SRI LANKA
GOVERNANCE REPORT 2014

TRANSPARENCY INTERNATIONAL SRI LANKA
a nation that upholds integrity

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GOVERNANCE REPORT 2014

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LIST OF ABBREVIATIONS AND ACRONYMS

AGM	Annual General Meeting
BBS	Bodu Bala Sena
CAST	Conflict Assessment Software Tool
CEA	Central Environmental Authority
CEDAW	United Nations Convention on the Elimination of All Forms of Discrimination Against Women
CFA	Chartered Financial Analyst Institute
CMC	Colombo Municipal Council
CPC	Colombo Port City
CPI	Corruption Perception Index
CRC	United Nations Convention on the Rights of the Child
CSD	Civil Security Department
CSM	Citizen Self-Mobilisation
EGDI	E-government Development Index
EIA	Environmental Impact Assessment
EPF	Employees Provident Fund
FFP	Fund for Peace
FSI	Fragile States Index
FUTA	Federation of University Teachers Associations
GDI	Gender Development Index
GII	Gender Inequality Index
GoSL	Government of Sri Lanka
HDI	Human Development Index
HDR	Human Development Report
ICAC	Independent Commission Against Corruption Hong Kong
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic Social and Cultural Rights
ICTs	Information and Communications Technologies
IDPs	Internally Displaced Persons
IHDI	Inequality-adjusted Human Development Index
KPK	Komisi Pemberantasan Korupsi; Independent Corruption Eradication Commission of Indonesia
LLRC	Lessons Learnt and Reconciliation Commission
LSE	London School of Economics and Political Science
MBCB	Monetary Board of the Central Bank of Sri Lanka
MDPI	Multidimensional Poverty Index
MLO	Military Liaison Officer
MoD	Ministry of Defence
NEA	National Environmental Act

NPC	Northern Provincial Council
PAA	Project Approving Agency
PSO	Public Security Ordinance
PTF	Presidential Task Force
RTI	Right to Information
SCARC	Standing Cabinet Appointed Review Committee
STF	Special Task Force
TI	Transparency International
TISL	Transparency International Sri Lanka
TNA	Tamil National Alliance
TRCSL	Telecommunications Regulatory Commission
UDHR	Universal Declaration of Human Rights
UGC	University Grants Commission
UNHCR	United Nations High Commissioner for Refugees
UNHRC	United Nations Human Rights Council
WJP	World Justice Project

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PREFACE

Transparency International Sri Lanka's (TISL) mission has always been to enhance integrity and curb corruption in all sectors of governance. To that end TISL has continuously worked towards monitoring, documenting and reporting abuses, misuses of public resources, election malpractices and the like. This particular publication, regularly documents and highlights main governance and corruption related issues, which is hoped will enhance integrity whilst eradicating corruption.

This current issue, focuses on the events of 2014 and seeks to provide the reader with a picture of the issues relating to governance status, and to raise awareness amongst the public regarding such governance issues, as a step towards developing a nation of integrity. Though some of the incidents documented are of a violent nature, serendipity, a word after which our country was named once, must not give way to despair. By providing fact based information and documenting these incidents, stimulating debate on governance in the country, it is hoped that such issues will be addressed.

This report does not seek to be exhaustive, but attempts to cover areas in which a constructive debate and exchange of ideas is needed. I would like to take this opportunity to thank the contributors who lent us their expertise to compile this report, and the TISL staff for their dedication without which it would not have become a reality.

J.C Weliamuna,

Chairman.

GOVERNANCE; A BRIEF OVERVIEW

- Pulasthi Hewamanna

"The whole art of government consists in the art of being honest. Only aim to do your duty, and mankind will give you credit where you fail."

- Thomas Jefferson

There is an apocryphal story about Alexander Graham Bell dialling the first wrong number in history, no sooner than he created the third telephone. Levity aside, it points to a sobering thought, when there is a system in place, (which is open to misuse or even mistake), misuses *will* soon follow. Corruption, is that persistent problem which continues to abuse the system. Finding an all-encompassing definition for corruption, is akin to hunting the Snark[1], but as a working definition, I will use "the abuse of entrusted power for private gain"[2]. Though it is *personally* beneficial, it is *collectively* detrimental to the integrity of the larger political system, and as seen time and time again, the members as a whole, are the victims of it.

The focus of this annual report, is to highlight key issues of governance and corruption in the county, and to consider what steps, if any, the system can implement to meet the challenge of combating corruption. Of course, it should be kept in mind that there is no one size that fits all answers that would apply across sectors, or areas, nor will there be an overnight answer to a problem that has plagued mankind from ancient China, (which vested its Mandate of Heaven in another if the emperor was corrupt)[3] to Rome, which thought enacting more and more laws was the solution.[4]

Corruption detrimentally affects the good governance of a system. It attacks the main elements of good governance such as the rule of law, tolerance, transparency, an impartial police force, a military subjected to civilian control, a free press, etc.,[5] Where there is a lack of such good governance, incidents unfold and escalate to a point which can cause unnecessary or avoidable harm.

1. The Hunting of the Snark (An Agony in Eight Fits)- Lewis Carroll (1876); a poem which in turn defines a 'Snark' in different ways, no two descriptions agreeing what it is.
2. Available [online] at https://www.transparency.org/whoweare/organisation/faqs_on_corruption/2/
3. The Chou, 1050-256 BC "(...) If the emperor or king, having fallen into selfishness and corruption, fails to see to the welfare of the people, heaven withdraws its mandate and invests it on another." Available [online] at http://richard-hooker.com/sites/worldcultures/ANCCHINA/CHOU.HTM
4. "In a State where corruption abounds, laws must be very numerous." – Publius Cornelius Tactius, Roman Historian, circa AD 56-177
5. Kofi Annan, "Preventing War and Disaster" (1999)

Going purely by a scale of violence, one cannot help but comment on the incidents that took place in Aluthgama, resulting in religious and ethnic riots which caused immense damage to life, property and the steps taken towards democratic governance in this country. This report looks at the incident from several perspectives. One perspective gives weightage to infringements of human rights, and the failure to carry over lessons learnt in similar situations in the past which were effectively diffused. That incident is also addressed from the perspective of how social media lent a platform for people to voice their concerns, in the face of the allegations of self-censorship of the main stream media. This one incident thus raised questions regarding tolerance, the impartiality of the police and a free press.

Another violent incident that received a lot of media coverage, but on which official information was lacking, was the incident relating to water pollution in Weliweriya, followed by an attack on civilian protestors by the army. Currently the Constitution, provides for freedom of expression[6], which has been interpreted to include the right to information,[7] however, this hasn't been held to include a right to information *simpliciter.*[8] This incident highlights not only the lack of access to justice citizens' face, but also, the very real need Sri Lanka has to implement right to information laws, or to include a provision in the Constitution making it a fundamental right, as is recognised in international conventions.[9] This need is recognised in the run up to the 2015 Presidential Elections, with the manifesto of Maithripala Sirisena pledging, amongst other things, to enact a Right to Information law to ensure transparent governance.[10] This particular incident is also discussed, albeit briefly, in the context of militarisation in the country.

At the other end of the spectrum, allegedly causing little or no damage, whilst bringing about development beneficial to the country, was the controversy surrounding the Colombo Port City Project. Much of the issues raised with regard to this project stem from the very little information trickling out to the general public. Again, the lack of access to information makes it difficult for the public to assess what impacts, social or environmental or otherwise, such a development project may have on the country. The intransparency regarding feasibility studies, environmental impact assessments, valid licences for sand mining and transportation to name a few, does little to portray such a development project in a favourable light, particularly as transparency is one of the key elements of constituting good governance.

6. Article 14(1)(a)
7. Fernando vs. Sri Lanka Broadcasting Corporation (1996) 1 SLR 157
8. *ibid* 179; "(...)Likewise, other rights may be needed to make the actual exercise of the freedom of speech effective: rights in respect of venues, amplifying devices, etc. I doubt, however, that it includes the right to information *simpliciter"* per *Fernando J.,*
9. For example Article 19 of the International Covenant on Civil and Political Rights, which Sri Lanka acceded to on 11-06-1980
10. Manifest available [online] at http://voteformaithri.com/download-manifesto/ see section 11, page 17, and 59-60

Another area of concern had to do with the social security system in place in the country, specifically, the Employees' Provident Fund (EPF), and the losses suffered by it. This was especially problematic, as the decisions regarding the investments made utilising the fund, were not made by the beneficiaries. Although certain guidelines were formulated to regulate decisions taken regarding investment of monies of the fund, investments made contrary to such guidelines, conflicts of interest in making such decisions and allegations of decisions based on political pressure led to serious issues being raised with regard to mismanagement. One chapter in this report is dedicated to analysing the governance issues related to the EPF and the possible ways to prevent such mismanagement in the future.

This report also looks at the education sector and for example, the anguish suffered by families during school admissions. Education is an entitlement of the youth[11], and is essential for promoting and developing the quest for social justice. Corruption in the education sector severely hampers the development of a system of good governance. Writings about corruption in this sector are as numerous and varied as one can imagine. This report focuses on the existing legal framework in Sri Lanka and looks to whether there are any lacunae that are being exploited with impunity. It also looks at the uneasy position on which private education in the country rests, and the need for proper regulation thereof.

The impact of militarisation has been considered, along with the vast powers exercised by the Ministry of Defence, which at times clearly encroached upon the sphere of civilian authority and administration. The chilling effect militarisation has on free speech, the maintenance of law and order, and civil administration are discussed in considerable detail, in light of the normalcy such military involvement has today. Justice it seems, is a victor's justice.

The much debated Executive Presidency, and whither its place towards democratic governance is approached by considering the various powers vested in the Constitutional head and what challenges the country will face in its continuous struggle for reconciliation.

All the topics discussed in this report can be traced back to a failing of some sort of the necessary elements of good governance, and for the most part are the culmination of a series of unfortunate events that can be readily labelled as one form of corruption or another. The Weliweriya incident shows a fundamental lack of access to both justice and information, exacerbated by the use of the military to carry out a civilian duty (i.e., policing and crowd control). The Aluthgama incident shows a glaring failure to respect minority views. The questions surrounding the Colombo Port City development project

11. Though not expressly recognised as a fundamental right in Chapter III of the Constitution which grants an individual the right to petition the Supreme Court, it *is* mentioned as one of the Directive Principles of State Policy.

are due to the decisions and actions taken regarding being anything but transparent. The list goes on. The long tolerated habit of corruption, though slowly becoming undesired are still prevalent. Acts of bribery and corruption continue to be carried out with some semblance of impunity, thereby being collectively detrimental to the nation. Our national flag displays a lion, but year after year the persistent prevalence of corruption, the lack of transparency, the failure to promote tolerance of minorities, and depriving the citizens of access to justice seems to depict wolves rather than lions. The issues that are highlighted in this report and the conclusions drawn from the discussion of ideas, are hopefully a small step in the right direction to combat corruption. The final stages of 2014 signal period of hope and potential for change in governance systems, courtesy of the 2015 Presidential Election. I, for one, will hold to the hope that such optimism is not misplaced.

ACCESS TO INFORMATION AND PUBLIC PARTICIPATION IN ENVIRONMENTAL GOVERNANCE; RECENT ISSUES IN SRI LANKA

- Professor Camena Guneratne

Introduction

Environmental law as a sphere of international law began to evolve in the 1970s in response to a series of crises that took place at both national and global level, and also to a growing awareness that humans were negatively impacting on the natural environment. A step forward in this process was the recognition that issues of environmental degradation were intrinsically linked to those of development, particularly in countries of the global south. The link between environmental protection and development evolved into the principle of sustainable development. This concept, popularized in the report "Our Common Future"[12] is now acknowledged to rest on three pillars, namely, that development must be environmentally sustainable, economically viable and socially equitable.

This three pronged definition of sustainable development, particularly the third aspect, i.e. social equity, in turn fed into an emerging body of rights recognized as the third generation of human rights. These rights are founded on the recognition that all human rights are indivisible and inter-dependent and include environmental and developmental rights. These latter rights in turn include three specific rights known as access rights, i.e. access to information, access to public participation and access to justice in matters of environment and development.

This paper will consider the international regime and the national framework in Sri Lanka on these access rights and will then examine recent issues of environmental degradation and development processes in this context.

12. Report of the World Commission on Environment and Development: Our Common Future, available at <http://www.un-documents.net/our-common-future.pdf>

The international regime on access to information in matters of environment and development

The right to information has long been recognised in international and regional human rights documents.[13] The Rio Declaration of 1992[14] provided the basis for the evolution of this right specifically in regard to information on issues of environment and development. This link was first made in Principle 10 of the Declaration, which stated, "Environmental issues are best handled with participation of all concerned citizens, at the relevant level. At the national level, each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities." The Principle has been interpreted as including three "access rights" – access to information, access to public participation and access to justice in matters of environment and development.

In the decades after the Rio Declaration, the right to environmental information has been embedded in several international and regional agreements and initiatives. The most significant of these is the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, (the Aarhus Convention), adopted by the United Nations Economic Commission for Europe in 1998. As reflected in its name, the Convention is founded on the three access rights and takes a rights based approach to integrating environmental protection, sustainable development and good governance. In addition to the Aarhus Convention, several environmental conventions contain provisions on access to environmental information in their particular context.[15] It must be noted that Sri Lanka is a signatory to all these Conventions.

In 2010, under the auspices of the United Nations Environment Programme, States adopted the Bali Guidelines which provide governments with guidance on facilitating access rights.[16] These Guidelines set out the most comprehensive benchmarks to ensure the rights of the public in this regard. They define environmental information as information relating to environmental quality, environmental impacts on health and the factors that influence them, and also environmental policy and legislation. A World Bank report notes that environmental information is generally held by public

13. International - Universal Declaration of Human Rights of 1948 (Article 19); the International Covenant on Civil and Political Rights of 1966 (Article 19); Regional - Declaration of Principles on Freedom of Expression in Africa of the African Commission on Human and Peoples' Rights (2002); Inter-American Declaration of Principles on Freedom of Expression of the Inter-American Commission on Human Rights (2000); European Convention for the Protection of Human Rights and Fundamental Freedoms (1950).
14. Rio Declaration on Environment and Development, A/CONF.151/26 (Vol.1), 12th August 1992.
15. Stockholm Convention on Persistent Organic Pollutants, adopted 23 May 2001; entered into force 17 May 2004; Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, adopted 10 September 1998; entered into force 24 February 2004; United Nations Framework Convention on Climate Change (UNFCCC), entered into force 21 March 1994.
16. Guidelines for the Development of National Legislation on Access to Information, Public Participation and Access to Justice in Environmental Matters adopted at the 11th Special Session of UNEP Governing Council/Global Ministerial Environmental Forum in Bali, Indonesia, available at <http://www.unep.org/civil-society/Portals/24105/documents/Guidelines/GUIDELINES_TO_ACCESS_TO_ENV_INFO_2.pdf>.

authorities and generated by environmental legislation.[17] The general presumption is that all such information should be available and should only be refused on specific grounds, which are defined in the law. The grounds for refusal should be narrowly interpreted taking into account the public interest in disclosure. States are also required to be pro-active in releasing such information, particularly when there is an imminent threat of harm to people or the environment, thus the onus should not be on the public to request it.

The international regime on access to public participation in matters of environment and development

The second access right is the right to public participation in matters of environment and development. This is intrinsically connected to the first, as effective public participation requires the necessary information. Again, the Bali Guidelines provide the benchmarks that elaborate the elements of this right. Public participation is a process rather than an isolated event, by which members of the public can directly engage in the mechanism of decision making on the matter in question. Here too, the State is required to take pro-active measures to inform the public of opportunities to participate and also to seek such participation in a transparent and consultative manner. The Guidelines also call on States to facilitate public participation when formulating laws and policies on matters of environment and development.[18]

The international regime on access to justice, in matters of environment and development

The third access right accrues to both natural and legal persons whose rights in the first two instances may have been violated. According to the Bali Guidelines, States must ensure that in such situations the affected persons have recourse to a review procedure through a court of law or any other independent and impartial administrative body, in order to challenge any decision which impinges on these rights or which affects the environment, or violates the substantive or procedural legal norms of the State related to the environment. It also notes that standing must be interpreted broadly so as not to restrict these rights. The State is further obliged to ensure that such access is affordable, and that there are prompt, adequate and effective remedies in cases relating to the environment, including interim and final injunctive relief and the effective enforcement of such decisions.

17. World Bank, Getting to Green, A source book for Pollution Management, Policy Tools for Growth and Competitiveness (2012) at page 119 available at http://siteresources.worldbank.org/ENVIRONMENT/Resources/Getting_to_Green_web.pdf/

18. Several multilateral environmental agreements have also incorporated the right to participation. These include the Desertification Convention, the Convention on Persistent Organic Pollutants and the Cartagena Protocol on Biosafety.

Sri Lankan law on access to information, public participation and access to justice

The rights to environmental information and to public participation were recognized in Sri Lanka decades before the proposed enactment of a general Right to Information Act. This was in the context of the environmental impact assessment procedure, and, to a more limited extent, of the environmental pollution licensing scheme. The provisions were included in the Coast Conservation Act[19] and later in the National Environmental Act (NEA).[20]

In the case of the environmental pollution licensing scheme, certain prescribed activities require a license if they involve discharging waste into the environment, causing pollution.[21] While the statutory provisions do not require public consultation, it is the practice to consult the surrounding community, particularly in the case of high polluting industries, before they are permitted to operate. Public complaints may also be a reason for cancelling such license or requiring the industry to amend its operations.

According to the NEA, an Environmental Impact Assessment Report (EIA) must be done on all development projects that are specified by gazette notification.[22] The Act requires that on receipt of the EIA report, the relevant Project Approving Agency (PAA) makes it available for public comments for a period of 30 days. During that period any member of the public may access the report and submit written comments. The PAA shall have regard to such comments in determining whether to grant its approval for the implementation of such project. Where the PAA considers it appropriate in the public interest, it may afford an opportunity to any such person of being heard in support of his/her comments. Public hearings may also be held where the project in question is particularly controversial. A similar procedure is followed in regard to the provisions of the Coast Conservation Act.

This public process has contributed in no small measure to ensuring environmental governance and sustainable development in Sri Lanka over the years. However, in recent times, due to lack of political will and the general deterioration of democratic governance in the country, the provisions have not been adequately implemented, resulting in abuse of the process.

The third right, the right of access to justice is a constitutional right. In the event of an infringement of a fundamental right contained in Chapter III of the Constitution, any person may have recourse to the Supreme Court under Article 126(1). However, this

19. Coast Conservation Act, No. 57 of 1981 as amended.
20. No. 47 of 1980 as amended by Act No. 56 of 1988 as amended.
21. National Environmental Act, Part IV A.
22. National Environmental Act Part IV C.

remedy is limited to infringements caused by executive or administrative action and does not apply to private actors. Affected persons may also have recourse to other courts with civil, criminal or writ jurisdiction.

Recent issues of environmental governance

This article will consider two recent issues of environmental governance that have arisen in Sri Lanka. Since there is very little official information publicly available in regard to either issue, the main source of information is news reports, and studies and commentaries carried out by civil society organisations.

The Weliweriya water pollution issue

Weliweriya is a small town in the Gampaha District of the Western Province. The conflict arose in the latter half of 2013 when the people of Weliweriya and surrounding villages found that their water sources were contaminated. This was allegedly due to untreated chemical waste discharged by a factory belonging to a company called Dipped Products PLC- Vinigros Pvt Ltd. According to newspaper sources the villagers were aware that there were containers of hard toxic chemicals within the factory premises and wanted the authorities to examine them in order to ascertain whether this was the source of the water contamination, and to also ascertain the process by which the factory was disposing of the chemicals. Protests took place outside the factory.

Instead of instituting an inquiry to make the necessary investigations, the government authorities closed the factory. The reason for doing so was reportedly to disperse the crowd outside the gates in order to enable the factory management to remove the toxic chemicals from the premises.[23] A few days later a mass protest launched by the people of the area was violently subdued by the army resulting in two students and a young worker being killed, and about 40 people injured.[24]

Several issues pertaining to access rights arise out of this situation. The factory in question claimed to possess a valid Environmental Protection License and stated that it was abiding by the conditions specified in it. Under the National Environmental Act, there is no provision for public access to such licenses but the views of the neighbouring communities are generally considered when granting them to industries. This factory had been in operation for around 18 years at the time of the incident and there are

23. http://www.thesundayleader.lk/2013/08/11/the-cry-for-water-at-weliweriya/
24. Available [online] https://www.opendemocracy.net/m-samarakoon/weliweriya-crushing-protest-polluting-democracy-sri-lankan-style; https://www.colombotelegraph.com/index.php/fight-for-clean-water-turns-deadly-army-fires-on-weliweriya-demonstrators/

no records of whether this was done. In any case, when the people of the area began protesting about the contamination of their water supply they were entitled to information and to participate in any further decisions regarding the factory. As at the time of writing, the required information has not been released to the public and the peoples' right to information in matters of serious concern as regards the environment and public health was also violated in this instance.

The people of the area appealed to several state authorities to intervene in the matter and ascertain whether the factory was in fact polluting the groundwater in the area. Several government institutions had done studies on the problem including the Central Environmental Authority (CEA), the Government Analyst and the National Water Supply and Drainage Board. However, these reports were not made available to the residents of the area or to the general public, although two were submitted to the Magistrate's Court in a subsequent case.[25] Further, the reports did not concur. While the Government Analyst stated that the reduction of the pH value in the ground water in the area cannot be positively attributed to the factory, that of the Central Environmental Authority had no conclusion. The Water Board's report, which was in fact carried out before the protests, stated that the water was not fit for consumption.[26] A report filed in the Magistrate's Court concluded that the factory is positioned in an elevated area, which is an unsuitable location that would carry contaminants with the ground water flow. However, it did not conclusively state that the contamination was caused by the factory, and questions as to the actual facts remain.[27]

There was an infringement of peoples' right of access to justice in matters of environment and development. The several state authorities whose duties and functions include monitoring water quality and regulating polluting activities did not address the concerns of the people or provide them with redress. Subsequently there were reports that the factory had been instructed to relocate, but there was a lack of transparency in the process and the administrative and regulatory authorities failed in their duties to provide information on the issue and to initiate a consultative process with the surrounding communities to resolve the matter. While the people did have access to the Courts, and a Magisterial inquiry into the deaths of the three people killed by the army was also instituted the outcome of this process is still unclear.[28]

25. Available [online] http://www.colombopage.com/archive_13B/Aug22_1377190125JR.php; http://dbsjeyaraj.com/dbsj/archives/23552.
26. Available [online] https://lifeinlanka.wordpress.com/2013/08/06/weliweriya-water-test-result/
27. http://www.sundaytimes.lk/131124/news/likelihood-of-groundwater-contamination-due-to-elevated-location-of-dpl-factory-nwsdb-74575.html
28. http://www.sundaytimes.lk/130825/news/weliweriya-victims-recount-and-relive-night-of-horror-at-magisterial-inquiry-59486.html

The Colombo Port City

The Colombo Port City (CPC) is an ambitious mega urban development project funded by the Chinese government. According to the official news portal of Sri Lanka it has been planned in two stages and will be completed in eight years. It will cover 233 hectares, which land will be totally re-claimed from the sea.[29] According to the website, the CPC will include facilities such as access roads, electricity, communication and other infrastructure facilities. The facilities comprise sport complexes, a mini golf course, housing and office complexes, and luxury hotels. According to another news source, one-third of the reclaimed land will be given to the primary investor in the project, the China Communications Construction Company (CCCC) outright, another 100 hectares will be awarded on a 99-year lease agreement and the remaining will be owned by the Sri Lanka Ports Authority.[30]

The controversies surrounding the CPC relate to both environmental and social impacts, apart from the lack of transparency and accountability in its design and implementation. Of equal concern are the terms of the agreement with the government of China, which raises questions concerning Sri Lanka's sovereignty, territorial integrity and the economic and social viability of the project.[31] The environmental concerns include adverse impacts on the coastal, marine and fisheries sectors.[32] The project requires massive quantities of granite and sand, and sourcing these materials from other parts of the country will cause extreme environmental damage.[33] Other questions raised relate to the availability of energy for the project and the impacts of pollution.

The procedure followed in designing and obtaining approval for implementation of the project was in total violation of the existing law. Since this project falls within the coastal zone, granting the necessary approvals comes within the purview of the Coast Conservation and Coastal Resources Management Department, while certain aspects fall within the jurisdiction of the CEA. An EIA was done by the University of Moratuwa, but there are conflicting reports as to whether it was made available for public comments in accordance with the provisions of the Coast Conservation Act and the National Environmental Act. While initial approval was granted by the Standing Cabinet Appointed Review Committee (SCARC), the Coast Conservation Department granted approval for the EIA in October 2014.[34] However, the role of the

29. http://www.news.lk/news/business/item/5329-mega-colombo-port-city-development-project
30. http://colombogazette.com/2015/05/17/boi-says-port-city-still-can-resume/
31. Port City project: Sweeping tax concessions to China http://www.sundaytimes.lk/140921/news/port-city-project-sweeping-tax-concessions-to-china-119063.html>; http://groundviews.org/2015/03/16/sovereignty-and-colombo-port-city/
32. See http://mirrorcitizen.dailymirror.lk/2015/03/03/colombo-port-city-project-the-adverse-environmental-impacts/; https://vositha.wordpress.com/2015/03/03/colombo-port-city-project-a-threat-to-sustainable-development/;
33. See https://www.colombotelegraph.com/index.php/justification-of-colombo-port-city-project/
34. See http://www.dailymirror.lk/65601/colombo-port-city-project-a-threat-to-sustainable-development

CEA in granting other necessary approvals appears to have been ignored. It is also alleged that the EIA does not provided complete information on the project and leaves many issues unaddressed.[35] Other commentaries in the press state that there was no approved project feasibility study, and at the time construction started there was no infrastructure development plan in place. A civil society group has noted the absence of information in the public domain and the lack of clarity and transparency in regard to the agreement between the government of Sri Lanka and the foreign developer.[36]

Where development projects such as the CPC are concerned, there has been for decades, a clear and established statutory procedure in place that is intended to ensure the environmental sustainability and economic viability of such projects. This procedure makes provision for access to information and public participation in the decision making process of such projects. By not calling for a comprehensive EIA report and making it available for public comments in accordance with the specific provisions of the NEA, the government institutions concerned violated the rights of the public to information and participation in the process.

Conclusion

There are clear international standards on the three access rights in the context of environmental protection and the development process. While the Rio Declaration is not an enforceable document, in the Eppawela case the Supreme Court held that it would be binding in Sri Lanka if adopted by the superior courts, and the Supreme Court in particular.[37] The Court made constant reference to the Rio Declaration in this case, and in fact held that arbitration would not satisfy the requirement of effective access to judicial and administrative proceedings as stated in Principle 10 since there is no role for the public. It can be argued that the principles contained in the Declaration in fact constitute part of the legal framework in Sri Lanka, which is bound to implement them.

The right to environmental information is intended to make decision-making in such matters more accountable and transparent and to facilitate peoples' participation in development activities of the State that impact on the environment. As noted above, this principle was incorporated into several statutes nearly three decades ago. During this period these provisions contributed in no small measure to regulating development projects of both the State and private sectors to ensure their sustainability and viability. The example of the CPC shows however, that even when such statutory provisions are in place the legal procedures can be violated with impunity in a political environment in which good governance and democratic processes are absent.

35. See http://mirrorcitizen.dailymirror.lk/2015/03/03/colombo-port-city-project-the-adverse-environmental-impacts/
36. See http://lmd.lk/friday-forum-on-port-city-project/
37. Bulankulama vs. The Secretary, Ministry of Industrial Development and Others (2000) 3 SriLR 243

This brings into context the third access right – the right of access to justice. While a judicial remedy may be available, recourse to the courts necessarily arises when the first two rights have been violated. It is when such access to government regulatory proceedings has not been available and there have been failures in democratic governance that people are compelled to resort to court action. In both cases discussed above there were protests from civil society and members of the public who appealed to government institutions for information and redress. In the Weliweriya case the affected people could not access the necessary information or obtain a remedy from the administrative bodies that were responsible for regulating the issue. As at the time of writing, there is no clear information as to the water quality of the area and what measures, if any, have been taken to remedy the situation. In the CPC case, which involves more complex political issues with a foreign entity, a clear and unambiguous position on the issues has not been declared by the State bodies responsible for initiating and implementing the project. It is in this context that affected people are compelled to resort to court action for a decision and directions on the issue.

Therefore, It is imperative that a comprehensive right to information law be enacted with stringent enforcement provisions. The duties of government entities and officials to implement the law, and accountability for doing so should be incorporated into the statute. However, a right to information law will not necessarily facilitate the right to participate in decision-making. Currently this right is limited to development projects and issues which impact on environmental quality. Extending it to other activities of the State will facilitate participatory governance, accountability and transparency.

TOWARDS AN ABOLITION OF THE EXECUTIVE PRESIDENCY

- Lakshan Dias

Whenever we discuss the executive presidency in Sri Lanka its worth recalling what veteran politician, Dr. N.M Prerea said during the early stages of it,

> *"The Anglo-Saxon Parliamentary system and the American Presidential system are two alternative forms of Government. The two cannot be mixed and the hotch-potch that JR has presented is not workable, as I shall presently show. In fairness to his own thought and in fairness to the country he should have drafted an entirely new Constitution to replace the present one based on the American pattern. He could have, as the previous Government did, transformed the present legislature into a Constituent Assembly placed all the aspects of the new Constitution before the Assembly and the people of the country and finally enacted it as a new Constitution of Sri Lanka."*

> *" (...) the manner in which this Bill has been rushed through Parliament makes us a little suspicious. A Constitution which has been incubating in his mid for 11 years cannot carry the label of urgency. In any case, what is there so urgent about amending a Constitution? After all, constitutional amendments are potent not for a year or two but for all time. I can think of no country with a written Constitution that enables Constitutional amendments to be carried through in the headlong manner that he has done. Most constitutional amendments take years to fructify and some countries provide even for a referendum before such an amendment is made effective. There may be many in this country who hold different views on the Presidential system of Government. Why should they be deprived of the right of expressing their different viewpoints to the legislature and to the people of the country and urge that full consideration and weight be given their views?"*[38]

These words were uttered challenging to the 1978 Constitution and the Executive Presidencial System, are still relevant today in light of the consolidation of power in the executive that has built over the years resulting in what can be perceived as a demi-monarchy. As Dr. N.M. Perera pointed out, under the executive presidency the President has the power to assign to himself *any* subject or function which he chooses to take over. He is not only the residuary legatee of Ministerial functions, but he can at will emasculate or remove any function already allotted to the Prime Minister or to any other Ministers. Over the last 25 years what happened in actuality, was

38. Available [online] at https://muditha05.wordpress.com/category/politics/page/2/

what he professed in that famous presentation referenced above. The peak of such, was the second term of President Mahinda Rajapakse . The Executive Presidency thus became a very powerful power block, and also breeding ground for massive corruption. Over the years, the position was abused by incumbent presidents, with serious abuses being reported during the second term of the President. Notably, in 2014, the corruption riddled Executive Presidency was highly criticized by all spheres of society and movements emerged to push for the abolition of it. So much so in fact, that it became the main slogan of the opposition camp for the Presidential election to be held in January 2015.

During 2014, abuse of the post of Executive President, with its antecedent corruption, reached its climax. This in turn resulted in a declaration of an untimely presidential election as per the whims and fancies of the position holder. This is yet another abuse of executive powers, where the President can through the spirit of the articles of the Constitution, put forward his/her political agenda in a time of unfavorable political climate. The 18th Amendment to the constitution granting the President unlimited terms of office, was used to further his political stranglehold and continue a nepotistic regime. The presidential election of 2015 comes in the backdrop of the 18th Amendment where all limitations for Executive Presidency were removed.

Corruption and Continuing Nepotism

As Dr N.M. Perera revealed, the Executive President can gather whatever powers he wishes, assigning any subject to himself. In addition, nepotism converted the country, into one governed not by a system, but into one governed by a family, where nearly 60% of the National expenditure allocated to the ministers and officials could be traced back by one connection or another, to the President's family. The Rajapaksa family was one of Sri Lanka's most powerful families during Mahinda Rakapaksa's Presidency. Many members of the family occupied senior positions in the State machinery. Throughout the second term, many accused the Rajapaksas of becoming increasingly authoritarian, corrupt and nepotistic all of which ultimately contribute to bad governance. There are numerous reports suggesting that Sri Lanka is heading towards an autocracy[39]. In his speech at the third reading of the UPFA's 2015 Budget which was passed with a 95-member majority in November 2014 , Eran Wickremaratne severely criticised the Government's 2015 Budget.[40]. Mr. Wickremaratne claimed that

39. See "Sri Lankan constitutional changes entrench autocratic rule" 21 September 2010 available [online] https://www.wsws.org/en/articles/2010/09/pers-s21.html , "Sri Lankan constitutional changes entrench autocratic rule" available [online] http://www.socialequality.lk/content/sri-lankan-constitutional-changes-entrench-autocratic-rule . "Sri Lanka leader to face health minister in polls" 22 November 2014, available [online] http://www.dailymail.co.uk/wires/ap/article-2843861/Sri-Lanka-leader-face-health-minister-polls.html

40. See "Rajapaksa family accounts for 56% of expenditure: Eran" 26 November 2014; available [online] http://www.ft.lk/2014/11/26/rajapaksa-family-accounts-for-56-of-expenditure-eran/ "(...)

the Rajapaksa family accounts for 56% of total Government expenditure. Further, the borrowing requirement had been increased by almost Rs. 440 billion with such amendments taking place within a period of 10 days.[41] The increased expenditure, meant that the funds accounted for by the Rajapakse family rose from 47% to 56%[42]. Most of these funds are allocated to infrastructure development, Defense and other development projects where no other minister or official can intervene or question. The Defence Ministry was under the supervision (and control) of the younger brother of the President. In addition, another younger brother of Mahinda Rajapakse, was the Minister of Economic Development, under whose purview the entire social welfare mechanism operated. These parties can act with virtual impunity under the patronage of Presidential powers. There is little or no resistance from the other arms of government be it the Legislature or the Judiciary.

The President's power

Again, I quote Dr. N.M. Perera`s prophetic speech which is still relevant today.

> *"Let us also take note of the fact that the President has the power to assign to himself any subject or function which he chooses to take over. He is not only the residuary legatee of Ministerial functions. He can at will emasculate or remove any function already allotted to the Prime Minister or to any other Ministers."*

In the decade of 2005 – 2015 one family governed nearly 60% of the national expenditure of the country. The foundation for such surging corruption is laid by the Executive Presidency with the support of the 1978 Constitution. The Executive Presidency assimilated powers given to the ministers, and in effect, governed the entire cabinet ministries through the public administration system where an extremely powerful President, brought an entire governance system under him through political appointments. These appointees were ultimately controlled by the President. The simple rational behind it is that the "*President has the power to assign to himself any subject or function which he chooses to take over*." During the decade that President Mahinda Rajapakse governed the country as President he was the Minister of Finance, Minister of Defense and also from time to time, the Minister of Highways etc.. There can be no real opposition to such presidential powers, as any person, or body can in practicality, be removed by the dictates of presidential authority thanks to its far reaching powers.

When a meaningful dissent started at the beginning of Presidential elections in late 2014[43], every minister that defected his cabinet post lamented that they had no

41. ibid
42. ibid
43. "More Defections From The Rajapaksa Regime" 22 December 2014 available [online] https://www.

powers during the Rajapakse regime. Even his former cabinet colleague Maithripala Sirisena disclosed the same[44].

President Rajapakse was not the only president against whom such criticisms and accusations were levelled, even President Premadasa faced similar accusations. This shows that this is not only an issue over personality but clearly a structure as well as Law. Therefore it is very important that the executive presidency be abolished as promised by both the candidates of the leading political parties in the 2015 presidential election. Such an executive presidency coupled with the unlimited terms of office brought about by the 18th Amendment paved the way for massive corruption which continues unabated.

The Presidential elections that began in November 2014 showed many election related violence and acts of corruption, using billions of rupees by the government party candidate to win the elections. Massive amounts of public funds were used and State institutions abused, just to bring the governing party candidate in to power. The rest of the experiences of the election are now known to all of us in the post presidential election era. Civil society groups and media groups that monitored the presidential election found massive instances of election violations which were conducted by State officials, security forces, state media and governing party politicians at every level. They not only used state property but distributed huge amounts of State funds as election bribes. Such incidents of election violence and corruption should be properly investigated by the Election Commissioner's Department, the Police, the Judiciary and the Bribery Commission, which had received numerous complaints. Failure to investigate such instances of corruption would lend a free hand to future politicians to continue the same system of impunity without any resistance, which would in turn send a wrong message to every politician involved in plundering State assets that are meant to be utilised for public purposes. The challenge we face now, is how would civil Society, and anti-corruption bodies going to engage investigations into acts of election malpractices. Should they file cases against those massive corruptions? Or would it be better to have a consolidated plan to challenge governing party candidates? We must be united against such corrupt activities that endenger poor governance. If we are to respond in a lukewarm fashion, civil society activism will not be embraced by the masses but will be reject as less serious and donor driven NGO actions.

Proportional Representation

Reviewing the 1977 general elections Dr. Perera said that

colombotelegraph.com/index.php/more-defections-from-the-rajapaksa-regime/

44. ""I Am The Common Candidate' - Maithripala Officially Announces" 21 November 2014. Available [online] http://www.asianmirror.lk/news/item/5120-i-am-the-common-candidate-maithripala-officially-announces

"The UNP with 1.3 million votes more than the SLFP has gathered in 140 seats. Clearly this seat distribution does not mirror the true political configuration in the country. On the other hand, proportional representation will have the opposite effect also. It will make it very difficult for any one party to obtain the kind of landslide victories that the SLFP in 1970 and the UNP in 1977 received."

This particular prophesy of Dr. Perera came to pass in the aftermath of the 2010 elections. The wave of popularity it gained after the end of the civil war in 2009 and the massive corruptions in bribing opposition parliamentarians through ministerial positions helped inflate the government. A jumbo cabinet continued in 2013 (and 2014) adding new ministers to the already large cabinet[45]. This open the flood gates for corruption to continue for another year. The lack of a strong opposition, strengthened by the 18th Amendment and a conservative Judiciary, meant that the expectations of a representative governance was denied in the year 2014 as well. Minorities were neglected and their aspirations forgotten. Political thugs continued to supress the minorities. The powerful defence establishment and intelligence either failed or purposely omitted their duties of curbing religious violence. In effect, the Executive Presidency failed again to maintain peace , law and order in the country.

The notion of a powerful Executive Presidency providing peace and harmony cannot be maintained in the face of religious riots in Aluthgama against the Muslim community. This anti-Muslim sentiment by the Sinhala and Buddhist religious extremists was purportedly supported by the defence establishment which is under the Executive Presidency. No suitable apology was made, and to date there is no commission of inquiry appointed to investigate into the Aulthgama incident. This incident clearly showed that an Executive Presidency is necessary for better security is a myth. Such protection seems to be a reality only for the majority community with the minorities receiving no benefits from its governance structures. Is the Executive Presidency a stumbling block for the smooth function of a Proportional Representation System where every person's vote matters? Under the Westminster System, with proportional representation, the Prime Minister will have to effectively engage with such incidents (communal riots etc.,) as it damages the voter base, however, for the Executive President it is not that important, as those perpetrators can be the front runners of the next elections to elect a President.

Military Power and Governance

The Executive President, as the chief commanding officer of the whole security establishment, and brother of the Defence Secretary, continues to enjoy huge military power which again undermines the governance of the country. Specially, the Tamil

45. "Sri Lankan jumbo Cabinet expanded" 28 January 2013 available [online] http://www.thehindu.com/news/international/sri-lankan-jumbo-cabinet-expanded/article4353822.ece

ethnic minority continuously complained that their freedom in the North and Eastern Province are curtailed, their day to day activities are subjected to repression. The high presence of security forces in the Northern and Eastern Provinces, large scale land grabbing[46] in those areas with the support of military oriented state officials, appointed by the Executive President, represent the majority community, largely to the detriment of the minorities. The Governor of the Northern Province, Major General Chandrasiri, a retired Armey General[47], made very little efforts to build a working relationship with the elected provincial government. The Governor continued his activities through the administrative structures and the Military loyal to him, and no meaningful efforts to building better relations between the Centre and the Province took place. The Northern Provincial Council has continuously called upon the centre to remove former military staff in civilian administration, reduce military camps and handover the lands in the High Security Zones. This remains one major issue of governance that needs to be solved to pave the way for effective reconciliation.

Where to from here?

Let me digress for a moment to consider the 2014 Presidential Election in Indonesia.[48] This was reported to be one of the most sophisticated and contentious elections in Indonesian history, featuring smear campaigns, hundreds of thousands of volunteers, intensive media coverage and, for the first time, regular debates that drew huge viewership. The election pitted Joko Widodo against Prabowo Subianto. Subianto, a former army general with strong links to the Indonesian army and the former leadership (he was previously married to Suharto's daughter) which appealed to Indonesians longing for strong leadership, saying he would seek to strengthen the presidency and reconsider some reforms of the post-Suharto era. Widodo, the Governor of Jakarta had a reputation as a forward thinking, liberal politician and reformist who took steps to increase transparency during his tenure as Governor. Widodo's win was widely seen as reflecting popular voter support for "new" or "clean" leaders rather than the "old" style of politics in Indonesia.

This demand for a "clean" leader, or a system that stands against corruption, was a major focal point in the Sri Lankan presidential election campaign of Maithripala Sirisena as well. Great priority was given in the build up to the elections, based on anti-corruption. The opposition was geared entirely against the massive corruptions in the country where they accused the regime in power, the president and his family.

46. See "On Illegal Possession Of Land By The Military And Demographic Change In North & East" by R. Sampanthan; 10 August 2014, available [online] https://www.colombotelegraph.com/index.php/on-illegal-possession-of-land-by-the-military-and-demographic-change-in-north-east/
47. "G.A.Chandrasri reappointed Governor of Northern Province" available [online] http://asiantribune.com/node/83764
48. See "Joko Widodo Wins Indonesia Presidential Election" 22 July 2014; available [online] http://www.wsj.com/articles/indonesia-vote-tally-shows-widodo-wins-1406016742

In Indonesia, there is the "*Komisi Pemberantasan Korupsi"* (KPK) an Independent Corruption Eradication Commission which supports free and fair elections, modelled after the powerful Hong Kong Independent Commission against Corruption (ICAC). Indonesia's Ministry of Justice hired a consultancy run by former ICAC commissioner Bertrand de Speville, who, with funding from the Asian Development Bank, wrote the KPK charter. The powers it granted went beyond those of the ICAC, which does not have prosecutorial authority like the KPK[49]. Among the powers given to the KPK to fulfil its investigative and prosecutorial mandate were: tapping phones without a court order, imposing travel bans, freezing bank accounts, accessing suspects' private financial records, and compelling cooperation from other government agencies. It can take over cases that are already being handled by other authorities, and is not subject to direct interference by any branch of government – though its budget is determined by the parliament. It was also permitted to establish preventative measures like audit procedures and wealth reporting rules. Only government employees can be suspects, and only if their crimes have cost the government more than Rp. 1 billion (US$80,000) . Once the KPK officially names a person as a suspect, it is required to bring the person to trial under a certain deadline even if new evidence leads the agency to doubt the suspect's guilt[50]. This is a failsafe to prevent KPK prosecutors from accepting a bribe in exchange for dropping a case. The structure of the KPK suggests that lessons were learned from the series of prior failures. It is independent and not under the control of the executive branch, who may have political reasons to clip its wings even if the president is fundamentally honest.[51] It had its own investigators and prosecutors and did not rely on overworked, undertrained, and morally questionable police and prosecutors. Its selection process of commissioners is transparent and includes respected members of the private sector rather than political cronies.[52] It makes efforts to change the culture rather than concentrate exclusively on punishing individuals. Finally, it took a lesson from the Judicial Commission, a body set up in the early 2000s to preserve the integrity of judges.[53] The Judicial Commission went after high-ranking judges right away and in reply had its legs cut out from under it . The KPK was ridiculed in its early years for not chasing any big fish, but that may have been the reason it survived long enough to set its sights higher[54].

Sri Lanka can learn much from the KPK. We must strive for such a commission to have a check on the powers exercised by an Executive President. Even in a system without an Executive President it can play a valuable role in combating corruption to ensure good governance.

49."Why Indonesia's Anti-Corruption Commission succeeds where others don't – a comparison with the Philippines' Ombudsman" - Emil P. Bolongaita; U4 AntiCorruption Resource Centre
50. "Cicak vs. Buaya: How Indonesia's Anti-Corruption Agency Challenged the Establishment and Lived to Tell the Tale" - Jacob Thomases Comparative Public Management Professor Brian Levy Final Paper
51. *ibid*
52. *ibid*
53. *ibid*
54. *ibid*

EDUCATION IN SRI LANKA: NO MARKS FOR GOVERNANCE

- Shantha Jayawardena

Introduction

Since early civilizations, education has been a fundamental aspect of human life. In the 4th Century B.C., Aristotle observed that there should be laws laid down in relation to education and that education itself must be made a public concern[55]. Today in Sri Lanka there are 10,390 government schools, 33 non-fee levying Government Assisted Schools, 33 fee levying private schools over 700 privately owned 'international schools' registered as Board of Investment approved companies, and 15 State universities. Sri Lanka's high literacy rate[56], which is the highest in South Asia, conceals serious governance issues in the education system. There is hardly a day passing by without a protest by a group of students, academic or non-academic employees in the education sector or parents. This chapter attempts to highlight two of them.

International Obligations, Constitutional and Legal Framework

The Constitution of Sri Lanka[57] does not expressly recognize the right to education. Instead, it has been given the relegated status of a "Directive Principle of State Policy" in Article 27(2) (h) of Chapter VI of the Constitution. Article 27(2)(h) of the Constitution provides that:

> *"2, The State is pledged to establish in Sri Lanka a democratic socialist society, the objectives of which include –*
>
> > *(h) The complete eradication of illiteracy and the assurance to all persons of the right to universal and equal access to education at all levels."*

The Directive Principles of State policy do not confer or impose legal rights or obligations and are not enforceable in a court of law[58]. However, the Directive Principle of State policy shall guide Parliament, the President and the Cabinet of Ministers in the enactment of laws and the governance of Sri Lanka for the establishment of a just and free society[59].

55. Aristotle, The Politics, Penguin Books, 1992, p.453.
56. Male Youth 97.7% and Female Youth 98.6%, www.unicef.org
57. Second Republican Constitution of 1978 (as amended).
58. *ibid*, Article 29.
59. *ibid*, Article 27(i) of the Constitution.

The Supreme Court has interpreted the equal protection clause[60] in the Constitution to include many rights, including the right to education. In *Karunathilka and another vs. Jayalth de Silva and others*[61], where a child had been arbitrarily denied admission to Grade 5 of a government school, the Supreme Court held that the refusal to admit the child to the school was not reasonable, but a decision that rests on arbitrariness, and therefore, is in violation of the right to equal protection of the law, guaranteed under Article 12(1) of the Constitution.

Sri Lanka has ratified or acceded to many international human rights treaties recognizing the right to education, in particular, the Universal Declaration of Human Rights[62] (UDHR), the International Covenant on Economic Social and Cultural Rights[63] (ICESCR), the United Nations Convention on the Rights of the Child[64] (CRC) the United Nations Convention on the Elimination of All Forms of Discrimination Against Women[65] (CEDAW) and the International Covenant on Civil and Political Rights (ICCPR)[66] and therefore is internationally obliged to ensure the right to education to the citizen.

In *Nadeeka Hewage and other vs. University Grants Commission and others*[67], the Supreme Court examined the university admission policy in the light of Sri Lanka's obligations under the ICESCR and held that Article 13(2)(c) of the ICESCR provides that higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and therefore the rules made by the University Grants Commission must be interpreted in the light of Sri Lanka's obligation to make higher education more accessible, as well as accessible on the basis of merit, rather than otherwise.

Legislation provides for the establishment of schools, universities, teacher-training institutions and many other educational institutions. However, since independence[68], legislation has been introduced on an *ad hoc* basis. As a result, there are several institutions with overlapping objects, powers and functions.

60. Article 12(1) of the Constitution provides 'All persons are equal before the law and are entitled to the equal protection of the law'.
61. SC FR No. 334/2002, SCM 25.11.2002
62. Adopted by the General Assembly of the United Nations on 10th December 1948.
63. Adopted by the General Assembly of the United Nations on 16th December 1966. Sri Lanka acceded to ICESCR on 11th June 1980.
64. Adopted by the General Assembly of the United Nations on 20th November 1989. Sri Lanka ratified CRC on 12th July 1991
65. Adopted by the General Assembly of the United Nations on 18th December 1979. Sri Lanka ratified CEDAW on 5th October 1981
66. Adopted on by the General Assembly of the United Nations on 16th December 1966. Sri Lanka acceded to ICCPR on 11th June 1980
67. SC FR No. 627/2002, SCM 08.08.2003
68. Sri Lanka gained independence on 4th February 1948

The Education Ordinance No. 31 of 1939[69] is the principal legislation relating to school education. Based on the British education system, the Education Ordinance established the Department of Education[70] as the central authority for education, which functions under the general direction and control of the Minister[71], with a Director General of Education in charge of enforcing the provisions of the Ordinance and Regulations. It provides for a Central Advisory Council[72], which advises the Minister and Local Advisory Committees[73] in different parts of the country at the level of Municipal Councils, Town Councils and Village Councils, on matters connected with education and educational needs thereof. However, the structure and the system of education provided for by the Education Ordinance are not adhered to and the Education Ordinance itself is rendered virtually obsolete.

The main statute in relation to the provision of higher education is the Universities Act, No. 16 of 1978[74], which provides for the establishment of the University Grants Commission (UGC) and Universities, Campuses and University Colleges. Under the Universities Act, the Minister may by an Order published in the Gazette establish a University[75]. Similarly, it empowers the Minister to establish Campuses[76], an Open University[77] and University Colleges[78]. Section 15 of the Universities Act, empowers the UGC *to inquire into or investigate from time to time, the financial needs of each higher educational institution, to prepare from time to time in consultation with the governing authority of each Higher Educational institution triennial budgets for its maintenance and development or for any other general or special purpose and to make recommendations from time to time to the Minister as to the nature and amount of grants out of public funds which it is desirable or necessary to make to each Higher Educational Institution. "*

69. Cap. 381, Vol. XIV, Legislative Enactments, 1980. The Education Ordinance No. 31 of 1939 was amended by Ordinances Nos. 61 of 1939, 21 of 1945, 3 of 1946, 26 of 1947, Acts Nos. 5 of 1951, 43 of 1953, 37 of 1958 and Law No. 35 of 1973.
70. *ibid,* Section 2(1)
71. *ibid,* Section 2A(3)
72. *ibid,* Section 5
73. *ibid,* Section 9
74. Cap. 383, Vol. XIV, Legislative Enactments, 1980
75. *ibid,* Section 21
76. *ibid,* Section 22
77. *ibid,* Section 23
78. *ibid*, Section 24

Admission to Government Schools

During the year 2014, the media reported several incidents of principals demanding bribes from parents for admission of children to Grade 1 of government schools and institution of criminal proceedings against them[79]. The Principal of Labuduwa Siridhamma College, Galle was arrested whilst receiving a bribe of Rs.300,000.00 to admit a child to grade 1[80]. The Principal of Vijaya College, Matale was arrested whilst receiving a bribe of Rs.150,000.00 to admit a child to grade 1 of the school[81]. The Principal of Uyanwatta Model Primary School, Matara was arrested whilst receiving a bribe of Rs. 53,250.00 to admit a child to grade 1 of the school[82]. By March 2014 Transparency International had received 32 complaints of bribery and corruption in school admission for the year 2014[83].

Moreover for the year 2014, the number of students to be admitted to Grade 6 of 'popular government schools' including Royal College-Colombo 7, Ananda College-Colombo 10, Nalanda College-Colombo 10, Rahula Vidyalaya-Matara, based on the results of the Grade 5 scholarship examination was arbitrarily reduced, significantly deviating from the previously followed procedure. This was a clear manifestation of the overcrowding of classrooms as a result of illegal admissions from Grade 1 to Grade 5[84] of said schools.

Admission to Grade 1 of government schools has been one of the most controversial issues in relation to education during the last two decades. It has given rise to the most difficult issues to children, parents, the Executive as well as the Judiciary. The Education Ordinance No. 31 of 1939 (as amended) enacted during pre-independent colonial era, does not provide for the criteria and the procedure for admission to government schools. However, Section 37(1)(d) of the Education Ordinance empowers the Minister of Education to make regulations, *inter alia*, in relation to admissions to government schools. Notwithstanding all the controversies and allegations of bribery and corruption, the successive Ministers of Education and governments, have not though it fit to make regulations under the Education Ordinance providing for the criteria or the procedure for admissions to government schools.

Instead, admissions to government schools are governed by 'Circulars' issued by the Secretary to the Ministry of Education, from time-to-time, which contained almost the same criteria for a period of over ten years. For no discernible reason, successive

79. '*Daruwa Genimata 50000k illu viduhalpathiniyata erehi winaya pareekshana*', Ada 09.07.2014, '*Mawanella Jathika Pasale Sisungen Mudal Geneemata Niyoga – Widuhalpathi Likhithawa Danwala'*,Lakbima 30.05.2014, '*Palamu Shreniyata Sisun Geneemedi Chakralekhayata Pitin Mudal Aya Karathi',* Divaina 10.01.2014
80. www.sundaytimes.lk 12.10.2014
81. www.sundaytimes.lk 02.03.2014
82. ibid
83. ibid
84. '*Shishyathwa Sisunge Aitheen Kappadu Nokaranu',* Lankadeepa 09.01.2004

Ministers of Education and governments did not think it fit, at the least, to give effect to the admission criteria and the procedure contained in the circulars, in the form of a Regulation promulgated under the Ordinance. Thus the admission criteria applicable for over 10,000 government schools have no statutory force. Had the admission criteria been formulated in the form of a 'Regulation', made under the statute, then the admission criteria could have been stringently enforced with penal sanctions attached to same.

Section 47(1) of the Ordinance prohibits charging any fee in respect of admission to a Government School or an Assisted School. The Section reads thus;

> *"No fees shall be charged in respect of admission to, or of the education provided in a Government School or an Assisted School".*

However, Section 47(2) of the Education Ordinance permits to charge a fee from the students for the facilities supplied. Moreover, the Circulars[85] issued by the Secretary to the Ministry of Education permits the establishment of 'School Development Committees' which are empowered to collect monies from the parents and past pupils. Though the circulars provide for maintenance of accounts of the School Development Committee, they do not provide for a transparent system of auditing or supervision by the Ministry of Education, of the funds collected by the School Development Committees. It is observed from the incidents reported in the media, that the School Development Committee' is used as a shield by the school principals to receive bribes from parents at the stage of admission to government schools.

The National Education Commission Act No. 19 of 1991 provides for the establishment of a "National Education Commission" and by Section 2(1) thereof empowers the President of the Republic, to, subject to the provisions of the Constitution, declare from time-to-time the "National Education Policy", which shall be conformed to by all authorities and institutions responsible for education in all its aspects. The National Education Policy shall be formulated on a consideration of the recommendations and advice made to the President by the National Education Commission, which is established under the National Education Commission Act.

The National Education Policy includes, almost everything in relation to education, namely[86]:

> *"Aims and goals of education; the structure of the education system - pre-school, primary, secondary, tertiary, informal, non-formal, adult, special, professional and religious; the establishment, location and distribution of education institutions, including methods and criteria*

85. For instance, Circular No. 2008/35 dated 15.09.2008 issued by the Secretary to the Ministry of Education
86. Section 2(2) of the National Education Commission Act

for admission of students and recruitment of teachers; the content of education, including medium of instruction, diversification of curricula, text books and learning materials, the place of religious knowledge, observance and practice, assessment and evaluation, the examination system, certificates, diplomas and academic awards and recognition of qualifications; recruitment, placement, disciplinary control and professional growth of education service personnel including teachers, para educational personnel, supervisors and administrators; resources for education, including the mobilization of community participation ; an ancillary services for education including mid day meals, health and dental services, physical education and sports. "

The National Education Commission, (of which the primary and imperative function is to formulate the National Education Policy, which includes the methods and criteria for admission), in their Proposals for a National Policy Framework on General Education in Sri Lanka, titled *Envisioning Education for Human Development*¸ issued in 2003, having conceded that *admission policy particularly to grade 1, has been a controversial issue over the years. The area rule for admission to 47% places in grade 1 and concomitant conditions have spawned malpractices such as forged documents and has caused frustration in many families seeking admission for their children to popular schools (...) In May 2003 a circular was issued reiterating almost the same requirements as in earlier years*[87], The National Education Commission went on to propose that "*in view of the lack of consensus on an alternative modality, the 2003 admission scheme based on the new Circular 2003/23 should be monitored and evaluated and the policy reviewed in 2004"*[88].

However, regrettably, thereafter, no proposal or evaluation has been released or published by the National Education Commission, on any of the aspects of the National Education Policy, let alone the method and criteria for admission to government schools. The media reported that the government, in particular, the Minister of Education and an eight-member Cabinet Sub-Committee is in the process of formulating a new education policy[89]. However, the draft is not available to the public for comment. Nor is it available at the National Education Commission.

87. Proposals for a National Policy Framework on General Education in Sri Lanka, National Education Commission, 2003, p. 123
88. *ibid*, p. 124
89. *'New Education Policy for Sri Lanka'*, Daily Mirror 09.08.2014

Private Education

Successive Governments and Ministers of Educations have shied away from openly engaging in the topic of private education. But they have secretly encouraged and passively facilitated private education for at least four decades. They fear the opposition surging from the student bodies within the State universities, with rural backgrounds who vouch to guard the 'free education' at the cost of their lives. As a result, private education is now an 'illegal reality'.

As per the Assisted Schools and Training Colleges (Supplementary Provisions) Act No. 8 of 1961, the law in Sri Lanka recognizes only three categories of schools:

(a) *Government schools;*

(b) *Un-aided schools existed as at the time of coming into operation of the assisted schools and training colleges (supplementary provisions) Act No. 8 of 1961;*

(c) *Four categories of Assisted Schools [(i) schools maintained exclusively for the education of children suffering from any mental of physical disability, (ii) schools maintained exclusively for the teaching of dancing, (iii) Estate schools and (iv) Schools conducted on July 21, 1960 mainly for the persons over 14 years of age], which are excluded from the application of the Assisted schools and training colleges (Special Provisions) Act No. 5 of 1960.*

Section 25 of the Assisted Schools and Training Colleges (Supplementary Provisions) Act No. 8 of 1961 provides that no person shall establish private schools. Section reads as follows:

(1) No person shall on or after the date of the commencement of this Act.-

(c) establish any school for the education of the persons who are between age of five years and the age of fourteen years (both ages inclusive);

(d) establish any school, other than a school referred to in paragraph (a), for the education of persons who are below the age of eighteen years without the prior approval of the Director.

(2) Regulations may be made under this Act for the conduct and regulation of schools which are established with the approval of the Director given under paragraph (b) of subsection (1).

(3) The preceding provisions of this section shall not apply to establishment of a school solely for religious instructions."

Thus after 1961, a private school *cannot* be established for the education of the persons between the age of five and fourteen years. For the education of persons between the age of fourteen and eighteen private schools can be established with the prior approval of the Director of Education.

The Overseas Children's School established in 1958 was the first International School established in Sri Lanka and was intended to cater to the educational needs of the children of the diplomatic community[90]. As at present there are approximately 700 international schools operating in Sri Lanka[91] concentrated in cities, which are of private ownership. All concerned in education in Sri Lanka know that persons between the age of five and fourteen are taught at these international schools. A majority of students of these international schools are Sri Lankan students. Most of the international schools have been established during the last two decades, *after* the passage of the Assisted Schools and Training Colleges (Supplementary Provisions) Act, which prohibited private schools for the education of persons between the ages of five and fourteen.

Significantly, these International Schools have been established as "Board of Investment Approved Projects" and are registered under the Companies Laws[92]. However, the Ministry of Education has not taken any action against the proprietors of the international schools. The fees and the curriculum taught at these international schools are not supervised or regulated by the Ministry of Education.

Similarly, the law as it stands today, does not permit establishment of private universities. Only the recognition of foreign degrees and diplomas and other academic distinction is permitted. Since, the 1980s, successive governments have made several attempts to introduce legislation for permitting private universities. However, due to severe opposition by university students and political groups on the basis that only students who are able to pay would gain admission to private universities, the proposals were withdrawn.

Conclusions and Recommendations

Judicial recognition of the right to education is inadequate. It is imperative that the right to education is recognized as a fundamental constitutional right, casting a positive obligation on the State. A coherent and comprehensive legislation providing

90. Proposal for a National Policy Frame Work on General Education in Sri Lanka, National Education Commission 2003, p.84.
91. *'Mother Tongue, Religion, History to be Compulsory in International Schools'*, Daily Mirror 15.03.2014.
92. Companies Act No. 07 of 2007

for all aspects of education is necessary. Although the government was in the process of drafting a new legislation and a new Education Policy, the draft was not made available to the public. The hierarchy of Government Schools has led to bribery and corruption in the school admission process. The admission criteria for government schools should be formulated by way of a Regulation promulgated under the Education Ordinance.

There are several statutory bodies with overlapping functions and powers. In the circumstances, functions of these institutions should be examined and necessary amendments to legislation should be introduced to ensure a coherent system of education.

The government should take a stand on private education and enact laws to regulate private education. The practice of establishment of schools as BOI Approved Projects has to be done away with. Section 25 of the Assisted Schools and Training Colleges (Supplementary Provisions) Act should be repealed permitting the establishment of private schools. The private schools, including 'international schools' should be registered with the Ministry of Education and thereby ensure that they are subject to the regulation and control of the Ministry of the Education.

SOCIAL MEDIA FOR PROMOTING BETTER GOVERNANCE: CHALLENGES AND OPPORTUNITIES

- Nalaka Gunawardene

There is no single path, quick fix or 'magic wand' for achieving good governance in a country, company or organisation. In reality, it takes many players and inputs that are sustained over time. Communications (both internal and public) is an important ingredient that helps create better governed entities and societies.

Adequate communication structures and processes are needed for a State to meet its governance obligations and to be responsive to public expectations. Modern democratic governance calls for a two-way exchange of information and opinions between citizens and the State. Such communication also allows citizens to monitor and critique State activities, to engage policy makers on current issues, and to influence political outcomes.

Citizens gain access to public information through multiple communication channels: interpersonal discussion, their social networks as well as news and entertainment media. Applied research findings support the relationship between good communication and good governance.[93]

As new information and communications technologies (ICTs) spread, more platforms and methods are becoming available for engagement and advocacy. These include social media.

Social media is a collective term that describes web-based or mobile media that have two fundamental attributes: conversations between people, and collaborative action that often results. It comprises many tools and services (most of them available free of charge) that allow users to create, share, rate, archive and search for content and information. Social media provides interactive platforms through which individuals and groups can build 'virtual communities' sharing a common vision and goals, which sometimes leads to real world mass mobilisation – for example, One Billion Rising, a global movement against rape and sexual violence against women that started in 2012, and has become an annual occurrence.[94]

93. The World Bank's Communication for Governance and Accountability Program (CommGAP). Communication for Good Governance position paper. Undated. http://siteresources.worldbank.org/EXTGOVACC/Resources/Governanceweb.pdf

94. https://en.wikipedia.org/wiki/One_Billion_Rising

Social media represents the second wave of the World Wide Web (or web 2.0).[95] The definition of social media keeps changing as technology and user behaviours evolve. There are hundreds of social media tools and platforms which includes social networking sites (e.g. Facebook), blogs (on platforms like Blogger, WordPress and Medium), micro-blogs (Twitter), video blogs, wikis, interactive images and maps, media sharing services, mobile apps like WhatsApp, and many others.[96]

Social Media and Governance

How does social media's spread influence governance?

Evidence for this nexus is still emerging: after all, these tools and platforms have been around only for a few years. Initial assessments have identified the following applications at a global level:[97]

Political participation: Governments are increasingly providing formal online channels for citizens to comment on new policies, petition for change, or report on public sector lapses. (However, many Lankan government websites are not very interactive).

Advocacy and activism: Individual citizens and civil society groups use social media to organise themselves for advocacy, activism or protest in the public interest on a broad range of topics and issues. Some political parties and governments are also turning to social media for promoting certain policies or self-promotion.

Transparency and accountability: Citizens use social media to track government projects and budgets, critique performance of public officials and demand governments to respond.

Peace-building: Social media are being used to monitor violence (crime, terrorism or warfare), which can ultimately contribute to peace-building (although the same platforms can also be used to spread hatred).

Corporate conduct: Companies are using social media to enhance their own transparency and improve customer communications, as well as to create new forms of leadership. Activists and ordinary consumers, meanwhile, use the same platforms to hold companies to account.

95. http://en.wikipedia.org/wiki/Social_media
96. A useful categorization is found at: http://blog.hootsuite.com/types-of-social-media/
97. Adapted from: Browne, Evie. "Social media and governance" - a synthesis of studies. GSDRC Applied Knowledge Services. 28 January 2015. http://www.gsdrc.org/docs/open/HDQ1191.pdf

Each of these phenomena merits careful monitoring and multidisciplinary study in the Lankan context. For now, everyone – including government agencies, political parties, civil society groups, corporate sector and the mainstream media – is still coming to terms with the relatively new reality. Many are in early stages of adopting different social media types for their outreach, engagement, advocacy or other purposes.

Rise of Information Society

The wider context for social media adoption is the growth of Sri Lanka's information society. By 2015, the country has had over 25 years of mobile telephony (first network commenced in June 1989)[98] and 20 years of commercial Internet connectivity (first Internet service provider started operations in April 1995).[99]

As technologies grew simpler and market competition drove down user costs, these services have become affordable to many ordinary Lankans.

Statistics collated by the Telecommunications Regulatory Commission (TRCSL) showed 22,123,000 mobile subscriptions, or 107 per 100 persons, by December 2014 (which includes multiple subscriptions held by some individuals). In contrast, there were 2,678,739 fixed phones by the same date (which has declined from a peak of 3,608,392 in 2011).[100]

There were also 3,396,295 Internet subscriptions by end 2014, most of it (82%) through mobile subscriptions. If we assume two users per subscription, and factor in the total population of 20,675,000 (mid-2014 projection by Department of Census and Statistics), the total number of Internet users comes to 32.85% of the population. The Internet Society in its 2014 report estimated that 22% of Sri Lanka's population was regularly using the Internet.[101] While determining the exact number is not easy, it is fair to say that around one in four Lankans regularly uses the Internet in 2015.

These raw numbers represent only part of a much larger and dynamic picture. The telecom services market, user types and profiles as well as socio-cultural and economic impacts of Internet use have all evolved during the past two decades. The

98. Gunawardene, Nalaka. "Mobile Revolution". *Echelon* magazine, August 2014. http://www.echelon.lk/home/mobile-revolution/
99. Gunawardene, Nalaka and Chanuka Wattegama. "Internet in Sri Lanka: The First Five Years". Book chapter in *Internet in Asia*, eds Sankaran Ramanathan and Jorg Becker. Asian Media Information and Communication Centre (AMIC), Singapore. 2001.
http://www.academia.edu/4378630/Internet_in_Sri_Lanka_The_First_Five_Years_book_chapter_written_in_late_2000_
100. http://www.trc.gov.lk/2014-05-13-03-59-39/statistical-overview.html
101. The Internet Society 2014 report http://www.internetsociety.org/doc/global-internet-report

early difficulties of connectivity and affordability have eased off in recent years, and Internet is no longer an urban or elite monopoly. Language barriers in the digital realm have also been reduced by new apps and other innovations.[102]

Also, the Internet's influence reaches a much larger section of society than quarter of the population directly accessing it. This is due to 'information multipliers' – such as teachers, journalists and activists - with significant audiences of their own. To explain this, I have used the analogy of the darker shadow (called umbra) and lighter shadow (penumbra) experienced during solar eclipses.[103] The Internet thus casts a larger 'shadow' on Lankan society than appears at first glance.

The real 'game-changer' in recent years has been the spread of smartphones. An estimated 3 million are being used in Sri Lanka (and rising), all capable of web browsing from anywhere with mobile signal coverage. A lower end smartphone costs around LKR 10,000 (approx USD 75) while call and data transfer costs are among the lowest in Asia.

These factors have set off a social media explosion. Exact figures keep changing, but Facebook is the dominant social media platform in Sri Lanka, with over 2.5 million accounts by end 2014. Among other popular platforms are Twitter (micro-blogging), Instagram (photo sharing) and YouTube (video sharing). According to a recent survey of social media and digital media use by officer workers, apps such as WhatsApp, Viber and Skype have become the chosen apps for communication due to their user-friendliness and versatility in offering features such as group chats, sharing of photos, videos and other files.[104]

Academic studies on social media trends in Sri Lanka are rare, but some market research and industry surveys offer some insights. For example, a 2013 survey found that 42% of Facebook users in Sri Lanka communicate using two languages. An average user spent approximately 34 minutes per day on Facebook (with over a third of users checking their account 8 times a day). Over half (58%) of users said they access Facebook via their mobile phones.[105]

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102. A new set of post-connectivity challenges have arisen, which include uneven quality of broadband connections, privacy and data protection concerns, low levels of cyber literacy, and state surveillance of citizens' private online communications.

103. "Emerging Digital Democracy: Social Media and Sri Lanka's Presidential Election 2015" Talk by Nalaka Gunawardene at University of London, 11 February 2015. http://www.slideshare.net/NalakaG/emerging-digital-democracy-by-nalaka-gunawardene

104. Smartphones and faster Internet boosts Lankan remote workers, survey shows. *The Sunday Times*. 14 June 2015. http://www.sundaytimes.lk/150614/business-times/smartphones-and-faster-internet-boosts-lankan-remote-workers-survey-shows-152917.html

105. Readme.lk magazine. "Sri Lankans on Social Media: What we found out". 24 November 2013. http://readme.lk/sri-lankans-social-media-out/

Globally and locally, the social media landscape keeps changing. A case in point is the growth of instant messaging services such as Viber and WhatsApp. Communications using these are confined among private individuals and groups, which makes it impossible to discern trends or analyse content. Going by social media communications in the public domain, however, it is clear that millions of conversations are taking place on a vast array of topics.

What does this mean for Lankan society, politics and governance?

Social Media during Presidential Election 2015

Perhaps the clearest indication of social media's influence came during the campaigning weeks running up to Presidential Election held on 8 January 2015.

The election saw unprecedented use of social media. In fact, the incumbent president Rajapaksa's campaign had a complete monopoly over the state media and also dominated the privately owned print and broadcast media (among other things, by spending the highest amount on campaign advertising). Against this backdrop, the common opposition candidate Maithripala Sirisena and critics of the Rajapaksa regime could find free expression only in the social media.

Social media platforms, typically used for everyday chatter or digital content swapping, provided a vital space for opinion leaders such as activists, artistes, university dons and public intellectuals to network, collaborate, and disseminate political information. Easy-to-use digital tools (especially smartphones) allowed citizens to initiate and engage in many public conversations on burning issues like racial and religious harmony, militarisation, large scale corruption, declining rule of law, lack of media freedom and state of the economy.

As I noted elsewhere, "During weeks preceding the election, hundreds of thousands of Lankans from all walks of life used social media to vent their frustrations, lampoon politicians, demand clarity on election manifestos, or simply share hopes for a better future."[106]

Political parties used social media too, but mostly in the 'broadcast mode', i.e. for disseminating news, statements and images, rather than for actually engaging citizens or discussing any issues. The online discussions were led by politically charged youth most of who were not affiliated to any political party.

106. Gunawardene, Nalaka. "Was #PresPollSL 2015 Sri Lanka's first Cyber Election?" Groundviews.org 13 January 2015. http://groundviews.org/2015/01/13/was-prespollsl-2015-sri-lankas-first-cyber-election/

Media researcher Dr Ranga Kalansooriya noted, "It was interesting to see how Facebook and Twitter campaigns dominated the information paradigm during the elections period – predominantly Facebook. With Maithri's crossover, individual and collective activism on social media got a new paradigm shift and most of these efforts were pro-Maithri."[107]

The presidential election social media experience has raised important questions that require deeper reflection and further research. Did inter-personal communications and myriads of open, public conversations in social media actually raise the level of public awareness of key political and policy issues? More important, could such fleeting communications really influence how people vote? Assuming this is so, could cyber-savvy Lankans play a sufficiently decisive role in changing an incumbent Government?

Researching answers to these questions holds many implications for good governance and future political campaigning.

E-Government and Social Media

Can social media enhance electronic government or e-government?

The United Nations has defined e-government as "the employment of the Internet and the World Wide Web for delivering government information and services to the citizens." This process encourages citizen participation in the decision-making process and makes governments more accountable, transparent and effective. Through innovation and e-government, public administrations around the world can be more efficient, provide better services and respond to demands for transparency and accountability. [108]

To measure the development of national e-government capacities, the UN compiles the UN E-government Development Index (EGDI), a composite indicator that consists of three indices (online service index, telecommunication index and human capital index) that are equally weighted.

Among the 193 member states of the UN, Sri Lanka ranked 74th in 2014, the highest in South Asia. As the *UN E-government Survey 2014* report noted: "The online portal offers A-Z government web indexes, 108 e-services for citizens, 51 e-services for businesses

107. Kalansooriya, Ranga. "Polls & Social Media During the Jan 8th Electioneering Process". Colombo Telegraph, 20 March 2015. https://www.colombotelegraph.com/index.php/polls-social-media-during-the-jan-8th-electioneering-process/

108. UN Department of Economic and Social Affairs. *United Nations E-government Survey 2014*. United Nations, New York. 2014. http://unpan3.un.org/egovkb/Portals/egovkb/Documents/un/2014-Survey/E-Gov_Complete_Survey-2014.pdf

and 10 non-residence related e-services. The portal also offers extensive mobile and SMS services, an e-participation portal, government forms easily accessible online, a developed open data portal with data available in various formats, as well as a whole-of-government strategy."

It has taken over a decade of efforts and substantial investment of public and donor funds for Sri Lanka to reach this point. Re-engineering government for using ICTs to deliver citizen services was a key strategy of the e-Sri Lanka project that was launched in 2003.[109] The project has now ended, but the journey must continue, so as to enable two-way *engagement* with citizens and citizen groups on policy, regulation and other governance related matters.

Social media can be part of the next phase of evolution for e-government in Sri Lanka. As the UN's E-government Survey 2014 notes, "Social media channels, which can be accessed through both desktop online and mobile devices, should certainly be explored further for public sector and communities to reach out to all their constituents particularly disadvantaged and vulnerable groups. Compared to other channels, it may be deemed a more cost effective channel."

Sri Lanka's orthodox government bureaucracy and usually risk-averse politicians have yet to harness the full potential of social media for citizen engagement. Even politicians who have the most number of followers on Twitter or Facebook have been ambivalent in their public comments on social media.

Government ministries, departments and other state agencies in Sri Lanka are using their social media accounts simply as another dissemination outlet. Meaningful efforts to engage citizens *via* social media are few and far between. For example, the Telecommunications Regulatory Commission makes a mockery of its Twitter presence by needlessly "protecting" its tweets, thus excluding all prospects of citizen engagement.[110]

In August 2013, economist and Parliamentarian Dr Harsha de Silva spoke on the social media's influence on governance at an international conference in Colombo. According to him, the level of social media use depends on how open and transparent a government is, and wants to be. Another factor is how much they are willing to learn.

He posed some pertinent questions: Are Facebook, YouTube and other social media giving citizens Right to Information (RTI)? What should be the government strategy

109. e-Sri Lanka project summary on ICTA website. http://www.icta.lk/index.php?option=com_content&view=article&id=25&Itemid=233&lang=en
110. TRCSL official twitter account, https://twitter.com/TRCSL, as at 13 June 2015

– reactive or proactive? (In the past, it was non-active.) In his view, social media platforms like Facebook and YouTube should not be seen as 'obstacles that are tolerated'. Government at all levels must integrate social media platforms in policy making as: tools to gather information; prioritize alternatives; pilot possible variations; and to improve policy through feedback and discussion.

His message to governments: "We must innovate to harness the power of social media. Continuous engagement is needed."[111] That is yet to be heard and heeded though he himself does sometimes engage citizens on his Facebook and Twitter feeds.

Advocacy and Activism

While governments hesitate, some public spirited citizens have been quick to seize the 'digital dividends' presented by social media to do good.

The diversity, speed of evolution and growing influence of social media pose both opportunities and challenges to those engaged in advocacy and activism. On the plus side, social media can help achieve quick and wide outreach at a relatively lower cost. Yet, unless messages are carefully planned and strategically released in the right platform, a social media campaign can get easily drowned in what has become a 'Global Cacophony' online.

This concern - coupled with currently limited cyber literacy skills (and perceptions of the Internet being an 'elite' medium) among many working in the non-profit sector - can perhaps explain why established civil society groups in Sri Lanka have been slow to warm up to using social media in their public advocacy.

But this is changing as more organisations are experimenting and learning. Parallel to this, new advocacy groups are emerging that are mostly or entirely virtual organisations with heavy reliance on web-based tools including social media.

Advocacy and activism using web 2.0 has grown well beyond just Facebook and Twitter (which remain important mass platforms). Among other technologies and approaches that can enhance governance are:

- using crowd-sourced data and images on specific issues (e.g. traffic offences, acts of pollution, disaster impacts, violation of election laws);
- platforms that triangulate and authenticate data;

111. De Silva, Harsha. The Influence of Social Media on Governance. Presentation to SEARCC International Conference, Colombo, 14 August 2013. https://prezi.com/booipc_alx74/the-influence-of-social-media-on-governance/

- Google Earth and Google Maps for producing interactive maps, often with crowd-sourced inputs (e.g. monitoring disaster impacts or election violence);
- WhatsApp being used for election monitoring and direct input to mobile phones via SMS updates;
- websites that enable infographics generation (e.g. for comparing performance of elected officials) and web memes (for satire, slogans); and
- using online surveying and petitioning platforms for specific issues.

Sri Lanka lacks an 'ICT Observatory' to discern relevant trends and document specific examples, so evidence tends to be anecdotal. Two initiatives are worth mentioning in the governance context.

Manthri.lk is a trilingual website that tracks the performance of the 225 Members of Parliament in Sri Lanka. It goes by the official record (Hansard), analysing and coding each statement which is fed into a customised system developed by the website owner and operator - Verite Research, a thinktank that provides strategic analysis and advice for decision-makers and opinion-formers.[112]

Groundviews.org is citizens' journalism website based in Sri Lanka. The site uses a range of *genres* and media to highlight alternative perspectives on governance, human rights, the arts and literature, peace-building and other issues. Its curated Facebook and Twitter feeds are among the most visible and consistent efforts of its kind in Sri Lanka, complemented by the Sinahala language (Vikalpa.org) and Tamil language (Maatram.org) websites and social media feeds.[113]

The recent experience of many civil society organisations has been that advocacy campaigns are more effective when they use a combination of online/social media and more conventional approaches such as press conferences, media statements, public marches and, where warranted, peaceful street demonstrations. Some physical activities generate photographs that then can be disseminated widely using social media.

A good example is the public campaign for a governmental commitment to increase Sri Lanka's annual expenditure on education from the current 1.7% to 6%. Launched by a citizen alliance led by the Federation of University Teachers Associations (FUTA), the campaign used multiple approaches to raise public awareness and build up pressure on policy makers to earmark more resources for the education sector. While FUTA's

112. http://www.manthri.lk/?locale=en
113. http://groundviews.org/about/

website[114], blog and Facebook page[115] directly promoted campaign messages, digital memes produced by FUTA were widely circulated on Facebook, Twitter and other social media. This campaign message influenced presidential candidate Maithripala Sirisena's pledge in late 2014 "to increase total provision for education...to 6% of GDP".[116]

Spontaneous citizen mobilisation

Research about online activism has shown that the Internet enhances social mobilisation by lowering the cost of information, mobilisation and participation. This, in turn, enables citizen self-mobilisation (CSM) by individuals who are unaffiliated with any political or civil society groups.

Back in 2002, author Howard Rheingold predicted this rise of 'smart mobs' - groups that behave intelligently or efficiently because of their exponentially increasing network links.[117]

Sri Lanka has also witnessed the formation of such spontaneous groupings of like-minded people collaborating through social media platforms to promote a specific cause or concern.

The eruption of anti-Muslim violence in Aluthgama, in southwest Sri Lanka, on 15 June 2014 provides an example. The incidents left at least four persons killed, 80 injured and hundreds of families homeless.[118] When most of the mainstream media underplayed and self-censored reporting the incident, it was social media platforms that enabled some area residents and other concerned citizens to share (admittedly incomplete and imperfect) situation reports.[119]

While Twitter was the social media platform of choice for many (citizen and mainstream) journalists to share breaking news and images, public sentiments also poured out elsewhere – on Facebook and blogs. During the crucial first 48 hours after the incident, when some irresponsible persons tried to circulate totally unrelated images (i.e. photography around the Rohingyas in Myanmar) portraying them as victims of Aluthgama, these falsehoods were quickly countered within social media itself. New media researcher and activist Sanjana Hattotuwa used Google Reverse

114. http://futa-sl.org/
115. https://www.facebook.com/futa.srilanka
116. *Maithri: A Compassionate Governance; A Stable Country*. Maithripala Sirisena Election Manifesto. December 2014. (p40 in English version). http://www.president.gov.lk/wp-content/uploads/2015/01/Manifesto-EN.pdf
117. http://www.smartmobs.com/
118. https://en.wikipedia.org/wiki/2014_anti-Muslim_riots_in_Sri_Lanka
119. Perera, Ayesha. "Aluthgama riots: Social media breaks SL media's shameful silence". FirstPost.com 17 June 2015. http://www.firstpost.com/world/social-media-breaks-sl-medias-shameful-silence-on-aluthgama-riots-1572793.html

Image search facility in close to real time as tweets were published to debunk fake photography.[120] This is an example of how responsible social media was even in the thick of the crisis, Hattotuwa says.

In the days and weeks that followed, peace-loving citizens used social media platforms to reiterate the need for restraint by everyone to prevent further religious or ethnic violence. Memes – such as the palm sign with 'Stand Against Racism' – were widely circulated, rallying citizens around on calls for racial and religious harmony, compassion for the affected and restraint by everyone.[121]

Increasing use of social media will inspire more such citizen self-mobilisation. The rise of CSM does not render formal civil society irrelevant, but rather amplifies the overall social movements in a country. The Lankan State and formal civil society organisations must welcome this trend and find meaningful ways to tap 'people power' for policy reform and better governance.

Can Social Media Trigger an 'Arab Spring' in Sri Lanka?

ICTs and social media have been credited with sparking off Arab Spring, the collective term for a revolutionary wave of demonstrations and protests, riots, and civil wars in the Arab world that began in December 2010 in Tunisia and soon spread to many other countries in the Middle East and North Africa. But the relative influence of ICTs and social media on this political activism is still being debated. Some researchers contend that the role of technology in these uprisings has probably been overstated.

Several common factors have been identified in the countries where uprisings happened:

- a low median age (early 20s), with highly youthful populations;
- high levels of unemployment especially among the youth;
- widespread corruption at all levels of government;

democracy deficits (e.g. not having multiparty elections, absence of rule of law, lack of respect for human rights, etc.); and
proliferation of ICTs such as trans-boundary satellite TV (especially Al Jazeera), mobile phones and Internet.

120. https://twitter.com/groundviews/status/478468261739110400
121. Gunawardene, Nalaka. Social Media 'Candles' for Mainstream Media Blackouts. *Ceylon Today*, 20 June 2014. https://collidecolumn.wordpress.com/2014/06/20/when-worlds-collide-112-social-media-candles-for-media-blackouts/

As ICT policy analyst Dr Rohan Samarajiva noted at the time, "Let us be clear. Governments are not toppled by technology. Democracy is not delivered over the Internet. People make these changes. Food prices, demographic structure, perception of corruption and marginalization constitute the necessary conditions. Incidents of torture, unjust imprisonment and self-immolation serve as triggers. What information and communication technologies do is catalyse, support, and reinforce the courageous actions of citizens who decide they have had enough. The effects of the communication technologies are powerful and difficult to counter once the technologies have reached critical mass."[122]

Thus, contrary to some speculations by various politicians, it is very unlikely that the spread of ICTs and social media would lead to an Arab Spring style uprising in Sri Lanka. In a recent analysis, I argued that while Sri Lanka today has reached significant levels of ICT and social media coverage, it does not have all the other factors listed above for the Arab region countries. With a median age of 31.8 years (in 2012), ours is no longer a youthful population: the demographic impetus for youth uprisings that prevailed in the 1970s and 1980s has now passed.[123]

Although there have been serious levels of malgovernance in Sri Lanka in recent years, the build up on social media platforms to the Presidential Election 2015 showed that Lankan citizens have sufficient maturity to use ICTs and other forms of social mobilisation for a more peaceful call for change. Channelling this civic energy into governance reform is the next challenge.

Taming the Social Media 'Beast'

Social media's beneficial characteristics can also be misused in the hands of authoritarian regimes, communalists and various anti-social elements.

As a 2011 report from the London School of Economics and Political Science (LSE) recognised, social media is neither a black box nor a panacea that will lead to worldwide peace and democracy. Some regimes are not only capable of blocking access to certain Internet outlets, but "also becoming increasingly adept at manipulating them to their advantage". Thus it is imperative to find the "proper balance between knee-jerk scepticism of technology's promise and the techno-utopianism that too often plagues public discourse".[124]

122. Samajiva, Rohan. "Technologies and Freedom". *Himal South Asian* magazine. 3 March 2011. http://old.himalmag.com/component/content/article/4319-technologies-and-freedom.html
123. Gunawardene, Nalaka. ශ්‍රී ලංකාවේ අරාබි වසන්තයක් හට ගත හැකිද? *Ravaya*, 4 January 2015. http://wp.me/p3zUD-2KR
124. Bekri, D., Dunn, B., Oguzertem, I., Su, Y., Upreti, S. "Harnessing Social Media Tools to Fight Corruption". LSE Department of International Development. London. 2011. https://blog.transparency.org/2011/08/19/harnessing-social-media-tools-to-fight-corruption/

During the immediate post war years (mid 2009 to end 2014), many Lankan citizens advocacting a progressive, egalitarian and equitable society confronted the formidable forces of entrenched feudalism, state authoritarianism and new forms of ethno-religious extremism. For simply holding a different point of view, some experienced not only verbal threats, but also violent physical attacks.

This intolerance has spilled over into social media as well. Racists, religious bigots, conspiracy theorists and assorted rabble-rousers have taken cover behind the web's anonymity and pseudonymity to indulge in widespread vilification and demonisation. Facebook, in particular, has become a space for spewing venom and hatred against political opponents, social activists or ethnic/religious minorities. Those advocating rule of law, respect for human rights and clean, transparent government have been particularly targeted.[125]

The challenge is amply summed up by Sanjana Hattotuwa who wrote thus in the first Lankan study on hate speech on Facebook in mid 2014: "Civility, tolerance and respect for diversity are as hard to find online as they are in Sri Lanka's mainstream party political framework even post-war. It would be a tragedy if the country's only remaining spaces to ideate, critical reflect and robustly debate – which are online – are taken over by hate-mongers, to the extent they are allowed to do so in the real world. So many in Sri Lanka, in various ways, resist violence, whether verbal or physical. The challenge is to strengthen their voices and efforts in light of what is a growing trend of hate speech production online, which though by no means easy, is also not an insurmountable one."[126]

To tap social media's multiple benefits for better governance and a better society, we as citizens must first promote cyber civility and digital pluralism – these values will help contain abusers of this new realm.

125. Gunawardene, Nalaka. "Sailing the Stormy Seas of Social Media". Ceylon Today, 9 June 2015. https://collidecolumn.wordpress.com/2013/06/09/when-worlds-collide-70-sailing-the-stormy-seas-of-social-media/

126. Hattotuwa, Sanjana. "Liking violence: A study of hate speech on Facebook in Sri Lanka". Groundviews.org. 24 September 2014. http://groundviews.org/2014/09/24/liking-violence-a-study-of-hate-speech-on-facebook-in-sri-lanka/

MILITARIZATION OF POST-WAR SRI LANKA

- Ambika Satkunanathan

Introduction: Setting the context

Following the end of the internal armed conflict in May 2009, the government of Sri Lanka (GoSL) adopted no measures to initiate a comprehensive process of demilitarization. Instead, militarization as a strategy was used to centralize and consolidate the power of a small group within the ruling regime of the time. During the years of the war, the impact of militarization was felt mainly in the North and East. However, following the end of the war, systematic militarization began taking place throughout the country. Cynthia Enloe defines militarization as 'the step-by-step process by which something becomes controlled by, dependent on, or derives its value from the military as an institution or militaristic criteria", an apt description of the creeping post-war militarization of Sri Lanka.[127].

In post-war Sri Lanka, the Ministry of Defence (MoD) expanded considerably and evolved into the institution that oversaw many activities and institutions that were previously within the purview of civilian authorities. As the Director of the Media Centre for National Security stated in an interview in October 2010 'Earlier we had about 15 organizations under the Ministry; now it has grown to about 25 organizations.'[128] The extent of militarization in the North is illustrated by 'A Protection Assessment of Sri Lankan Internally Displaced Persons who have Returned, Relocated or are Locally Integrating- Tool 3 (hereinafter Tool 3)' published by UNHCR in June 2013, which states 82% of respondents in Mullaitivu, 58% in Killinochchi and 57% in Jaffna said the nearest army/navy/air force camp was less than 1 mile from their residence, while 63% in Trincomalee in the East said it was 1 to 5 miles from their residence. [129]

As the military's reach and influence expanded, the military machinery also expanded rapidly with a large network of sub-entities, such as the Civil Security Department (CSD) being established, which has had an adverse impact on freedom of expression, association and assembly, especially in the North and East, where the military, with the aid of an active surveillance network, placed restrictions on civil society and community activities. Further, in the conflict-affected areas, the military's involvement

127. Enloe, Cynthia. *Maneuvers: The International Politics of Militarizing Women's Lives.* Berkeley, Los Angeles, London: University of California Press: 2000.
128. "Interview with Lakshman Hulugalle". *Business Lanka*. 3 October 2010 at http://www.businesstoday.lk/article.php?article=2896. Accessed on 19 June 2015.
129. UNHCR, "A Protection Assessment of Sri Lankan Internally Displaced Persons who have Returned, Relocated or are Locally Integrating,". June 2013.

in commercial activities disadvantaged small farmers and those engaged in home-based agricultural activities, and hampered their ability to re-build their lives.
This paper will discuss the lack of checks and balances on the activities of the military and the resultant lack of transparency and corruption. It will thereafter set out the impact of militarization on the political, social and economic life of Sri Lanka, with a particular focus on the conflict-affected areas.

Unfettered power of the military: Lack of oversight and transparency

The United Nations Integrated Technical Guidance Note that 'outlines the desirable characteristics of democratic governance of the security sector' in the context of the provision of UN support to countries, reiterates the need to strengthen independent institutions and mechanisms to provide oversight of the security sector.[130] These mechanisms include the Parliament, the judiciary and independent audit bodies. The note states specialized committees, such as parliamentary committees, should be 'equipped with an adequate legal mandate – supported by institutional rules and regulations – that will allow them to request and receive regular reports from relevant security actors'. In addition, according to the note, such mechanisms 'should also be able to hold public hearings and conduct investigations, and have access to classified information where necessary'. Senior appointments to these oversight bodies, should be independent, politically balanced and be approved by Parliament.

In Sri Lanka the military is above scrutiny, even parliamentary scrutiny. For instance, Sri Lanka's military budget for 2015 was Rs. 285 billion (USD2.18 billion), a 12% increase over military spending in 2014, and the armed forces constituted 2.62 % of the labour population in 2010[131], i.e., 223,100 personnel.[132] Despite the large budget and size of the military, there is little parliamentary oversight or public debate on national security policies, or transparency in procurement. The 2013 Government Defence Anti-Corruption Index report listed Sri Lanka in the 'very high risk' of corruption in the defence and security sector category.[133] The 2012 Government Defence Anti-corruption Index published by Transparency International found there is 'little or no transparency on purchases, pre-bid standards for companies to meet or on a strategy

130. UN Inter-Agency SSR Task Force, "Integrated Technical Guidance Note on SSR – Democratic Governance of SSR". December 2012, available at http://unssr.unlb.org/Resources/UNandSSRGuidance/PolicyandGuidance.aspx. Accessed on 19 June 2015.
131. World Bank, "Armed forces personnel (% of total labour force)" at http://data.worldbank.org/indicator/MS.MIL.TOTL.TF.ZS. Accessed on 19 June 2015.
132. World Bank, "Armed forces personnel, total" at http://data.worldbank.org/indicator/MS.MIL.TOTL.P1. Accessed on 19 June 2015.
133. Transparency International. *Watchdogs? The Quality of Legislative Oversight of Defence in 82 countries.* September 2013, available at http://government.defenceindex.org/report. Accessed on 31 May 2015.

to guide procurement'.[134] With regard to the defence budget, the report states that a breakdown of the defence budget was made available mainly through the President's speech in Parliament, where it is presented as a line item in the overall budget and news reports, with the breakdown of procurement expenditure between the three forces is also unclear.[135] According to the report, although the Auditor-General is independent and tasked with auditing the accounts of all government departments, certain parts of the defence budget are not audited and parliamentary oversight is not provided in this regard.[136] The controversy regarding Avant Garde Maritime Limited and Rakna Lanka Securities, companies that were formed by Gotabaya Rajapaksa in his capacity as Secretary, Ministry of Defence, and which were allegedly involved in operating floating armouries and selling weapons without the required authorisation or transparency, illustrates the lack of oversight of the security sector.[137]

The independence of institutions such as the Human Rights Commission and Bribery Commission, which could have functioned as oversight mechanisms, was compromised by the enactment of the 18th amendment to the Constitution which abolished the Constitutional Council tasked with appointing members of the independent commissions, and vested this power in the President, who was thereafter required to only 'seek' the observations of a number of stipulated persons, such as the leader of the opposition.[138]

The description in Gotabaya Rajapaksa's authorised biography of how he was appointed Secretary Ministry of Defence by the President, who was also Minister of Defence, is revealing, and points to the kinship/familial ties that bound the executive and the defence sector, which enabled Gotabaya Rajapaksa to take a far broader role, with more powers than an average secretary to a ministry. Although technically a government official, he functioned more as a politician or a parliamentary representative and exercised powers far exceeding his mandate and duties. Even though Gotabaya Rajapaksa had no formal power to issue instructions to other government institutions, his unofficial/informal influence extended well beyond his officially mandated powers. Gotabaya Rajapaksa has made pronouncements on a range of issues, including calling for the repeal of the 13th Amendment to the Constitution which devolved power to the provinces as part of the Indo-Lanka Accord signed in 1987[139], informed a visiting delegation of Indian MPs that separate system

134. Transparency International. "Sri Lanka", *Government Defence Anti-Corruption Index*. July 2012, available at: http://government.defenceindex.org/results/countries/sri-lanka. Accessed on 31 May 2015.
135. *ibid*.
136. *ibid*.
137. 'Sri Lanka Bans Foreign Travel By Former Defence Chief in Armoury Probe'. NDTV. 10 March 2015, available at http://www.ndtv.com/world-news/sri-lanka-bans-foreign-travel-by-former-defence-chief-in-armoury-probe-745453. Accessed on 31 May 2015.
138. At the date of this chapter going to print, although the 19th amendment to the Constitution restored the Constitutional Council which was tasked with appointing independent commissions, appointments to the Council have not yet been made.
139. Fernando, Shamindra. 'Defence Secretary repeats call for abolition of 13-A'. *The Island.* 21 Oct 2012.

of governance for the Northern and Eastern Provinces would never be a reality[140], dismissed the proposal to sing the national anthem in Tamil as a 'ridiculous idea'[141], publicly expressed his deep disappointment in India for voting for the resolution on Sri Lanka at the Human Rights Council in March 2013[142], blamed India for Sri Lanka's internal armed conflict[143] and publicly criticised an elected TNA MP for calling for the reduction of the presence of the military in the North[144].

The lack of checks and balances along with the unfettered exercise of power by Gotabaya Rajapaksa aided the acceleration of militarization, which in turn enabled him to further expand his power and influence. Not only did the military encroach upon the authority of civilian authorities and play a role in civil administration, but it also began challenging the authority of elected representatives and censuring their activities, making pronouncements on public policy and interfering in judicial decisions. The impunity with which the military functioned contributed to the erosion of the rule of law and space for dissent, and diminished the ability of the public and civil society to hold state institutions and officials accountable.

Impact of Militarization

Freedom of expression, association and assembly

Militarization has had a chilling effect on freedom of association, initially particularly in the North, but later in the rest of the country as well. In the Vanni region, i.e., the former LTTE controlled areas, any gathering of more than a handful of people had to be reported to the local military office/post. Sometimes, army officers who visited workshops/meetings obtained personal details of attendees and even photographed them. Section 12 (3) of the Public Security Ordinance (PSO) which states that members of the armed forces not below a certain rank[145] possess powers given to the police to disburse any unlawful assembly of 5 or more persons that is likely to cause disturbance, under section 95 (1) of the Criminal Procedure Code Act has aided the curtailment of freedom of assembly. In the South this was taken a step further when on 1 August 2013, the army was summoned to deal with unarmed protesters in Weliweriya outside Colombo, and fired live bullets with no warning resulting in the death of 3 persons and injuring 40.

140.Fernando, Shamindra. 'Separate system of governance for N&E won't be a reality'. *The Island.* 13 April 2013.
141. 'Singing national anthem in Tamil a ridiculous idea: Gotabaya'. *Lankasri news*. 2 April 2012
142. Fernando, Shamindra. 'Gotabhaya deeply disappointed with India's stand'. *The Island.* 21 March 2013.
143. Srinivasan, Meera. 'India responsible for 30-year war: Gotabaya Rajapaksa'. *The Hindu*. 22 May 2013.
144. Fernando, Shamindra. 'GR lashes out at TNA'. *The Island.* 12 Sept 2013.
145. Sergeant of the Sri Lanka Army or the Sri Lanka Air Force or Petty Officer of the Sri Lanka Navy.

Due to increased military surveillance, intimidation and intervention, over the past couple of years, civil society organisations in the North and the East curtailed their activities extensively. Examples of military intervention range from surveillance, intimidation and interrogation of staff members of civil society organizations and beneficiaries, to visiting or preventing meetings and workshops from being held, and visiting these organisations and demanding information about their activities. Fear has therefore been created very successfully amongst those in the non-profit sector and is ever-present everywhere. Extra-legal institutions that were established, such as the Presidential Task Force for Resettlement, Development and Security in the Northern Province (hereinafter PTF), were also used by the military to monitor and curtail the activities of civil society organisations.

In July 2010, the Ministry of Defence issued a circular dated 15 July 2010 in which it stated that officials of all INGO and NGO projects in the North have to be registered with the PTF.[146] The circular stated that the PTF would then forward the list of names along with its recommendations to the Director- General of the National Secretariat for NGOs, who in turn would forward the same with his recommendations to the Military Liaison Officer (MLO) for further clearances and final approval. In addition, after the issuance of the circular, all human and material movements of NGOs and INGOs to the Northern Province had to be channelled through the PTF, with a copy to the Director- General of the NGO Secretariat, and to the MLO for further approval. Organizations with field presences reported that although procedures to obtain approval were set out in the abovementioned circular, there were constant changes in procedure, leading to lack of transparency and certainty, which caused great inconvenience to agencies working in the North. There have also been recorded instances in which the MoD instructed local organisations that sought PTF approval to re-submit applications without including the names of certain individuals within the organisation, since those persons were said to have engaged in activities adverse to national security. In addition, permission to travel into the former LTTE controlled areas to work on projects was refused to certain individuals who were deemed to be a threat to national security. [147] It should be noted that the members of the PTF included the Secretary to the MoD, the Inspector-General of Police, Chief of Defence Staff and the Commanders of the Navy and Air Force. Hence, for all intent and purpose the PTF functioned as a wetting mechanism for the military.

In the North, the military has interfered in the activities of elected representatives and political parties as well. For instance, on 16 June 2011 a meeting of the largest Tamil political party, the Tamil National Alliance (TNA), held in Jaffna in the North was attacked by a group of army officers. In response to reports of the attack, Gotabaya Rajapaksa stated he had received a letter from the leader of the TNA seeking assistance for his

146. The PTF was disbanded only in May 2014.
147. Interviews with civil society organisations.

party to engage in political activity in the Northern and Eastern Provinces, and while the Secretary was in the process of making the necessary arrangements to approve the TNA's request, a group of TNA MPs who sought to undermine the TNA leader's agreement with the government, held an unauthorised meeting in Jaffna with the aim of derailing the national reconciliation process.[148] The question why a registered political party would require the authorisation of the Secretary to the Ministry of Defence to engage in legal and legitimate party activities during peace-time, nor how military officers engaging in violence against unarmed civilians engaged in a peaceful activity could be justified didn't figure in the reportage or discussion.

Even today, the oppressive security apparatus continues to function in a business-as-usual manner. This is particularly evident in the conflict-affected areas where civil society organisations and activists continue to be monitored and harassed by the military and intelligence services.

Post-war development and reconstruction

In 2009, the Northern Security Forces Commander signalled the involvement of the military in post-war development and reconstruction activities[149], which was followed in September 2010, by the Army Spokesperson Major General Ubaya Medawala's statement that the Army was to be deployed in development programmes in many parts of the country as part of the Army's efforts to reportedly foster civil-military cooperation and understanding.[150] In an interview in July 2013, the outgoing army commander Jagath Jayasuriya stated that the Army was awaiting cabinet approval to form an entity that could venture into profit-making commercial activity. This was justified on the grounds that the Army at the time was involved in development projects, and when those projects were completed, the army would be able to undertake projects on a profit-making basis by bidding for government tenders.[151]

Following the end of the armed conflict, the rhetoric of the regime, particularly Gotabaya Rajapaksa, has focused on the efficiency and ability of the armed forces to undertake and implement tasks, with a number of close members of the regime, such as the Advisor to the President at the time on Reconciliation, Rajiva Wijesinha[152], the former Attorney-General and former Chief Justice Mohan Peiris[153] and former

148. Fernando, Shamindra. 'GR alleges TNA split over Sampanthan's reconciliation move'. *The Island*. 20 June 2011.
149. Palakidner, Ananth. 'Security Forces to Assist Rehabilitation and Reconstruction-Maj Gen Mark'. *Sunday Observer.* 30 August 2009.
150. Ali, Rifthi. 'Army of workers'. *Daily Mirror.* 27 September 2010.
151. 'Army awaits cabinet nod for profit making ventures', *Daily Mirror.* 18 July 2013.
152. Wijesinha, Rajiva. '*The Role of the Armed Forces in Reconciliation',* 29 February 2012, available at: https://rajivawijesinha.wordpress.com/2012/02/29/the-role-of-the-armed-forces-in-reconciliation/. Accessed on 19 June 2015.
153. Wijedasa, Namini. 'Armed Forces must be thanked for doing civilian work for free: Mohan Peiris, outgoing AG'. *Lakbima News*. 3 Sept 2011.

Senior Minister for International Monetary Cooperation and Deputy Finance and Planning Minister Sarath Amunugama[154] amongst those praising the armed forces for their efficiency. For instance, it was reported that due to the failure of the Colombo Municipal Council (CMC) to manage Viharamahadevi Park in the centre of the city, the Urban Development Authority (UDA), which is within the purview of the MoD, had placed the park under the supervision of the Navy. [155] Hence, instead of strengthening civil administration and dealing with allegations of corruption in the public service, the government used allegations of corruption and a weak administrative service to justify the military's involvement. Commensurately, the armed forces vociferously defended their entry into the public sphere, particularly their involvement in commercial and development activities. This is further evinced by the report of the Army on the recommendations of the Lessons Learnt and Reconciliation Commission (LLRC), which recommended the human resources and machinery of the Armed Forces should be utilized to assist the relevant state agencies to develop tourism and hotel industry in the North and East.[156]

Accordingly, members of the armed services have been seen engaging in development activities in all parts of the country; army officers worked on the renovation of Independence Square in Colombo and built houses in the North, while Navy officers have undertaken a study to ascertain reasons for the flooding of Colombo with the aim of taking preventive measures[157]. According to the Tool 3 report, 36% of respondents in Jaffna, 30% in Mannar and Mullaitivu and 25% in Kilinochchi stated that the military is engaged in activities such as building houses for returnees. 24% of respondents in Kilinochchi, 21% in Mullaitivu and 19% in Jaffna stated that the military was involved in development activities in their villages. In areas such as the North, particularly the Vanni, where many villages happen to be predominantly women- headed due to the death, disappearance or detention of male family members, deploying the military to undertake development work increased the vulnerability of women who reported feeling extremely insecure, particularly at night. The UNHCR Tool Three report found that 40 % of women did not feel safe staying home alone, illustrating serious concerns regarding physical security for women at the village level. It also notes that 25% of women felt unsafe to travel out of their village.

As part of expanding their activities in the development and commercial sector, the armed forces have acquired or forcibly occupied private land, both for the expansion of camps and barracks and establishment of commercial enterprises. In late April 2013, the Government issued land acquisition notices to begin the process of acquiring around 7,000 acres of private land in the Northern and Eastern Provinces

154. 'Govt's decision to deploy security forces in development commended', *Sunday Observer,* 10 Feb 2013.
155. De Silva, Jayantha. 'Now Navy moves to supervise Viharamahadevi Park'. *The Island.* 8 May 2011.
156. Full report available at http://www.army.lk/docimages/image/LLRC_2013.pdf. Accessed on 19 June 2015.
157. Balasuriya, Duminda Sanjeeva. 'Reconstruction of Beira Lake to prevent floods'. *Daily Mirror.* 15 March 2011.

of Sri Lanka, to build army camps and installations, including an army hospital and 'a holiday resort under 572th Brigade Headquarters of the SL Army'. The land the army sought to acquire, was equivalent in size, to two-thirds the entire land area on which Colombo City is established. The vast majority of this land belongs to families who were internally displaced by the 30 year civil conflict. Even though most owners of the land were known and in the country, many acquisition notices posted on the lands stated the 'Claimant could not be traced'.

Since the army is subsidised by the State, they are able to offer goods and services for cheaper rates, thereby forcing small farmers and retailers out of business. The Tool 3 report states that 21% respondents in Kilinochchi, 26% in Mullaitivu and 25% in Mannar said the military in their area was involved in farming or fishing. In many instances the normalisation of militarisation is aided by the dire economic circumstances of the conflict affected people, who due to lack of other livelihood opportunities seek employment with different sectors of the military machinery, such as the CSD which employs a large number of persons in Kilinochchi in agricultural farms, which ironically were previously managed by the LTTE. Hence, instead of providing viable livelihood options to the conflict affected, the State offered opportunities mainly in the defence industry, to those living in the former LTTE controlled areas.

Militarisation of civil administration, maintenance of law & order and civilian space

Another means through which military extended its tentacles in the public service and state institutions, is through the appointment of former military officers to positions in the administrative and foreign services[158], including as governors to the conflict affected Northern and Eastern Provinces. The establishment of ad-hoc mechanisms, such as the PTF, which superseded civil administration and issued instructions to civilian authorities, also enabled the entrenchment of militarisation.

158. Air Chief Marshal Jayalath Weerakkody (former Air Force Chief) – Sri Lanka's High Commissioner to Pakistan.
2. Air Chief Marshal Donald Perera (former Air Force Chief and Chief of Defence Staff) – Sri Lanka's Ambassador to Israel
3. Major General Nanda Mallawaarachchi (former Chief of Staff of the Army) – Sri Lanka's Ambassador to Indonesia
4. Major General Udaya Perera (Director Operations of the Sri Lanka Army) – Sri Lanka's Deputy High Commissioner to Malaysia
5. Major General Jagath Dias (former General Officer Commanding the 57th Division) – Sri Lanka's Deputy Ambassador to Germany
6. Major General Shavendra Silva (former General Officer Commanding the 58th Division) – Deputy Permanent Representative for Sri Lanka in the UN
7. Admiral Wasantha Karannagoda (former Navy Commander) – Highways Ministry Secretary and tipped to become Sri Lanka's Ambassador to Japan
8. Admiral Thisara Samarasinghe (former Navy Commander) – Board Member, Water's Edge Complex and tipped to become Sri Lanka's High Commissioner to Australia
9. Major General Amal Karunasekara (former Head of the Directorate of Military Intelligence) – Charge d' affaires for the proposed Sri Lankan Mission in Eritrea
10. Major General G.A. Chandrasiri (former Jaffna security forces commander) – Northern Province Go

The militarisation of law and order was institutionalised through many means; by bringing the police within the purview of the Ministry of Defence (MoD) in 2004.[159] Further, in August 2011 the President used the power bestowed upon him by section 12 of the Public Security Ordinance (PSO)[160] and called out the armed forces (army, navy & air force) to maintain public order in all 25 districts. Section 12, which gives the President the power to call out the armed forces if 'circumstances endangering public security in any area have arisen or are imminent and the President is of the opinion that the police are inadequate' to deal with the situation, confers powers of search and arrest upon the armed forces. The Order is valid for one month from the date of publication in the gazette and has to be re-issued at the end of that period. Unlike the declaration of a state of emergency, which requires parliamentary approval, the Presidential Order has to be **only communicated to Parliament**.[161] Inability to communicate to Parliament does not affect the validity or operation of the Order. It has to be noted that although Section 12 of the PSO gives the army the power to search and arrest persons, it makes no mention of how the person should thereafter be treated, i.e., there are no checks to ensure that there is no abuse of power by the armed forces, and that the rights of citizens are protected. For instance, it does not state the period the person can be in army custody, conditions of detention, the need to inform the family of the arrest etc., and hence creates space for rights violations.

The army's encroachment into civilian space to exercise further control over the population, particularly children and youth in the conflict-affected areas, is illustrated by its involvement in the education sector in the North and engagement in philanthropic initiatives. The MoD website for instance is replete with stories about the army's activities which range from providing scholarships and distributing books to students. The Civil Security Department (CSD) of the Ministry of Defence, recruited mainly women, including former LTTE combatants, as pre-school teachers. These persons, employed by the Ministry of Defence, were thereafter deployed as pre-school teachers within the community by the CSD. Additionally, leadership training programmes for school students are held with the involvement of the army[162], which also organises educational tours for school children[163].

159. It was moved to the purview of the Ministry of Law & Order in August 2013.
160. Part III-Special Powers to the President. Public Security Ordinance.
161. Section 21 (2) and 2 (3), Public Security Ordinance.
162. 'Tamil Leaders in the Making at Kilinochchi'. *Asian Tribune.* 29 January 2012 at http://www.asiantribune.com/news/2012/01/28/tamil-leaders-making-kilinochchi. Accessed on 19 June 2015.
163. Jaffna students make a four day tour to Colombo', 11 March 2011 at http://www.defence.lk/new.asp?fname=20111103_06. Accessed on 19 June 2015.

Conclusion

In post-war Sri Lanka, militarisation became a key strategy used to further the power of a small group within the ruling regime whilst exercising repressive control over the population. Militarisation was able to thrive due to familial ties that created space for the abuse of power by a few individuals. While increased military involvement and interference in civilian affairs was justified by pointing to remaining elements of the LTTE, the efficiency of the armed forces was also used to deflect criticism of the failure to implement a comprehensive demilitarisation programme. Further, the lack of oversight mechanisms and lack of independence and effective of mechanisms such as parliamentary sub-committees and the Human Rights and Bribery Commissions meant there was lack of transparency in financial dealings related to the military. The militarisation of civil administration has been internalised, both by government officials and the public, and it has been normalised to the point there is public acceptance of it, and a culture and narrative in which the army is Positioned as an integral actor in all aspects of governance in Sri Lanka has been created. The response of an army officer who when responding to allegations of military interference in civilian affairs declared that, "these are baseless accusations made by certain parties who want the people to be distanced from the forces as they do not want harmony"[164], illustrates not only the entrenchment of militarisation but also lack of understanding of the role of the military in a functioning democracy.

164. Nathaniel, Camelia. 'Living in Harmony'. *Sunday Leader.* 3 March 2013.

SRI LANKA: A REVIEW OF HUMAN RIGHTS VIOLATIONS AND RELIGIOUS VIOLENCE IN 2014

- Luwie Niranjan Ganeshathasan

Introduction

This article is not an exhaustive litany of human rights violations that took place in Sri Lanka during the year 2014. It is meant to be an exposition of key incidents, trends and their linkages to issues of rule of law and governance, issues which are an ever-present challenge to Sri Lankan society.

The violence that took place in Aluthgama was the most significant incident in 2014 for most persons interested in issues of human rights in Sri Lanka. It was a moment in which the two fundamental issues plaguing the Sri Lankan State (i. e the nature of the State and the systematic erosion of the rule of law) intersected with disastrous consequences. However the violence in Aluthgama was not a spontaneous and isolated incident and it has to be understood in the context of the events of previous years. The wide margin the government provided to the individuals and groups allegedly involved in the Aluthgama violence, while worthy of rebuke, also provided a unique counter point to compare the government's attitude towards other forms of collective expression of rights. It is for these reasons that the author has endeavoured to comment specifically on issues relating to religious freedom and the freedom of association and expression in the present chapter.

The first part of the article will discuss religious violence that occurred during the course of the year 2014 and its impact on Sri Lanka's post war reconciliation process. As will be seen, this violence was allowed to take place with minimum checks on the perpetrators. The second part of the article will look at the forms of expression and association that were subject to the censure of the government.

Threats to Religious Freedom

The Constitutional framework

Prior to examining the incidents that occurred and analysing them in the context of violations of human rights, it would be useful to understand the scope of the right(s) in question. The right to religious freedom in Sri Lanka is the combination of several Constitutional provisions which are textually related, and include Article 9, 10 and

14(1) (e) of the Constitution.

- Article 9 relates to the foremost place of Buddhism and the State's duty, subject to the provisions of Articles 10 and 14 (1) (e), to protect and foster Buddhism.

- Article 10, which is exempt from the limitations on fundamental rights set out in Article 15 (i.e., is an absolute right), guarantees the freedom of thought, conscience and religion, including the freedom to have or to adopt a religion or belief of one's choice.

- Article 14(1)(e) guarantees to all citizens the freedom, either by himself or in association with others, and either in public or in private, to manifest their religion or belief in worship, observance, practice or teaching.[165]

The relationship between Articles 9, 10 and 14(1)(e) has been examined in several decisions of the Supreme Court. However, a clear line of judicial authority on this issue is yet to emerge. Although the Court has taken an expansive view of Article 9 in some cases,[166] this has been criticised as being contrary to the provisions of the Constitution.[167] Furthermore, in at least one other case[168] the Court sought to retreat from its previous expansive interpretation of Article 9 and in a later case went to the extent of stating that;

> *"It has to be firmly borne in mind that Sri Lanka is a secular State. In terms of Article 3 of the Constitution, Sovereignty is in the People at common devoid of any divisions based on perceptions of race religion language and the like."* [169]

Furthermore Article 12 protects individuals from discrimination on grounds of religion (amongst other things) and prevents individuals from being subject to any disability, liability, restriction or condition with regard to access to public places on grounds of religion.

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165. This right is subject to certain restrictions that may be prescribed by law under Article 15 (7), for the purpose of, inter alia, "securing recognition and respect for the rights and freedoms of others."
166.Supreme Court Special Determination on a Bill titled "New Wine Harvest Ministries (Incorporation)" SC. SD. 02/2003; Supreme Court Special Determination on a Bill titled "Provincial of the Teaching Sisters of the Holy Cross of the Third Order of Saint Francis in Menzingen of Sri Lanka" SC. SD 19/2003
167. See Asanga Welikala, "The Menzingen Determination and the Supreme Court: A Liberal Critique", Monograph - Center for Policy Alternatives; Dr. Jayampathy Wickramaratne PC, "Fundamental Rights in Sri Lanka", 2nd Edition (2007), pp. 200 – 205.
168. Supreme Court Special Determination on Bill titled "Prohibition of forcible conversion of Religion" SC. SD 2 – 22/ 2004
169. Alhaj M. T. M. Ashik and others V. R.P.S. Bandula, O.I.C., Weligama and others SC. FR 38/2005 SCM 09 November 2007 (Noise Pollution Case)

Post War Trends

The year 2014 witnessed the peak of anti-Muslim sentiment that had been slowly taking hold within the Sinhala community, in post war Sri Lanka[170]. The post-May 2009 period had seen a significant number of attacks on places of religious worship, mainly targeting evangelical Christian churches.[171] This troubling trend was highlighted by civil society organisations[172] and also the governments own Lessons Learnt and Reconciliation Commission (LLRC),[173] which recommended establishing an early warning and early diffusion mechanism in consultation with inter-faith groups.[174]

However with the formation of organisations such as the Bodu Bala Sena (BBS), Sihala Ravaya and Ravana Balaya in 2012 and 2013, the sporadic attacks against evangelical Christian groups and the Muslim community, were weaved into a larger narrative. These groups positioned themselves as "saviours of the Sinhala- Buddhists" who, the groups claimed, were in danger of being relegated to a minority in Sri Lanka.[175] These groups expressly rejected the idea that Sri Lanka was a multi-ethnic and multi-religious society, their policy positions were based on the idea that Sri Lanka was and is a Sinhala-Buddhist State.

Events during 2014

During the course of the year 2014, the violent attacks against the Christian and Muslim community, often led by Buddhist monks, continued with impunity. In January a violent mob calling itself "Hela Bodhu Pavura" led by monks attacked two churches in Hikkaduwa. While the police were deployed to control the situation, they were unable to control the large crowd. The mob, which caused damage to property, even wanted the Pastors of the two churches to be arrested.[176] In February, a Protestant Christian Pastor and his wife were assaulted in Asgiriya, Kandy by a mob of about 250 led by BBS Buddhist monks.[177]

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170. See Centre for Policy Alternatives, "Attacks on Places of Religious Worship in Post–War Sri Lanka", 9 March 2013, pp.32-33, available [online] http://www.cpalanka.org/attacks-on-places-of-religious-worship-in-post-war-sri-lanka/
171. *ibid*.
172. See Joint Submission by Civil Society in Sri Lanka for UPR 2012, p.14, available [online] http://lib.ohchr.org/HRBodies/UPR/Documents/Session14/LK/JS1_UPR_LKA_S14_2012_JointSubmission1_E.pdf
173. See Final Report of Report of the Commission of Inquiry on Lessons Learnt and Reconciliation, November 2011, p. 316, http://www.priu.gov.lk/news_update/Current_Affairs/ca201112/FINAL%20LLRC%20REPORT.pdf
174. *ibid*., pp.384-385
175. Chamitha Kuruppu, "Our fight is for all Sri Lankans: BBS CEO", FT Political Pulse, 30 April 2014, available at http://www.ft.lk/article/286624/%E2%80%9COur-fight-is-for-all--Sri-Lankans%E2%80%9D:-BBS-CEO
176. Charles Haviland, "Sri Lanka police 'identify church attackers' in Hikkaduwa", BBC NEWS, 13 January 2014, available at http://www.bbc.com/news/world-asia-25716456; See also for video of incident https://www.youtube.com/watch?v=c84C_m4kD6c.
177. Morning Star News, "Buddhist Nationalism Continues to Haunt Christians in Sri Lanka- Secretary general of extremist group leads assault on pastor, family", 12 March 2014, http://morningstarnews.org/2014/03/buddhist-nationalism-fuels-attacks-on-christians-in-sri-lanka-2/

The BBS and other groups - in order to combat what they perceived to be threats to Buddhism- also took it upon themselves to act as an unofficial police unit, and on several occasions stormed into private and government property. On 9 April 2014 BBS's Gnanasara Thero and his supporters stormed a press conference organized by Watareka Vijitha Thero's "Jathika Bala Sena" organisation and a group of Muslim Clerics. The General Secretary of BBS acted in an aggressive manner and was abusive to those present stating that Muslims should not discuss their problems with Buddhist monks. Gnanasara Thero also publically humiliated, Watareka Vijitha Thero who was one of the organisers of the press conference.[178] A few days later another group of monks also linked to the BBS entered the premises of the Ministry of Industry and Commerce, and demanded to search the premises claiming that Watareka Vijitha Thero was in hiding within the premises.[179],[180]

However, all these incidents paled in comparison to the violence and destruction that engulfed Aluthgama and Beruwela, and specifically in Dharga Town over the course of several days in June 2014. In August 2013 potential large-scale violence between Sinhala and Muslim communities living in close quarters in the Grandpass (Colombo 14) area was avoided by the timely settlement of the dispute over the mosque at the Swarna Chaithiya Mawatha.[181] Unfortunately, lessons from that incident were not learned or used to defuse the situation that was simmering in Aluthgama over several days. Whilst the violence itself started on 16 June 2014, there were several incidents that occurred in the lead up to the violence.[182]

A tense situation prevailed in Aluthgama, after reports that a Muslim man allegedly attacked a monk and several others on Poson poya day, which is one of the most sacred holidays among Sinhala Buddhists living in Sri Lanka.[183] Tear gas was used to control protests that occurred and the three individuals who were suspected of assaulting the monk were arrested/ surrendered themselves to the police.[184]

178. Hiru News, "Bodu Bala sena raids Jathika Bala sena media conference Galagoda-Aththe thero reprimand Wataraka Vijitha thero: police intervenes", 9 April 2014, available at http://www.hirunews.lk/80932/bodu-bala-sena-raids-jathika-media-conference-galagoda-aththe-thero-reprimand-wata-raka-vijitha-police-intervenes; see video at https://www.youtube.com/watch?v=IdjdYVXgpqk

179. The Daily FT, "BBS brings its cold war home, tests official resolve", 24 April 2014, available at http://www.ft.lk/2014/04/24/bbs-brings-its-cold-war-home-tests-official-resolve/#sthash.LtcIkY7b.dpuf ; See video at https://www.youtube.com/watch?v=hOQirOxL9Fg

180. Watareka Vijitha Thero was subject to several attacks by groups linked to the BBS. He was also found beaten on the side of the road, with several cut injuries. He was later accused of staging the incident and arrested. See WATCHDOG, "Did the BBS attack Vijitha Thero again?", Groundviews, 20 June 2014, available at http://groundviews.org/2014/06/20/did-the-bbs-attack-vijitha-thero-again/

181. See Latheef Farook, "Calculated Attack On Grandpass Mosque",Colombo Telegraph, 14 August 2013, available at https://www.colombotelegraph.com/index.php/calculated-attack-on-grandpass-mosque/

182. Farzana Haniffa, Harini Amarasuriya, Vishakha Wijenayake and Gehan Gunatilleke, Where Have All The Neighbours Gone? Aluthgama Riots And Its Aftermath - A Fact Finding Mission to Aluthgama, Dharga Town, Valipanna and Beruwela", Law and Society Trust, December 2014, pp. 15-18, available at http://lawandsocietytrust.org/images/PDF/Resources/aluthgama%20report%20final.pdf

183. The Republic Square, "What happened in Aluthgama, a verified account", 15 June 2014, available at http://www.therepublicsquare.com/news/2014/06/what-happened-in-aluthgama-yesterday/

184. *Supra*, Haniffa, Amarasuriya, Wijenayake and Gunatilleke

While a tense situation prevailed in much of the area over the next few days, a large meeting was organized in the area on 15 June 2014. There are allegations that the advertisement for the meeting carried the logos of the BBS and the Sihala Ravaya, however the BBS subsequently claimed that the meeting was organised by the "Sashanarakshaka Balamandalaya of Beruwela".[185]

Regardless of who formally organised the meeting, Gnanasara Thero of the BBS made a speech, which was widely considered to be incendiary and provocative. Towards the end of the highly provocative speech, Gnanasara Thero told the participants at the meeting to disperse peacefully but in the same breath went on to state that they have to win this battle in the long run, even if it requires laying down their own lives in pursuit of killing the enemy.[186] Subsequently violence broke out as a group of monks and laymen marched through Dharga Town. There are allegations and counter allegations as to who threw the first stone.

Regardless of "who threw the first stone", the resulting violence left four people dead (killed by acts of homicide). Furthermore, 88 people including 16 Sinhalese and at least two Buddhist monks were injured in the violence and hundreds of families were displaced.[187] The total property loss that resulted from the violence has been estimated at Rs. 627.81 million.[188]

While it has not been established as to who was behind these riots, there are credible claims that there were signs of organisation and orchestration.[189] Furthermore, the Special Task Force (STF) has been accused of being complicit in the attacks by way of omission. This is based on testimonies that the STF refused to help people and also testimonies that the STF directed abuse at Muslims who requested such help.[190]

Despite allegations of complicity by the STF and the contradictory narratives on the outbreak of violence in Aluthgama, the promised high-level panel to investigate the incidents that transpired in Aluthgama was never appointed.[191] The violence was the culmination of religious tension that was simmering for several years, however in the aftermath of the Aluthgama incident, violent groups such as the BBS became even more defiant. The BBS specifically denied allegations that it was involved in the violence in Aluthgama or even that the incendiary language used by Gnanasara Thero might have instigated the violence.[192] Moreover the government's response was to, on

185. *ibid*
186.S.ee speech https://www.youtube.com/watch?v=YFeaR9acsvM
187. Dharisha Bastians, Striking the Match, FT Politics, 26 June 2014, available at http://www.ft.lk/2014/06/26/striking-the-match/
188. *Supra*, Haniffa, Amarasuriya, Wijenayake and Gunatilleke, p 76
189. *ibid* p 70
190. *ibid*, p 70
191. Newsfirst, "President to appoint high-level panel to investigate Aluthgama incident", 21 June 2014.
192. Camelia Nathaniel, 'What Have We Done?', The Sunday Leader, 29 June 2014, available at http://www.thesundayleader.lk/2014/06/29/what-have-we-done/

the one hand play down the seriousness of the incident and to invoke the idea of a foreign conspiracy, and also to promote as part of the official narrative the idea that violence originated from the actions of the Muslim community.[193]

In September 2014, the BBS organised a Maha Sangha Council meeting in Colombo, with the participation of about 5,000 monks. The Sangha Council was attended by Ashin Wirathu, the leader of Myanmar's 969 group, who promised to join hands with the BBS to protect Buddhists who are facing a serious threat today from jihadist groups.[194]

In many of the attacks on evangelical churches, the attackers have maintained that the said church/ prayer centre has not been duly registered in terms of the 2008 circular. The circular issued in 2008 by the then Ministry of Religious Affairs and Moral Upliftment, has since made it mandatory for religious authorities to seek approval from the Ministry before constructing a new place of worship.[195] Whilst this circular does not apply to premises that have been in use prior to 2008, it has nonetheless been used as a pretext for attacks and harassment of evangelical churches and their congregations.[196] In 2014 alone, 111 incidents involving direct attacks, church closures, intimidation, threats, desecration of religious objects and texts, demonstrations and legal restrictions were reported by evangelical Christian churches from around Sri Lanka.[197]

Fundamental rights guaranteed under the Sri Lankan Constitution are justiciable only when there is an infringement or imminent infringement of such rights by executive or administrative action. However, case law suggests that where a private individual was acting as a functionary of the State or where an executive or administrative authority should have, but failed to prevent the actions of a private individual, which would amount to the infringement of a fundamental right, the Supreme Court has been willing to consider an application regarding the violation of fundamental rights.[198]

The situation that prevailed throughout the year 2013 - 2014 is indicative of a systematic failure on the part of the State, to protect citizens from mob violence. Despite the wide range of legal provisions available to prosecute against such acts,

193. *Supra* Haniffa, Amarasuriya, Wijenayake and Gunatilleke, pp.49-50
194. Dinouk Colombage, "Buddhist monk to fight 'jihad threat' Ashin Wirathu, of Myanmar's 969 group, tells Sri Lankan group BBS he will help combat 'Muslim extremists'", Al Jazeera, 28 September 2014, available at http://www.aljazeera.com/news/southasia/2014/09/buddhist-monk-fight-jihad-threat-asia-201492815351295386 1.html .
195. *Supra* n 6, p 98.
196. See The National Christian Evangelical Alliance of Sri Lanka (NCEASL), Incident Reports, available at http://nceasl.org/category/incident-reports/
197. "Incidents Of Violence and Intimidation Of Christians 2014", Compiled by The National Christian Evangelical Alliance of Sri Lanka (NCEASL).
198. See Mohamed Faiz V Attorney General [1995] 1 S.L.R 372 at p. 383

in a vast majority of cases, perpetrators have not been apprehended or indicted.[199] Furthermore, the lack of action against groups, such as the BBS, that openly flout the law, raises serious questions as to whether they enjoy patronage at the highest levels of the government. Equally troubling have been pronouncements of high-level government officials, which not only echo the ideology of these groups, but also go a step further and laud them as performing an essential social function.[200] This conveyed a dangerous message to religious minorities, that the government was aligning itself with the ideological position of elements such as the BBS.

The idea of a plural and inclusive democracy is especially important for a society that was emerging from decades of civil war. The intolerance of organizations such as the BBS towards any idea contrary to their own and their ability to intimidate civil society actors with different opinions was hugely problematic. By at least tacitly supporting organisations of the nature of the BBS, the government was effectively reducing the space for a serious conversation on the modalities of developing a plural and inclusive Sri Lankan State and thereby perpetuated the fears and insecurities that was a source of conflict and recurring cycles of violence in post-independence Sri Lanka.

Freedom of Expression and Association

The Constitutional framework

The Sri Lankan Constitution recognizes the right of every citizen to the freedom of speech and expression including the freedom of publication, the freedom of peaceful assembly, the freedom of association and the freedom to form and join a trade union.[201] The Supreme Court has recognised that "Group association" does advance the enjoyment of certain rights provided for in the Constitution as it provides a platform to voice and advocate both private and personal views especially when such views are considered controversial.[202] This link between individual liberties and the right to association was discussed in *Channa Pieris and others vs. Attorney General and others (1994) 1 S.L.R 1* where it was held that;

"What the Constitution does is to state in Article 14(1) (a) that every citizen is entitled to the freedom of speech and expression, including publication, and then recognise the indispensable means of preserving individual liberties guaranteed by the Constitution,

199. Centre for Policy Alternatives, "Constitutional and Legal Framework Governing Religious Freedom and Related Issues", July 2014, available at http://www.cpalanka.org/constitutional-and-legal-framework-governing-religious-freedom-and-relatd-issues/
200. Interview with Secretary to the Ministry of Buddha Sasana and Religious Affairs, "Most issues raised by BBS are rational", The Ceylon Today, 21 November 2014, available at http://www.ceylontoday.lk/114-78266-news-detail-most-issues-raised-by-bbs-are-rational.html
201. See Article 14(1)a- 14(1)d of the Constitution of Sri Lanka
202. Channa Pieris and others vs. Attorney General and others (1994) 1 S.L.R 1 at p 177

including the fundamental right of the freedom of speech and expression, by declaring in Article 14(1) (b) the fundamental right of freedom of peaceful assembly; and in Article 14(1) (c), the fundamental right of freedom of association"[203]

The practical application of these rights in the previous year did not live up to the judicial standards stated above. In contradistinction to organisations in the nature of BBS, Sihala Ravaya and Ravana Balaya, many other civil society organisations operated in a restrictive environment during the course of 2014. This was especially true in the case of organisations and individuals working on issues of human rights, governance and accountability. It is also important to note that many of the organisations that were censured, engaged in peaceful agitations and did not propagate violence.

Post War Trends

The post war period has seen continued repression of civil society actors in general and Non-Governmental Organizations (NGOs) in particular. This repression has taken several forms including incidents of killings, physical attacks and abductions – in many instances the perpetrators were not arrested or prosecuted- and a concerted campaign of vilification by the government controlled media institutions took place.[204] In 2014 whilst no killings were reported, attempts at controlling and restricting civil society were reported from across Sri Lanka with both the civil administration and military involved in such practices. Reports from the districts indicated that local groups are required to report to district and divisional secretariats and in the North and East in some instances to the military, via a diverse range of reporting mechanisms.

Events during 2014

Meetings and workshops organised by civil society organisations came under threat either by the Police and persons claiming to be from the security forces, and by individuals claiming to be part of various other organisations. In May 2014, Transparency International Sri Lanka (TISL) organized a training workshop on investigative reporting related to the enforcement of the recommendations made by the LLRC. The workshop had been organised for Tamil medium journalists from the Northern and Eastern Provinces. However, this workshop was abandoned, due to the military commander of the Eastern Province pressurising the owner of the Hotel where the workshop was to take place, to stop the workshop.[205] The said workshop was later scheduled to be held

203. *ibid* at 146
204. *Supra* n 8, pp. 7-9
205. The Free Media Movement, "Tamil Media Workshop on Investigative Journalism Threatened for the 3rd time; Hotels Refuse Accommodation to Tamil Journalists", 14 June 2014 available at http://dbsjeyaraj.com/dbsj/archives/30611

on 7 June 2014, however, the workshop had to be cancelled again due to a mob that entered the hotel premises and threatened participants.[206] The participants moved to Colombo for safety for the night, but the hotel at which they were staying for the night also received threatening messages and the participants were forced to leave the premises in the middle of the night.[207] In June 2014, the Annual General Meeting (AGM) of TISL was also threatened when the hotel refused to allow the AGM to take place on the basis that they had received instructions from a Buddhist monk to halt all proceedings.[208]

Meetings and peaceful protests that were perceived to be anti-government continued to be disrupted or prevented through a variety of methods including judicial action.[209] In May 2014, the OIC of the Cinnamon Garden Police station charged 17 University students for Contempt of Court. They were accused of participating in a protest march violating an *ex parte* Court order obtained by police the previous day from the Chief Magistrate of Hulftsdorp. The said order was issued against the 17 University students, restraining them from staging a protest and a protest march in specified areas on 7 May 2014 during the World Youth Conference 2014 being hosted in Colombo.[210] However it should be noted that considering the circumstances of the case, the Chief Magistrate of Hulftsdorp stated that the Court would, in the future, not issue any *ex parte* orders restraining protests and meetings.[211]

In July 2014, attempts were made by the government to restrict the activities of NGOs via the issue of circulars[212] preventing NGO's from holding press conferences. Moreover, there were attempts at financial control through Central Bank circulars and greater scrutiny of bank accounts.[213] Media reports also indicated that the Government was drafting legislation to control and restrict the activities of civil society.[214] However, no legislation was proposed to curtail the work of civil society.

206. *ibid*.
207. *ibid*
208. Daily FT, "Organised elements continue to disrupt TISL activities", 28 June 2014, available http://www.ft.lk/2014/06/28/organised-elements-continue-to-disrupt-tisl-activities/#sthash.yYClcYUA.dpuf
209. *Supra* n 8, p.7
210. The Daily Nation, "Protests galore!", 7 May 2014, available at http://dailynation.lk/protests-galore-2/
211. See Officer in Charge (OIC), Cinnamon Garden Police Station Vs. R.M.C Sirimewan Rajapaksha and 18 others B7542/1/14
212. The Ministry of Defence and Urban Development issued circular No. MOD/NGO/mon/4 dated 1.7.2014. See The Financial Times, "Ranil says in P'ment MOD directive to NGOs invalid; PM defends", 12 July 2014, available at http://www.ft.lk/2014/07/12/ranil-says-in-pment-mod-directive-to-ngos-invalid-pm-defends/
213. Notice Published by Director General of the Department of External Resources (DGDER) of the Central Bank of Sri Lanka, The Daily News, 18 July 2014 available at http://epaper.dailynews.lk/?id=03&tday=2014/07/18
214. Kelum Bandara, "New Law on NGOs is ready", The Daily Mirror, 14 July 2014, available at http://www.dailymirror.lk/news/49662-new-law-on-ngos-is-ready.html; Chamikara Weerasinghe, "Probing Wild-Ass NGOs", The Daily News, 15 July 2014, available at http://www.dailynews.lk/?q=local/probing-wild-ass-ngos

On 4 August 2014, a mob lead by Buddhist monks, forcibly entered a private premises, which was hosting a discussion with the families of the disappeared, civil society organisations and some members of the diplomatic community. The aim of the discussion was to provide a platform for families to share their experiences in searching for their disappeared loved ones. The mob justified their action on the basis that they suspected the gathering was to allow LTTE families to provide evidence via skype to the United Nations Human Rights Council (UN HRC) and demanded that they be allowed to observe and participate in proceedings.[215]

The year 2014 was marked by the *ad hominem* approach taken by the government and law enforcement authorities, towards different actors exercising their right to association and expression. Whilst some actors were allowed margin to even violate the law, others were prevented from exercising their democratic and constitutional rights. The clamp down on civil society organisations has to also be viewed in the context of the investigation being carried out by the UN HRC. In March 2014 the UN HRC adopted a resolution in which it requested the Office of the High Commissioner to undertake a comprehensive investigation into alleged serious violations and abuses of human rights and related crimes by both parties in Sri Lanka during the period covered by the LLRC. Considering the nature of the work carried out by organisations that were subject to restrictions, violence and intimidation, and past experiences, it is possible that there was a deliberate targeting of organisations with a view to prevent any information from within Sri Lanka being provided to the UN HRC investigation.

Conclusion

The year 2014 saw the continuing and serious lapse in the rule of law and the maintenance of the security of the citizens of Sri Lanka. The fact that the above detailed incidents took place despite the well-equipped and extensive security apparatus and network at the disposal of the government was particularly cause for concern.

This *ad hominem* approach taken by the government and law enforcement is exemplified by the fact that the Police have on several occasions in the past, obtained Court orders to prevent or limit protests by student organisations, opposition political parties, and even civil society activists. These orders were obtained on the intimation to Court that such activities would lead to a breach of the peace. However, as was seen above, the Police not only failed to protect citizens when violence was actually being perpetuated, they also failed to apprehend the perpetrators even after the fact.

215. WATCHDOG, "Mob disrupts meeting of families of disappeared: Police & Government hound participants", Groundviews, 7 August 2014, available at http://groundviews.org/2014/08/07/mob-disrupts-meeting-of-families-of-disappeared-police-government-hound-participants/

Finally, the frequency and ferocity of incidents of religious violence are indicative of the fact that more than five years after the end of the civil war, Sri Lanka remains a deeply divided society. There is a need for this fact to be acknowledged by the government, political parties, religious groups and civil society. Unless this is acknowledged and a serious attempt made to remedy this, Sri Lanka will struggle to transition from a post war to post conflict society.

GOVERNANCE ISSUES AND THE EPF

-Senura Abeywardena

Introduction

The Social Security system in Sri Lanka provides for pension schemes and contributory fund schemes for its labour force in the formal sector. The Employees Provident Fund (EPF) was established in 1958 to provide for private sector employees and those serving in statutory boards, state sponsored corporations etc., According to the Employees Provident Fund Act No. 15 of 1958, the fund is managed by the Central Bank of Sri Lanka.

Today the fund stands at approximately 1 trillion rupees, arguably the largest employee benefit fund in Sri Lanka. The Central Bank as the custodian of the fund, in the late 1990s, devised a policy to invest in equities in the stock market, as part of its strategic investment plan for the fund. Accordingly the Central Bank decided to invest 5% of the fund in the listed equities in the stock market.

As of the financial year ended 2013/2014, the fund is believed to have made losses of 10.4 billion rupees arising from investments made in the stock market. The sheer volume of this fund being over 1 trillion rupees makes this loss just 0.01% of the total value of the fund. However in *real* terms, it is a substantial loss by *any* standards, especially in view of the fact that this fund is made of contributions made by a substantial majority of the work force of Sri Lanka.

In this background, the following article analyses the existing system, the drawbacks of the existing system of managing of the EPF, and the reforms required to improve the transparency of the investments and its methods.

The Central Bank and the EPF

The Monetary Board of the Central Bank of Sri Lanka (MBCB) is the authority responsible for the administration, supervision and regulation of monetary and finance payment system of Sri Lanka. In terms of section 5 of the Act, as amended in 2002, its specific objectives are Economic and Price stability and Financial System stability. The MBCB determines the policies and implementation of such decisions which are carried out by the Central Bank of Sri Lanka.

The EPF was first established by Act No. 15 of 1958 (the EPF Act). The EPF is the foremost employment related social security system to secure superannuation

benefits to persons employed in private companies, corporate and unincorporated bodies, statutory boards and government corporations.[216] The finances for the Fund are received jointly from the Employee and the Employer, based on the principle that superannuation is the joint responsibility of both the Employer and Employee.[217]

This fund was also created on the principle that all benefits accruing to the EPF should accrue and/or be able to accrue to the benefit of its members. Therefore the EPF cannot endeavour to obtain any benefits that will not accrue to, or pass on to its members. Thus the MBCB is required to act as the custodian in trust of the EPF funds, and is legally and morally bound to ensure that the operations of the fund are within the legal framework. This is because the funds lying to the credit of the EPF are remittances of earnings of belonging to its members and thereby becoming "**Real Savings**".

In terms of the importance of the superannuation fund sector, the EPF accounts for 78% of the total assets in the sector. There are a number of privately managed superannuation funds and publicly managed funds. According to the Central Bank Annual Report of 2011, the EPF has a total of about 13.6 million accounts, of which 2.3 million are active. The EPF has a significant impact on the national economy and the Gross Domestic Product as it comprises of "Real Savings" of its members.[218]

Investments of the EPF in equity

According to section 4 of the EPF Act, the Commissioner of Labour shall be in charge of the general administration of the Fund or Act, and section 5 vests the powers with the MBCB to be the legal custodian of the Fund.[219] When the EPF Act came in to operation in 1958, annual inflation was approximately 1%, and the Rupee Loan interest rate was in the region of 3.5% per annum. Therefore, the MBCB acting under Section 5(1)(e), invested in Securities with Sovereign Guarantees such as Rupee Loans and Reverse Repos to ensure that the MBCB was able to meet the requirement under Section 14(1) of the EPF Act to pay a rate of return (interest) not less than 2.5% per annum, in respect of contributions made by the members. If there is a deficit in the minimum rate of return, Parliament is required to meet such deficit in terms of Section 14(2) of the Act. The 2.5% was the "real" rate of return *at the time*; meaning the "nominal rate of return" less inflation measured by the Colombo Consumers Price Index.

216. See Section 8 of the EPF Act.
217. ibid Section 10
218. See Central Bank Annual Report 2011 at page 179
219. In terms of S 5(1)(e) the Board "*may invest such of the monies of the Fund as are not immediately required for the purposes of this Act in such securities that the Board may consider fit and may sell such securities*...".

However in the 1980s, the annual inflation increased to around 14%, and a need arose to evolve an investment policy to ensure reasonable **real returns** to the members, given the almost total investment of the EPF funds in government debt securities. It is in this background that the MBCB was considering investing a certain percentage of the Fund in various forms of other securities such as Debentures, Collateral Trust Certificates, Transferable Shares [Equity] and many other forms of investment, in order to increase the real return of the EPF and its beneficiaries. Having regard to the inherent risks involved in Equity, particularly due to the fact that the value of the share of stocks depends on the profitability or future prospects of the company that issued the stock, the MBCB was initially extremely reluctant to invest in Equity.

In or about 1997, the MBCB in consultation with the Chartered Financial Analyst Institute [CFA] evolved a system of investing a certain percentage of funds in Equities. The first investment in Equities was made in or about 1998, and the general guidelines were disclosed to market participants through regular meetings. Thereafter, having been cleared by the then Attorney General, a fully-fledged policy on investment in securities was adopted by the MBCB. In or about 2002, the said policy was disclosed to the public through a document titled *Investment Policy Statement & Standards of Professional Conduct*.[220] The said Policy was available to the public on the official website of Central Bank of Sri Lanka and until recently the document was found on the said website.

Investment Policy Statement & Standard of Professional Conduct 2002

The disclosed policy on investment in Equity includes a set of guidelines .The disclosed policy, and particularly its mandatory provisions, provide as follows;

(a) Unless agreed by the Investment Committee, investment in any company should not exceed 5% of its issued share capital. Reasons for this decision are;

   i. No sufficient liquidity and

   ii. Avoid undue control of the company by the Fund.

(b) The Fund must make sure that investment in any company is made only with an intention to increase the return of the Fund, and not to take control over the company. At the discretion of the Investment Committee, the Fund can vote, at annual general meetings of the invested companies.

220. Investment Policy Statement & Standards of Professional Conduct 2002 (as amended).

(c) The Fund cannot invest in stocks of the banking and financial sector, since the Monetary Board regulates both EPF and banks/financial institutions. But investment in unlisted equity securities of banks and financial institutions shall be permissible only insofar as;

Investment in common and preferred stocks shall be limited to publicly traded securities, with an emphasis on "Blue Chip" securities

New investment institutions with a long-term motive of the investment.

The investment account is passively managed and the relevant index contains such securities.

(d) The Fund Management Unit must carry out a thorough study of the company and related macro factors, which relate to the future performance of the company, prior to recommending to the Investment Committee.

The formulation of the aforesaid policy, and the implementation of that policy, was essential, as the investment decisions were made by those *other* than the legal owners/ beneficiaries of the EPF money. The members of the EPF, contributed the money due to statutory compulsion at an opportunity cost of alternative investments that could have been made on their own. Therefore a strong public duty is placed on the managers of such a fund, to value investment decisions with regard to its monies in a responsible manner, following a method that has been publicly disclosed. Further the disclosed method should be generally acceptable to its members and such disclosed method should not be changed arbitrarily or in an *ad hoc* manner.

The aforesaid disclosed Policy on investment in Equity, has been implemented in consultation with the Employees' Federation of Ceylon and the major trade unions. The aforesaid policy was also consistent with the demands of the trade unions who were legitimately concerned about the performance of the Fund and the returns on investments in Equity. At the time the Policy was evolved, trade unions had full confidence in the Central Bank as the trust worthy guardian of the EPF, and never had any doubts about the integrity of the Central Bank or its Governors, who had always been respected professionals, with integrity.

Investments contrary to the Policy

The MBCB decided to invest in the Banks and financial institutions which were in fact regulated by the MBCB itself. In fact the Central Bank is **prohibited** from purchasing shares in Banks and Financial Institutions by the Monetary Law.[221] Further, investments were made in Companies not on the main Board or rather on the Secondary Board (*Diri Savi Board)*. Both investments i.e., in Banks and Financial Institutions, and the Secondary Board, were completely contrary to the investment policy of the EPF funds. Additionally, investments had been made which had caused considerable losses, as for example the investments in Sri Lankan Airlines of Rs. 500 million.[222]

Further there were allegations of the misuse of the EPF funds to manipulate the stock market by means of 'pumping and dumping', a prohibited practice in any Stock Exchange, in addition to other issues which were raised such as conflicts of interest and political pressures being exerted in such misuses. Details of misuse of EPF funds by such a pumping and dumping method was filed in the Supreme Court when these actions were challenged.[223]

Governance Issues

The policy of investing EPF money in the stock market by the Central Bank in the following manner has raised several Governance issues which have far reaching consequences to the National Economy.

The conflict of interest of the Central Bank being the Chief Regulator of Financial Institutions i.e., Banks, Finance Companies etc., whilst the EPF holds equity in those Banks and Financial Institutions is one such issue. Not only does the Central Bank hold equity in the said Banks and Financial Institutions, but they also moved to appoint *and* remove Directors to the said institutions by virtue of the equity held by the EPF. One such instance which was subject to criticism, was the use of this opportunity to appoint persons who failed the 'fit and proper test' to a Board of a private sector listed bank, in which the EPF had a stake.[224] Such an instance not only affects the credibility of the Central Bank of Sri Lanka, but has far reaching consequences on the economy of the country, while compromising the integrity of the financial system. In addition, the Central Bank used these holdings, in pursuing a policy of consolidating

221. Section 117(b) of the Monetary Law Act No. 58 of 1949 (as amended)
222. See http://www.sundaytimes.lk/150524/news/epf-lost-over-one-billion-rupees-on-investments-in-2013-pac-150450.html (last visited on 22nd June 2015).
223. See case record of SC/FR/587/2012. ; Free Trade Zone and General Services Employees Union and Others vs Monetary Board of the Central Bank of Sri Lanka and Others
224. With specific reference to the appointment of Lukshman Hulugalle, who has a criminal record to the Board of the Commercial Bank of Ceylon PLC.

banks, and also, in having financial institutions and finance companies under stress to be acquired as subsidiaries of banks.

The Central Bank being vested with the job of policy making and regulating the monetary policy, should not be in a position where its integrity is compromised. The lack of transparency in the functioning of the Central Bank with respect to the policy on the investments to be made by it, in its management of the EPF, has in fact created a doubt about the *bone fides* of its actions.[225] One might argue that a high level of transparency cannot be exercised when making such investments. However, the Central Bank is duty bound to exercise transparency in disclosing its investment policy to enable a contributor to the fund to make that informed decision.

The arbitrary deviation from the 2002 investment policy also indicates the lack of Governance with respect to the EPF. The reason for the fund to formulate the policy not to invest in Banks and Financial Institutions was to avoid the conflict of interest as the regulator of said institutions. Further the policy not to invest in the Secondary Board of the Colombo Stock Exchange was because the companies listed in the said Board do not have the same disclosure requirements as the Companies in the Main Board. In addition, the companies on the Secondary Board do not have the same stock market liquidity as the companies on the Main Board.[226] The companies on the Main Board are subject to more scrutiny than the ones on the Secondary Board. In those circumstances, since the EPF is using public money, it would be more prudent to invest in the companies on the Main Board, and in particular as set out in the 2002 investment policy in 'Blue Chip' companies.[227]

The failure of the effective supervision mechanism in Parliament i.e., the Public Accounts Committee, is also cause for concern. It must be noted that to date, according to the available information, there is no audit of the investments of the EPF for the years of 2013 and 2014 made available. Ideally the audits of such investments much be carried out annually and the results must be made available to the public.

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225. Similarly the investments made in Greek Bonds by the Central Bank of Sri Lanka was also brought before the Supreme Court unsuccessfully. The said issue was challenged as the Central Bank of Sri Lanka has made a high risk and high value investment into Bonds issued by the Central Bank of Greece in order to salvage the Greek economy. Considering the risk involved in such investment and considering Sri Lanka's economy and the availability of funds it would not be prudent make such investments. As a result of the said investment and the subsequent collapsing of the Greek economy led to substantial loss caused on the said investment. See *Sujeewa Senasinghe vs. Ajith Nivard Cabraal, Governor Central Bank of Sri Lanka SC/FR/457/2012 SCM 18-09-2014* judgment available [online] at http://supremecourt.lk/images/documents/scfr_application_457_2012.pdf

226. The Securities and Exchange Commission has different capital requirements and disclosure requirements for a Company to be listed on the Main Board or the Secondary Board. The Companies on the Main Boards have stricter regulation and standards when compared with those Companies listed on the Secondary Baord.

227. 'Blue Chip companies' is a reference to Companies which are of high repute of those listed on the Main Board of the Colombo Stock Exchange.

Recommendations and Conclusions

According to the 2012 Annual Report of the EPF which was made available only two years late, (i.e., in the year 2014), the EPF fund has made a loss of approximately Rs. 10 Billion, on the investments made in equity.[228] The following recommendations are made to avoid such losses in the future and to ensure better governance of the EPF.

a) Remove the EPF from the Central Bank and create a separate fund management unit to manage the EPF and its investments, to prevent further conflicts of interest. In order to achieve this, it would be required to amend the EPF Act and the Monetary Law of Sri Lanka.

b) Formulate a fresh investment policy with the participation of all stakeholders. The right to amend the policy should be exercised, only after consultation and on concurrence of all stakeholders. It will be necessary to consider the Laws in force, and in particular section 117 of the Monetary Law in this regard, which prohibit the Central Bank (amongst other things) from purchasing the shares of any other banking institution.

c) If however, changes are made to the law permitting investments in Banks and other Financial services, then, impose caps on investments to avoid a major impact on Banking and Financial Services industry in view of the large resources of the EPF.

d) Create a separate branch in the Auditor General's Department to review the accounts of the EPF and the return on investments be audited and/or monitored by the Auditor General.

e) The said investments must be audited annually and be tabled in Parliament within such year.

228. See http://newsfirst.lk/english/2014/11/epf-incurred-loss-10-4-billion-rupees-2012-annual-report-epf-reveals/62814. (last visited on 24th June 2015).

WHAT THE GOVERNANCE INDICES REVEAL

-Menakshi Uduwela

The term 'governance', has a vacillating definition highly dependent on context and period. A recognised and oft-repeated definition utilised by the World Bank[229] conceptualises governance as the 'traditions and institutions by which authority in a country is exercised', including the 'process by which governments are selected, monitored and replaced, the capacity of the government to effectively formulate and implement sound policies; and the respect of citizens and the state for the institutions that govern economic and social interactions among them.'

Many development oriented organisations emphasise 'good governance' as a central tenet of their agendas, and the concept has become a by-word in everyday vernacular. These organsations measure and assess the quality of governance utilising governance indicators and may condition assistance on these measurements, purporting to design and implement evidence-based policies on governance reform. The concentrated focus on the concept of good governance is justified on the basis of evidence that better governance promotes economic development. Thus, many of the indicators emphasise actionable indicators, underscoring areas for policy reform resulting in an effective governance diagnostic system.

However, the transformation of 'governance' to 'good governance' is a highly subjective evaluation. This subjectivity hinders the ability to identify easily any discernible commonalities but results in an overarching impression of positivity.

In recognition of the prevailing ambiguity, four thematic elements have been identified in order to increase cogency; Governance, Transparency and Accountability, Rule of Law and Human Rights. However, these elements themselves are subject to definitional opacity. This should not, however, lead to the perception that it is futile to attempt measurement of the concept- there are, of course, quantifiable factors. Instead, the extent to which governance can be accurately measured should be broached with a degree of realism. There are, necessarily, margins of error for all types of governance indicators, indicating the importance of avoiding over-interpretation of comparatively small changes in governance indicators over time or geographic region, as those fluctuations may not signify change in the underlying infrastructure.

229. http://info.worldbank.org/governance/wgi/index.aspx#home

The extensive range of initiatives which have developed indicators to measure such concepts have employed methodologies which are inevitably inextricably linked with the conceptual definition each favors. The international governance indices examined in this chapter, though limited by space and time constraints attempts to examine governance issues most pertinent to Sri Lanka. The indices use either qualitative or quantitative analysis dependent on the factor measured, with a number of indices triangulating their data in order to minimise the margin of error. The indices considered are:

INDEX	INITIATIVE
Corruption Perception Index	Transparency International
Fragile States Index	Fund for Peace
Rule of Law Index and Open Government Index	World Justice Project
Human Development Report	United Nations Development Programme

THE CORRUPTION PERCEPTION INDEX[230]

The Corruption Perception Index (CPI), established in 1995, is produced annually by Transparency International (TI), a leading global anti-corruption movement. The CPI scores and ranks countries/territories based on the perception of the degree of corruption in a country's public sector. It is a composite, qualitative index incorporating a combination of surveys and assessments and is the most widely used indicator of corruption in the public sector in keeping with the thematic element of transparency and accountability in governance.

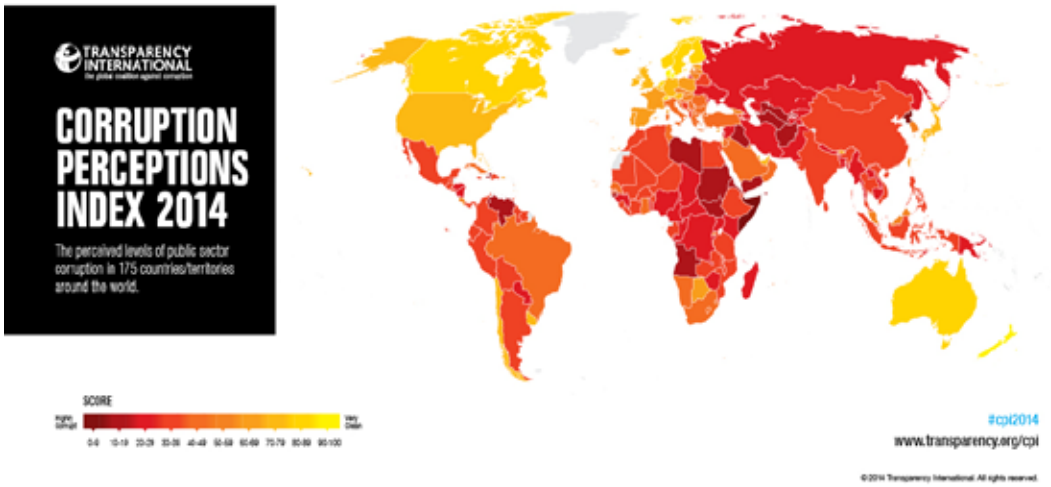
Transparency International defines corruption as "the abuse of entrusted power for private gain", generally comprising illegal activities, which are deliberately hidden and only come to light through scandals, investigations or prosecutions. As a result, it is impracticable to assess absolute levels of corruption in countries or territories on the basis of hard empirical data. Attempts to utilize empirical data cannot be taken as definitive indicators of corruption levels. Assessing perceptions of corruption among experts is the most reliable method of comparing relative corruption levels across countries. As a result, the CPI is limited in scope, capturing perceptions of the extent of corruption in the public sector, from the perspective of business people and country experts. There is no weight given to public perception. Due to the fact that it is entirely subjective, there is a greater margin of error as corruption may be perceived differently in accordance with a number of biases, including cultural bias.

230. https://www.transparency.org/cpi2014/results

The 2014 CPI draws on data sources from independent institutions, based on data gathered in the past two years, measuring perceptions of corruption in the public sector.

The 2014 CPI included 175 countries and territories. For a country/territory to be included in the ranking, it must be included in a minimum of three of the CPI's data sources. Of the twelve sources utilised to calculate the 2014 CPI, seven were taken into account when assessing Sri Lanka's score.

A country/territory's score indicates the perceived level of public sector corruption on a scale of 0-100, where 0 means that a country is perceived as highly corrupt and a 100 means that a country is identified as extremely clean. A country's rank indicates its position relative to the other countries/territories included in the index. Ranks can change merely if the number of countries included in the index changes. Analysis can be performed by comparing the country's score with previous scores. Due to updated methodology, CPI scores before 2012 are not comparable over time.



In 2014 Sri Lanka received a score of 38/100, with a rank of 85/175. The score has a margin of error of 2.18, with a range between 34/100 to 42/100. Sri Lanka's score is comparable to five other countries in the region: China, Thailand, India, Mongolia and the Philippines. The global average score is 43/100- a score which Sri Lanka does not measure up to, falling five points short of the average, indicating a higher degree of corruption. The average score for Asia Pacific is also 43/100, indicating that Sri Lanka has a higher average of corruption in comparison to other countries in the region.

In 2013 Sri Lanka's score was 37/100 and in 2012, it was 40/100. There has been a single point change in score since 2013, indicating slightly less corruption. However,

it would be futile to indulge in over-interpretation and make the generalisation that there is a decreasing trend in corruption. In comparison to the score achieved in 2012, there has been a two point increase in corruption. Again, it would be difficult to identify a trend. This would indicate that Sri Lanka is neither perceived to be more corrupt or less corrupt, but rather has remained comparatively stagnant, failing to make any improvement to the underlying infrastructure.

The Global Corruption Barometer, another initiative by Transparency International, measures the public perception of corruption. While the 2014 results have yet to be released, in 2013, 64% felt that the police were corrupt or extremely corrupt, 51% of respondents in Sri Lanka believed that the political parties were corrupt or extremely corrupt and 33% of those surveyed perceived the public service and civil servants to be corrupt or extremely corrupt.

If these data sets were to be utilized in a complementary manner, the results demand greater transparency and accountability in the public sector with an emphasis placed on the sectors perceived to be the most corrupt by Sri Lankans.

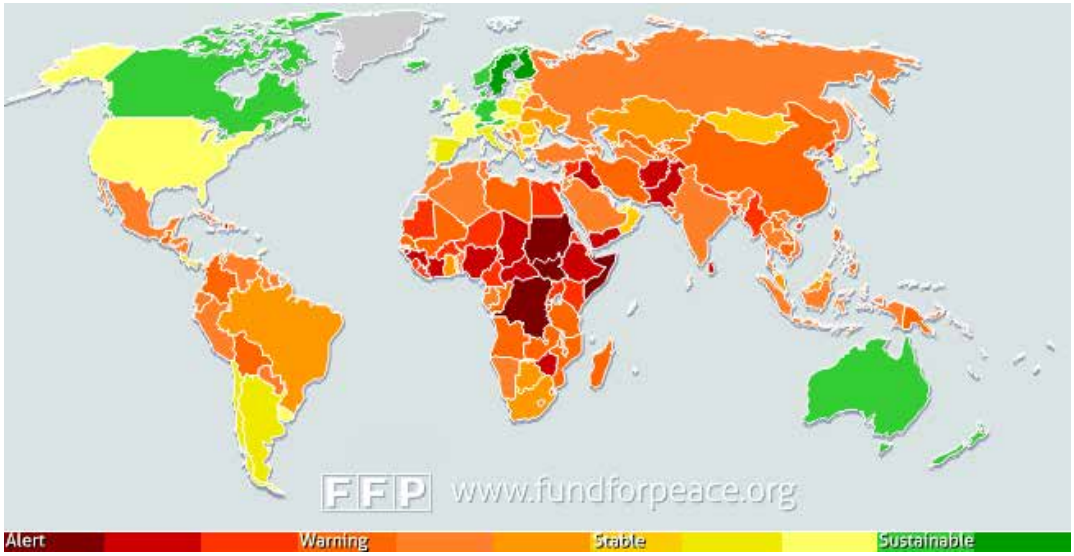
THE FRAGILE STATES INDEX[231]

The Fragile States Index (FSI), previously the Failed States Index, produced by the Fund for Peace (FFP) examines 178 countries, across 12 social, economic, and political indicators (and 100 sub-indicators) of pressures experienced by countries. The Fragile States Index opines that all conflicts stem from social, economic, and political pressures that have not been managed by professional, legitimate, and representative state institutions. In order to provide effective early warning and thus, appropriate policy responses the FSI utilises qualitative and quantitative techniques to analyse information. It is a critical tool in identifying when social, political and economic pressures result in a precariously balanced state. By highlighting pertinent issues, the Index makes political risk assessment and early warning of conflict accessible.

The Index is based on The Fund for Peace's proprietary Conflict Assessment Software Tool (CAST) analytical platform. Based on comprehensive social science methodology, data from three primary sources is triangulated and subjected to critical review to obtain final scores for the Fragile States Index. As aforementioned, the FSI is guided by twelve primary social, economic and political indicators. The social factors considered include demographic pressures, the status of refugees and internally displaced persons (IDPs), group grievances and human flight and brain drain. Economic concerns include uneven economic development along with poverty and economic decline. Of greatest concern to governance are the political and military indicators examined, comprising

231. http://fsi.fundforpeace.org/rankings-2014

state legitimacy, public services, human rights and rule of law, security apparatus, factionalised elites and external intervention. Each indicator is rated on a scale of 1-10, based on the analysis of over 40 million publicly available documents, additional quantitative data, and assessments by analysts. The FSI scores should be interpreted with the understanding that the lower the score, the better. Therefore, a reduced score indicates an improvement, just as a higher score indicates greater instability.



Countries are grouped into eleven clusters in order of threat level- namely very high alert, high alert, alert, very high warning, high warning, warning, less stable, stable, very stable, sustainable and very sustainable. Sri Lanka is grouped into the third category, alert, with a comparatively high threat level placed 30/178 in descending order of most unstable countries to least unstable countries. In the 2014 FSI, Sri Lanka received a score of 92.6. Contextually, the highest score of 112.9 (thus indicating the most unstable nation) was received by South Sudan, and the greatest sustainability was achieved by Finland generating a score of 18.7. Within the same grouping (Alert), Sri Lanka was considered more unstable than Rwanda and Timor-Leste. Sri Lanka fares poorly in comparison to other countries from the Asia-Pacific region; the only countries considered to be at greater risk than Sri Lanka include Pakistan (10/178), Myanmar (24/178), North Korea (26/178) and Bangladesh (29/178).

In comparison to previous years, Sri Lanka has achieved a marginal change since 2013, improving by +0.2. In 2012, Sri Lanka achieved a score of 92.9, indicating a change of +0.3 from 2012 to 2014.

The scores Sri Lanka receives for the twelve components are consistently poor, but with particularly high scoring indicators for factionalised elites (9.4/10), group grievances

(9.3/10) and Human Rights and Rule of Law (9.1/10), indicating serious issues in said areas. Similarly, Sri Lanka's lowest score is for Public Service (5.3), indicating that it is the most stable institution of those surveyed in Sri Lanka. However, none of the indicators in Sri Lanka indicate stability. In comparison to the individual indicator scores for 2013, Sri Lanka has increased danger in the factionalized elites (+0.1) and Human Rights and Rule of Law (+0.1) indicators.

The Fragile States Index 2014: A-Z Country Scores by Indicator

	DP	REF	GG	HF	UED	ECO	CL	PS	HR	SEC	FE	EXT	Total
Samoa	6.5	2.4	4.8	8.9	5.7	6.2	6.0	5.1	4.8	5.5	5.1	8.3	69.3
Sao Tome & Principe	6.9	4.6	4.8	8.2	6.6	8.1	6.6	6.2	4.1	5.8	6.3	7.6	75.8
Saudi Arabia	6.0	4.9	7.7	3.4	6.1	3.9	8.1	4.0	8.8	6.9	8.0	5.3	73.1
Senegal	8.1	7.3	6.6	7.1	7.0	7.0	6.0	7.9	6.5	6.5	6.6	8.2	82.8
Serbia	4.2	6.5	8.0	5.0	5.6	6.4	5.3	4.4	5.2	6.2	8.0	6.7	72.0
Seychelles	5.4	3.4	4.8	5.2	6.3	4.9	6.0	3.5	4.9	6.4	5.7	7.2	63.7
Sierra Leone	8.7	7.8	5.9	8.3	8.5	8.3	7.2	9.1	5.0	5.1	7.7	7.4	89.9
Singapore	2.8	1.4	2.8	3.6	4.0	2.8	3.5	2.1	4.9	2.0	4.0	2.0	35.9
Slovakia	3.1	2.3	5.6	4.5	4.3	5.4	4.0	3.2	3.0	2.6	3.7	3.6	45.3
Slovenia	2.4	1.6	3.6	2.9	4.2	3.9	2.9	2.3	2.3	2.4	1.6	2.5	32.6
Solomon Islands	8.2	5.2	6.8	6.0	8.6	7.5	7.0	7.9	6.0	6.7	8.0	8.5	86.4
Somalia	9.5	10.0	9.3	8.9	8.7	9.1	9.1	9.6	9.8	9.4	10.0	9.2	112.6
South Africa	7.4	6.2	5.8	4.6	7.7	5.8	5.0	6.1	4.3	4.9	5.6	3.2	66.6
South Korea	2.9	1.8	3.1	3.0	3.2	2.3	2.8	2.1	2.9	2.4	3.6	5.7	36.4
South Sudan	9.1	10.0	10.0	6.8	8.9	8.8	9.7	9.9	9.9	9.9	10.0	9.9	112.9
Spain	3.0	2.0	6.1	2.7	3.8	5.3	3.4	3.0	2.2	3.6	6.1	1.9	43.1
Sri Lanka	6.5	8.5	9.3	7.6	7.5	6.2	8.3	5.3	9.1	8.2	9.4	6.7	92.6
Sudan	8.6	9.7	9.9	8.7	8.2	8.1	9.3	9.1	9.3	9.6	10.0	9.6	110.1

The FSI 2014 is based on data collected in 2013 and it is possible that conditions may have changed. However, the FSI indicates that there are serious issues in the areas of group grievances, factionalised elites and human rights and rule of law.

RULE OF LAW INDEX[232]

The WJP Rule of Law Index, produced for the fourth time, was developed by the World Justice Project (WJP), an independent, multidisciplinary organisation. In order to increase efficacy, rule of law development requires clarity about the fundamental features of the rule of law, as well as an adequate basis for its evaluation and measurement. The Index presents a portrait of the rule of law in each country through a set of 47 indicators organised around nine themes: constraints on government powers; absence of corruption; open government; fundamental rights; order and security; regulatory enforcement; civil justice; criminal justice; and informal justice. The Index utilises comprehensive data relying solely on primary data, measuring a nation's adherence to the rule of law from the perspective of how ordinary people experience it.

232. http://worldjusticeproject.org/publication/rule-law-index-reports/rule-law-index-2014-report

The WJP bases its definition of the rule of law on four universal principles: accountability, well-defined legislature applied without bias and capable of protecting fundamental rights, accessible and fair legislative process, and justice is delivered timely by competent, ethical, and independent representatives who are of sufficient number, have adequate resources and reflect the composition of the communities they serve.

The Rule of Law Index indicates that Sri Lanka ranks 1st of the six countries ranked in the region, and globally ranks 48/99. It is important to note that in comparison to the other indicators examined in this chapter, this index utilises a relatively small sample size, and thus superficial comparison between indices would not be beneficial.

The first factor, constraints on government power, measures the extent to which those who govern are governed by law. This factor addresses the effectiveness of the institutional checks on government power by the legislature, the judiciary, and independent auditing and review agencies, the effectiveness of nongovernmental oversight by the media and civil society, Whether transitions of power occur in accordance with the law and the extent to which government officials are held accountable for official misconduct. Sri Lanka achieves a score of 0.53, a median score, indicating that there is an average level of constraints on government power and is globally ranked 54/99. In comparison to other countries in the region Sri Lanka is ranked 3/6.

Absence of corruption is the second factor and takes into account bribery, improper influence by public or private interests and misappropriation of public funds or other resources by the executive, judiciary and legislative branches along with the military and policing authorities. Sri Lanka ranks relatively high, considered the least corrupt of the six countries examined in the region and placed 39/99 globally. In terms of score, Sri Lanka receives a score of 0.53, thereby considered average in relation to the other countries surveyed.

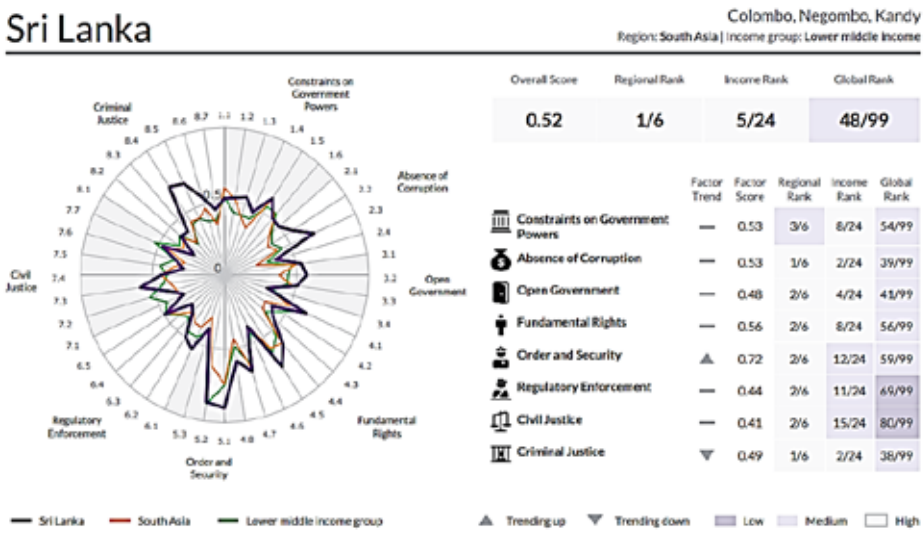
The third factor, open government, measures the extent to which the society has clear, publicised, accessible, and stable laws, whether administrative proceedings are open to public participation and whether official information is available to the public. Sri Lanka ranks 41/99 globally, and 2/6 regionally. The factor score is 0.48, thereby being perceived as middling.

The fourth factor measures protection of fundamental human rights encompassing equal protection, the right to life and security of the person, due process of law and the rights of the accused, freedom of opinion and expression, freedom of religion, the right to privacy, freedom of assembly and association and fundamental labor rights. Sri Lanka is ranked 56/99 globally and 2/6 regionally, with a factor score of 0.56.

Order and Security examines crime, political violence and violence as a socially accepted means to redress personal grievances. Sri Lanka has demonstrated an upward trend in relation to order and security, with a factor score of 0.72, the highest factor score it achieves in any of the eight factors, globally ranked 59/99 and regionally ranked 2/6. Regulatory enforcement considers timeliness of administrative, effective enforcement, lack of undue interference, due process and no expropriation of private property without adequate compensation. Sri Lanka receives a comparatively low factor score of 0.44, with a lower global rating 69/99 but maintains a high position regionally with a score of 2/6.

The seventh factor measures the extent to which civil justice is accessible and affordable, indiscriminate, non-corrupt, without improper influence, timely court proceedings and effective enforcement of judgements. Sri Lanka scores the lowest in this component in comparison with other factors, receiving a score of 0.41, with the country's lowest global ranking of 80/99. However, maintains a high position regionally, being ranked 2/6.

The final factor evaluates the criminal justice system including the efficient investigation and adjudication of criminal offences, impartially and in a non-discriminatory manner, free of corruption and improper influence, ensuring the rights of the victim and the accused are effectively protected. The presence of effective rehabilitation systems are also taken into account. Sri Lanka receives a median score of 0.49, a global ranking of 38/99 and is placed first in the region. Sri Lanka has exhibited a downward trend in this area in comparison to previous years.



The data indicates that in large measure Sri Lanka has remained in stasis, with an upward trend indicated in only one of the eight factors measured and a downward trend indicated in other factors. All other factors have remained unchanged. It would be precipitous to assume that the rankings indicated by the WJP Rule of Law Index are truly commensurate of Sri Lanka's global or regional standing due to the limited sample size. Realistically, the factor scores indicate that little or no change has occurred, for better or worse. This index utilises data from 2013, as a result of which undocumented changes may have occurred in the period under review.

HUMAN DEVELOPMENT REPORT[233]

The 2014 Human Development Report (HDR) presents the 2014 Human Development Index (HDI) (values and ranks) for 187 countries and UN-recognised territories, along with the Inequality-adjusted HDI (IHDI) for 145 countries, the Gender Development Index (GDI) for 148 countries, the Gender Inequality Index (GII) for 149 countries, and the Multidimensional Poverty Index (MDPI) for 91 countries.

While this report may not be specifically governance-oriented, it does emphasise a number of actionable spheres, thereby indicating it's usefulness as a governance diagnostic tool by clarifying problem areas.

The Human Development Index 2014 assesses long-term progress in three basic dimensions of human development: a long and healthy life, access to knowledge and a decent standard of living. Sri Lanka's HDI value for 2013 is 0.750, placing the nation in the high human development (High HDI) category. This results in a ranking of 73/187 countries and territories. Between 1980 and 2013, Sri Lanka's HDI value increased from 0.569 to 0.750, an increase of 31.8% or an average annual increase of about 0.84%. Sri Lanka's 2013 HDI of 0.750 is above the average of 0.735 for countries in the high human development group and above the average of 0.588 for countries in South Asia. Sri Lanka scores above average in all three dimensions except life expectancy at birth, where High HDI is 74.5 years and Sri Lankans life expectancy at birth is 74.3.

The Inequality-Adjusted HDI (IHDI), takes into account inequality in all three dimensions of the HDI (a long and healthy life, access to knowledge and a decent standard of living) by 'discounting' each dimension's average value according to its level of inequality across the population. As the inequality in a country increases, the loss in human development also increases. Sri Lanka's HDI for 2013 is 0.750. However, when the value is discounted for inequality, the HDI falls to 0.643, a loss of 14.3% due to inequality in the distribution of the dimension indices. This would indicate that Sri Lanka should concentrate on a more equal distribution of resources in order to

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reduce inequality. However, the average loss due to inequality for high HDI countries is 19.7% and for South Asia it is 28.7%, indicating that Sri Lanka has greater equality in distribution than average.

The Gender Inequality Index (GII) reflects gender-based inequalities in three dimensions – reproductive health, empowerment, and economic activity. Reproductive health is measured by maternal mortality and adolescent birth rates; empowerment is measured by the share of parliamentary seats held by women and attainment in secondary and higher education by each gender; and economic activity is measured by the labour market participation rate for women and men. Sri Lanka has a GII value of 0.383, ranking 75/149 countries in the 2013 index. In Sri Lanka, 5.8% of parliamentary seats are held by women, and 72.7% of adult women have reached at least a secondary level of education compared to 75.5% of their male counterparts. For every 100,000 live births, 35.0 women die from pregnancy related causes; and the adolescent birth rate is 16.9 births per 1000 live births. Female participation in the labor market is 35.0 percent compared to 76.4 for men. Of these statistics, a number emphasise actionable areas. Considering the high percentage of women who have received at least secondary education, it could be argued that there should be greater representation of women in Parliament. Additionally, female participation in the labour force is comparatively low, though this could be for a number of reasons.

The Gender Development Index (GDI) was first introduced in the 2014 HDR and is based on the sex disaggregated Human Development Index, defined as a ratio of the female to the male HDI. The GDI measures gender inequalities in achievement in three basic dimensions of human development—health (measured by female and male life expectancy at birth), education (measured by female and male expected years of schooling for children and mean years for adults aged 25 years and older); and command over economic resources (measured by female and male estimated GNI per capita). The 2013 female HDI value for Sri Lanka is 0.720 in contrast with 0.749 for males, resulting in a GDI value of 0.961, which places Sri Lanka in the High HDI category (High HDI is calculated to be 0.946). This indicates that in Sri Lanka, gender inequality is at a minimum in relation to the aforementioned dimensions of human development.

The Multidimensional Poverty Index was not calculated for Sri Lanka due to lack of data.

The indicators mentioned in the Human Development Report indicate that in the basic aspects of human development, Sri Lanka has seen significant improvement as indicated by the 31.8% increase in HDI value over the last 23 years. However, the increase in HDI score since 2012 has been a marginal 0.005, which has been the average level of improvement since 2010. This reflects, as do the other indices that Sri Lanka has largely been in equilibrium, with little improvement.

CONCLUSION

The indices examined cover to a great extent the four thematic elements of Transparency International Sri Lanka, Governance Report 2014. The variant tools, methodology and theoretical foundations utilised, depict overlapping trends showing marked consistency. The indices paint a picture of a country in stasis since 2012. The delineation of Sri Lanka is far from desolate, neither is it auspicious. Fortunately, the indicators guide interested parties to actionable spheres of governance, providing a policy diagnostic tool for policy makers. Considering the increased interest in good governance within Sri Lanka, the utilisation of these indicators as grounds for policy reform would be judicious.

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