNewsDetailView.aspx?ARTID=39311](http://www.dailymirror.lk/DM_BLOG/Sections/frmNewsDetailView.aspx?ARTID=39311)

20. Sirimanna, Bandula. "Ceylinco to sell Seylan shares to pay Golden Key depositors". *Sunday Times FT*. Dec. 28, 2009. [http://sundaytimes.lk/081228/News/sundaytimesnews\\_02.html](http://sundaytimes.lk/081228/News/sundaytimesnews_02.html)

21. Central Bank of Sri Lanka Annual Report 2008. Chapter 8, Page 6. [http://www.cbsl.gov.lk/pics\\_n\\_docs/10\\_publication/\\_docs/efr/annual\\_report/ar2008e/10.ar08\\_Chap\\_08\\_e.pdf](http://www.cbsl.gov.lk/pics_n_docs/10_publication/_docs/efr/annual_report/ar2008e/10.ar08_Chap_08_e.pdf)

22. Antonio, Jithendra. F&G real estate arm faces difficulties. Mar. 2, 2009. [http://www.dailymirror.lk/DM\\_BLOG/Sections/frmNewsDetailView.aspx?ARTID=41985](http://www.dailymirror.lk/DM_BLOG/Sections/frmNewsDetailView.aspx?ARTID=41985)

23. Council to run crisis-hit F&G. Feb 22, 2009. <http://sundaytimes.lk/090222/FinancialTimes/ft303.html>

Ceylinco Shriram Capital Management Services, which had also accepted deposits from the public without Central Bank registration, collapsed next. In July 2009, the AG's Department objected before the Fort Magistrate (where a case was being heard) to bail being granted to four suspect directors of Ceylinco Shriram saying the company had been committing fraudulent activities from the beginning. It was claimed in court that Ceylinco Shriram had evaded Central Bank regulations by forming one company to mobilize deposits and another to invest them.

The State Counsel said Shriram subsidiaries named Ceylinco Capital Investments and CLC Asset Management were bogus entities that had no employees but two boards of directors. The money invested in these firms was "deposited in shady companies about which the suspects had failed to give full details". There were no records of director board meetings for any of the companies for at least three years. The Shriram case pertains to alleged fraud amounting to seven billion rupees belonging to 7,325 depositors.<sup>24</sup>

At the end of 2009, cases filed by aggrieved depositors relating to Golden Key, Ceylinco Shriram and F&G companies were still being heard at the Supreme Court, Fort Magistrate's Court, Mt. Lavinia Magistrate's Court and before the Colombo Chief Magistrate. Nearly all directors of these companies, including Chairman of Ceylinco Consolidated Lalith Kotelawala, spent much of 2009 in state custody. Remanded in February 2009, Kotelawala was only released in October 2009 on bail with stringent conditions attached.<sup>25</sup>

Extensive media attention on these and other scandals meant the public rapidly became aware of the large number of illegal deposit-taking businesses in the country. Many protests held at the time apportioned blame on the Central Bank, saying the regulator had failed to act against unregistered finance institutions. There were manifestly crucial structural failures in the financial system and grave shortfalls in the regulatory mechanism. These factors were also commented upon by the Supreme Court in examining Fundamental Rights petitions filed against several deposit-taking institutions, including those of Ceylinco Consolidated.

## **Regulatory Obligations of the Central Bank**

In March 2009, the Supreme Court granted leave to proceed with petitions filed by 23 depositors against Golden Key on the basis of the alleged failure of the respondents—the Monetary Board, Mahinda Rajapaksa in his capacity as Finance Minister, Treasury Secretary Sumith Abeysinghe and Central Bank Governor Ajith Nivard Cabraal—to monitor the financial business of Golden Key.

Court issued an order to the Monetary Board of the Central Bank to submit a report on what steps were taken with regard to an investigation conducted by its Special Investigation Unit on the Golden Key Credit Card Company in 2006 – a probe which had evidently not resulted in meaningful action. The Court also expressed dismay at the manner in which "the Monetary Board was acting by looking the other way whilst the people (depositors of the Golden Key Credit Card Company) were being swindled."<sup>26</sup>

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24. Fernando, Susitha R. "Four directors produced for alleged cheating of Rs 7 bn". *Daily Mirror*. Jul. 4, 2009.

[http://www.dailymirror.lk/DM\\_BLOG/Sections/frmNewsDetailView.aspx?ARTID=53802](http://www.dailymirror.lk/DM_BLOG/Sections/frmNewsDetailView.aspx?ARTID=53802)

25. Fernando, Susitha R. "Birthday bail for Kotelawala". *Daily Mirror*. Oct. 29, 2009.

[http://www.dailymirror.lk/DM\\_BLOG/Sections/frmNewsDetailView.aspx?ARTID=66228](http://www.dailymirror.lk/DM_BLOG/Sections/frmNewsDetailView.aspx?ARTID=66228)

26. Selvanayagam, S S. "SC tightens grip on Golden Key Company". *Daily Mirror*. Mar. 24, 2009.

[http://www.dailymirror.lk/DM\\_BLOG/Sections/frmNewsDetailView.aspx?ARTID=44268](http://www.dailymirror.lk/DM_BLOG/Sections/frmNewsDetailView.aspx?ARTID=44268)

Similar views were expressed in other forums. At a discussion called by the Ceylon Chamber of Commerce in March 2009, for instance, veteran banker Ranjith Fernando insisted that regulators couldn't just wash their hands off these scams on the pretext that many fraudulent deposit-takers were not registered with the Central Bank. Fernando admitted that the regulators could not keep tabs on each of the estimated 20,000 unregistered finance companies in Sri Lanka. "But what about the likes of Sakvithi and Golden Key which accounted for the loss of billions of rupees?" he asked, apparently referring to the fact that those institutions had conducted their unregulated business so blatantly that it was hard to miss.

It was revealed in press reports that the director of the Central Bank's Non-Banks Supervision Division and the director of its Bank Supervision Division had presented several reports about errant institutions, but that the Monetary Board had failed to act. It was learnt, too, that the case of Golden Key had also gone up to the Monetary Board, which had decided that this business could not be regulated under existing legislation. Similarly, Sakvithi Ranasinghe's case had also been highlighted by Central Bank officials but no action was taken.

Former Chairman of the Committee on Public Enterprise Wijeyadasa Rajapakse revealed in media reports that Central Bank Governor Ajith Nivard Cabraal had promised COPE as far back as July 2006 to act against illegal finance companies functioning without Monetary Board approval. The 2007 COPE report says: "Frequent publication of notices in newspapers indicating the illegal functioning of finance companies are the most unhealthy practice which could cause an immense effect adversely to the economy of the country. The Governor undertook to take the remedial measures within a period of two months."<sup>27</sup>

Under heavy pressure over its alleged failure to prevent a series of scams involving public funds, the Central Bank on October 12, 2008, took out an 'Important Notice to the Public' on 'Action Taken by the Central Bank of Sri Lanka against Unauthorized Conduct of Finance Business'. It said defensively that, with the collapse of a bogus deposit scheme adopted by an organisation to mobilize funds from some members of the general public, "a few persons" have made allegations that the Central Bank has not taken action on such fraudulent business.

The notice outlined action that had been taken in this regard since 2001, when the regulator started investigations of persons alleged to be carrying on finance business without authority "while repeatedly alerting the general public to the dangers inherent in investing in such institutions." It said that between 2003 and 2008, the Central Bank had instituted legal action against twelve institutions for conducting "finance business" without authority, and warned the public regarding nineteen persons who were doing the same without permission.<sup>28</sup>

Nevertheless, Central Bank officials say the regulator still does not have sufficient legislative clout to rope in unregistered deposit-takers. An amendment to the Finance Companies Act, which strengthens the role of the Monetary Board, is still with the legal draftsman.<sup>29</sup> It envisions the

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27. First report of the Committee on Public Enterprises (COPE) Second Session of the Sixth Parliament. Pgs 5-6.

<http://www.parliament.lk/committees/ListCommReport.do?comID=COMM1045>

28. Important notice to the public. Central Bank of Sri Lanka. Oct. 12, 2008.

[http://www.cbsl.gov.lk/pics\\_n\\_docs/02\\_prs/\\_docs/notices/snbf\\_english.jpg](http://www.cbsl.gov.lk/pics_n_docs/02_prs/_docs/notices/snbf_english.jpg)

29. Author interview with Finance Houses Association Chairman Shirley Perera on Nov. 23, 2009.

strengthening of provisions prohibiting illegal financial business and deposit-taking; the widening of the definition of “deposits” to cover a broader range of fund mobilization activities; and the making an offence of the acceptance of deposits without authorization. Authoritative Central Bank sources said they have been trying for four years to have it passed.<sup>30</sup> In the meantime, businesses like Golden Key had been functioning for the past 30 years in the absence of adequate legislation to regulate them.

A Central Bank officer is quoted anonymously in the *LakbimaNews* newspaper as saying it was difficult to control the activities of unregistered and unregulated companies because they use loopholes in prevailing legislation to wriggle free. In this way, unregistered deposit-taking institutions avoid paying withholding tax or declaring income tax.<sup>31</sup>

Some companies even file legal action against the regulator. For instance, Okanda Finance (Pvt) Ltd has repeatedly petitioned the Court of Appeal over attempts by the Central Bank to examine its internal documents and to be registered. Most recently, Okanda Finance made an application to the Court of Appeal after the regulator published a notice on September 24, 2008, requiring six persons/institutions—including Okanda—to comply with the requirements of the Finance Companies Act and to apply for registration. In June 2009, however, Okanda Finance sought liquidation through a civil case filed in the Colombo High Court—more bad news for its depositors.

Most unregistered companies that deal with deposits from the public—including those of Ceylinco Consolidated—design their business specifically to avoid regulation. The officer is quoted in *LakbimaNews* as saying that they don’t accept deposits in the manner defined by law. Instead, they offer “all kinds of explanations” when questioned and often take the Central Bank to court.

The officer is also cited as saying that corporate governance is a major requirement but that even corporate governance directives drawn up by the Central Bank were challenged in courts. The Finance Companies (Corporate Governance) Direction No. 3 of 2008 applies to every registered finance company and went into operation with effect from 1 January, 2009.<sup>32</sup>

Ironically, in July 2008, Lalith Kotelawala wrote to Central Bank Governor Ajith Nivard Cabraal threatening to initiate legal action if the Central Bank adopted such a code which was still in draft form at the time. Kotelawala said governance codes proposed by Cabraal for commercial banks and finance companies were aimed at targeting a few individuals. The previous month, Kotelawala had demanded a billion rupees in damages from Cabraal for trying to introduce corporate governance rules that would effectively remove him from bank and finance companies in his Ceylinco group.<sup>33</sup> Among the clauses that are reported to have irked Kotelawala—who turned 70 on October 29, 2008—is one which says that a person over the age of 70 years shall not serve as a director of a finance company.

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30. Author interview with Central Bank sources on Nov. 23, 2009.

31. Wijedasa, Namini. “Danger: More money scams as Monetary Board sleeps”. p. 10. *Lakbimanews*. Jan. 4, 2009.

32. Finance companies corporate governance direction. Central Bank of Sri Lanka. Oct. 16, 2008.

[http://www.cbsl.gov.lk/pics\\_n\\_docs/09\\_lr/\\_docs/directions/nbsf/notice\\_22102008e.pdf](http://www.cbsl.gov.lk/pics_n_docs/09_lr/_docs/directions/nbsf/notice_22102008e.pdf)

33. “Banking Code”. *Lanka Business Online*. Jul. 2, 2008.

[http://www.lbo.lk/fullstory.php?nid=1285399070&no\\_view=1&SEARCH\\_TERM=2](http://www.lbo.lk/fullstory.php?nid=1285399070&no_view=1&SEARCH_TERM=2)

## The Role of the Investor

A significant factor in the financial scams that broke out within the period under review was the failure of the public to be vigilant despite regular warnings by the Central Bank. In an interview, Cabraal said the Central Bank had done everything possible within the limits of the wholly inadequate Finance Companies Act of 1988 and blamed the public for having ignored nearly 20 million rupees worth of press notifications (in a single year) advising them not to invest with finance companies that were not registered with the Central Bank.<sup>34</sup>

In its press notice published in October 2008, the Central Bank said it was clear that the majority of the investors in unauthorized institutions are aware of the illegality and/or the risk of the institutions in which they place their investments. The attractive rates, other returns, and the motives of tax evasion may have led some persons to invest in these institutions, while some others may have chosen these institutions over the legitimate deposit-taking institutions in order to hide from the authorities the illegal origin of the funds. The documents and agreements they have signed with the relevant institutions in support of their investments make this apparent. When persons knowingly enter into high risk transactions, the Central Bank asserts, they are responsible for the consequences.<sup>35</sup>

It may serve the Central Bank to argue that the responsibility for ensuring the safety of public money lies with the public. Investors must indeed consider the repercussions of placing their funds with unregistered institutions before they make such a high-risk move. However, there is no excuse for the government not to have passed the amendment to the Financial Companies Act so many years after the authorities first started drafting it. The ground realities have changed and this needs to be reflected in and tackled through adequate legislation to be passed as a matter of urgency. The Central Bank's failure to push through this vital amendment is inexplicable, particularly when its officials have openly admitted that they are crippled by the inadequacy of existing laws.

The Central Bank must also engage more pro-actively with investors and convey information in a manner that is easily absorbed by all levels of investors. Restricting public information to staid, wordy, and sometimes self-righteous print notices has not worked. It has only proved to be a convenient excuse, to be pulled out of a hat each time criticism is levelled at the Central Bank's – and Monetary Board's – inaction on unauthorized financial institutions.

New and innovative methods of engaging potential investors, perhaps through the setting up of hotlines or advice centres, will assist them in making informed decisions, thereby averting the type of financial disaster observed during the period under review. Groping about in the dark after the candle goes out is a failed strategy that cannot possibly succeed in the future.

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34. Wijedasa, Namini. "Central Bank lethargy helps Sakvithi bolt". p. 6. *Lakbimanews*. Oct. 5, 2009.

35. Important notice to the public. Central Bank of Sri Lanka. Oct. 12, 2008.

[http://www.cbsl.gov.lk/pics\\_n\\_docs/02\\_prs/\\_docs/notices/snbfi\\_english.jpg](http://www.cbsl.gov.lk/pics_n_docs/02_prs/_docs/notices/snbfi_english.jpg)





# Perceptions of Sri Lanka in Governance Indices

Garesha Wirithamulla

The delivery of essential public goods to citizens such as security, rule of law, political freedom, enabling economic performance, education, and health can be termed governance.<sup>1</sup> Where a regime reasonably fails to perform the above tasks, it is considered as governing poorly. The term "good governance" is being increasingly used in development literature. Major donors and international financial institutions are more and more basing their aid and loans on the condition that reforms are undertaken that ensure "good governance."<sup>2</sup> Hence, measurement tools of governance could help to set standards for the improvement of good governance, as well as serve as a tool for donors to help determine where and how to allocate their funds most effectively.<sup>3</sup>

Various instruments have been developed by different organizations and think tanks to measure governance using both quantitative and qualitative analysis. Based on these measurements, country rankings and indices are developed which are, in turn, disseminated and used widely by both local and international policy makers. These rankings also provide a sound basis for governance debates by pointing out key governance problems of a state.

This chapter provides a snapshot of Sri Lanka's current system of governance as portrayed in four separate indices. We will not discuss three out of six governance indices, that were included in the previous year's report due to their unavailability owing to various reasons. Bertelsmann Transformation Index, which is conducted bi-annually, will only be launched in 2010. The Countries at the Crossroads Survey will include Sri Lanka in 2009—the report, however will be available only in 2010. Further, the Global Integrity Report has not produced a Sri Lanka country study after 2007. However, we have included a new research instrument called the Index of State Weakness in the Developing World by the Brookings Institute's Global Economy and Development Program. In addition, we will be discussing Sri Lanka's position as reflected in the Failed State Index, the Worldwide Governance Index, and Transparency International's Corruption Perceptions Index (CPI)—the only index exclusively measuring corruption.

However, it is noteworthy that governance and corruption are broad and complicated concepts and therefore difficult to measure. The scores and rankings may provide a false sense of precision due to the simplification of complex notions into uncomplicated numbers. It is also important to note that the indices discussed focus on different aspects of governance and thus cannot be compared. All survey instruments discussed herein rely on assessments of country experts and political analysts to generate consensus ratings.

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1. Marie Besancon, Good Governance Rankings: The Art of Measurement, Report -World Peace Foundation, [http://belfercenter.ksg.harvard.edu/publication/2077/good\\_governance\\_rankings.html](http://belfercenter.ksg.harvard.edu/publication/2077/good_governance_rankings.html)

2. <http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp>

3. [http://belfercenter.ksg.harvard.edu/files/Indices\\_Governance\\_2008\\_ibrahim\\_index.pdf](http://belfercenter.ksg.harvard.edu/files/Indices_Governance_2008_ibrahim_index.pdf)

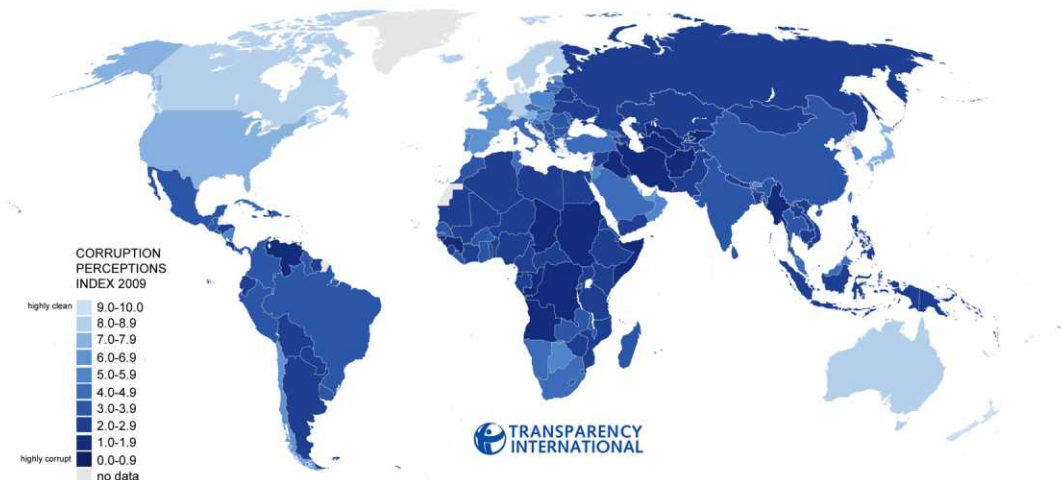
## Corruption Perception Index

First published in 1995, Transparency International's Corruption Perception Index (CPI) is the only index exclusively covering corruption. This year's CPI, released in November 2009, ranks 180 countries/territories (the same number as in 2008) and reflects the views of business people and country analysts for the previous year. However, the CPI is not designed to measure a given country's progress by comparing its score to that of another country. Rather, the only reliable way to compare a country's shift in level of corruption is to compare its score with its own score from older surveys.<sup>4</sup> If not, one runs the risk of incorrectly inferring that a country has deteriorated in corruption because its overall ranking decreased when, in fact, this could have resulted from the increase in ranking of other countries.

A score is calculated through standardization using a complex statistical technique. Country scores are indicated on a scale of 0 to 10 (0 being the lowest and 10 being the highest score). The country with the highest score tops the list.

The CPI ranks countries/territories in terms of the degree to which corruption is perceived to exist among public officials and politicians.<sup>5</sup> It is a composite index, or a poll of polls, drawing on corruption-related data from expert and business surveys carried out by a variety of independent and reputable institutions.<sup>6</sup> These polls themselves reflect views from around the world, including experts who live in the countries/territories evaluated. The 2009 CPI draws on 13 different polls, and surveys from 10 independent institutions.

The CPI is based on perceptions for the main reason that measuring corruption based on hard empirical data is overly difficult. For instance, obtaining information on the number of bribes actually paid by people is impossible due to the very secretive nature of corruption.



This year the CPI ranks Sri Lanka 97th out of 180, with a score of 3.1. Since first being included in the index in 2002, Sri Lanka's scores have steadily depreciated, indicating a major corruption problem in the country.

4. Corruption Perceptions Index 2009, Frequently Asked Questions, [www.transparency.org](http://www.transparency.org)

5. *ibid*

6. *ibid*

## Sri Lanka's CPI scores and ranks from 2002-2009

| Year | Score | Rank | Total number of Countries included in the CPI |
|------|-------|------|---|
| 2002 | 3.7   | 52   | 102   |
| 2003 | 3.4   | 66   | 133   |
| 2004 | 3.5   | 67   | 145   |
| 2005 | 3.2   | 78   | 158   |
| 2006 | 3.1   | 84   | 163   |
| 2007 | 3.2   | 94   | 180   |
| 2008 | 3.2   | 93   | 180   |
| 2009 | 3.1   | 97   | 180   |

### The Failed State Index

The Failed State Index assesses the vulnerability of the risk of violence in States by measuring the political, economic and social stability of countries on an annual basis. There are 177 states included in the most recent (2009) index. The Failed States Index was first released in 1996 by Fund for Peace, a Washington-based research organization, and *Foreign Policy*, a publication of the Carnegie Endowment for International Peace. The scores in the index are determined by independent experts based on more than 90,000 open-source articles and reports collected from May to December of the preceding year.

The rank order of the states is based on the total scores of the 12 indicators. These are, demographic pressures, refugees/IDPs, group grievance, human flight, uneven development, economic decline, de-legitimization of the state, public services, human rights, security apparatus, factionalized elites, and external intervention.<sup>7</sup> For each indicator, the ratings are placed on a scale of 0 to 10, with 0 being the lowest intensity (most stable) and 10 being the highest intensity (least stable). The total score is the sum of the 12 indicators and is on a scale of 0-120.

According to the 2009 index, Sri Lanka is ranked 22nd out of 177 countries, with a score of 96.7.<sup>8</sup> While Sri Lanka's rank has improved from 20 (in 2008) to 22 (in 2009), Sri Lanka's score has deteriorated from 95.6 to 96.7, which shows a slight decline.

Somalia, which tops the list (ranked 1), scores 114.7 indicating it is the most vulnerable country to violence in the world. In stark contrast, Norway ranks 177th with a score of 18.3 indicating it is the least vulnerable to the risk of violence.

Sri Lanka's scores are particularly high in indicators such as group grievance which indicates patterns of atrocities committed with impunity against communal groups singled out by state authorities (scores 9.8 out of 10), refugees (9.3), human rights (9.2), and factionalized elites which indicates fragmentation of ruling elites and State institutions along group lines (scores 9.2). Further, the country scores 9.0 under the indicator de-legitimization of the State. However, it should be noted that this is a reflection of the country's situation between May and December 2008 during which time the country was at war.

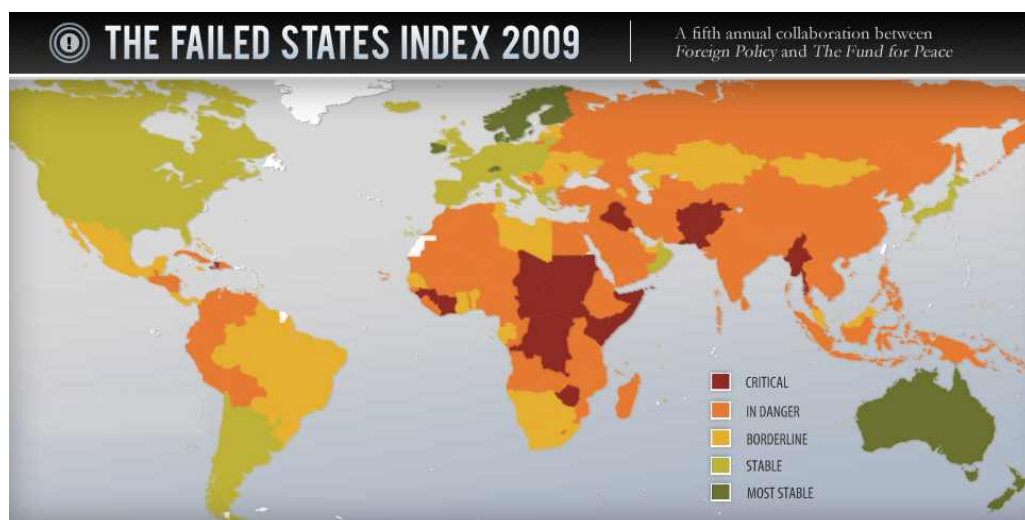
7. [http://www.foreignpolicy.com/articles/2009/06/22/2009\\_failed\\_states\\_index\\_faq\\_methodology](http://www.foreignpolicy.com/articles/2009/06/22/2009_failed_states_index_faq_methodology)

8. [http://www.foreignpolicy.com/articles/2009/06/22/2009\\_failed\\_states\\_index\\_interactive\\_map\\_and\\_rankings](http://www.foreignpolicy.com/articles/2009/06/22/2009_failed_states_index_interactive_map_and_rankings)

# Failed State Index 2009

| RANK | TOTAL | COUNTRY                  | DEMOGRAPHIC PRESSURES | REFUGEES /IDPs | GROUP GRIEVANCE | HUMAN FLIGHT | UNEVEN DEVELOPMENT | ECONOMIC DECLINE | DELEGITIMIZATION OF THE STATE | PUBLIC SERVICES | HUMAN RIGHTS | SECURITY APPARATUS | FACIONALIZED ELITES | EXTERNAL INTERVENTION |
|------|-------|--------------------------|-----------------------|----------------|-----------------|--------------|--------------------|------------------|-------------------------------|-----------------|--------------|--------------------|---------------------|-----------------------|
| 1    | 114.7 | Somalia                  | 9.8                   | 9.9            | 9.7             | 8.5          | 7.7                | 9.5              | 10                            | 9.9             | 9.9          | 10                 | 10                  | 9.8                   |
| 2    | 114   | Zimbabwe                 | 9.8                   | 9.1            | 9.1             | 10           | 9.7                | 10               | 9.8                           | 9.8             | 9.9          | 9.7                | 9.5                 | 7.6                   |
| 3    | 112.4 | Sudan                    | 9                     | 9.8            | 9.9             | 9            | 9.6                | 7                | 9.8                           | 9.5             | 9.8          | 9.7                | 9.5                 | 9.8                   |
| 4    | 112.2 | Chad                     | 9.3                   | 9.4            | 9.8             | 7.8          | 9.3                | 8.3              | 9.8                           | 9.6             | 9.5          | 9.9                | 9.8                 | 9.7                   |
| 5    | 108.7 | Dem. Rep. of the Congo   | 9.7                   | 9.6            | 8.9             | 8.1          | 9.3                | 8.3              | 8.6                           | 9.2             | 9            | 9.7                | 8.7                 | 9.6                   |
| 6    | 108.6 | Iraq                     | 8.7                   | 8.9            | 9.7             | 9.1          | 8.6                | 7.6              | 9                             | 8.4             | 9.3          | 9.7                | 9.6                 | 10                    |
| 7    | 108.2 | Afghanistan              | 9.3                   | 8.9            | 9.6             | 7.2          | 8.4                | 8.3              | 9.8                           | 8.9             | 8.8          | 9.9                | 9.1                 | 10                    |
| 8    | 105.4 | Central African Republic | 8.9                   | 9              | 8.6             | 5.7          | 9.1                | 8.4              | 9.3                           | 9.3             | 8.9          | 9.6                | 9.5                 | 9.1                   |
| 9    | 104.6 | Guinea                   | 8.5                   | 7.1            | 8.2             | 8.6          | 8.9                | 8.7              | 9.8                           | 9.2             | 9            | 9.4                | 9.2                 | 8                     |
| 10   | 104.1 | Pakistan                 | 8.3                   | 8.6            | 9.6             | 8.3          | 8.8                | 6.4              | 9.1                           | 7.5             | 8.9          | 9.5                | 9.6                 | 9.5                   |
| 11   | 102.5 | Ivory Coast              | 8.6                   | 7.8            | 9               | 8.4          | 8.1                | 8.3              | 9.1                           | 8               | 8.5          | 8.5                | 8.5                 | 9.7                   |
| 12   | 101.8 | Haiti                    | 9.3                   | 5.8            | 7.3             | 8.6          | 8.2                | 8.9              | 9.2                           | 9.5             | 8.5          | 8.4                | 8.3                 | 9.8                   |
| 13   | 101.6 | Burma                    | 9                     | 8.8            | 8.9             | 6            | 9.5                | 8.2              | 9.5                           | 9               | 9            | 8.4                | 8.7                 | 6.5                   |
| 14   | 101.4 | Kenya                    | 9                     | 9              | 8.6             | 8.3          | 8.8                | 7.5              | 9                             | 8               | 8.2          | 8                  | 8.8                 | 8.2                   |
| 15   | 99.8  | Nigeria                  | 8.5                   | 5.3            | 9.7             | 8.3          | 9.5                | 6.6              | 9.2                           | 9               | 8.6          | 9.4                | 9.6                 | 6.1                   |
| 16   | 98.9  | Ethiopia                 | 9.4                   | 8              | 8.2             | 7.7          | 8.8                | 8.3              | 7.9                           | 8.2             | 8.5          | 7.5                | 8.8                 | 7.6                   |
| 17   | 98.3  | North Korea              | 8.5                   | 6              | 7.2             | 5            | 8.8                | 9.6              | 9.8                           | 9.6             | 9.5          | 8.3                | 7.8                 | 8.2                   |
| 18   | 98.1  | Yemen                    | 8.8                   | 7.9            | 7.7             | 7.4          | 8.9                | 8.2              | 8.3                           | 8.5             | 7.7          | 8.4                | 9                   | 7.3                   |
| 19   | 98.1  | Bangladesh               | 8.9                   | 6.9            | 9.4             | 8.4          | 9                  | 8                | 8.5                           | 8               | 7.6          | 8                  | 8.9                 | 6.5                   |
| 20   | 97.2  | East Timor               | 8.4                   | 9              | 7.3             | 5.7          | 6.8                | 8.4              | 9.4                           | 8.4             | 7            | 9                  | 8.8                 | 9                     |
| 21   | 96.9  | Uganda                   | 8.7                   | 9.3            | 8               | 6.5          | 8.7                | 7.6              | 8                             | 8               | 7.7          | 8.2                | 8.2                 | 8                     |
| 22   | 96.7  | Sri Lanka                | 7.5                   | 9.3            | 9.8             | 6.9          | 8.5                | 6.1              | 9                             | 6.6             | 8.5          | 9.2                | 9.2                 | 6.1                   |
| 23   | 96.6  | Niger                    | 9.5                   | 6.4            | 8.5             | 6.3          | 7.6                | 9.2              | 8.7                           | 9.5             | 8.2          | 7.4                | 7.1                 | 8.1                   |
| 24   | 95.7  | Burundi                  | 9.2                   | 8.1            | 7.5             | 6.5          | 8.4                | 8                | 7.5                           | 9               | 7.6          | 7.3                | 7.7                 | 8.9                   |
| 25   | 95.4  | Nepal                    | 8.3                   | 6.8            | 8.7             | 6            | 9.3                | 8.5              | 8                             | 7.4             | 8.7          | 8.1                | 8.4                 | 7.2                   |
| 26   | 95.3  | Cameroon                 | 8                     | 7.5            | 7.2             | 8            | 8.9                | 6.9              | 9.2                           | 8               | 8            | 7.8                | 8.7                 | 7.1                   |
| 27   | 94.8  | Guinea-Bissau            | 8.6                   | 6.5            | 5.8             | 7            | 8.5                | 8.5              | 8.6                           | 8.7             | 8            | 8.5                | 8                   | 8.1                   |
| 28   | 93.8  | Malawi                   | 9.3                   | 6.3            | 5.9             | 8.3          | 8.5                | 9.1              | 8.3                           | 8.8             | 7.5          | 5.6                | 7.8                 | 8.4                   |
| 29   | 93.5  | Lebanon                  | 7                     | 9              | 9.2             | 7.2          | 7.4                | 6.3              | 7.8                           | 6.2             | 6.9          | 9.1                | 9.1                 | 8.3                   |
| 30   | 93.1  | Republic of Congo        | 8.9                   | 7.8            | 6.5             | 6.1          | 8                  | 8                | 8.6                           | 8.8             | 7.9          | 7.8                | 7.1                 | 7.6                   |
| 31   | 92.8  | Uzbekistan               | 7.9                   | 5.3            | 7.4             | 7            | 8.7                | 7.2              | 9                             | 6.6             | 9.2          | 9                  | 9                   | 6.5                   |
| 32   | 92.1  | Sierra Leone             | 8.9                   | 6.9            | 6.6             | 8.5          | 8.4                | 8.6              | 7.4                           | 8.7             | 7            | 6.1                | 7.7                 | 7.3                   |
| 33   | 91.8  | Georgia                  | 6.4                   | 8.3            | 8.5             | 6            | 7.5                | 6                | 9                             | 6.3             | 7.5          | 7.9                | 8.9                 | 9.5                   |
| 34   | 91.8  | Liberia                  | 8.6                   | 8              | 6.1             | 6.8          | 8.5                | 8.2              | 7                             | 8.5             | 6.7          | 6.9                | 7.9                 | 8.6                   |
| 35   | 91.3  | Burkina Faso             | 9                     | 6              | 6.1             | 6.5          | 9                  | 8.2              | 7.9                           | 9               | 6.5          | 7.5                | 7.6                 | 8                     |
| 36   | 90.3  | Eritrea                  | 8.6                   | 7              | 5.8             | 6.5          | 6                  | 8.6              | 8.6                           | 8.6             | 7.9          | 7.4                | 7.7                 | 7.6                   |
| 37   | 90.3  | Tajikistan               | 8.2                   | 6.4            | 6.9             | 6.5          | 7.3                | 7.5              | 8.9                           | 7.6             | 8.6          | 7.5                | 8.4                 | 8.5                   |
| 38   | 90    | Iran                     | 6.5                   | 8.5            | 7.6             | 6.8          | 7.4                | 5.5              | 8.3                           | 6               | 8.9          | 8.6                | 9.1                 | 6.8                   |
| 39   | 89.8  | Syria                    | 6.1                   | 9.2            | 8.2             | 6.8          | 8                  | 6.8              | 8.8                           | 5.7             | 8.6          | 7.8                | 7.8                 | 6                     |
| 40   | 89.6  | Solomon Islands          | 8                     | 5              | 7.5             | 5            | 8                  | 8.3              | 8.3                           | 8.4             | 7            | 7.2                | 8                   | 8.9                   |
| 41   | 89.2  | Colombia                 | 6.9                   | 9.2            | 7.2             | 8.5          | 8.5                | 4.3              | 7.9                           | 6               | 7.2          | 7.5                | 8                   | 8                     |
| 42   | 89.1  | Kirgizstan               | 8                     | 5.3            | 7.2             | 7.5          | 8.3                | 7.6              | 8.3                           | 6.5             | 7.6          | 7.7                | 7.3                 | 7.8                   |
| 43   | 89    | Egypt                    | 7.6                   | 6.9            | 8               | 6.2          | 7.6                | 7                | 8.6                           | 6.4             | 8.4          | 6.2                | 8.1                 | 8                     |
| 44   | 89    | Laos                     | 8.2                   | 5.9            | 7               | 6.6          | 6                  | 7.5              | 8.2                           | 8               | 8.5          | 7.6                | 8.3                 | 7.2                   |
| 45   | 89    | Rwanda                   | 9.3                   | 6.9            | 8.7             | 7.2          | 7.3                | 7.5              | 7.9                           | 7.3             | 7.3          | 4.6                | 8                   | 7                     |
| 46   | 88.7  | Mauritania               | 8.7                   | 6.2            | 8.2             | 5            | 7                  | 7.8              | 7                             | 8.5             | 7.1          | 7.9                | 8                   | 7.3                   |
| 47   | 88.3  | Equatorial Guinea        | 8.3                   | 2              | 6.8             | 7.4          | 9                  | 4.4              | 9.4                           | 8.6             | 9.2          | 8.6                | 8.6                 | 6                     |
| 48   | 87.3  | Bhutan                   | 6.5                   | 7.5            | 7.9             | 6.8          | 8.7                | 7.5              | 7.4                           | 7.2             | 8.4          | 5.5                | 7.7                 | 6.2                   |
| 49   | 87.3  | Cambodia                 | 7.9                   | 5.2            | 7               | 8            | 7.2                | 7.5              | 8.5                           | 7.9             | 7.4          | 6.5                | 7.5                 | 6.7                   |
| 50   | 87.2  | Togo                     | 7.9                   | 6              | 5.8             | 6.9          | 7.5                | 8.2              | 7.5                           | 8.3             | 7.6          | 7.4                | 7.3                 | 6.8                   |
| 51   | 86.3  | Bolivia                  | 7.8                   | 4.9            | 7.5             | 6.9          | 8.7                | 7                | 7.6                           | 7.7             | 6.8          | 6.4                | 8.2                 | 6.8                   |
| 52   | 86.3  | Comoros                  | 7.4                   | 3.7            | 5.5             | 6            | 6.3                | 7.8              | 8.7                           | 8.7             | 7            | 7.5                | 7.9                 | 9.8                   |
| 53   | 85.8  | Philippines              | 7.2                   | 6.3            | 7.5             | 7.2          | 7.6                | 6                | 8.5                           | 6.1             | 7            | 7.7                | 7.9                 | 6.8                   |
| 54   | 85.1  | Moldova                  | 6.6                   | 4.2            | 7.1             | 8            | 7                  | 6.8              | 8.1                           | 6.7             | 7            | 8                  | 8                   | 7.6                   |
| 55   | 85    | Angola                   | 8.6                   | 7              | 6.1             | 5.5          | 9.4                | 4.5              | 8                             | 8               | 7.2          | 6.2                | 7.3                 | 7.2                   |
| 56   | 84.6  | Azerbaijan               | 6.4                   | 8.2            | 7.9             | 5.7          | 7.4                | 6.1              | 8.2                           | 5.5             | 7            | 7.3                | 7.9                 | 7                     |
| 57   | 84.6  | China                    | 9                     | 6.8            | 7.9             | 6.1          | 9.2                | 4.5              | 8.5                           | 7.2             | 8.9          | 6                  | 7.2                 | 3.3                   |
| 58   | 84.6  | Israel/West Bank         | 7.2                   | 8              | 9.3             | 4            | 7.5                | 4.1              | 7.5                           | 7               | 8            | 6                  | 8                   | 8                     |
| 59   | 84.3  | Turkmenistan             | 7                     | 4.8            | 8.5             | 5.6          | 7.6                | 6.9              | 8.5                           | 7.2             | 8.9          | 7.6                | 7.7                 | 6                     |
| 60   | 84.2  | Zambia                   | 9                     | 7.1            | 5.3             | 7            | 7.1                | 8.5              | 7.8                           | 8.4             | 5.6          | 5.2                | 5.7                 | 7.5                   |

The map below illustrates countries that are in the most critical danger of descending into violence as red, while those that are simply in danger as orange. Borderline countries are colored yellow and countries that are considered stable are colored light green. The most Stable Countries are colored in dark green.



## Worldwide Governance Indicators

Worldwide Governance Indicators (WGI) has been published annually by the World Bank since 1996 and is one of the most comprehensive cross-country sets of governance indicators. It does not rank countries; rather, the WGI measures six broad dimensions of governance.<sup>9</sup> They are:

- Voice and Accountability<sup>10</sup>
- Political Stability and Absence of Violence<sup>11</sup>
- Government Effectiveness<sup>12</sup>
- Regulatory Quality<sup>13</sup>
- Rule of Law<sup>14</sup>
- Control of Corruption<sup>15</sup>

The above indicators are used to evaluate 212 countries and territories, drawing together hundreds of variables from 35 different data sources<sup>16</sup> to capture the views of tens of thousands of survey respondents worldwide, as well as thousands of experts in the private, NGO, and public sectors.

9. Daniel Kaufmann, Aart Kraay, Massimo Mastruzzi, Governance Matters VIII, Aggregate and Individual Governance Indicators-1996–2008, The World Bank - Development Research Group, Macroeconomics and Growth Team, June 2009, Policy Research Working Paper 4978

10. The extent to which a country's citizens are able to participate in selecting their government, as well as freedom of expression, association, and the press

11. The likelihood that the government will be destabilized by unconstitutional or violent means, including terrorism

12. The quality of public services, the capacity of the civil service and its independence from political pressures; the quality of policy formulation

13. The ability of the government to provide sound policies and regulations that enable and promote private sector development

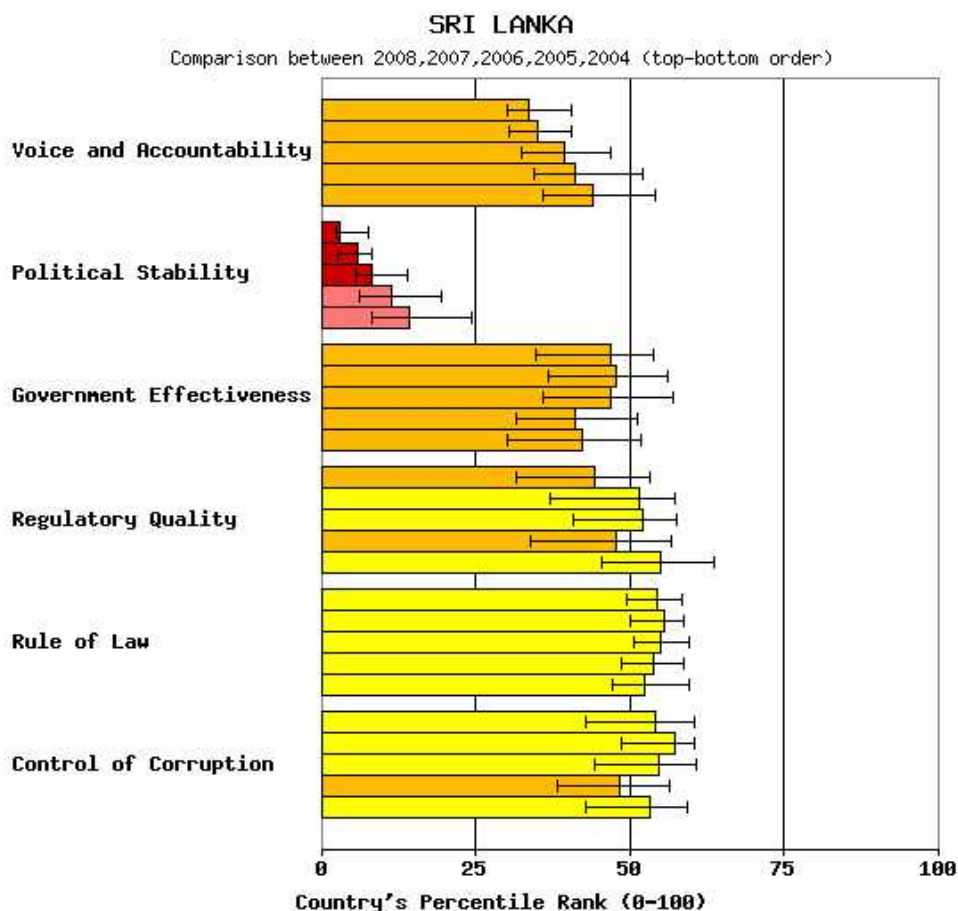
14. The extent to which agents have confidence in and abide by the rules of society, including the quality of property rights, the police, and the courts, as well as the risk of crime

15. The extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as elite "capture" of the state

16. Supra note 7

The eighth release of the WGI, highlights the serious challenges that remain for rich and poor countries alike, and draws attention to the well-established link between better governance and improved development results.<sup>17</sup>

The following table denotes the position of Sri Lanka as indicated in the WGI for the past 5 years in all six of the aforementioned indicators.



Source: Kaufmann D., A. Kraay, and M. Mastruzzi 2009: Governance Matters VIII: Governance Indicators for 1996-2008

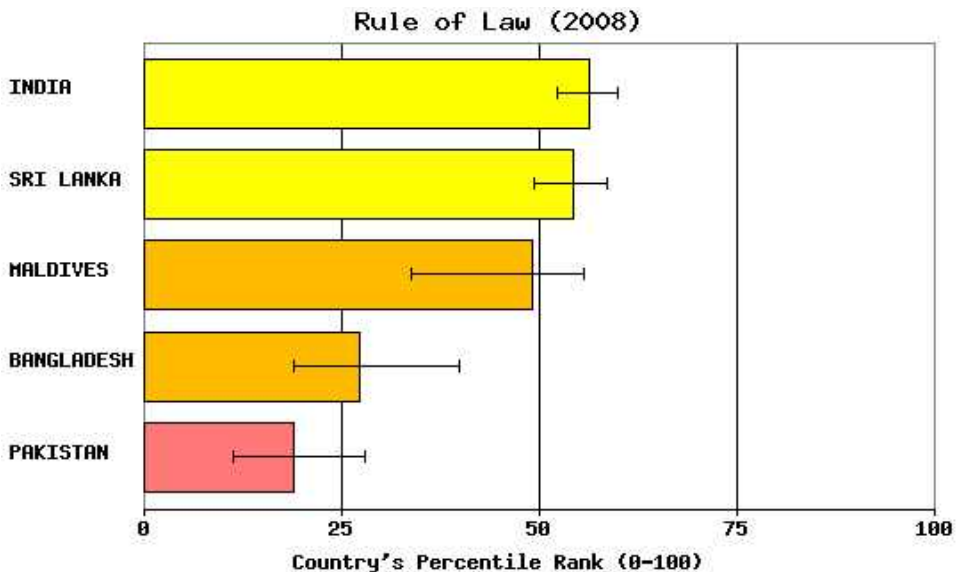
Note: The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The WGI do not reflect the official views of the World Bank, its Executive Directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources.



17. <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:22229554~menuPK:34463~pagePK:34370~piPK:34424~theSitePK:4607,00.html>

It is essential to note that the position of Sri Lanka has gone from bad to worse over the past 5 years in terms of political stability. Based on the explanation available in footnote 11 (see above) it is clear that acts of terrorism and related fears which sky rocketed in 2008 (i.e. war in the North and the East, several bomb blasts, killings of several key political figures etc.) may have led to such results.

Further, it is noteworthy that in comparison to previous years, there has been a downward trend in the indicators of control of corruption, rule of law, voice and accountability, and regulatory quality. This raises major governance concerns and highlights the crucial need to bring in mechanisms to address them.

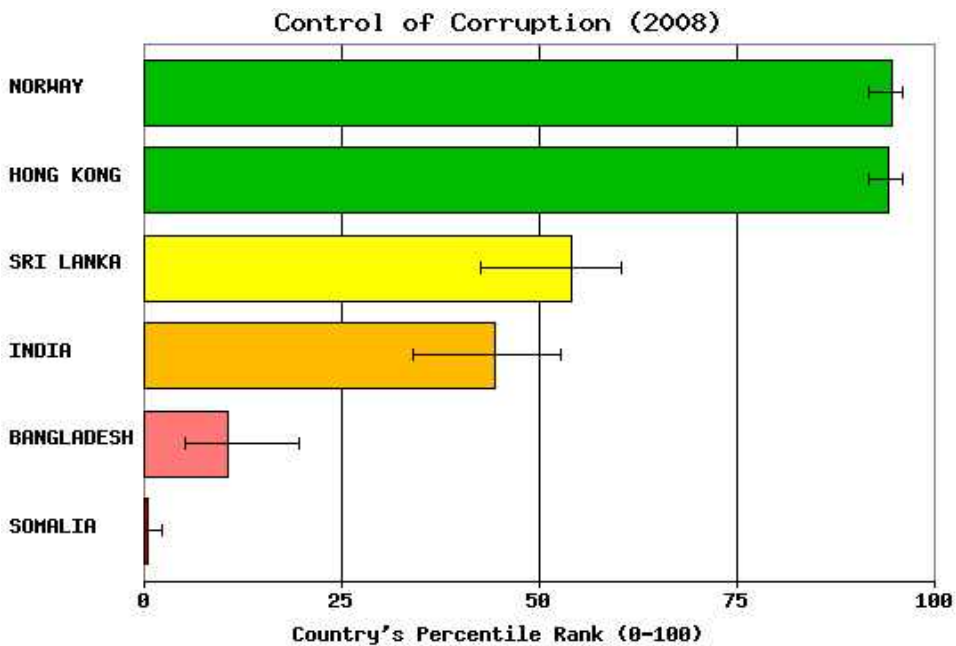


Source: Kaufmann D., A. Kraay, and M. Mastruzzi 2009: Governance Matters VIII: Governance Indicators for 1996-2008

Note: The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The WGI do not reflect the official views of the World Bank, its Executive Directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources.



The chart above indicates the position of rule of law in Sri Lanka in comparison to some other South Asian countries. Accordingly India occupies the highest position compared to that of all the other countries in the table. Both Sri Lanka and India are in the 50%-75% range.



Source: Kaufmann D., A. Kraay, and M. Mastruzzi 2009: Governance Matters VIII: Governance Indicators for 1996-2008

Note: The governance indicators presented here aggregate the views on the quality of governance provided by a large number of enterprise, citizen and expert survey respondents in industrial and developing countries. These data are gathered from a number of survey institutes, think tanks, non-governmental organizations, and international organizations. The WGI do not reflect the official views of the World Bank, its Executive Directors, or the countries they represent. The WGI are not used by the World Bank Group to allocate resources.



The table above shows the positions of Norway, Hong Kong, India, Sri Lanka, Bangladesh and Somalia as reflected in the WGI on the indicator of control of corruption. The table clearly indicates that countries and territories like Norway and Hong Kong have effectively managed corruption while in countries like Somalia corruption is not under control at all. The position of Sri Lanka is somewhat average.

## The Index of State Weakness in the Developing World

The Index of State Weakness in the Developing World was designed to provide policy-makers and researchers with a credible tool for analyzing and understanding the world's most vulnerable countries.<sup>18</sup> It is an information tool for US foreign policy. This is a composite index, which amalgamates other indices, and is presented by the Brookings Institution—a nonprofit public policy organization based in Washington, DC.

The index defines weak states as countries that lack the essential capacity and/or will to fulfill four sets of critical government responsibilities such as fostering an environment conducive to sustainable and equitable economic growth, establishing and maintaining legitimate,

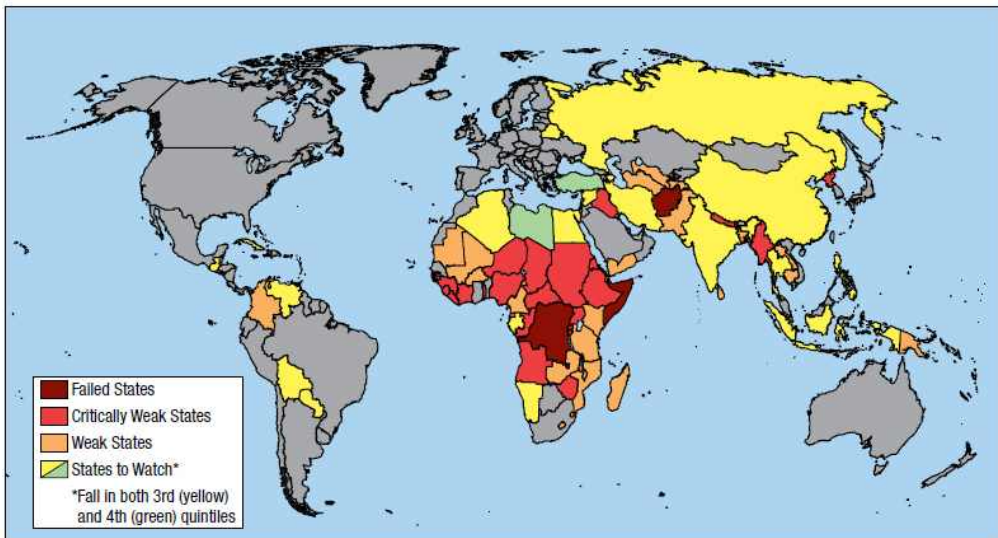
18. [http://www.brookings.edu/reports/2008/02\\_weak\\_states\\_index.aspx](http://www.brookings.edu/reports/2008/02_weak_states_index.aspx)



transparent, and accountable political institutions, securing their populations from violent conflict and controlling their territory, and meeting the basic human needs of their population. The Index, which was issued for the first time in 2008, ranks and assesses 141 developing nations according to their relative performance in four critical spheres: Economic<sup>19</sup>, Political<sup>20</sup>, Security<sup>21</sup> and Social Welfare.<sup>22</sup> It therefore provides a snapshot of relative state effectiveness. The Index enables policymakers to assess with greater ease and accuracy the relative weakness of developing countries in these four spheres.

According to the index, Sri Lanka ranks 56th with an overall score of 5.94—categorizing it as a weak State (see map below). Sri Lanka scores 6.32 under the economic indicators, 5.47 under the political indicators, and 3.38 under security. The security score is a particularly low score, which reflects the security situation at the time of the study (before the war was over). Sri Lanka further scored 8.59 on social welfare, which is relatively high in comparison to its other scores (representing the 4th quintile). According to the report, Somalia occupies the first position with an overall score of 0.52. The Slovak Republic, which occupies the 141st position, scores 9.41 indicating the best position of the lot.

**Index of State Weakness**



19. Indicators in the economic basket assess a state's ability to provide its citizens with a stable economic environment that facilitates sustainable and equitable growth.

20. Political indicators assess the quality of a state's political institutions and the extent to which its citizens accept as legitimate their system of governance. They seek to measure government accountability to citizens, the rule of law, the extent of corruption, the extent of democratization, freedom of expression and association, and the ability of the state bureaucracy and institutions to function effectively, independently, and responsively.

21. Security indicators evaluate whether a state is able to provide physical security for its citizens. They measure the occurrence and intensity of violent conflict or its residual effects (e.g., population displacement), illegal seizure of political power, widespread perceptions of political instability, territory affected by conflict, and state-sponsored political violence and gross human rights abuses.

22. Indicators in the social welfare basket measure how well a state meets the basic human needs of its citizens, including nutrition, health, education, and access to clean water and sanitation.

## **Conclusion**

The above discussion on the various indices indicates an overall weak performance of Sri Lanka even in comparison to “weak countries”, and marks a downward trend. One clearly notable development is the poor and declining ranking in terms of human security and political stability. While this may partly be attributed to the war situation, low scores in other areas point at serious structural flaws in Sri Lanka’s governance.

Sri Lanka’s score has also significantly dropped in the indicator voice and accountability of the Worldwide Governance Indicators. This is alarming as citizens’ voice, i.e. their ability to communicate their views and priorities to their representatives, is a prerequisite for good governance. Similarly, accountability as reflected in the government’s preparedness to stand up to public scrutiny is a key component of good governance. Poor ratings in this indicator should be a red flag to the Government.

In regard to corruption, indices seem to show a slight deterioration, as reflected in decreasing scores in both the Corruption Perceptions Index and the Worldwide Governance Index. However, Sri Lanka’s rating has been stable over the past years in other indicators such as rule of law and government effectiveness.

# Interview with the Chairman of the Bribery Commission (CIABOC)

Nilhan de Mel

The Commission to Investigate Allegations of Bribery or Corruption (CIABOC) was established by Act No. 19 of 1994. It was designed to be a permanent and independent commission empowered to investigate and direct the prosecution of allegations of bribery and corruption. CIABOC has jurisdiction over cases where individuals hold public office or are employed by the state, and where evidence of recent acquisition of wealth or property are not on a scale commensurate with their known sources of wealth or income.

The Commission is headed by three members, two of whom are required to be retired judges of the Supreme Court or Court of Appeal. The third is meant to be a person with wide experience in criminal investigation and law enforcement. The Commission's work is supported by 226 staff, including 105 police officers, 105 administrative staff, and 16 legal officers.

Transparency International interviewed Justice Ameer Ismail, the Chairman of the CIABOC.

## How many complaints did you receive in the last year?

In 2008 we received some 2,500 complaints. And up to August 2009 we have received 2,300.

## Types of communications received by the commission:<sup>1</sup>

| Year | Real | Pseudonymous | Anonymous | Total |
|------|------|--------------|-----------|-------|
| 2005 | 1238 | 413          | 467       | 2118  |
| 2006 | 2279 | 854          | 1134      | 4267  |
| 2007 | 2268 | 297          | 1420      | 3985  |
| 2008 | 1541 | 79           | 1048      | 2668  |
| 2009 | 1148 | 163          | 1000      | 2311  |

## What are the sectors from which most complaints are usually received?

Well, the education sector stands out in the area of school admissions. Also, at the village level, there are many complaints of corruption against the Grama Sevaka officers. Other than that, of course, there are also a lot of complaints regarding the police, and against the Samurdhi officers. These are the sectors that stand out.

## During your tenure as Chairman of the Bribery Commission did you find any undue political influence?

No. In fairness to the government and ministers I can say that I never received any telephone calls from any politician. I can positively say that there has been no political interference in relation to my duties. No politician has spoken to me in regard to any pending investigation.

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1. Commission to Investigate Allegations of Bribery or Corruption, Factsheet 2009. Unpublished

**Do you find that the Commission is used to target political opponents?**

Well, whenever there is an election, we receive a spate of complaints regarding candidates of many of the parties. Some of these may be politically motivated. But in many cases we find that there is not enough evidence or facts for the Commission to proceed with it. Nevertheless, the media usually cover these stories and show pictures of persons entering the Commission to file a complaint against such and such a party. Once the election is over, they forget about it, so there may be some political game-playing involved.

**In your view, should the Commission do more to ensure the prevention of corruption?**

There is a lot more work that the Commission can do in terms of prevention and educating the public. There is lot of scope for the Commission in this area but there is virtually no financial provision for this. This is also an area where non-governmental organizations can collaborate with the Commission to help increase awareness of bribery and corruption issues at a much broader level.

**The changes made to the Bribery Act in 1994 limit the power of the Commission to only investigate matters for which it receives a complaint. Do you think the Commission's capacity to investigate bribery and corruption is curtailed by this amendment?**

There are both pros and cons to this. Earlier, anything that came to the knowledge of the Commissioner could be investigated. But now there has to be a communication to the Commission in order to start an investigation. So to some degree the current situation does limit the ability of the Commission to conduct investigations into allegations that are reported in the press. On the other hand, under the previous system, a biased Commissioner would be able to initiate investigations on his own or at the instigation of another to harass a person for personal or political reasons.

**What are your views on the Commission's ability to conduct thorough investigations into complaints?**

One of the limitations we need to overcome is that we need to have our own independent investigation staff. Presently, our investigation staff is completely comprised of officers from the police department. However, a large number of complaints of corruption are against the police. So this situation is tantamount to a conflict of interest. Elsewhere in the world, bribery and corruption commissions have their own independent staff. Hong Kong's Independent Commission Against Corruption (ICAC), for example, one of the most successful in the world has its own independent investigators. Ideally, to overcome this we need to have our own investigation team, and they need to be qualified in various fields. Investigations, at present, are like an investigation conducted in a normal police station. Corruption cases need sophisticated investigation.

**What would you say is the main limitation faced by the Commission?**

I would see one of the main problems as the lack of sufficient financial independence for the Commission. A certain sum of money is allocated by Parliament, and this is available for the Commission, but on a piecemeal basis. So the Commission needs to regularly keep looking to the Treasury to receive its funds. This can result in delays and, in general, lead to difficulty in planning the activities of the Commission. Investigations are also hampered by the lack of adequate

transport facilities. Finally, the Commission does not have disciplinary control of its legal and administrative staff. This is also a limitation.

**Generally speaking, would you consider the Commission as being a success?**

I would say that the CIABOC as an institution itself is successful. Of course there are many improvements that can be made, but in general I would say that the institution is successful despite its limitation. The problem is that there is no one to take the initiative to make the Commission effective in its effort to fight corruption. No Minister wants to take the initiative, and if we discuss it with the Ministers they say that this Commission comes directly under the authority of His Excellency the President. But of course, the President himself has so much to do that he has no time to give special attention to the requirements of the Commission. But it will be good to have someone who can listen to our problems and help rectify the relevant laws that need amendment.

**What would you say are some of the highlights of the Commission during your tenure?**

Well, I must say that we have developed fairly meticulous and detailed filing system. Anyone can make an inquiry regarding a complaint that they have made, and we can respond without delay, and give specific information as to what the Commission has done so far. Given the large number of complaints received by the Commission, I think this is quite an achievement. In addition, I must say that the commissioners of this Commission have been actively involved in their task, and have pursued their duties diligently working full time.



# The Decline of Media Freedom in an Age of Fear

Ananda Dharmapriya Jayasekara

*" Were it left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter. But I should mean that every man should receive those papers and be capable of reading them."*

*--Thomas Jefferson (1787)*

Indeed, the right to hold independent views and make them publicly known, as well as the right to obtain information from diverse sources is not only a fundamental right, but is absolutely necessary for the proper functioning of a democratic society.

When there is freedom of speech and expression in the country, governments cannot manipulate the people the way they want to. Instead, the people are able to pressure the government to accommodate their needs. To be sure, media freedom is among the fundamentals of good governance.

In Sri Lanka too, Article 14 of the Constitution guarantees that "every citizen is entitled to the freedom of speech and expression." Article 19 of the Universal Declaration of Human Rights states that "everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive, and impart information and ideas through any media and regardless of frontiers."

The degree to which States allow this fundamental human right, however, remains a question. Freedom House's latest survey, of the 195 countries and territories assessed, total media freedom is enjoyed by only 36% (70 countries). Of the balance, 31% (61 countries) were rated Partly Free, and 33% (64 countries) were rated Not Free. Sri Lanka is in the category of countries without media freedom.<sup>1</sup>

The World Press Freedom Index indicates that Sri Lanka, which was in position 51 out of 139 countries in 2002, dropped dramatically in 2008 to rank 165 out of 173. Only Iran, China, Vietnam, Cuba, Myanmar, Turkmenistan, North Korea, and Eritrea rank lower than Sri Lanka. Neighbouring India occupies the 118th position.<sup>2</sup>

British politician Edmund Burke wrote that mass media has a social responsibility of exposing the misuse of power by the Legislature, the Executive, and the Judiciary on behalf of the people. All the same, many State leaders dislike the role of the media, as they resent the criticism that they inevitably receive from them. As such, in countries where the democratic process is not deeply entrenched, governments tend to suppress the media.

In his paper entitled "Exit the Censor, Enter the Regulator," Leonard Sussman writes that the methods used worldwide by leaders and their political henchmen to suppress the media are very

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1. [http://www.freedomhouse.org/uploads/fop/2009/FreedomofthePress2009\\_OverviewEssay.pdf](http://www.freedomhouse.org/uploads/fop/2009/FreedomofthePress2009_OverviewEssay.pdf)

2. <http://www.rsf.org/en-classement1003-2009.html>

similar. Among these methods are the killing, forced disappearances, abductions, and physical violence towards media workers. The burning of media institutions, raids by armed forces, and forcible entry by gangs are also considered common practice. Furthermore, in attempts to slant the news in favour of the powers that be, media workers are frequently intimidated into quitting their jobs or fleeing the country. In this way, journalists who are critical of the government can be sidelined, and preference given to state controlled media outlets.

Such repressive measures have been adopted in Sri Lanka, and media freedom has suffered immensely as a consequence. This is evident upon closer inspection. According to Journalists for Democracy in Sri Lanka (JDS) the number of journalists and media workers who have been killed between 2004 and August 2009 amounts to 34.<sup>3</sup>

Among the incidents involving journalists and media workers during the past year were the assassination of editors, the abduction and beating up of editors and journalists, the burning of media offices, and forcibly entering media offices and harassing employees. In addition, there were instances of forcible entry into houses of journalists and intimidating them by holding guns against their head to intimidate into stopping writing about the war, and forcing them to divulge their news contacts. For fear of death, some of these incidents have not been reported even to media organizations.

There were also disturbing instances of journalists and media activists being brought before the Defense Secretary and reprimanded, threatened and told how to better do their job.

With the war reaching its apex, whatever media freedom that was enjoyed in Sri Lanka, quickly began to erode, with references to the war, the ethnic crisis, corruption, and general criticism of the government becoming forbidden topics for the media.

As International News Safety Institute points out, in recent months more than 50 journalists have left Sri Lanka fearing persecution.<sup>4</sup>

### **Assassination of the Sunday Leader Editor**

Lasantha Wickrematunga was a fearless and bold investigative journalist. He was the first journalist to be selected for the Integrity Award (2000) by Transparency International. Although his use of the media was limited do the context of Sri Lanka, he used his pen forcefully with a particular focus on corruption.

With the escalation of the war many journalists began to leave the country, while others severely limited their scope. Lasantha, however, continued his mission. Every issue of his weekend newspaper, the Sunday Leader exposed an important issue that became a talking point in the country.

In his quest to hold the Government accountable, Lasantha faced many threats. In one incident he was attacked while travelling with his wife, while in a separate incident his house was attacked

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3. JDS Press Release, 22nd July 2009

4. [http://www.newssafety.org/index.php?view=article&catid=129%3Asri-lanka-media-safety&id=14607%3AThirty-four-journalists-a-media-workers-killed-during-present-government-rule&option=com\\_content&Itemid=100465](http://www.newssafety.org/index.php?view=article&catid=129%3Asri-lanka-media-safety&id=14607%3AThirty-four-journalists-a-media-workers-killed-during-present-government-rule&option=com_content&Itemid=100465)



with grenades. Twice his press offices were burnt to the ground despite being located in a high security zone. Furthermore, in 2000 his press offices were sealed by the military. Despite these open attacks on Lasantha, Defense Secretary Gotabhaya Rajapaksa pointed out that "even Lasantha Wickrematunga can get about in Colombo safely driving his car." This was apparently his attempt to show that there was, indeed, media freedom in the country.<sup>5</sup>

Ironically, in July 2007 Defense Secretary Gotabhaya Rajapaksa filed a case against Lasantha in the Mount Lavinia Magistrate's Court alleging defamation for an article published in the Sunday Leader under the caption "MiG deal crash lands on government" claiming Rs 1,000 million as damages. In December 2008, Mr. Rajapaksa obtained a court order restraining the Sunday Leader from publishing any news relating to him.<sup>6</sup> This was because Lasantha was planning to publish several investigative features involving him.

Sadly, Lasantha never had the opportunity to appeal the case, as he was assassinated 4 days before he was due in court. According to Lasantha's close associates, Lasantha was planning on publicising the investigative features by including them as an annexure to his appeal.

Lasantha Wickrematunga was assassinated around 10 in the morning on 08 January 2009 on the Attidiya Road near the Model Junior School. This location is about 500 metres away from the Sri Lanka Air Force base at Ratmalana and is a busy area within the high security zone.

In the media world, the killing of Lasantha created as much of a commotion as the killing of Richard de Zoysa a few years back. In a special statement, President Mahinda Rajapaksa stated that "My Government and I most vehemently and unequivocally condemn the murder of Lasantha Wickramatunga, Editor of The Sunday Leader."<sup>7</sup>

The statement added that the President had directed the Police to conduct the most thorough investigation to bring to justice any and all persons responsible for this act of brutality, with maximum speed.

"Despite grave threats of this nature, my Government reiterates its commitment to upholding the principles of Media Freedom and Freedom of Expression, even under the most trying circumstances, as we have witnessed today," it stated.<sup>8</sup>

Soon after Lasantha's assassination, even the few media institutions which were openly critical of the government before began to practice self-censorship. Although a few articles appeared about Lasantha's death, journalists were wary of raising any issues for fear of their own death.

Ravaya editor Victor Ivan, in his book "*Pena ahinsakada?*" ("How innocent is the pen?") released in September 2009 described Lasantha's killing as the biggest and most violent incident to ever occur in field of media. He further stated that responsibility should be borne by the government of Mahinda Rajapaksa.

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5. Sunanda Deshapriya- Ravaya, 18th January 2009

6. <http://fremediasrilanka.wordpress.com/page/2>

7. <http://www.lankanews.com/sinhala/newes.php?id=7642>

8. <http://www.asiantribune.com/?q=node/15071>

At the time of writing the chapter, the Lasantha assassination case was being heard at the Mount Lavinia Magistrate's Court. Although the President had directed the police to conduct a thorough investigation, on several occasions the magistrate had to continue the hearing without police assistance. Indeed, the police have still not submitted the final report on the investigations to court. This fact reminds us that, to date, not one case involving an attack on, or murder of journalists have been solved successfully in Sri Lanka.

## **Sirasa/MTV Attack**

Similar to the Sunday Leader, Sirasa TV was engaged in the reporting of kidnappings, killings, and top-level corruption when most media outlets were hesitant to do so. Vimarshana, a programme on Sirasa TV, was branded as a new experiment in investigative journalism.<sup>9</sup> Very often their revelations exposed persons in high places of wrongdoing, causing the programmes audience to soar. In addition to their investigative work, Sirasa TV also accommodated the opposition point of view. As a result, the Defence website branded Sirasa as pro-LTTE, and indicated that it was not supporting the war effort.

Sirasa TV studio complex, located at Depanama, Pannipitiya was attacked on January 6th 2009 around 2.15 a.m.<sup>10</sup> An armed gang of about 20 masked men dressed in black arrived at the station in a white van carrying T56 weapons, pistols, and swords. After jumping over the main gate, the gang began to threaten the staff and then shot and destroyed the main control room. They then blew the station up using explosive devices. Later inquiries revealed that remotely detonated claymore bombs had been used. It is important to note that only the Sri Lankan Army and the LTTE had access to claymore bombs.

Four days prior to the attack, a gang of masked persons arrived at the station in a white van without number plates and threw a petrol bomb and vanished. Sirasa management had made a complaint to the Maharagama police about the incident on January 2nd. Again on the morning of January 4th, Sirasa staff noticed a white van without number plates driving around the premises, and again reported it to the Maharagama police. Finally, on January 6th the police failed to turn up until after the gang had blown up the station and left. This was despite the fact that security had contacted the police as soon as the white van appeared.

Participating in a discussion on ITN eight days after the incident, Defense Secretary Gotabhaya Rajapaksa said that the Sirasa attack had been engineered by Sirasa itself. "We shall divulge the facts soon. Why do we want to burn this useless place called Sirasa," he asked during the discussion. Despite requests by Sirasa for the Defense Secretary to divulge how exactly they themselves had engineered the attack, there was no response by either him or the Government. It is still not known who was responsible for the well-planned attack, as there as been no credible investigation into the incident.

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9. This program won the TISL Integrity Award in 2008

10. Ravaya, 11 Jan 2009

## **Attack on Poddala Jayantha**

Poddala Jayantha is the General Secretary of the Sri Lanka Working Journalists Association—the primary organization representing employed journalists in Sri Lanka. He is also a committed investigative journalist who has worked hard to expose corruption and malpractice.

Over the years, Poddala Jayantha has extensively investigated and reported on corruption related incidents and brought to light many issues hidden through the abuse of power. He remained committed to this cause even when there were serious threats on his life and the safety of his family. It is because of this dedication that in 2004 Transparency International Sri Lanka presented to him the National Integrity Award.

As the situation for journalists in Sri Lanka has become more severe Poddala has become even more involved in campaigning for media freedom, resulting in continued threats from those who seek to silence dissent.

Since the end of the war many state media institutions have invoked Poddala Jayantha's name as someone who worked against the Government and the war, with the intention of instigating public outrage against Poddala and other media campaigners. One commentator went so far as to say on national radio that the limbs of these traitors should be broken. Recognizing the threat that these comments posed, Poddala wrote to the President, the Media Minister, the Inspector-General of Police, and various other groups asking for an end to this witch-hunt.

Inspired by Poddala's request, five journalist organizations including the Free Media Movement and the Sri Lanka Working Journalists Association wrote to the Media Minister also asking for press freedom. In their letter they directly asked for a meeting with the President to further discuss the matter. In a seemingly progressive move, the President met with the five groups on June 1st 2009. At the same time as the meeting was taking place, however, Poddala Jayantha, who had not been invited to the meeting, was abducted in Nugegoda and severely assaulted.

According to Poddala, the men who abducted him, blindfolded and tortured him, broke his left leg in two places, cut his hair and beard and forcibly inserted the hair into his mouth while burning his feet. Throughout the ordeal, his abductors repeatedly told him that this was just a warning and that unless he stopped all his work on media freedom he would be killed. At the end of the torture, he was dumped into a mud pit in Angoda. Again, no credible investigation has yet occurred.

## **More Attacks**

According to the Free Media Movement, attacks on media personnel during the past two years seem to have taken a new trend. Indeed, there have been a number of attacks by professional gangs on a large number of individuals including the Deputy Editor of The Nation, Keith Noir on the 22nd May 2008, Namal Perera of Sri Lanka Press Institute on the 30th of June 2008, the Press Secretary of the British High Commission Mahendra Ratnaveera also on the 30th of June 2008, and the attack on Upali Tennakoon, the Editor of the Rivira newspaper, and his wife on the 23rd of January 2009.

It cannot be discounted that the abductions of Sudaroli Editor Nadesapillai Vithyatharan, Poddala Jayantha, Dhammika Ganganath Dissanayake, and Prageeth Ekneligodsa were also carried out by professionals. It is also significant that the roadblocks, which were placed at regular intervals near the scenes of the abductions, were of no hindrance to the abductors. To be sure, both Namal Perera and Mahendra Ratnaweera were attacked in the vicinity of an army camp.

After a close study of some of these incidents, the Media Alliance, including the Working Journalists Association and the Free Media Movement has stated that the abductions have been executed by a group similar to “an auxiliary army” under the patronage of “an authoritative group” with no relationship to the legally constituted police or the armed services.<sup>11</sup>

## **Tissanayagam Case**

On the 31st of August 2009, journalist Jayaprakash Sittampalam Tissanayagam was sentenced to 20 years hard labour for writing two articles in North Eastern Monthly—the magazine he was the editor of. Tissanayagam was convicted under the Prevention of Terrorism Act (PTA) by High Court judge Deepali Wijesundara on three counts. Those were: attempting to cause acts of violence or racial or communal disharmony; attempting to cause such acts with the intention of causing disrepute to the government; and collecting and obtaining information for the purpose of terrorism and raising funds for the purpose of terrorism through the collection of funds for the said magazine.

The judgement against Tissanayagam<sup>12</sup> was delivered on August 31st 2009. It became a landmark judgement in Sri Lanka's media scene, as it was the first time that a journalist was convicted under the PTA. His conviction was based on a confession extracted by the police Terrorism Investigation Division (TID).

In the first few weeks after his arrest on March 7th 2008, Tissanayagam was allowed to meet neither his wife nor his lawyer. It was further revealed that he was being detained without an order from the Defence Secretary, despite the fact that under the PTA such a directive is essential when a suspect is kept in a location other than a police station or a prison.<sup>13</sup> Regardless of this fact, Tissanayagam was kept under detention in the TID and in the remand prison for 530 days. It was during this time that Tissanayagam, according to his own testimony, had been forced to make a confession under duress after being subjected to torture.

A large number of media organisations throughout the world have protested against the judgment, which is now under appeal. After being sentenced, Tissanayagam was selected as the first winner of the Peter Mackler Award for Courageous and Ethical Journalism by Global Media Forum and the US branch of Reporters Without Borders. The Peter Mackler award rewards journalists who fight courageously and ethically to report the news in countries where freedom of the press is either not guaranteed or not recognized.

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11. The Resurgence of Terror & the Paramilitary Forces, submitted to All-Religious Conference, 7th April 2009.

12. HC 4425/2008

13. K.W. Janaranjana. Ravaya. September 6th 2009

## **Sudaroli Editor Abducted**

A senior journalist, N. Vithyatharan, Editor of the Sudar Oli newspaper was abducted on February 26th 2009 when he arrived at a funeral parlour in Mount Lavinia to attend the funeral of a relative. Those present at the parlour saw three armed policemen getting down from a white van and go straight towards Vithyatharan. As the police attempted to drag him away, those present at the funeral actively intervened and managed to free him from the police. Three additional men in civilian dress, however, proceeded to emerge from the vehicle, push everyone aside, and drag him on the floor to the van. Managing Director of Sudar Oli newspaper, E. Saravanabhavan quickly alerted the police and the media. In response to media queries, the police media spokesman said that Vithyatharan had not been arrested but, in fact, abducted. A little while later, the spokesman said that he had been arrested by the Colombo Police Crimes Division and was being questioned on an alleged conversation between him and the pilot of LTTE light aircraft that attacked Colombo on February 21st 2009. When produced in court, he was released.

## **Conclusion**

The above incidents account for only a few instances of media suppression that occurred during the past year. Sadly, the horrifying nature of all of these attacks and abductions points to the fact that Leonard R Sussman's observation that the quest for free press is often met with brutal suppression, applies perfectly well to the Sri Lankan context.

For the time being, it is encouraging to find new initiatives that actually bode well for the future of Sri Lanka. The grenade attack on the house of human rights lawyer and Executive Director of Transparency International Sri Lanka, J C Weliamuna on September 27th 2008, for example, was widely interpreted as a dastardly act against freedom of thought and expression. While the attack did not achieve its goal of silencing dissent, what it did accomplish was to bring together over 100 civil society organizations, media organisations, trade unions, and civil activists to, among other things, demand that the government hold an independent inquiry into the attack. This also led to the formation of a mass movement focussing on the protection of freedom of expression and the right to life.

In this same way, there seems to be a new sense of unity amongst some media organisations that, up until now, have tended to act independently of one another. To be specific, five organisations including the Sri Lanka Working Journalists Association, and the Free Media Movement have now joined themselves into a single entity, and are working with the Sri Lanka Editors' Guild, Sri Lanka Newspaper Publishers' Association, and the Sri Lankan branch of the South Asia Free Media to protest against government actions such as their attempt to revive the Press Council law.

Nevertheless, while there exists a limited number of organizations and individuals that are standing up for their rights, it seems that the majority Sri Lankan media is not prepared to stand with them. Until this fact changes, and until certain laws and circulars are revoked, both the media and the average citizen will continue to lack the right to information.



# Failing to COPE: Parliamentary Oversight in 2008/2009

Ramsey Ben-Achour

The Committee on Public Enterprise (COPE) was established in 1979 by Parliament to ensure that Public Corporations in which the government has a financial stake maintain strict financial discipline. This oversight tool has been used to call the attention of Parliament to cases of corruption, malfeasance, lack of regulation, poor record keeping, and poor leadership.

For instance, it was reported in 2007 that the COPE “examined allegations of financial frauds at the National Housing Development Authority which had sold a land belonging to it at Kirimandala Mawatha in Narahenpita for a mere Rs.75 million while its actual value was about Rs.4,000 million. There was no cabinet approval for this sale.”<sup>1</sup>

Similarly, the same report drew attention to startling inefficiency with which the Coconut Development Board was run. Specifically, under the Board's management between 2000 and 2007, revenues from coconut exports declined by 33 percent, while the expenditures of the Board increased by 107 percent.<sup>2</sup>

In this way, the annual COPE report has drawn much needed scrutiny to the public sector. Despite the importance of this role, however, this brief case study will attempt to illustrate how the authority of the COPE has been eroded, and why attempts to counteract this trend must succeed if responsible governance is to be restored to Sri Lanka's public enterprises.

It is the view of many that the legitimacy of the COPE has seemingly begun to diminish over the years.<sup>3</sup> Indeed, many of the suggestions and recommendations made by the COPE have remained just that—recommendations. According to the Asian Human Rights Commission, for example, the recommendations found in the COPE reports not only bring lackadaisical indifference from Sri Lanka's leadership, but actually result in the victimization of the report's authors. To be sure, “...instead of acting on committee reports, members of parliament who act with independence and submit such reports after a lot of hard work are themselves victimized.”<sup>4</sup>

A number of factors also limit the effectiveness and credibility of the COPE. The first, and arguably most detrimental, is the competing lines of accountability of the current COPE Chairman. That is to say, the role of the Government is to ensure that publicly owned enterprises are running efficiently, and it is thus the Government that is accountable for the failures of public enterprises. Conversely, the role of the COPE is to point out when these failures occur. Having a Member of Parliament that is concurrently the COPE Chairman and a Government Minister creates a conflict of interest. Indeed, the current Chairman of COPE, W. D. J. Senewiratne, is both a Member of

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1. Read the entire story at “COPE exposes corruption in 20 more state institutions” Daily Mirror: 25/08/2007” By Kelum Bandara & Yohan Perera

2. *ibid*, 2007

3. The former chairman of COPE, Mr. Wijeyadasa Rajapakse, spoke before Parliament in 2007 and stated ‘This report is an indictment on all 225 of us who are here. It is not because we have all robbed the country, but because we are the Custodians of Public finances and we have failed to do our duty...’ This was further reported in the Sunday Leader, available here: <http://pdfs.island.lk/2007/03/09/p6.pdf>

4. <http://www.ahrchk.net/pr/mainfile.php/2008mr/505/>

Parliament, and a Government Minister. A simple solution to this problem could be to return to the once long-standing tradition of appointing an opposition member to the post of the COPE Chairman.<sup>5</sup>

An additional factor that severely hinders the efficacy and legitimacy of COPE, yet could easily be addressed, is the lack of transparency in COPE proceedings. In stark contrast to the practices of other democracies, sessions of the COPE are held in private. It seems unnecessarily ironic that Parliament's body for public scrutiny is not open to scrutiny itself. Without the watchful eye of the public and civil society, there is no way to ensure that the COPE is fulfilling its mandate to its fullest capacity. Similarly, members of the COPE lack research support teams to aid them in their work. Therefore, even when COPE members are quite keen to execute their mandate, their capacity to do so is severely limited.

Further constricting the effectiveness of the COPE's ability to maintain strict financial oversight of publicly owned enterprises is its narrow mandate. That is, the COPE report of Parliament for the year 2008 was tabled in Parliament in August of this year. The landmark feature of said report was the recommendation that the Standing Orders in Parliament be amended to require any institution which has at least 15% of its shares held by the General Treasury, or any enterprise owned by the government, to be brought under the scrutiny of both the Committee on Public Accounts (COPA) and the COPE. While 15% is an ostensibly small percentage, when converted into actual rupee amounts, 15% could equate to sums larger than the total worth of entirely government owned enterprises.

This recommendation was based on the proposal to Parliament made by the former Chairman of the COPE in 2007. Concrete measures, however, have yet to be taken on this recommendation. Rather, when this report was tabled in Parliament a debate ensued on the legal right of the Parliament to scrutinize enterprises that are not fully owned by the State. Following the debate, a majority of the members of Parliament from both the ruling party and opposition party agreed that the Constitution granted Parliament the authority to amend the Standing Orders, and that Parliament is supreme with respect to public finance. Parliament therefore voted in favour of the suggestion of the former COPE chairman to amend the Standing Orders. Despite this ostensibly progressive move, the Standing Orders have yet to be amended by the Committee on Standing Orders.

In addition to the lack of authority granted to the COPE, it seems that the COPE itself has willingly diminished its own purview. While the COPE records prior to 2006 have not been accessible to the public, comparing the COPE reports that are, indeed, available leads one to notice an emerging trend. Specifically, the 2007 COPE report, headed by Wijeyadasa Rajapakshe MP, thoroughly scrutinized 26 public enterprises. In 2008, however, under the direction of Minister Senewiratne MP the COPE examined only 20 institutions, thus significantly relaxing their scrutiny of public enterprises by almost 25%.<sup>6</sup>

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5. Due to their inherent incentive to hold the government accountable, the Chairman of this Committee has most typically been a member of the opposition party. Read more at <http://www.tisrilanka.org/?p=357>

6. This information can be deduced by comparing the past 2 COPE reports available here: <http://www.parliament.lk/committees/ListCommReport.do?comID=COMM1045>



While the unrealised potential for the COPE far surpasses its current level of effectiveness, it should not be said that the COPE serves no purpose. On the contrary, the COPE should be seen as one of the most important mechanisms for scrutinizing public finances in Sri Lanka today. Even without the mandate to include in its purview any private company with investments of 15% or greater of public finances, and even with the structural problem of misaligned incentives, the COPE has and continues to play an essential role in government regulation. The most recent COPE report, for example, draws attention to a number of important points that were common to all of the institutions examined. While the details of all of these points fall outside the scope of this short article, they are very much worth mentioning. They include:<sup>7</sup>

- The need for the coordination of functions of different public enterprises having overlapping functions
- The need for the State Information Communication Technology Agency (ICTA) to be utilized by enterprises
- The failure of public enterprises to consult the Attorney General on legal matters
- The absence of internal auditors and increasing balances of the debtor's accounts
- The need to achieve the objectives of each public enterprise
- The need for corporate action plans
- The establishment of decentralized units

More specifically, the report points out explicit incidences of waste, delays, bureaucracy, and lack of transparency. The non-observance of these important fundamentals points to the alarming state of poor governance of certain public enterprises. This problem is one that is systemic and widespread. Indeed, the Post Graduate Institute of Management, an institution that is meant to advise enterprises on best practices of governance, itself does not have a credible corporate plan. This begs the question, how can we expect public enterprises to design and implement an effective corporate plan, if the institute that is meant to serve as a role model does not do so?

Clearly, there is a role to be played by the COPE, and Parliament more broadly, in counteracting serious cases of poor governance. By drawing attention to such failures by Sri Lanka's public enterprises, the COPE is playing a crucial role of oversight. The lack of action against the malpractices of waste, mismanagement and possible instances of corruption revealed in the COPE, however, undermines the effectiveness of their recommendations. Serious action must be taken to act on the COPE's recommendations, and to expand their mandate to include private companies with public investment, while ensuring that the COPE maintains its incentive to effectively fulfil their ever-important function.

This article is based on initial research by Senura Abeywardena.

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7. All of these points can be examined in further detail by reading the full COPE report available here: <http://www.parliament.lk/committees/ListCommReport.do?comID=COMM1045>



# The Politicization of Public Administration in Education and Foreign Service

## Nilhan de Mel

The declining quality of Sri Lanka's public service is a recurrent complaint in our daily discussions, and it is often attributed to the increasing politicisation of our public service. This article examines this statement by looking at two sectors that have been at the centre of debate in the past year: Education sector and Foreign Service.

Broadly speaking, the goal of public administration is to safeguard the public good by providing fair and effective services to all citizens. In Sri Lanka, we do not advocate a minimalist state, so we all engage significantly with the public administration of the State. In return for taxes, the public administration provides education, health, transport, housing, clean environment, and much more. Impartiality of service delivery is a constitutional requirement that means all citizens must be given equal opportunity regardless of ethnicity, political preference, faith, or economic status.

Political parties, by their very nature, vie for the support of various groups with similar ideology to gain power. Once a political party is in power, however, it must serve all people, and not infiltrate or manipulate the impartiality of the public administration.

Yet, with their various motives, the authors of the Sri Lankan Constitution of 1972, and 1978 undermined the safeguards built in to the post-independence constitution that were meant to keep the public administration from being politicised. Both these constitutions saw powers and functions that were allocated to the Public Service Commission (PSC) being transferred to the hands of the political party in power via the Cabinet of Ministers. This erosion of integrity of the public administration was ostensibly halted in 2002 with the adoption of the 17th Amendment to the Constitution by Parliament. The 17th Amendment seeks to ensure independence of the PSC and other commissions through the Constitutional Council that would appoint members to the various commissions.<sup>1</sup> Under the 17th amendment the PSC is responsible for ensuring that public officers are appointed, promoted, transferred and disciplined according to the provisions of the law, including the PSC rules<sup>2</sup> without being subject to political influence. However, since the Constitutional Council has not come into being, the President directly appoints members to the commissions, including the PSC. When its term lapsed in April 2009 the PSC became defunct, and Cabinet has usurped its powers. This is in contravention to the Constitution that states: "55(1) The appointment, promotion, transfer, functions of disciplinary control and dismissal of public officers shall be vested in the (Public Service) Commission."

While the Constitution vests some limited powers in the Cabinet of Ministers, and in the President, in regard to appointments of Heads of Departments<sup>3</sup> and other senior positions, the appointments made by Cabinet are clearly outside of the Constitution. At the time of writing of

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1. see chapter "Governance in Times of Peace and War"

2. <http://www.psc.gov.lk/>

3. 55(3) Notwithstanding the provisions of paragraph (1) of this Article, the appointment, promotion, transfer, disciplinary control and dismissal of all Heads of Departments shall vest in the Cabinet of Ministers, who shall exercise such powers after ascertaining the views of the (Public Service) Commission. 55(4) Subject to the provisions of the Constitution, the Cabinet of Ministers shall provide for and determine all matters of policy relating to public officers.

this chapter, no members had been appointed to the PSC.<sup>4</sup>

This chapter looks at the education sector and the Foreign Service – both sectors with reportedly high levels of politicisation, that have a damaging effect on the quality of education and on foreign policy.

## The Sri Lanka Educational Service

The literacy and education standards in Sri Lanka have ranked high for decades. Enrolment rates for primary school entrance are nearing 100% and the standard of the GCE O/L is on the rise.<sup>5</sup> The government has committed to improving the quality of education as well as education governance.<sup>6</sup> Nevertheless, the education sector in Sri Lanka is perceived as a sector in which corruption is rampant, and one that is highly politicised.<sup>7</sup> The education sector topped the list of complaints received by the Bribery Commission in 2008.<sup>8</sup> A survey conducted by TISL in 2008 found that more than half of teachers and education officials interviewed believed that most of the important positions in education were political appointments.<sup>9</sup> Also, President Mahinda Rajapakse in a speech on 23 June 2009 stressed the need to depoliticize the education system. Presidential Advisor Sunimal Fernando stated that teaching has been severely affected due to political interference.<sup>10</sup>

The Sri Lanka Educational Administrative Service (SLEAS) Minute of 2002 sets out the regulatory framework for the educational service. According to the SLEAS minute, 2,283 positions are indicated for officers of the SLEAS cadre. However, according to the Ceylon Teachers Union, only about 1,170 officers of the SLEAS had been appointed to these positions in June 2009<sup>11</sup> thereby depriving the SLEAS cadre of approximately 50% of the due allocation. However, the 1,100 remaining positions to which SLEAS officers have not been appointed are not vacant. These positions have been filled via a Cabinet decision through a supernumerary scheme for persons who qualify as targets of political victimisation.

Under the supernumerary scheme, from 1978 to 1999 approximately 7,800 appointments have taken place, out of which 7,500 public officers continue to hold these positions in 2009. Thus, the number of supernumerary appointments is almost seven fold the number of officially appointed SLEAS cadre, increasing the size of the SLEAS to over 8,000.

The consequences of these appointment practices cannot be underestimated: In addition to the huge costs, they cause inefficiencies and redundancies leading to poor outcomes of administration. Also, the lack of rigor in appointments of the SLEAS cadre has demoralized the legitimate members of the cadre, thus reducing the standards of education service.

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4. <http://www.thesundayleader.lk/20090816/NEWS.HTM>

5. World Bank: Treasures of the Education System of Sri Lanka. 2005. Harsha Aturupane: Has the Holy Grail of education been sighted? Sunday Times. 06 July 2008. Transparency International SL, Position Paper, 09.06.2009

6. Education Sector Development Framework and Programme (ESDFP) 2006-2010 Ministry of Education: Education for Economic Development and Prosperity. 2005

7. Transparency International SL, Position Paper, 11.07.2008

8. Nadia Fazlulhaq: Bribery rampant in 'elite' schools - Sunday Times. 24 August 2008

9. Transparency International SL, Position Paper, 09.06.2009

10. 'President disappointed over failure of Education Authorities' - Daily Mirror 23 June 2009.

11. SC re-fix rights petition challenging flaws in SLEAS - Daily Mirror 26 June 2009

The SLEAS Minute details the requirements and the procedure for the appointments and promotions of SLEAS cadre. However, many SLEAS officials who have successfully met the criteria for promotion to a higher class remain without their promotion for years. In the mean time, less qualified individuals from outside the cadre are appointed to the higher positions on a supernumerary basis.<sup>12</sup>

The appointment and reappointment of retired public servants contrary to the SLEAS minute, is another serious irregularity in the education service. The Public Administration Circular of September 2007 mandates that a retired person over 60 years of age can only be appointed to a post in the public service if it cannot be filled with the existing cadre. Further, such an appointment of a retired person over the age of 60 can be only for a period of 12 months, and the person not be reappointed at the expiration of that period. The SLEAS, however, has many examples to the contrary. While official SLEAS cadre members are available to fill key positions, they are instead given to retired political loyalists over the age of 60. At the expiration of 12 months, they are simply reappointed. While this is an illegal practice, it is openly and repeatedly performed to keep political loyalists in key positions. Some of these positions continue to be annually extended despite them being mentioned in the Auditor General's report.<sup>13</sup>

Another irregularity in the education sector is the appointments to acting positions that are made by circumventing the necessary regulations. When a senior post falls vacant, often a junior officer with political affiliations is appointed in an acting capacity to this position.<sup>14</sup> By virtue of the fact that the appointment is made in an acting capacity, his/her qualifications, seniority, or suitability is not assessed or matched with the position. However, the appointee usually continues to hold the position that he/she was appointed to for prolonged periods of time, rendering the appointment a de facto permanent appointment. Once again the suitable and qualified SLEAS officials who should be appointed to these senior positions forgo them for these political appointees.

## **The Sri Lanka Foreign Service (SLFS)**

The appointment of non-career diplomats to the Foreign Service is a practice that is found in both Sri Lanka, and the world over. The phenomenon is certainly not an invention of the current political regime. Indeed, many of the leading prominent diplomats that have represented Sri Lanka overseas have not come from the SLFS cadre.

Nevertheless, over the last two years there has been a considerable outcry over this issue, with protest focused on the political appointment that allegedly undermines the integrity of the Foreign Service. The problem reportedly has taken on unprecedented levels and left career diplomats of the SLFS de-motivated and disgruntled.<sup>15</sup>

The Foreign Service is currently governed by the SLFS Minute of 2004.<sup>16</sup> According to this Minute, only the cadre of the SLFS can be appointed to the Sri Lanka Foreign Service. The Minute gives a

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12. Interview with the Ceylon Teachers Union

13. Public Administration Circular 09/2007

14. Interview with the Ceylon Teachers Union

15. Govt. destroying professional diplomatic corps, says UNP. Sunday Island, August 30, 2009

16. Gazette Extraordinary 24.01.2004

detailed breakdown of the positions available in the SLFS and the qualifications that are required for them. For example:

|                     |   |  |
|---------------------|---|--|
| Rank                | - | Qualifications needed to be appointed to the rank  |
| Third secretary     | - | On appointment to Grade III of the SLFS  |
| Second secretary    | - | On completion of 4 years of Grade III of SLFS and having earned all annual increments within that period |
| First secretary     | - | On completion of 7 years of Grade III of SLFS and having earned all annual increments within that period |
| Counsellor          | - | On promotion to Grade II of SLFS   |
| Minister Counsellor | - | On completion of 2 years of Grade II of SLFS and having earned all annual increments within that period  |
| Minister            | - | On completion of 7 years of Grade II of SLFS and having earned all annual increments within that period  |

It is the function of the Public Service Commission to make appointments to the SLFS according to the SLFS Minute. In addition to the PSC, the Head of the State has constitutional powers to make certain appointments to the SLFS. According to article 33(c) of the Constitution, for example, the President has power to appoint and accredit ambassadors, high commissioners, plenipotentiaries and other diplomatic agents. The term diplomatic agent is understood as any of the following: i) ambassadors, ii) envoys, and plenipotentiaries, iii) ministers resident accredited to the sovereign, iv) charges d'affairs accredited to the Minister of Foreign Affairs. Therefore, apart from these high ranks, the President may not make any other appointments to the SLFS. Such appointments would be outside the provisions of the Constitution.

Where non SLFS diplomats are appointed by the Head of State to missions overseas, the suitability of the candidate should be clearly established through transparent appointment criteria. A robust governance framework must include provisions for proper parliamentary scrutiny over such appointments, and must set clear standards of required qualifications of candidates.

The argument has been made that politicians must appoint non-career diplomats to missions overseas because career diplomats do not meet the required standard.<sup>18</sup> Such an approach is problematic in two ways. Firstly, if indeed the standard of career diplomats in the Foreign Service is lower than required, making political appointments from outside the SLFS cadre is not the remedy or long term solution. The real solution to such a problem would lie in streamlining the processes of recruitment to SLFS and and training. Secondly, making political appointments, regularly, and in increasing higher numbers<sup>19</sup> is a sure way to undermine the standards of the SLFS officers. As the frequency and number of political appointments increase, the professionalism of the SLFS will erode and it can be expected that the SLFS will find it increasingly difficult to recruit high calibre candidates into its cadre.

At the moment, there appears to be blackout of information regarding such appointments, with

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17. SLFS Minute of 2004

18. Our men overseas perform better as non-career diplomats, Thilak Gunaratne, The Sunday Times, July 19, 2009

19. Major battle in the Foreign Service, The Sunday Times, December 7, 2008

even the names of some presidential and cabinet appointees not publicly disclosed. More specifically, a comprehensive list of political appointees is not to be found, the locations and posts to which they have been appointed is not fully disclosed, and most of all, the basis on which these appointments have been made, the criteria of suitability that has been employed, is not discussed.<sup>20</sup> Instead, what is apparent are the various personal linkages that such appointees have to members of the political class.<sup>21</sup> It is commonly discussed in the public domain that appointments overseas have become a way for politicians to dole out favours to their personal contacts and friends. An important step in the right direction is to address this striking dearth of information.

## **Towards Depoliticising Public Administration and Affirming Democratic Space**

The examples of the education and Foreign Service show the extent to which public administration has become open to politicisation, at the detriment of the quality of services. The lack of independence of the Public Service Commission has degraded it to a mere rubber-stamping of decisions made by the Cabinet or the President. With the PSC becoming defunct in April 2009, appointments are done directly without even the appearance of concurrence with approved procedures and norms.

Unfortunately, it appears that political appointments, promotions and transfers have become the order of the day, rather than the exception. The overload created by the supernumerary scheme has led to discrimination against the existing SLEAS cadre who are legally qualified and eligible to receive appointments and promotions. In regard to the Foreign Service the Head of State may continue to enjoy powers of making certain limited appointments to Missions abroad but, these appointments must not take place in complete absence of transparency.

What is at stake is the professionalism and integrity of public service. If officers of public services are denied just and fair treatment and they are marginalised and discriminated against as result of political bias,<sup>22</sup> the social and democratic fabric of society is at risk.<sup>23</sup> The politicisation of the public administration has a snowballing effect that needs to be stopped in its tracks. If allowed to continue unchecked, it will grow to undermine the fundamental rights of all citizens to enjoy equal opportunity in a just and fair society.

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20. Transparency International SL, Position Paper, 11.07.2008

21. Foreign Service is not anybody's private property, K.Godage, The Nation, November 2, 2008

22. Stop playing football with the foreign service, Dinesh Weerakkody, Daily Mirror July 11.2009

23. How could the public service be re-vamped and re-activated?, Chandra Wickramasinghe, Daily Mirror September 25, 2009





# **Interview with the President of the Clean Hands Alliance**

**Aiman Rasheed**

The Clean Hands Alliance (or Campaign) is a Sri Lankan public service movement that seeks to reduce corruption within the public service. The Alliance was initiated in March 2007 and currently has nearly 2000 members. The members elect its seventeen member Executive Committee. The Clean Hands Alliance advocates reducing wastage and improving the quality of public services. Members of the Clean Hands Alliance are required to adhere to a strict Code of Conduct and take an oath to minimize corruption, reduce wastage, and make service delivery more efficient.

Transparency International interviewed one of the founding members and current President of the Clean Hands Alliance, Mr D. Dissanayake, Secretary of Ministry of Public Administration and Home Affairs for the Sri Lanka Governance Report 2009.

## **Can you tell how the Clean Hands Campaign was conceived, and the motives behind it?**

In 2006, I had the opportunity to attend a workshop hosted by the Commonwealth Secretariat in the UK. During the workshop, we learned about investments being misused in the world and the Asia region in particular. The calculated losses were enormous. A report by the [former] Vice Chairman of Asian Development Bank stated that 1/3rd of all investments in the Asia region had been wasted. I actually think that Sri Lanka's level of wastage is higher than that. Upon my return, I shared my experience with like-minded senior public officials. After lots of discussions, we decided to form an organization within the public service that would be completely apolitical. Our goal was to reduce wastage and act as a deterrent against corruption.

Clean Hands Alliance believes that though corruption cannot be erased completely, it can be reduced. A proactive and efficient public service with good moral values is the best deterrent against corruption. Our movement is open to all public servants who wish to join our cause.

## **How many members does the Clean Hands Alliance have?**

We started with about 35 members, but it quickly got bigger. After starting the Alliance, we went all over the country and conducted public meetings that were attended by 500-600 public officers. We held these meetings in about 10-15 districts and they soon became very popular. We received hundreds of requests for membership. The current membership has increased to about 2,500 or so. Most of the members were enlisted into the organization during 2007 and 2008.

## **Can you highlight some of the successes of the Clean Hands Alliance?**

No one has evaluated or measured the success of the Clean Hands Alliance. But I can say with certainty that it has created momentum against corruption. Our biggest success is getting government ministries to adopt our principles by introducing the Citizens Charter. These charters introduce standards for service delivery within public institutions by, for example, specifying how

long it will take to get a specific service done. They empower the public to seek and obtain their rights. We proposed this to the Cabinet in September 2007, and obtained a directive from the Cabinet Ministers seeking to create Citizens Charters for all government institutions and bodies. By now 35 institutions have developed their respective Citizens Charters, and each charter is tailored to the institution in question. For example, the Citizens Charter of the Registrar General states that birth certificates will be issued within one hour, while the Department of Motor Traffic's Charter says that vehicle licenses will be issued within two hours. The Charters also specify the charges for the services.

Another success was the Clean Hands Alliance's training for over 4,000 Community Based Organizations (CBOs) in tsunami affected areas to empower them to act as watch dogs and hold their local authorities accountable. We trained these CBOs to monitor how tsunami-related funds are spent, check if the projects are proceeding on schedule and verify the quality of the developmental projects.

### **Can you highlight some of the challenges faced by the Clean Hands Campaign?**

Firstly, we don't have funds. The only externally funded activity we conducted was printing of the Code of Ethics of public servants and the Constitution for the Clean Hands Alliance. This activity was funded by USAID. All of our activities, including meetings, travel, and refreshments are covered by the members themselves or by the respective ministries, as Clean Hands Alliance's programs are conducted in concurrence with programs that we conduct in our official capacity. The only revenue source we have at present is the membership fee. Members of the Clean Hands Alliance have to pay Rs. 10 yearly membership fee or Rs 100 for permanent membership.

Secondly, in the past years, the political and social environment in the country was not conducive to our initiative, mainly because the country was at war. The focus of the administration was on winning the war and not on corruption. Thus, our cause wasn't seen to be a pressing matter.

Thirdly, some of the core persons involved in the initiation of the Clean Hands Alliance are now retired. Due to these reasons, our campaign has slowed down significantly. Now that the war is over, we are looking into starting our work with a renewed vigor.

### **What is the future of the Clean Hands Alliance?**

The objectives of the Clean Hands Alliance are vast and ambitious, and given the challenges we face, we may not be able to achieve the objectives of the Clean Hands Alliance with our current strategies. Our future strategy must be completely non-confrontational and passive so that there will be less resistance towards our movement. The Clean Hands Alliance is a coalition of public servants dedicated to improving themselves, and improvements will be brought about through changes from within.

### **What is the role of civil society in curbing corruption?**

Although we don't have an organized civil society in this country, they have an important role to play. Civil society needs to develop into collective groups. NGOs should not tolerate corruption and need to be more accountable to the public.

**As a leader of the Clean Hands Campaign, what is your message to the public sector?**

We have a lot to do, but remarkable changes have already happened. Look at the Department of Immigration and Emigration, the Motor Vehicle Department, District Secretariats, Divisional Secretariats, etc. and compare to ten years back. These are public institutions that interact with the public, and the positive changes made are very visible. You will see that today these institutions work speedily, and the quality of their service has improved immensely. Also, there is a very positive change in how their staff interacts with the public. Most people will say that going to these institutions is now a more pleasing experience compared to before.

Public servants' attitudes have to be changed towards service delivery. I think we are more or less moving in the right direction. I am quite happy with the changes that we have brought to this country.



# Post Conflict Challenges of Governance

Frances Bulathsinghala and Arjuna Parakrama

The Northern and Eastern areas of Sri Lanka, parts of which were under the fascist control of the rebel Liberation Tigers of Tamil Eelam (LTTE) for two decades, are now fully under a democratically elected government which should be equally answerable to all citizens of the country and must demonstrate democracy, accountability, and transparency in all its activities. The end of the conflict, which brought relief to the people of Sri Lanka—though the civilian cost was huge—has also created a much anticipated and unique opportunity for rapid economic development in the high natural resource-endowed North and East.

This analysis focuses on economic and social/political development as two sides of the same coin, both of which are necessary to ensure good governance in the post-war period in the conflict-ravaged North and East of Sri Lanka. This analysis further views reconciliation and trust building as major ingredients for a healthy and sustainable social transformation which itself needs to redress the vacuum created by the neglect of major development measures in the recent past.

The large-scale violence and destruction of the economy and political institutions over the last decades, leading to a breakdown in social cohesion, therefore requires a concerted will and prioritized resources to rebuild and develop the region both economically and politically. To bring prosperity, local people must benefit from economic development, and for this to happen in sustainable and equitable ways they must participate equally in the decision-making processes. To bring political stability and trust in government, state institutions must be developed that represent local people, and are trusted. To this end, pro-active (as opposed to passive) accountability and transparency, as well as sensitivity to the tragic losses that people have suffered due to the war, need to be built-in to all state and other development partner interventions in order to ensure legitimacy and ownership by affected communities.

In the overall post-conflict context of the North and East today, the urgent pre-requisites upon which good governance can be built are a safe environment that allows for public participation and inclusiveness without fear or trepidation, the end to human rights violations and impunity in the name of national security, and the transparent and equitable delivery of basic humanitarian needs. Not only will this cement the necessary confidence in the State among the traumatised communities in the North and East, it will also empower them to move beyond the apathy and hopelessness that they display now. It is only once these pre-conditions have been addressed that the longer-term rehabilitation and developmental agenda on the economic side, and democratic power-sharing on the political side can be meaningfully measured.

While transparency, equitability, transparent tender processes, priority to regional businesses, and community inclusiveness are inherent parts of a healthy economic development process, compulsory requisites for social and political development include strengthening regional institutions, emphasis on the rule of law, and boosting of regional capacity to empower enhanced participation in governance. Economic development needs to be governed by principles of

participation in planning (e.g. involving local chambers of commerce and traditional community leaders), beneficiaries of projects must be the local people, and measures must be taken to prevent corruption in big infrastructure projects.

This chapter is based on information obtained in 25 expert interviews, conducted between 03 September and 31 October 2009. This information has been supplemented by relevant primary and secondary documents from the archive covering the spectrum of issues under consideration. Interviewees included government and military officials, and a sample of local residents of the three main ethnic groups, including IDPs in Colombo, the North, and the East.

Obtaining concrete and accurate information from official sources proved challenging since, in most instances, government reports and work plans for the North and East, which included updated costs and contract details, were viewed by the authorities to be solely the property of the Government with the public having no right to know. “Why do you want to know?” was a common response, with officials indicating that the central government ‘knew best’, and that there was no reason for any private organization or ‘any other body’ to ‘pry’ into its plans. The study thus underscores the urgent need for a Right to Information Act in Sri Lanka, especially in the post-conflict context of the North and East where civilian stakeholders have been isolated from any consultative role in the development process for over three decades, and hardly any organisation is sufficiently empowered to act as watchdog.

## **Pre-Conflict Status of the North-East Economy and Damage done by the Civil War**

The victory of the government military over the Liberation Tigers of Tamil Eelam (LTTE) in May 2009 ended one of the bloodiest and most prolonged internal conflicts in the world, leaving well over 100,000 dead and maimed and even larger numbers displaced. Draining billions of rupees year after year from the national coffers, the conflict in Sri Lanka also shattered the earning capacity of a region which was once seen as a key producer of cash crops, fish, and livestock and held great potential for tourism development. The North-East region was a key exporter of agricultural products to the rest of the country prior to the conflict which is generally agreed to have begun in 1983. The most significant crops grown in the North are red onion, chilli, potato, and tobacco, while in the East it is paddy. In comparison to its lucrative output prior to the war, during the period of the conflict the North-East was at the lowest level in terms of food security.

The fisheries sector, which was a major provider of employment in the North and East, was one of the worst affected areas during the conflict due to sea access restriction imposed by the government, and ongoing battles between the Navy and the Sea Tigers. For obvious reasons, tourism in the coastal areas within the region was non-existent during the war, and has only now begun to pick up.

The industrialization of the North-East has been minimal since independence from British rule in 1948 with the manufacturing industries in the region being confined to three main state-owned companies—the paper manufacturing factory in Valaichchenai (Batticaloa District), the chemical

factory in Paranthan (the former rebel controlled Killinochchi District) and the cement manufacturing factor in Kankasanthurai (Jaffna District). In the early 80s over 100,000 metric tons of paper, 1,700 metric tons of caustic soda, 1,200 metric tons of chlorine, 1000 metric tons of hydrochloric acid, and 500,000 metric tons of cement were produced annually. However, as a result of the ethnic conflict in the North-East these industries were non functional (Sarvananthan, 2008).

The level of infrastructure of the North and East prior to the war in comparison to the rest of the country is impossible to assess due to the lack of adequate recorded data. However, it is clear that as a direct result of the conflict the region has been devastated, making the reconstruction of basic infrastructure one of the most urgent post-conflict priorities.

### **The Socio-Economic Fabric in Tatters**

The war is the clear single overall factor that prevented development in the North and East and destabilized thousands of families, transforming farmers, fishermen, traders, labourers etc., to dependent Internally Displaced Persons (IDPs) and depriving children and youth of even basic education.

In addition to the debilitating violence of war, the economic embargo imposed on the conflict region by the government and the illegal taxation of the LTTE are seen as two chief reasons for the economic deterioration of the North and East. "Ceaseless individual violence, establishment of high security zones, time and distance restrictions on fishing, mining of agricultural lands, closure of numerous roads, lack of transport facilities, massive displacement of population, lack of power supply, lack of teaching and health professionals, lack of human security, etc, are identified as the direct and indirect causes of economic and social decline" (ibid.).

Although Sri Lanka saw the ushering in of a ceasefire, which lasted from 2002 to 2005, the tenuous nature of this truce did not provide any opportunity for the North-Eastern economy to grow to the level it enjoyed during the pre-conflict era.

Decades of violent conflict have left the entire population of the North and East provinces traumatised and apathetic. Many are direct victims of a war that thought nothing of using civilians as human shields or bargaining chips; almost every family has lost a loved one and suffered extensive loss of property, and drastically diminished opportunity. Trust and confidence are at low ebb. All those who were able to do so have already left the region, while those who have remained had little choice. Hence, the principles of good governance demand pro-active trust-building participatory processes on the part of the State to restore minimal confidence and to empower communities to be able to make their voice heard. In this post-war context, therefore, real consultation, information-sharing, and participatory decision-making are processes that are as important as the end outcomes of economic and political development. In fact, they are the essential pre-requisites that, unfortunately, are not being adequately met

Housing is a basic need and precedes other aspects of infrastructure development. With regard to the reconstruction of the homes of civilians in the Mullaitivu and Killinochchi areas, it was

revealed by the Secretary to the Northern Task Force that a sum of Rs. 25,000 will be provided by the government to people who have lost their houses to the war. However, according to this official, the assessment apparently carried out by the government has revealed that 90% of the houses in Killinochchi and Mullaitivu were not damaged. This claim however goes against the general perception of war destruction.

Clarification could not be obtained as to how the assessment was carried out. The general understanding by the writer, based on anecdotal information obtained from persons from the northern war-affected region is that much more than 10% of the houses have suffered damage in the course of the various stages of war. However, the lack of any other formal independent evidence makes it difficult to assess the precise extent of damage to personal property. Such an assessment is clearly, a pre-requisite for proper planning of a rehabilitation programme and needs to be undertaken in an open and participatory manner.

### **Potential for Economic and Social Development**

The Northern Province (NP) consisting of the districts of Jaffna, Mannar, Kilinochchi, Vavuniya, and Mullaitivu, covers a land area of 8,884 sq km. This is 13.6 per cent of the land area of Sri Lanka. The NP is rich in resources with fertile lands, mineral ores, forests, scrublands, wetlands, tanks, and beaches. The sea off Mullaitivu is shallow with very high fish density.

The Eastern Province (EP), comprising the districts of Trincomalee, Batticaloa and Ampara, encompasses an area of 9,361 sq kms which accounts for 15 per cent of Sri Lanka's land area. The EP is rich in natural resources such as arable land, forests, scrubland, wetlands and lagoons. The Trincomalee district has the world's largest natural harbour. According to information in the annual report of the Central Bank of Sri Lanka for the year 2007, cultivable land in the East is of the order of 450,950 hectares, or 26 per cent of the agricultural land of Sri Lanka. In the Maha season, in 2007, the yield of paddy in Trincomalee and Ampara districts was higher than the national average.

Both the North and East hold high potential for tourism but this requires both extensive promotion, and infrastructure development due to the ravages and stigma of the conflict.

### **Internal Displacement**

There are ambitious post-conflict plans for the development of the Northern and Eastern provinces, developed under the Ministry of Nation Building. Until recently, however, the plan to resettle the once nearly 300,000 war displaced persons trapped in Manik Farm, or more than a quarter of the Northern population, remained secret for nearly 6 months. Nevertheless, in the last week of October, Government reports indicated that nearly 90,000 IDPs in Manik Farm had been released, and that out of this number 70,492 were being resettled in their places of origin. A further 41,685 IDPs belonging to 12,095 families were released on 22nd October and are in the process of being resettled in Mannar, Vavuniya, Killinochi and Mullaitivu districts (Daily Mirror, 23rd October, 2009). According to Minister Mahinda Samarasinghe The total number of IDPs



remaining in the camps in Vavuniya, Jaffna, Mannar, Trincomalee have come down to 136, 328 as of 20th November. The Minister expressed his confidence in resettling the bulk of the IDPs by the 31st of January 2010.<sup>1</sup>

However, detailed official information was not available from government officials as to how many of these persons were made to stay in transit camps in the process of being relocated from Manik Farm to their original homes and how long they would be detained in these transit camps.

The government's northern development plan is segmented into two stages with phase one, referred to as the Accelerated Development Plan being carried out over a period of around 2 years. The 180-day plan, which is included in phase one, was to accelerate de-mining, which is currently being carried out mainly in Vavuniya, Jaffna, and Trincomalee. According to the Northern Task Force, areas for de-mining have been identified in Killinochchi but not in Mullaitivu, and the de-mining process in both areas will take a long time. This should mean that an alternative plan to relocate the IDPs during this transition period be devised. According to information gathered for this report, there has been no such plan worked out. Instead, those who have war relatives that were not affected by the war who are willing to take them in are being given the responsibility for caring for these persons. Here too stringent and often difficult conditions are being imposed on prospective host families. Indeed, little state support is forthcoming in the East to ease their burden.

Interview data in the North-East showed that although non-war affected families are willing to take in war refugees who are their relatives, a majority of these families are not financially able to care for their displaced relatives for an extended time period. It is, therefore, imperative that the State should expedite the long-term resettlement of the war displaced to enable them to be self-sufficient as soon as possible. It is to the ultimate benefit of the government to speed up this process so that the money spent at present on keeping the IDPs in camps is more sustainably utilised in ensuring a better livelihood and future in the IDPs' own places of origin.

In this regard, it is crucial that IDPs be given the opportunity to benefit from the construction programmes that are to be carried out in their places of residence such as Mullaitivu and Killinochchi. However, when asked if those who are now incarcerated in the Manik Farm camps and who have been deprived of their livelihood for no fault of their own will be allowed to be directly involved in the development process, (i.e. by being ensured of jobs) at least in the first phase of the development process, Secretary to the Northern Rehabilitation Task Force, Essential Services Commissioner and Advisor to the President, Mr. Divaratne, said that although ensuring jobs for these people was of "the utmost importance" it could not be ascertained when the war displaced refugees in Manik Farm will be allowed to get passes to enable them to move out of the camp to seek work. At the time of writing, the pass system had not yet been facilitated.

### **Ambitious Development Plans, but Top-Down Approaches**

Despite the ongoing military offensive at the time, it is reported that key infrastructure projects were launched in 2008 though we have not been able to verify their progress. According to the Central Bank Report these include the construction of the Mannar Bridge at a cost of Rs. 2,116

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1. Official website of the Sri Lankan government <http://www.priu.gov.lk/>

million, and Jaffna Water supply Scheme costing Rs. 11,800 million. The other projects which are being carried out are the Kankasanthurai Port Development project and the development of northern roads under the 'Maga Neguma' initiative (Central Bank of Sri Lanka: 2008).

The "Vadakkim Wasantham" (Flourishing North) programme announced in the Budget of 2009, which primarily aims at resettlement and rehabilitation of the war-affected Northern people, focuses on reconstruction of economic infrastructure to restore livelihoods and basic facilities. The reconstruction of the railway track and highways, schools, hospitals, government offices, bridges and about 80,000 houses are envisaged in this plan. In addition, there are plans by the Board of Investment (BOI) to develop around 3000 acres of land for large-scale projects under the Agriculture & Agro Processing and Livestock Development Sector. A massive tourism plan is being developed with the BOI identifying locations with beach frontages in Jaffna Peninsula which include Kachurina, Vadukkodai, Nagadeepa, Madugal, Vallipuram and Navanthurai, identified as State owned lands which are to be transferred to the BOI so that these lands can be released to investors (BOI presentation on Investment Opportunities in Sri Lanka).

In respect of the Eastern province, the government had in 2007 prepared a three-year comprehensive development plan, the "Nagenahira Navodaya" (Eastern Revival) to the tune of Rs. 198.5 billion rupees. The 2007 Central Bank Report states that of this sum Rs. 83.8 billion would be allocated for improving economic infrastructure, Rs. 33.9 billion for revitalizing productive sectors and the regional economy, Rs. 21.5 for the resettlement of war returnees, Rs. 19.1 billion for strengthening social infrastructure and fostering social services, Rs. 38 billion for Human settlements development and Rs. 2.2 billion for Public institutions capacity building.

Fifty two per cent of the total investment cost is to be borne by the Treasury from foreign resources while 30 percent will be directly allocated by the Treasury out of its own funds. The balance 18 percent is to be made available for investment by the private sector and non governmental organizations. Meanwhile, with regard to Trincomalee, a key part of its development is the planned Trincomalee Special Economic Zone which has been declared as a Licensed Zone under section 22A of the BOI Act No 4 of 1978 on 16th Oct. 2006 by an Extraordinary Gazette notification No. 1467/03. Under the Special Economic Zone, the main concentration would be port-related development, tourism development, agricultural and agro-processing and eco-tourism. The main related development activities would be port related activities such as dock, container yard and boat building, oil refinery and storage facilities, and large, medium, and small scale development activities related to tourism, agriculture, and environment conservation.

However, these plans are greeted with public apprehension, even suspicion, fuelled by lack of information and transparency—for instance as to the exact land demarcation and the numbers of people who will be deprived of their homes or agricultural land. "We have not been consulted on any of the development work. We know what the problems here are and we should be consulted. We have not seen any proof that the development that is envisaged for Trincomalee involves the Trincomalee-based community and is not secretly meant to 'Sinhelize' Trincomalee," opined Rajaram Mohan, Chairman, Chamber of Commerce and Industries in Trincomalee. Confusion regarding the nature of the SEZ and its relationship to the current High Security Zone (HSZ) also

needs to be addressed immediately. Thus, even plans that may be laudable in and of themselves require discussion with the people of the area, respecting their right to know about and participate in plans that directly affect their lives. Among the main projects envisaged for the East is the development of the Trincomalee Harbour and the building of a Port City using 10,565 acres and the 2x250 Megawatt coal power plant to be constructed under an agreement between the Ceylon Electricity Board (CEB) and the National Thermal Power Company limited (NTPC) of India. The coal power plant is expected to commence operations from 2011.

Also, key elements of the development of the East are the foreign-funded projects assisted by the Asian Development Bank, the International Development Association, the European Union, the World Bank, and the Japan Bank for International Cooperation. These projects, which began in 2004/5 towards the end of the ceasefire, are scheduled for completion in 2010/11, but do not appear to have been substantially changed in light of the new post-war context.

The main initiatives include (a) the North East Coastal Community Development Project (NECCDEP) for the construction of community infrastructure such as multipurpose buildings, pre schools, community markets, production and milk collection and chilling centres, (b) the North East Community Restoration and Development Extension Project (NECORD II) for the construction of schools, hospitals, stores, training centres, improvement of rural roads and wells, supply of vehicles, tractors, water bowsers, ferries, supply of electricity and skills development, (c) the North East Housing Reconstruction Programme – NEHRP, assisted by the International Development Association (IDA) and the European Union (EU) which is to complete 34,784 Housing Units for vulnerable war affected people in the North and East and provide skills training programmes, and (d) the Conflict Affected Area Rehabilitation Project (CAARP) assisted by the Asian Development Bank (ADB) which is carrying out work at present in Amparai, Batticaloa and Trincomalee to support rehabilitation of essential infrastructure and restoration of community livelihoods in the most severely conflict affected areas.

The Community Livelihoods in Conflict Affected Areas Project assisted by the World Bank focuses on helping conflict affected communities in the Northern Province and Eastern Province and adjoining areas to restore livelihoods and enhance agricultural and other production and incomes and build their capacity for sustainable social and economic reintegration. The major components of the project are village rehabilitation, improvements to selected major irrigation scheme, farmer organization capacity building, and empowerment & agricultural support services strengthening. Among the other main projects categorised as ‘special projects’ by the Eastern Province is the Japan Bank for International Cooperation (JBIC) assisted Pro-Poor Economic Advancement and Community Enhancement Project (PEACE) aimed at achieving sustainable development of regional agriculture and improving family income and socioeconomic status of rural communities.

This article cannot examine in detail the extent to which the various projects have taken into consideration stakeholder views and needs in their planning stages. However, the potential overlap among these initiatives is easily discernible, and even taken together they appear to have left out some of the most vulnerable and marginalised conflict-ravaged communities. In general, the examination of Eastern projects demonstrates that there is very little inclusiveness and even

'fear' of sharing any dissenting opinion. Clearly one of the key challenges is to make the different strata of people who live in the North-East region actively feel that they are part of the development process, and to bridge the gap between local deprivation and the planned industrialization and development.

As field visits show, this is especially so in areas such as Trincomalee where the demography has been changed due to development projects established in the 60s. Although there is no general opposition by business leaders interviewed in both Trincomalee and Batticaloa to the recruitment of Sinhalese, especially where particular skilled labour is not available in a particular district, there is a belief that development could be misused for colonization, with job preference given to the Sinhalese community. Though government officials assured that this is not so, there needs to be a specific policy of recruitment in the planned development projects that will ensure preference to the local population. Even in the North, the government's bona fides were seriously tarnished by the fact that the apex body, the North Rehabilitation Task Force headed by the President's brother Mr. Basil Rajapakse, contained not a single Tamil member until public outrage resulted in the hasty inclusion of two representatives.

### **Lack of Participation Leads to Lack of Legitimacy**

A claim made repeatedly by interlocutors from both regions was that the ongoing development plans are imposed by the central government with very little regional inclusiveness, and hardly any consultation with the Tamil community. The government version is that both the Tamil Diaspora and Sri Lanka-based Tamil representatives from various professions such as engineers, doctors, academics, and judges were, in fact, consulted to obtain their opinion on the development necessary for the North and East. However, due to the reluctance of government officials to clarify or provide details of such consultation, coupled with the overall difficulty of obtaining interviews it became impossible to verify these claims.

No documentation of any engagement with local communities was made available for this study. Therefore, despite assurances by government officials that persons of the North and East were consulted, there is little evidence that there was an assessment carried out among the Tamil people on their needs prior to the formulation of the development plans, thus effectively leaving out the beneficiaries from the planning process entirely.

A concomitant need expressed by the people of the East was for the existing constitutional framework for enhancing regional participation and accountability to be enforced by facilitating the Eastern Provincial Council to implement a higher degree of independence in affairs concerning the region. Enabling the Eastern Provincial Council to obtain foreign funding for the carrying out of projects to be initiated within the province is seen as a key step in building the capacity of local institutions. At present it is the consensus of respondents from the North and East that all key steps of the development process are determined and carried out by the central government. In order to reap the existing potential of the North and East to the fullest, it is important that the regional autonomy provided in the 13th Amendment be implemented. In addition, the practice of placing retired senior military officers at the helm of civilian

administrative structures is a setback to de-militarization in the post-conflict context. “There are factories being opened in the pockets of Sinhala areas in Trincomalee such as Thampalagamuwa. In the newly opened garment factory in Thampalagamuwa, which has around 600 employees, there are less than seventy Tamils. We want garment factories to be set up in Trincomalee along with training centres, as one of the biggest issues is lack of capacity. And we want the Eastern Provincial Council to be in a position where it can be a strong part of the decision making process,” stated Dr. K. Vigneswaran, former Member of Parliament.

Interviewees frequently stated their fear that mass-scale industrialization in Trincomalee would lead to ‘Sinhalisation’ as a result of special benefits accruing to the majority Sinhalese through enhanced job opportunities at the expense of Tamils and Muslims. There is much scepticism and fear that the industrialisation will be aimed at changing the demography of the region.

Meanwhile, the immediate development plans detailed by the Northern Task force for the North include the creation of cooperatives, shops, agrarian centres, post offices, schools, health centres, and water tanks. The details such as the cost involved in these development plans were impossible to obtain with the reason given that the report was still in the stage of being finalised and could not be shared with a Non Governmental Organisation. Although several attempts were made in the last week of October to contact officials, all attempts ended in failure. If privileged metropolitan journalists with access to all the resources of modern communication modalities are unable to access basic information that should be in the public domain in this and many other cases cited above, what chance do ordinary civilians in the North and East have to question what is going on?

The gulf between different perceptions of the problem is huge. While Tamils in the area feel left out and insulted, Colombo-based officials bemoan the lack of support from North-East leaders. According to the BOI Chairman the biggest challenge is to initiate interest among Tamil entrepreneurs and industrialists to invest in the North and East, but this will not be easy unless they feel a sense of ownership. Moreover, in the process of interviewing officials in Colombo who were responsible for development in the North and East it was clear that certain attitudinal changes were needed to set aside prejudices bred by 30 years of terrorism.

Similar sentiments were conveyed in Batticaloa. The lack of an overall vision and strategy has led to piecemeal development which often exacerbates duplication and waste. This is exemplified in the case where tube wells were built in the area without ensuring their maintenance. It was noted by respondents that the real beneficiaries of some of the development projects are outsiders to the area, such as middlemen in the agriculture and fisheries sectors. This is mainly due to the lack of resources of the people of the region, ironically in a context where billions of rupees are spent for North-Eastern poverty alleviation. Interviews with fishermen in the East also showed that despite the fishing restrictions being removed soon after the end of the conflict in May, few East-based fishermen had resources to go deep-sea fishing. Instead, many of them were selling their boats and nets to fishermen from areas such as Negombo who are making the best use of the safety of the seas.

Many interviewees wanted a closer role between governmental and non governmental organizations working in the North and East to ensure that monies used in projects are spent and accounted for in a sustainable and transparent manner.

## **Corruption**

The lack of a legitimised right to information for the people is one of the key problems that seem to mar the East based development programs, with a significant element of information withholding and a general clamming up of government officials when such information is requested. There is also a very high element of general fear of 'higher authorities.' That is, there is a general assumption that such 'authorities' do not encourage the sharing of certain aspects of information pertaining to development plans of the eastern region. Whether it is recruitment to the hotel industry, which is seeing a resurgence in the North and East, or the garment trade, which is earmarked according to BOI officials to be spread in ten different locations in the region, when it comes to the utilization of local resources it is the view of the general public in the north-eastern region that it should clearly begin with building infrastructure and providing adequate training.

Meanwhile, allegations against BOI corruption and favouritism were dismissed by Chairman, Dhammika Perera whose claim that "There may have been corruption in the BOI earlier. But now there isn't," hardly inspires confidence. It was also found that there is an urgent need for independent and politically unconnected mechanisms to be set in place to prevent corruption, (taking place at each of the various levels of authority) which can be cancerous in a post conflict development process. A Right to Information Act in Sri Lanka is seen as a first step that will ensure this. According to reliable informants, there exists the danger of pay-offs (of varying amounts) being required to get projects passed. Furthermore, in the eastern Batticaloa district there exists the danger of certain elements who were formerly affiliated with the LTTE still resorting to extortion. However, military officers interviewed in areas such as Vakaraï strongly denied this allegation stating that investigations and arrests would be made if this was the case.

Unfortunately, allegations of corruption, mismanagement, and waste are not irregular in the North and East. Lack of accountability in tender processes and award of contracts to friends and family have become more the rule than the exception. What distinguishes the specific nature of the problem in this region, however, is that no one is sufficiently empowered to blow the whistle, even belatedly, as in the case of the e-Sri Lanka Government Network contract, the Kerawalapitiya power plant, or the Uma Oya hydropower and irrigation project.

## **Outlook for the Future: Conclusion**

Three major concerns if left unaddressed will jeopardise the credibility and effectiveness of post-conflict development in the North and East. These are the need for inclusive participatory decision-making through legitimate public institutions based in the areas themselves, the restructuring of centralised, narrowly politicised, and non-representative administrative mechanisms so that they are more accountable and transparent to local communities, and the rapid and systematic demilitarization of the entire region. It is only through the combination of

these minimal pre-requisites that successful sustainable development can take place in a context where confidence and trust have been eroded and human suffering has reached terrible proportions due to prolonged conflict.

The high level of reticence and absence of any sustained public dialogue or consultation delegitimizes the development activities taking place in the North and East, reduces community ownership, and drastically reduces prospects of success. In a context where trust-building is of paramount importance due to the ravages of decades of brutal war, due processes, including the public's right to information, are all the more important. Yet, public officials do not even see the need to share information with the people, much less engage them in the decision-making process. This leads to legitimate concerns about the award of large tenders, for instance, which is exacerbated by the fact that detailed information about these are unavailable to the general public.

Also significant are the narrow politicization of development initiatives and the high level of fear of 'higher authorities' displayed by most government officials, especially when expressing views on subjects perceived to be controversial. This has greatly added to the sense of secrecy and concomitant suspicion on the part of the beneficiaries. In fact, had a more inclusive model been followed it is contended that some development priorities would have changed, and greater emphasis placed on small-scale industries and self-employment.

The centralisation of conceptualization and planning of development programmes, however ambitious and well meaning, is inimical to both downward accountability and transparency, and invariably culminates in various forms of wastage, inappropriateness, or corruption. The risk of corruption is exponentially greater in this context because of the large sums involved, the lack of local accountability or even participation of beneficiaries, and the excessive centralization of decision-making.

Interview respondents in the East especially flagged the need for proper devolution of power to the provincial councils without interference from the centre. Recent controversies over land allocation in the Trincomalee District bears out this point well. Alleged paramilitary extortion and some vestigial military harassment are also obstacles that need to be urgently addressed. Also crucial is the expediting of the resettlement process of internally displaced persons and ensuring their livelihood, the provision of enough water for agricultural and drinking purposes, the availability of adequate electricity supply to all rural areas in the North and East, as well as improvement of health and educational resources.

Good governance requires the fulfilment of fundamental rights and basic needs as pre-requisites for meaningful public participation in economic and political development. Equally important is the absence of fear and suspicion that alone will enable individuals and communities to actively engage in partnership with government and other stakeholders in determining the nature and quality of their future.

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### **Interviews were held with the following persons between September 3rd and October 20th, 2009**

Muttukrishna Sarvananthan, Principal Researcher, Point Pedro Institute of Development

Dharmika Perera, Chairman and Director General, Board of Investment of Sri Lanka

Vidharshan Fernando, Director, Promotions Department, Board of Investment of Sri Lanka

S. B. Divaratne, Advisor to President, Commissioner General of Essential Services and Secretary of the Northern Development Task Force Suntharam Arumainayaham, Government Agent and District Secretary, Batticaloa

R. Rajarammohan, Chairman, Chamber of Commerce and Industries of the Trincomalee district  
Major Nalindra Mahawitharana, Military Civilian Co-ordinator, Vakarai

Jeevan Thiagarajah, Executive Director of the Consortium of Humanitarian Agencies

Manique Mendis, Secretary General, Business for Peace Alliance, an organization that works with regional Chambers of Commerce

**The author has withheld the names of the other interviewees, especially those among the general public, who wished to remain anonymous.**



## **Contributors to Governance Report**

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Aiman Rasheed is a Project Coordinator of Transparency Maldives and is working with Transparency International Sri Lanka as Fellow Institutional Development Capacity Building under Fredskorpset exchange program. Aiman has been working primarily in the field of capacity building of local CBOs and election monitoring. Aiman has worked as an international elections observer with ANFREL (Asian Network for Free Elections) and Commonwealth in several countries and served in the National Advisory Committee for Elections as the civil society representative.

### **Justice Ameer Ismail**

Justice Ameer Ismail is a former Judge of the Supreme Court. He has served as a member of the Judicial Service Commission and as a member of the Council of Legal Education. He is presently the Chairman of the Commission to Investigate Allegations of Bribery or Corruption.

### **Ananda Jayasekara**

Ananda Jayasekara was the former Provincial News Editor of Ravaya News Paper and is currently the Media Officer of Transparency International Sri Lanka. Ananda received the Excellence Award from the Editors Guild in Sri Lanka in 1998 for his investigative reporting on corruption in the judiciary. He holds a BA from the University of Peradeniya, a Postgraduate Diploma in Writership and Communication (Sri Jayawardhanapura) and a Master of Arts (M.A) in Mass Communication from the University of Sri Jayawardenapura.

### **Arjuna Parakrama**

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### **Bettina Meier**

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## **D Dissanayake**

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Transparency International (TI) is the global civil society organization leading the fight against corruption. Through more than 100 chapters worldwide and an international secretariat in Berlin, Germany, TI raises awareness of the damaging effects of corruption and works with partners in government, business and civil society to develop and implement effective measures to tackle it.

Transparency International Sri Lanka (TISL) started operations in 2002. It functions as an autonomous chapter of TI with its own local strategies and priorities.



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