

# Sri Lanka

## Governance Report

### 2012/13



Sri Lanka  
Governance Report  
2012/13

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# Table of Contents

<b>Contents</b>	<b>Page</b>
<b>Abbreviations and Acronyms</b> .....	iv
<b>Acknowledgments</b> .....	vi
<b>Preface</b> .....	vii
<b>An Overview of Governance status 2012/13</b> .....	9
R.M.B Senanayake	
<b>The Increasing Burden of Public Debt</b> .....	18
Nimal Sanderatne	
<b>Impeachment of the 43rd Chief Justice</b> .....	29
Ermiza Tegal	
<b>Illegal dispossession of lands</b> .....	44
Gehan Gunatilleke, Vidya Nathaniel	
<b>Sports and Corruption</b> .....	65
J. C Weliamuna	
<b>The Dilemma of the Sri Lankan Media</b> .....	74
Victor Ivan	
<b>The Problem of Governance in Sri Lanka; Do they really matter?</b> <b>An examination of governance indices</b> .....	88
Dharmika Herath	
<b>Contributors</b> .....	105

# Abbreviations and Acronyms

<b>ADB</b>	Asian Development Bank
<b>AG</b>	Attorney General
<b>BOI</b>	Board of Investment
<b>CCS</b>	Countries at the Crossroads Survey
<b>CEB</b>	Ceylon Electricity Board
<b>CEO</b>	Chief Executive Officer
<b>CJ</b>	Chief Justice
<b>COPE</b>	Committee on Public Enterprises
<b>CPC</b>	Ceylon Petroleum Corporation
<b>CPI</b>	Corruption Perception Index
<b>CSN</b>	Carlton Sports Network
<b>DS</b>	Divisional Secretary
<b>EIA</b>	Environmental Impact Assessment
<b>FFP</b>	Fund For Peace
<b>FMRA</b>	Fiscal Management Responsibility Act
<b>FSI</b>	Failed States Index
<b>GDP</b>	Gross Domestic Production
<b>GN</b>	Grama Niladhari
<b>HDI</b>	Human Development Index
<b>HSZ</b>	High Security Zone
<b>IDP</b>	Internally Displaced Persons
<b>IMF</b>	International Monetary Fund
<b>IOC</b>	International Olympic Committee
<b>IPS</b>	Institute of Policy Studies
<b>ITN</b>	Independent Television Network
<b>LAA</b>	Land Acquisition Act
<b>LARC</b>	Land Acquisition and Resettlement Committee
<b>LDO</b>	Land Development Ordinance
<b>LLRC</b>	Lessons Learnt and Reconciliation Commission
<b>LSSP</b>	Lanka Sama Samaja Party
<b>LTTE</b>	Liberation Tigers of Tamil Elam
<b>NIRP</b>	National Involuntary Resettlement Policy
<b>NLC</b>	National Land Commission
<b>NOC</b>	National Olympic Committee
<b>PC</b>	Provincial Council
<b>PLC</b>	Public Limited Company
<b>PSC</b>	Parliamentary Select Committee

<b>PTA</b>	Prevention of Terrorism (Temporary Prevention) Act
<b>RIP</b>	Resettlement Implementation Plans
<b>SEZ</b>	Special Economic Zone
<b>SLC</b>	Sri Lanka Cricket
<b>SLFP</b>	Sri Lanka Freedom Party
<b>SLO</b>	State Lands Ordinance
<b>SMS</b>	Short Message Service
<b>STDP</b>	Southern Transport Development Project
<b>TI</b>	Transparency International
<b>TRC</b>	Telecommunication Regulatory Commission
<b>UN</b>	United Nations
<b>UNDP</b>	United Nations Development Project
<b>UNHCR</b>	United Nations High Commission for Refugees
<b>UNHDR</b>	United Nations Human Development Project
<b>UNP</b>	United National Party
<b>UPFA</b>	United People's Freedom Alliance
<b>US</b>	United States
<b>VIP</b>	Very Important Persons
<b>WGI</b>	Worldwide Governance Indicators
<b>WHO</b>	World Health Organization

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**Transparency International Sri Lanka**

# Preface

The Sri Lanka Governance Report, a regular publication of Transparency International Sri Lanka (TISL) is devoted to promote good governance. It is concerned with building a nation that upholds integrity whilst eradicating corruption. The current issue of the Governance Report also covers 2012 as a report was not published exclusively for 2012 and focuses on issues of seven thematic areas of governance.

The opening chapter provides an overview of the status of governance of the period under review. It critically examines with examples the instances where the rule of law has eroded and how politicians of the ruling party have flouted the law with impunity.

Over the years, Sri Lanka has got caught to the debt trap in the name of rapid economic development. The second chapter on “The Increasing Burden of Public Debt” analyses the growing public debt and its macroeconomic impact. It examines the extent of the total public debt, its foreign and domestic debt components, the debt servicing costs and the implications of the public debt on economic growth and development. It draws attention to the uses of debt capital, the lack of transparency on the amounts and conditions of foreign borrowing and the proxy borrowing of commercial banks that distorts the actual liabilities of the government.

The year 2013 is unforgettable in the history of the post independent judiciary of Sri Lanka because of the impeachment of Chief Justice, Shirani Bandaranayake. The chapter on ‘Impeachment of the 43rd Chief Justice’ of Sri Lanka covers the procedures followed by judicial and legislative bodies at various stages of the impeachment process that resulted in the removal of the incumbent Chief Justice from office. The chapter also reveals some interesting details of the domestic laws which governs impeachment of judges of the higher courts and also does a comparative analysis to demonstrate the gaping inadequacies of the domestic legal framework. This lacuna in law renders the system of governance vulnerable. The independence of judiciary is under a serious threat endangering the sovereignty of the people as it is envisioned in the Constitution and the rule of law.

The Chapter on ‘Illegal Dispossession of Lands’ provides a synopsis of the current crisis of land dispossession in Sri Lanka and assesses the legality of the methods used to deal with land. It provides an overview of the legal and policy framework in Sri Lanka and seeks to address some of the key practices that remain inconsistent with the legal framework pertaining to the state land. The report presents some suggestions and recommendations for consideration of policy makers.

Sri Lanka's internal reputation in sports has tarnished with recent allegations of corruption and mal governance in sports administration. The article on 'Sports and Corruption' shows how the general governance structure has adversely affected the integrity of sports in Sri Lanka. It concludes that the politicization of sports associations has created multiple challenges to sports integrity, particularly the autonomy of sport and its social acceptance. It has rendered sports associations extremely vulnerable for all forms of corruption such as conflict of interests, misappropriation, fraud, manipulations etc., with the risk of taking the game away from the sports loving citizens.

The sixth chapter titled 'The Dilemma of the Sri Lankan Media' broadly attempts to trace the changes in the media sphere from colonial times through its path of evolution in the post-independence era. The article reveals that the internal disorganization and the extent of corruption in the media organizations themselves, have invariably made them vulnerable to direct and indirect control of the government.

The seventh and final chapter 'The Problem of Governance in Sri Lanka; Do they really matter? An examination of governance indices' provides an exhaustive exploration into a selected set of governance indices, such as Corruption Perception Index (CPI), The Failed States Index (FSI), Worldwide Governance Indicators (WGI), Countries at the Crossroads Survey (CCS). It seeks to understand how Sri Lanka performs broadly in relation to many dimensions of governance and compares itself with other countries in the world. Some dimensions of governance, as the indices have shown, point to upward and downward changes year to year but some have suffered consistent deterioration. It is noteworthy that Sri Lanka's percentile ranks in 2012 in all the indicators have fallen significantly compared to the ranks in 2002 except political stability and absence of violence/terrorism which recorded marginal improvements. Given that, governance dimensions are constituent parts of what we now understand as development and human wellbeing, the messages from the indices deserve very serious attention by the policy makers, citizens, academics and civil society.

**S. Ranugge**  
**Executive Director**

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# An Overview of Governance Status in 2012/13

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## What Constitutes Good Governance

"In practice, good governance involves promoting the rule of law, tolerance of minority and opposition groups, transparent political processes, an independent judiciary, an impartial police force, a military that is strictly subject to civilian control, a free press and vibrant civil society institutions, as well as meaningful elections. Above all, good governance means respect for human rights."<sup>1</sup>

But these canons of good governance no longer prevail in Sri Lanka. The 18th Amendment to the Constitution which was enacted in the second term of the present President, has undermined all these canons for it effectively gave President Mahinda Rajapaksa unlimited powers to appoint all the most important officials, the members of the previous independent commissions including the Judicial Service Commission, and

every judge of the Supreme Court and the Court of Appeal. It abolished the 17th Amendment which had set up independent commissions for making appointments to the higher posts in the public service and in the judiciary. It has enabled the President to exercise these powers himself. So he appoints Judges to the superior courts- the Supreme Court, the Court of Appeal at his discretion. The appointees are beholden to the President and seek to give judgments in accordance with his will. The Attorney General who is the chief law officer of the government was expected to act independently but his department which was earlier under the Ministry of Justice was brought directly under the President so that he (AG) can no longer use his independent judgment but must carry out the wishes of the President. So, when deciding whether to file criminal cases against an accused or not, the Attorney General had to forego his right to make his own judgment on the basis of the law

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1. Kofi Annan, "Preventing War and Disaster", (1999). Annual Report on the Work of the Organization. See Preamble.

and evidence and instead, carry out the orders of the President in cases where he personally or for reasons of State policy gives instructions. These orders and instructions are not given in writing, as they should be in any democratic governance procedure, but only orally. Democratic governance should be based on written decisions and written records should be kept of them. This practice in democratic governance procedures is to ensure that decision-making is in accordance with the law and good judgment and not arbitrary or influenced by extraneous considerations. It is also to hold government officials accountable to the Law.

The Bar Association of Sri Lanka has pointed out that the President is also exercising the right to appoint judges not only to the superior courts but also to other courts as well. Several judges have been overlooked in the matter of promotions whereas the Judicial Services Commission has lost its independence and plays only a passive role in selecting judges for higher office. The Secretary of the Judicial Services Commission Mr. Manjula Tillekaratne was intimidated by goons who attacked him in October 2012 and he was hounded out of office to enable the President to make his own appointment<sup>2</sup>. So the President now appoints the judges in his sole discretion. Those who are so appointed are expected to obey his instructions and since

they are beholden to him for their appointments, find it difficult to exercise independent judgments in deciding cases brought before them where it involves a government party politician or a person connected to such a person. Where there are no persons acceptable to him among judges the President is free to keep the vacancy without filling it. The President has also appointed some judges to other high posts after their retirement. Those who have been loyal to him in carrying out his decisions have been appointed as High Commissioners or Ambassadors, a reward for their servility to him. What is expected of Judges who retire is that they do not take any other posts after their retirement. This rule was to strengthen the independence of the judges. It does not exist anymore. Nor do judges beholden to the President have any independence. It is said that not only the President but even other VIPs exercise influence over judges. Lawyers appearing for them in cases are often said to visit the Judge's Chamber and canvass on behalf of their clients. This practice of influence pedaling prevailed only in the administration earlier where the clientele of Ministers and Members of Parliament produced chits to high ranked government officials like the Heads of Department and Government Agents asking them for various favours for their supporters and loyalists. In the past, people were afraid to influence judges since they could be charged for contempt.

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2. [www.colombotelegraph.com/?s=Manjula+Tilakaratne&x=5..and](http://www.colombotelegraph.com/?s=Manjula+Tilakaratne&x=5..and) [www.nation.lk/.../11271-no-easy-takes-on-manjula-tilakaratne-attack.html...](http://www.nation.lk/.../11271-no-easy-takes-on-manjula-tilakaratne-attack.html...) 8 October 2012

But that attitude has changed now with politicians do so flagrantly. No longer can the judiciary dispense justice where influential politicians are brought before them on criminal charges. Provincial Council and Pradesiya Sabha Members as well as the sons of Cabinet Ministers have no fear in violating the law and are openly doing so under impunity.

## **The Rule of Law and Democratic Rights Have Been Eroded**

The rule of law in Sri Lanka has been eroded and politicians, their sons and henchmen flout the law with impunity. One Provincial Council Member forced a teacher to kneel because she had censured his daughter for wearing a short uniform. A 72-year-old Superintendent of Noori Estate was waylaid and hacked to death by a gang and a local politician was suspected to be behind it<sup>3</sup>. The law is not enforced against ruling party politicians<sup>4</sup>. The President has absolute immunity under the Constitution<sup>5</sup> and he can intervene in any judicial action through the Attorney General or against any police action through the Ministry of Defence, to protect those

whom he likes. Those citizens who seek to protest against any action of the government find themselves facing counter-protests which can turn violent while the Police look on. The Police have no freedom to enforce the law against those who have the support of the Government. The Attorney General was brought directly under the President by the present regime. Twenty two journalists and media activists have been murdered over the last six years, and countless others have disappeared. Those who committed such crimes have not been charged before the courts. According to the Report of the International Bar Association, the Attorney-General had not prosecuted crimes against lawyers, journalists and human rights defenders. Cartoonist Prageeth Ekneligoda disappeared in 2010. The present Chief Justice Mohan Peiris<sup>6</sup> told the Human Rights Council that the government had information that Mr. Ekneligoda was living abroad, but subsequently informed the courts that 'only God knows where [he] is'. Human rights lawyer Lakshan Dias<sup>7</sup> on 25 February 2013 made a complaint to the Police that a group of menacing motorcyclists followed in a threatening manner and that he suspected it was an attempt

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3. [www.sundaytimes.lk/.../normality-slowly-returning-to-noori-estate](http://www.sundaytimes.lk/.../normality-slowly-returning-to-noori-estate) .Aug 25, 2013

4. [www.colombotelegraph.com/.../midweek-politicstowards-impunity](http://www.colombotelegraph.com/.../midweek-politicstowards-impunity) .Sep 20, 2012

5. Article 35 of the Constitution of Sri Lanka 1978

6. Ruki Fernando in [dbsjeyaraj.com](http://dbsjeyaraj.com) "Mohan Peiris Told the UN that "Disappeared" Prageeth Ekneligoda was Living Abroad and Retracted Claim in a Sri Lankan Court 22 January 2013

7. Lakshan Dias Amnesty International document - SRI LANKA: SRI LANKAN HUMAN RIGHTS LAWYER THREATENED: LAKSHAN DIAS UA: 53/13 Index: ASA 37/009/2013 Sri Lanka Date: 27 February 2013

at abduction; and, Faraz Shauketaly<sup>8</sup>, a journalist who had been writing about high-level corruption was shot and seriously injured inside his house.

Similarly the right to freedom of assembly has been eroded. When some group exercise their right to peaceful protest, they are often met with counter-protests against them by groups supporting the Government, which inures to the benefit of the Government while undermining the people's right of peaceful assembly. A protest meeting by a group of women who denounced vile comments made by the Chairman of the government owned Sri Lanka Broadcasting Corporation was met with a counter demonstration by supporters of the Chairman. Foreign media men who arrive in the country on visit visas find themselves deported if they do engage in human rights matters. Over 600 Tamils were forcibly prevented by the police in northern Vavuniya from going to Colombo to petition the UN on their disappeared loved ones in March 2013<sup>9</sup>. The President has also taken control of the termination or dismissal of judges.

## **The Unjust Impeachment of Chief Justice Shirani Bandaranayake**

A bench of the Supreme Court presided over by Chief Justice

Shirani Bandaranayake ruled that some provisions in the draft Divineguma Bill required to be passed by the Provincial Councils , and that if it were to be passed as it was presented to Parliament it requires a referendum. This seems to have annoyed the powers that be. A series of charges were levelled against her regarding non-disclosure of bank accounts and buying an apartment in Trillium Residencies when a justiciable matter regarding the owner of the Residencies –the Ceylinco Group was before her for adjudication. Charges were proffered against her and a Parliamentary Select Committee was appointed to conduct an inquiry in terms of the Constitution. The proceedings were hurried and deliberations were in secret and in contrary to principles of natural justice. They denied her repeated requests for an open and transparent procedures and, when her lawyers were shown documentary evidence for the first time – 989 pages – they were told that the trial proper would begin the next day. The Chief Justice walked out in protest, followed soon afterwards by the Committee's four opposition members, and the majority then heard from 16 witnesses in their absence. Less than 12-hours later, the Committee had drafted a 35-page report that found her guilty of misbehavior serious enough to justify her removal from office. They were all members of the ruling party and

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8. Faraz Shauketaly note [www.thesundayleader.lk/2013/02/17/leader-journalist-shot](http://www.thesundayleader.lk/2013/02/17/leader-journalist-shot)

9. Police detain Tamils who wanted to come to Colombo to present petition [www.srilankabrief.org/2013/.../police-detains-families-of-disappeared.ht](http://www.srilankabrief.org/2013/.../police-detains-families-of-disappeared.ht)

ministers and deputy ministers in the government. The Parliamentary Select Committee ignored the writ issued by the Court of Appeal claiming supremacy of Parliament over the Judiciary. The recommendation of the Parliamentary Select Committee was forwarded to the President but the Constitution requires an Address of Parliament before doing so. But this too was ignored. The President appointed Mr. Mohan Pieris as the 44th Chief Justice. Lawyers who spoke against the impeachment were subjected to physical attacks and intimidation by unidentified persons and the police failed to take action.

## **The Lessons Learnt and Reconciliation Commission (LLRC) Report**

The Lessons Learnt and Reconciliation Commission which had studied the failure of the Ceasefire Agreement of 27/2/2002 and the subsequent war including the ethnic conflict in general, presented its report on 16 December 2011<sup>10</sup>. It has highlighted the lessons to be learnt and has suggested measures to promote national unity and reconciliation among all communities. It also narrated the events during the last phase of the war which ended in May 2009 but did not fault the military forces for any alleged war crimes or crimes against humanity. It also highlighted various issues of governance which, the Commission

saw as obstacles to the process of reconciliation between the two communities. It noted in particular, several deficits in the democracy practiced in the country after the 18th Amendment to the Constitution was passed which did away with the Independent Commissions. So it gave separate recommendations regarding governance. Here are some of them:

- that a Special Commissioner of Investigation be appointed to investigate alleged disappearances and provide material to the Attorney General to initiate criminal proceedings as appropriate;
- that an Independent Advisory Committee be appointed to monitor and examine detention and arrest of persons taken into custody under any regulations made under the Public Security Ordinance or the PTA;
- new domestic legislation to criminalize enforced or involuntary disappearances.
- that the next of kin of the detainees have the fundamental right to know the whereabouts of their family members who are in detention and that they be given the right of access to detainees.
- that “Proper investigations should be conducted in respect of the allegations against the illegal armed groups with a view to ascertain the truth; and the institution of criminal

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<sup>10</sup>. Interim Recommendations of the Commission of Inquiry on Lessons Learnt and Reconciliation. September 2010. LLRC archives.

proceedings against offenders where sufficient evidence can be found”.

- That there should be Freedom of Expression and the Right to Information, which are universally regarded as basic human rights.
- It affirmed the need for media freedom to be enhanced in keeping with democratic principles, and to enact legislation to ensure the right to information
- That the Government should ensure the freedom of movement of media personnel in the North and East and the freedom of association and movement in general
- That the Government should create an environment which respects, promotes and protects people’s right to freely engage in observing their religion,
- That Government should take immediate action to disarm persons in possession of unauthorized weapons and prosecute such offenders and regrets that its interim recommendations have not been given full effect yet.
- That an independent permanent Police Commission be set up as a necessary pre-requisite to guarantee the effective functioning of the police
- That an Independent Public Service Commission be set up

without delay to ensure that there is no political interference in the public service and that recruitment and promotions in the public service are in conformity with the equality provisions in the Constitution.

- That the Northern Province should revert to civilian administration in matters relating to the day-to-day life of the people, particularly, with regard to matters pertaining to economic activities such as agriculture, fisheries land etc. The military presence must progressively recede to the background to enable people to return to normal civilian life and enjoy the benefits of peace.
- That, since public intervention regarding proposed legislation is an integral part of a vibrant democracy that the Government and the Opposition make all endeavors to reach a consensus on an appropriate constitutional amendment, to provide for an adequate timeframe to challenge proposed legislation.

The Government has so far not given effect to these recommendations. The United Nations High Commissioner for Human Rights, Ms. Navaneethen Pillay, visited the island and on February 11, 2013 issued her Report thereafter<sup>11</sup>. Reviewing the recommendations of the

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11. Report of the Office of the United Nations High Commissioner for Human Rights on advice and technical assistance for the Government of Sri Lanka on promoting reconciliation and accountability in Sri Lanka

Lessons Learnt and Reconciliation Commission (LLRC) the High Commissioner has highlighted matters of concern regarding governance among others, namely the rule of law, the administration of justice and the right to freedom of opinion and expression.

## **Media Freedom Curtailed**

Following upon the attacks on journalists including the disappearance of Mr Ekneligoda a cartoonist in January 2010, the news media have been cowed into submission, toe-ing the government's line in reporting or commenting on several matters of public importance. The newspaper editors exercise self censorship for they fear for their lives. Several journalists have fled the country and sought asylum abroad. The latest is the Associate Editor of the Sunday Leader Ms. Mandana Abeywickrema who was attacked by goons in her house. The police tried to make out that it was a case of burglary. But the goons were looking for files as it was thought she had some incriminating evidence against the powers that be.

## **Extremist Organizations Raise Their Head**

A new phenomenon is the radicalization of Buddhist monks and the emergence of extremist communal organizations. One such

organization- the Bodu Bala Sena has led attacks against the Muslim community, particularly on mosques and Muslim business houses in the city and carried out vile propaganda against them. Evangelical Christians have also been attacked and their places of worship set on fire.

## **Suppression of Public Protests against Environmental Pollution**

Venigros, a company owned by Dipped Products PLC which is part of the Hayleys Group and whose Chairman is Mr. Dhammika Perera, a strong supporter of the Government, ran a factory to manufacture rubber gloves in Weliveriya. Villagers discovered that ground water has been polluted due to chemicals that has high level of phosphorous emitted from the factory. The Company denied responsibility but the villagers took to streets in protest. To disperse the protesters, the Government sent armed troops<sup>12</sup>. On the 1st of August 2013, armed forces in battle gear fired live bullets at men, women and children killing three youth and injuring several. Even those who had fled to a nearby church were attacked with makeshift clubs. The factory was closed. It is necessary not only to make Environmental Impact Assessments prior to granting approval but also to monitor their compliance by factories and other persons. The people should be made aware that

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<sup>12</sup> [www.ceylontoday.lk/59-39888-news-detail-the-story-of-the-rathupaswala](http://www.ceylontoday.lk/59-39888-news-detail-the-story-of-the-rathupaswala). Aug 12, 2013

the Environment Ministry would inquire into their complaints of environmental pollution or hazards. Another problem which gives rise to protest is the dumping of garbage in sites close to people's habitation. Such garbage dumps are not covered with earth and they become breeding grounds for mosquitoes and cause a stench and pose a health hazard. People protest but no permanent solution has been devised to re-cycle the garbage or dump them away from human habitation.

## **Misuse of Government Resources During Elections**

Sri Lanka's ruling United People's Freedom Party (UPFA) secured victory in the Sri Lanka Provincial Council Elections held in 2012. They were characterized by the usual electoral violence and the misuse of State resources in the election campaigns of the ruling party candidates. These abuses of State power and State resources have now become a standard practice undermining the principle of free and fair elections and giving undue advantages to the incumbent party in office. According to Article 104B (a) of the 17th Amendment, the Commissioner of Elections was vested with the powers to prohibit the use of any movable or immovable property belonging to the State or any public corporation for election campaigning of the candidates. This power with the Commissioner of Elections was modified by the 18th Amendment. In any case, he

is not able to prevent the misuse of government resources.

## **The Introduction of Crony Capitalism**

The present government has introduced crony capitalism rather than the principles of free market capitalism, where, there is a level playing field for businesses. In a free market democracy, no business gets undue advantages or undue protection for their business and if any business violates the laws of the State then it is held accountable.

Economic and political power must be in different hands for such a democracy. The rationale for Crony Capitalism however is the provision of financial benefits to the ruling politicians as a quid pro quo for business advantages given to businessmen. We have a long tradition of businessmen supporting political parties particularly, the two main political parties which have alternated in office. So election campaign donations have figured in our business sector for a long time. But there were other businessmen who abstained altogether from party politics and concentrated only on their businesses. This was workable in the past when there was a politically neutral public service and the bureaucracy acted impartially and decided issues on the basis of the law and canons of fairness. But after 1972, the bureaucracy particularly, at the higher levels were

politically recruited on the basis of their political loyalty and affiliation. These newer bureaucrats became obedient servants not of the people but of those to whom they owed their appointments. Friendship with and political support for those in power rather than qualifications, experience, competence, and suitability for the job became the basis of appointments to the higher ranks of the bureaucracy. This new type of bureaucracy has made it difficult for the business sector to function without wooing the ruling political party and those Ministers or the President who call the shots. So they cultivate the friendship of those in power. Since the State is the dominant player in the economic and business sphere it is not possible for business people to do business with the government except by offering bribes or commissions to those decision makers. Tender procedures are either done away with or if followed they are followed more in the letter than the spirit. Allegations of hidden commissions are widely prevalent.

The Bribery Commission, like the rest of the bureaucracy owes their appointments to the President and thus, have to comply with the orders of the President as witnessed in the charges brought against the former Chief Justice and her husband. There are allegations of bribery or improper conduct against the Chairman of the Bribery Commission himself which has undermined public confidence in the Commission. Its impartiality has come into question in matters relating

to the former Chairman of the National Savings Bank who is the husband of the impeached Chief Justice Shirani Bandaranayake. When businessmen pay undue commissions to those exercising decision making power, they have to make up the consequent reduction in their earnings or profits by resorting to the supply of inferior goods and services. So, inferior petrol has been imported several times. The newly built Norochcholai Coal Power Plant has broken down many times from its inception. All these are manifestations where the democratic institutions have lost their independence vis a vis the exercise of power by ruling politicians to enforce tender procedures. They provide the background to the establishment of 'crony capitalism'. Crony capitalists use state patronage to curtail or eliminate competition from rivals in business. Freedom can be preserved in a democratic society only if the checks and balances both in the economic and the moral sphere operate.

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# The Increasing Burden of Public Debt

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## Introduction

Sri Lanka's public debt has been increasing sharply in recent years. Both domestic and foreign debt has increased and debt servicing costs have reached a burdensome level absorbing the entirety of government revenue. Particularly, pernicious is the increasing huge foreign indebtedness that absorbs a significant proportion of export earnings and poses debt servicing difficulties. Despite this, the government continues to increase its debt. In January 2014, the government borrowed US\$ 1,000 million of US\$ 1,500 million it intends to borrow in 2014.

The amount of government debt, large foreign funding, massive debt servicing costs and public expenditure exceeding revenue have serious long-term economic and social consequences. The debt servicing cost that is the highest expenditure of the government is a severe burden on the economy and a serious constraint to economic development. The heavy debt servicing cost increases the annual fiscal deficit and impacts on

macroeconomic fundamentals that have adverse effects on long term economic development.

The lack of full disclosure of government liabilities, the terms and conditions of borrowing and the proxy borrowing of state banks to finance government expenditure are serious limitations on public accountability. The actual public debt is much higher than the official figures as the government's liabilities to the banking system are not taken into account. Furthermore, the foreign borrowings of banks to finance government expenditure are also not included in country's foreign debt figures.

In this backdrop this chapter analyses the growing public debt and its macroeconomic impact. It examines the extent of the total public debt, its foreign and domestic debt components, the debt servicing costs and the implications of the public debt on economic growth and development. It draws attention to the uses of debt capital, the lack of transparency on the amounts and

conditions of foreign borrowing and the proxy borrowing of commercial banks that distorts the actual liabilities of the government.

## Objectives

The objectives of this chapter are to focus on the growing burden of the public debt and its debt servicing costs. It discusses the extent of the domestic and foreign debt and their debt servicing costs that are a severe burden on the economy. The high debt servicing costs result in misallocation of public finances, unsatisfactory prioritisation of public expenditure and are an underlying factor for inflationary pressures and hamper sustained economic growth. It analyses the causes for the ballooning debt, the uses of the borrowed funds and suggests ways and means by which the debt burden could be reduced. It discusses the serious implications of the structure, sources, and servicing cost of the debt.

The next section discusses the methodology and sources of data. This is followed by an analysis of the debt problem with special attention to the growing foreign debt. Following this, is a section that makes suggestions for reducing the debt. The chapter ends with a summary and conclusions.

## Methodology

The study is based mainly on official data sources of the Central Bank of Sri Lanka, the Ministry

of Finance and the Department of Census and Statistics. Studies of the Institute of Policy Studies (IPS) and comments, observations and data of the International Monetary Fund (IMF) are also used in the analysis. Although there has been much criticism of official statistics recently, the study is based on official data, the veracity of which, especially the calculation of the GDP and inflation, has come into question recently. The GDP that is a reference point of several economic indicators, including the debt burden, is alleged to be exaggerated in recent years.

Table 1 - Public Debt 2005-2012

Year	Total Public Debt (Rs. millions)
2005	2,222,341
2006	2,582,648
2007	3,041,685
2008	3,588,962
2009	4,161,422
2010	4,590,245
2011	5,133,365
2012	6,000,112

Source: Central Bank of Sri Lanka, Annual Reports

## Analysis

### Growth of Public Debt

Country's public debt comprising of domestic and foreign borrowing has been increasing over several decades. As can be seen from Table 1 the increase in debt has been particularly sharp in recent years.

The public debt that was Rs. 2.2 trillion in 2005 increased nearly threefold (270 percent) to Rs. 6 trillion in 2012 (approximately US\$ 47 billion). In the last 5 years from 2008-2012 the public debt increased by about 75 percent. The public debt is likely to have exceeded Rs 7 trillion (approximately US\$ 54 billion) by the end of 2013 as there was heavy borrowing last year.

The debt burden is generally assessed in terms of the debt to GDP ratio and the debt servicing costs as a proportion of revenue. These are given in Table 2.

Table 2 - Debt Indicators

Year	Debt/ GDP	Debt Service cost/ Revenue	Foreign Debt Servicing / Export Earnings
2006	87.9	93.0	7.1
2007	85.0	88.6	8.2
2008	81.4	90.5	13.9
2009	86.2	118.0	14.6
2010	81.9	100.4	10.7
2011	78.5	95.8	11.1
2012	79.1	103.0	16.4

Source: Central Bank of Sri Lanka Annual Reports

The public debt that was as high as 105 percent of GDP in 2002 was brought down in subsequent years. In 2009, it was 86.2 percent of GDP. In 2010, it was reduced to 80 percent of GDP and reduced further to 78

percent of GDP in 2011. It increased to 79.1 percent of GDP in 2012, owing to slower GDP growth but is expected to be about 78 percent of GDP at the end of 2013, owing to a higher GDP growth of over 7 percent.

The decreasing trend in the debt to GDP ratio, despite the increase in public debt, is due to the higher rate of GDP growth. Although the public debt increased substantially, the debt to GDP ratio declined owing to increasing GDP. These decreases were due to higher rates of economic growth in these years. In addition to this, the government has used state banks and private commercial banks to finance government expenditure. When these contingent liabilities of the government are taken into account the public debt is higher than the official debt to GDP ratio. Furthermore, the GDP estimates are considered to be overestimated. Therefore the public debt as a proportion of GDP does not convey the real extent of the debt burden.

Appreciation of the Rupee too leads to a lowering of the ratio as the debt is in rupees. Rupee appreciation made possible due to the large foreign reserves from foreign borrowing and large inflows of workers' remittances gives a misleading indicator of the country's indebtedness. The Rupee appreciated 3 percent in 2010 and a further 1.23 percent in the first half of 2011.

Although there has been a declining debt to GDP ratio from over 85 percent of GDP to around 80

percent, it is too high. It is higher than the ratio of India and Bangladesh, though lower than Pakistan. The government's target is to reduce it to about 65 percent in the next five years. This is the upper limit that the IMF considers to be comfortable. Furthermore, when bank borrowings of the government and government agencies that are contingent liabilities of the government are included, the public debt burden is higher than the official debt to GDP ratio.

The real burden of public debt is evident when other indicators are considered.

The debt servicing cost as a proportion of revenue is a better indicator of the crippling effect of the large public debt. In 2009, the debt servicing cost was 118 percent of revenue: 18 percent more than revenue (Table 2). In 2012 too debt servicing costs absorbed more than the total revenue (103 percent). Revenue is likely to be inadequate to meet debt servicing costs in 2013 too because of the increasing debt servicing costs, on the one hand, and tardy increases in revenue, on the other hand.

The inadequacy of revenue to meet debt servicing costs means that funds are not available for other essential expenditure. All current and capital expenditure have to be met by further borrowing from domestic and foreign sources. This lack of funds from revenue, results in a distortion in priorities in public spending. Public expenditure on

education and health has been inadequate in recent years due to this fiscal stringency.

## Foreign Debt

Foreign borrowing is not intrinsically bad. It can assist in resolving constraints in foreign resources for development, supplementing inadequate domestic savings for investment and undertaking large infrastructure projects. Foreign borrowing can spur an economy to higher levels of economic growth than its own resources permit. However the extent, costs, terms of borrowing, and use of funds have significant implications on macroeconomic fundamentals. Foreign borrowing could have either beneficial or adverse impacts on economic stability and development.

Foreign debt increased significantly in the last decade as revealed in Tables 3 and 4. The foreign debt component of the public debt increased somewhat from 43 percent to 46 percent of total debt in 2012. However, the amount of foreign borrowing tripled between 2000 and 2012 and doubled between 2007 and 2012 (Table 3). This is a serious concern especially, as recent increases in foreign debt have been commercial borrowings at high interest rates.

By the end of 2009, foreign debt had more than doubled what it was in 2000, to reach US\$ 18 billion and 19 percent of export earnings were

Table 3 - Domestic and Foreign Debt

Year	Domestic Debt	Foreign Debt	Total Debt	Foreign Debt as Percentage of Total Debt
2005	1,265,722	956,620	2,222,342	43.0
2006	1,479,236	1,103,418	2,582,648	42.7
2007	1,715,798	1,326,487	3,041,685	43.6
2008	2,140,228	1,448,734	3,588,962	40.4
2009	2,400,953	1,760,467	4,161,422	42.3
2010	2,565,662	2,024,583	4,590,245	44.1
2011	2,804,085	2,329,280	5,133,315	45.3
2012	3,232,813	2,767,299	6,000,112	46.1

Source: Central Bank of Sri Lanka Annual Report 2012

Table 4 - Foreign Debt and Debt Service Ratio

Year	Total External Debt (US\$ Mn)	Debt Service Ratio
2000	9,031	14.7
2001	8,372	13.2
2002	9,333	13.2
2003	10,735	11.6
2004	11,346	11.6
2005	11,354	7.9
2006	11,981	12.7
2007	13,989	13.1
2008	15,107	18.0
2009	18,662	22.4
2010	21,438	16.7
2011	25,002	12.7
2012	28,441	21.2

Source: Central Bank of Sri Lanka, Annual Reports

required for capital and interest repayments. By the end of 2012, foreign debt increased significantly to US\$ 28 billion and its servicing absorbed 21 percent of export earnings. This high proportion of export earnings needed for servicing the debt (repayment of capital and interest payments) is a strain on the

balance of payments and raises the issue of foreign debt sustainability.

Recent increases in commercial borrowings have also tilted the debt profile more towards commercial borrowing from the earlier bias towards concessionary loans from bilateral and multilateral sources. In 2012, the debt profile shifted more towards commercial borrowing. This increases the debt servicing costs due to both higher interest rates and

Table 5 - Sovereign Bond Based Borrowing and Maturity Periods.

Year	Sovereign Bonds Issued US\$ millions	Period (years)
2007	500	5
2008	nil	-
2009	500	5
2010	1000	10
2011	1000	10
2012	1000	10

Source: Institute of Policy Studies, State of the Economy 2013.

short term nature of such debt.

Since 2007 there has also been increasing Sovereign Bonds based commercial borrowing. These loans have been of 5 to 10 year maturity. The amount and maturity periods of these loans from 2007 to 2012 is given in Table 5

## External Debt Sustainability

The large increase in the country's foreign debt in recent years and increasing foreign debt servicing costs is a serious concern. The Ministry of Finance estimated Sri Lanka's foreign debt servicing costs comprising of both principal and interest payments for 2010 at US\$ 810 million. The debt service payments is expected to be US\$ 954.5 million in 2011 and nearly doubled in 2012 to US\$ 1,539.4 million (Ministry of Finance and Planning web site).

The sharp increases in debt servicing costs are due to increased borrowing in recent years and the higher interest rates of commercial loans. Foreign debt has been sustainable owing to the large inflows of foreign remittances that have offset about 60 percent of the trade deficit and reduced the balance of payments deficit.

Foreign debt should be incurred for developmental purposes. According to the Ministry of Finance, 75 percent of recent foreign borrowing has been for infrastructure development such as for power and

energy, ports, roads, bridges, water supply, agriculture, fisheries and irrigation, among others (Ministry of Finance and Planning Annual Report 2011).

Nevertheless, all infrastructure development in recent years, is not economically justified. In fact, there has been massive foreign funding for infrastructure projects that do not result in increasing tradable goods. The large investment in the Hambantota port and the Mattala airport, as well as huge expenditure on sports stadiums and other costly unproductive infrastructure increase the foreign debt serving costs. Foreign debt driven infrastructure development with long gestation periods and low returns can lead to a foreign debt trap and an economic crisis. Infrastructure projects that either save or earn foreign exchange are the least burdensome.

## Causes of Indebtedness

The accumulation of a large public debt is a result of cumulative fiscal deficits, large debt servicing costs, war expenditure and large expenditure on infrastructure development, huge losses of public enterprises, large expenditure on public service salaries and pensions, wasteful conspicuous state consumption, expenditure on subsidies and welfare costs. The large amount of public debt has itself led to a massive debt servicing burden as current revenue is inadequate to even meet the costs of servicing this debt and the government has

to resort to further borrowing to meet its recurrent as well as capital expenditure. This results in further increases in debt servicing costs. The inability to raise adequate revenue has been an important reason for the large fiscal deficits. Government revenue as a percent of GDP has been falling from about 15-17 percent of GDP in 2008-10 to 11 percent of GDP in 2012.

## **Consequences of Large Indebtedness**

The reduction of the public debt and its servicing cost is a prerequisite for economic stabilization and growth. This has been stressed ever so often and accepted by the Central Bank of Sri Lanka, multilateral agencies such as the IMF, World Bank and Asian Development Bank (ADB) and repeatedly stressed by the Institute of Policy Studies (IPS). The IMF required the government to bring down the fiscal deficit to 7 percent of GDP in 2009, when it gave the stand-by facility of US \$ 2.6 billion, but the fiscal outcome was a deficit of 9.8 percent of GDP. Although, fiscal deficit is expected to be 5.8 percent of GDP in 2013, this does not take into account government liabilities to the banking sector.

The containment of the fiscal deficit to a reasonable level has been recognised as important in Central Bank Annual Reports and in Budget Speeches. In December 2002 the Fiscal Management Responsibility Act

(FMRA) passed in parliament, made it mandatory for the government to take measures to ensure that the fiscal deficit is brought down to 5 percent of GDP in 2006 and kept at that level thereafter. The FMRA also required the public debt to be brought down to 60 percent of GDP by 2013. However the FMRA was abandoned due to the unexpected Tsunami in December 2004. The fiscal deficit averaged 8 percent of GDP in the five years 2004-2008.

Bringing down the public debt to 60 percent of GDP by 2013 was unrealistic as foreign borrowing has increased substantially in the last two years. It is expected to be about 68 percent of GDP in 2013.

## **Economic and Social Impacts of Debt**

Sri Lanka's huge accumulated debt is a result of persistent deficits over the years. The massive public debt and crippling debt servicing costs, distort public expenditure priorities and hamper economic development. Government borrowing to service the debt results in inflationary pressures that destabilise the economy. Inflationary pressures generated by large fiscal deficits increase the cost of living and cause severe hardships, especially, to the lower wage earners, pensioners and fixed income earners. This in turn, leads to strikes demanding higher wages and creates industrial unrest. Wage increases, increase the costs of production and reduce export competitiveness.

The depreciation of the currency to restore export competitiveness would lead to further inflation and increased hardships to people.

The servicing of the large public debt is itself a factor that increases the deficit and public debt. There is therefore, a need to break the cyclic debt burden. Containing the fiscal deficit is vital for stabilization of the economy and economic growth. Therefore the containment of the public debt is crucial in reducing the fiscal deficit, as debt servicing costs are the highest item of government expenditure.

The extent of borrowing, costs and terms of borrowing, especially of foreign funds and the use of funds have significant implications for macroeconomic fundamentals. These could have either beneficial or adverse impacts on long-term economic development. Therefore containing the public debt, reducing fiscal deficits and decreasing debt servicing costs are vital for economic stabilisation and Sri Lanka's economic development.

## **Other Concerns in Debt Management**

The lack of transparency in the borrowed funds and their terms of borrowing are concerns in the management of public finances. The terms and conditions of the large scale borrowing from China for infrastructure projects are unknown. The government does not disclose

many off budget liabilities at the time they are incurred: government purchases on credit and state owned enterprises finance government expenditure.

## **Suggestions for Reducing Debt Burden**

The reduction of the public debt is vital for economic stability and sustained growth. The large debt servicing cost absorbs the entirety of government revenue, leads to further borrowing, inadequate resources for expenditure in vital areas for development and distorts priorities in expenditure. Paradoxically it results in further foreign debt to fund development expenditure.

As much as the large debt is an underlying reason for the fiscal deficit, the large fiscal deficit is the cause for increasing debt. This cyclic nature of the problem makes it imperative to put in place immediate measures for decreasing the fiscal deficit. At the same time the trade deficit that affects the balance of payments and necessitates foreign borrowing has to be reduced by increasing exports and reducing imports.

The reduction of large fiscal deficits requires a two pronged strategy of increasing revenue on one hand and decreasing expenditure on the other. Both these are undoubtedly difficult to achieve in the current fiscal context but remains a fundamental requirement for

economic stabilization and economic growth. Fiscal consolidation is difficult for many reasons: limited revenue base of only about 12 percent of GDP; large debt servicing costs; huge expenditure on public service salaries and pensions; big losses in public enterprises; a large defence expenditure; wasteful conspicuous state consumption and expenditure on subsidies and welfare. Many of these expenditures have rigidity and are difficult to reduce.

Increasing government revenue from as low as 12 percent of GDP in 2012 to about 18 percent of GDP is vital for fiscal consolidation. Although, government revenue has increased in value, it has fallen as a proportion of GDP in recent years. Revenue decreased from 20 percent of GDP in 2005 to 12 percent of GDP in 2012. Although the government expects it to be 14 percent of GDP in 2013, it is likely to be around the same proportion of GDP as in 2012.

Furthermore, the ratio of direct to indirect taxes is 20:80. The implication of this taxation tends to be regressive, falling more on the less affluent section of the population. Recent taxes on basic food items are illustrative of this regressive nature. In several other countries, this ratio is weighted more towards direct taxes. In Malaysia, for instance, it is 40:60.

The revenue to GDP ratio of 12 percent and even the expected 14 percent of GDP in 2013 is below the

levels of countries with Sri Lanka's per capita income. Tax avoidance and tax evasion are important reasons for this shortfall in revenue. The Presidential Taxation Commission Report that was submitted in 2010 is said to have suggested comprehensive taxation reforms to increase revenue to 18-20 percent of GDP in five years. However, this report has not been made public and its recommendations have not been implemented.

The expectation that tax reforms would significantly reduce past fiscal slippages and increase revenue is yet to be realized. Reforms in trade and excise taxes, a broader tax base and more effective tax collection are expected to achieve higher revenue collection that would reduce the fiscal deficit.

Increasing revenue depends very much on the realistic nature of the tax reforms, the administrative capacity and honesty of officers of the Department of Inland Revenue. Besides this, the government should tax luxury consumption of the affluent who avoid direct income taxation in diverse ways. Instead, the taxation system has tended to be regressive by taxing basic food items that affect the livelihoods of the poor.

There is a need to curtail wasteful expenditure to achieve a lower fiscal deficit. Regrettably, there have been no signs of fiscal prudence. The government continues to spend on unnecessary and wasteful expenses.

In order to make a dent in public expenditure, it is essential for the government to have a strong resolve to desist from imprudent expenditure for political advantages. Public money must be spent on the basis of national priorities.

Paradoxically, the areas of large government expenditures provide the opportunities for expenditure reductions that would trim overall government expenditure. In spite of the end of the war defence expenditure has increased partly owing to obligations, such as deferred payments on armaments purchases in the past. Military hardware expenditure could be brought down and fresh recruitment of personnel should be minimal. If the expenditure on defence can be brought down by even 1 percent of GDP, then its burden on the public finances could be eased significantly.

The losses incurred by public enterprises like the Ceylon Electricity Board (CEB), Ceylon Petroleum Corporation (CPC) and other state enterprises must be reduced by enhancing their efficiency. Reform of public institutions and reduction of losses are essential to reduce government expenditure. Without reforming these public enterprises an important means of expenditure cuts would be unavailable.

In the past, the privatisation of loss making enterprises, such as the estates, provided both relief to public expenditure as well as revenue from

the privatisation proceeds to offset the deficit. This option is no longer available due to the ideological position of the government that it will not sell public enterprises. In fact, the government has increased expenditure by investing in a number of loss making enterprises. The government desist from expanding public ownership that results in incurring further losses.

Other public expenditure such as salaries of public servants and pensions, subsidies such as for fertilizer and Samurdhi payments are not likely to be reduced. In fact, the salaries bill may once again increase due to both salary increases and further recruitment. Increasing unemployment among the educated youth would probably result in another wave of public service recruitment. The government should resist these due to fiscal stringency and the need to keep government expenditure down. However political compulsions are stronger than economic imperatives.

The government's development strategy of achieving higher growth through massive foreign funding for infrastructure projects whose gestation periods are long, and in some instances whose returns are doubtful, and in any case, their production of tradable goods is minimal increases foreign debt. Achieving high economic growth through foreign debt driven consumption and low productive investments is not a sustainable strategy.

## Summary and Conclusions

Containing the public debt is vital for stabilization of the economy and economic growth. In as much as the large servicing cost of this debt is an important reason for increasing the fiscal deficit, the containment of the fiscal deficit would be the means by which the reduction of the public debt could be achieved. The reduction of the foreign debt is particularly important as it has reached proportions when the debt servicing costs are a strain on the balance of payments. The increasing debt servicing costs could lead to a need to borrow more internationally to meet debt servicing needs, thereby increasing the foreign debt servicing costs further and being enmeshed in a vicious foreign debt cycle and debt trap.

Therefore the containment of the public debt is crucial in reducing the fiscal deficit, as debt servicing costs are the highest item of government expenditure. The need to reduce the public debt and its servicing cost has been stressed ever so often and accepted by successive governments. However successive governments have failed to contain the fiscal deficit as they lacked the political will, courage and resolve to follow prudent fiscal policies to reduce the fiscal deficit.

By not containing the fiscal deficit and reducing the public debt the country is on a dangerous course, especially as public expenditure has high unproductive and wasteful

expenditure and revenue collection is tardy. The government has also been unwilling to take steps to reform public enterprises and curtail unproductive expenditure. The suggestions made in this chapter could reduce the fiscal deficit and public debt.

There are other concerns in debt management that are of relevance for public accountability of public funds and good governance. There is a lack of transparency in the terms of borrowing of foreign funds, especially the Chinese loans. The government does not disclose many off budget liabilities at the time they are incurred and state banks finance state owned enterprises and finance government expenditure.

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# Impeachment of the 43<sup>rd</sup> Chief Justice of Sri Lanka

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## A: Introduction

The impeachment of the 43<sup>rd</sup> Chief Justice of Sri Lanka exposed a series of issues relating to the adequacy of the legal framework governing impeachment of judges. It also highlighted grave concerns relating to governance and provided yet another dimension to the recurrent debate of excesses and manipulation of executive power in Sri Lanka.

This Chapter focuses on the domestic legal framework which governs impeachment of judges and looks at comparative legal frameworks and standards to demonstrate the gaping inadequacies of the domestic framework. This legal lacuna renders the system of governance vulnerable, in that it demonstrates a lack of protection for the independence of judiciary, a lack of protection of the sovereignty of the people as it is envisioned in the Constitution and a failure to protect the rule of law.

This Chapter will finally evaluate the substantive aspects of the impeachment process, to assess the extent to which fundamental rights, basic principles of justice and equality and respect for the separation of powers is observed and upheld.

## B: History of Judicial Independence in Sri Lanka

The judiciary has time and again had cause to fight for its independence in Sri Lanka. British administrators reflecting their domestic jurisprudence, infused principles of respect for independence and impartiality of the judiciary. Under the British, the idea of professional judges was established. The *Bracegirdle* case<sup>1</sup> was an instance in which the judiciary visibly attempted to establish its independence. In granting a writ of habeas corpus, the Supreme Court rejected the State's argument that "the safety of the state is a matter of paramount concern

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1. Re Mark Anthony Lyster *Bracegirdle*, 39 New Law Report 193.

and every other principle must give way to the safety of the state". It is said that clash between the judiciary and military eventually led to the transfer of the Supreme Court from the Fort of Colombo to its present site in Hulfsdorp, representing "the rather stubborn manner in which judges sought to assert their independence"<sup>2</sup>.

The Soulbury Constitution, the first independent Constitution of Sri Lanka did not expressly provide for the independence of the judiciary. In the case of *Queen Vs. Liyanage*<sup>3</sup> the Privy Council observed that 'although no express mention is made in the Constitution of vesting in the judicature the judicial power which is already had and was wielding in its daily process under the Courts Ordinance, the provisions of part VI in the Constitution manifest an intention to secure to the judiciary a freedom from political, legislative and executive control. The Constitution's silence as to the vesting of judicial power is consistent with its remaining where it had laid for more than a century, in the hands of the judicature"<sup>4</sup>. The first Republican Constitution of 1972 in Article 5 stated that; "The National State Assembly is the supreme instrument of state power of the Republic. The National State Assembly exercises ...

(c) The judicial power of the people through courts and other institutions created by law except in the case of matters relating to its powers and privileges, when judicial power of the people may be exercised directly by the National State Assembly, according to Law." The deliberate move away from separation of powers was emphasized by Felix Dias Bandaranayake, the Minister of Justice in deliberations in the Constituent Assembly, by the statement "We are trying to reject the theory of separation of powers. We are trying to say that nobody should be higher than the elected representatives of the people, nor should any person not elected by the people have the right to throw out decisions of the people elected by the people"<sup>5</sup>.

The second Republican Constitution of 1978 in Article 4(c), restoring the principle of separation of power, states that "judicial power of the people shall be exercised by Parliament through Courts, Tribunals and Institutions created and established or recognized by law, except in regard to matters relating to the privileges, immunities and powers of Parliament and of its members, wherein the judicial power of the people may be exercised directly by Parliament

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2. M.J.M Cooray, "Judiciary in Democratic system of Government", Logos Volume 23 No. 2 on Independence of the Judiciary July 1984.  
3. *Queen v. Liyanage* 64 New Law Reports, page 313  
4. *Liyanage v. Queen* 68 New Law Reports, page 265.  
5. Quoted by C.R de Silva in "Ideas for Constitutional Reform", at page 484, published by the Council for Liberal Democracy, Colombo, 1989.

according to law". A section titled 'independence of the judiciary' was also introduced, which deals with appointment and removal of judges, salaries, performance or discharge of other duties or functions by judges and criminalization of acts of interference with the judiciary. It has been noted that the provisions in the Constitution, particularly, regarding the appointment and removal of judges of superior courts have "given rise to serious doubts whether they are conducive to the creation of an independent judiciary"<sup>6</sup>.

A detailed analysis of the current Sri Lankan legal framework governing impeachment of judicial officials is undertaken below.

### **C.i: Sri Lanka's Legal Framework Governing Impeachment of Judges**

The current Constitution sought to address several criticisms levelled against the first republican constitution, including the provision regarding the judiciary. Therefore, Article 4 elaborated the principle of separation of powers and in theory, there was an attempt to secure an independent judiciary. Article 4(a) deposited the legislative power of the people with Parliament, Article 4(b) the executive power with the President and Article 4(c) the judicial power was to be exercised

by Parliament through courts, tribunals and institutions created or established by the Constitution. The exception to Article 4(c) expressly states that judicial power in relation to privileges, immunities and powers of Parliament and its members may be exercised 'by Parliament according to law'.

Articles 105 to 147 of the Constitution are in relation to powers of appointment, transfer, dismissal and disciplinary control of judicial officers and the establishment and jurisdiction of courts. Article 107(2) stipulates that a resolution for removal shall only be entertained by the Speaker if it is signed by not less than one third of the total number of members of parliament. Article 107(3) states that "Parliament shall by law or by Standing Orders provide for all matters relating to the presentation of such an address, including the procedure for the passing of such resolution, the investigation and proof of the alleged misbehaviour or incapacity and the right of such Judge to appear and to be heard in person or by representative."

Standing Order 78A, issued by Parliament, lays out the procedure for the presentation of the address for removal, inquiry and investigation into the alleged misbehaviour or incapacity of a Supreme Court judge. The Standing Order provided for the Speaker to appoint a Select Committee consisting of not less

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6. Lal Wijenayake, at page 6 of "Independence of the Judiciary in Sri Lanka since independence", published by Stamford Lake Publication, Pannipitiya, 2005.

than seven members to investigate and report on the allegations against the judge.<sup>7</sup> The select committee is to transmit to the judge a copy of the allegations as presented in the resolution and require a written statement of defence within a stipulated period.<sup>8</sup> The select committee is empowered to call for persons, papers and records in pursuance of the investigation.<sup>9</sup> The judge against whom allegations have been levelled is guaranteed the right to appear, in person or by a representative and adduce oral or documentary evidence to disprove the allegations.<sup>10</sup> Within one month of the commencement of proceedings, the select committee is to conclude its investigation and report its findings to parliament together with the minutes of evidence and any other special matters of relevance.<sup>11</sup> Thereafter if a resolution with the presentation of the address to the President is passed in parliament, the Speaker shall present the address to the President.<sup>12</sup> All proceedings in relation to the investigation are not made public if there is no finding of guilt.<sup>13</sup>

It is important to note that the Standing Orders do not constitute 'law' as recognized in terms of the constitution. It can at best be

referred to as guidelines adopted by parliament. The constitution recognizes 'law' as being 'any Act of Parliament, and any law enacted by any legislature at any time prior to the commencement of the Constitution and includes an Order in Council'<sup>14</sup>. The constitution is providing for standing orders, states that "Subject to the provisions of the Constitution, Parliament may by resolution or Standing Order provide for (i) ... (ii) the regulation of its business, the preservation of order at its sittings and any other matter for which provision is required or authorised to be so made by the Constitution." Standing Orders are strictly made 'subject to the Constitution' and therefore cannot be inconsistent with the provisions of the Constitution. This gives rise to anomaly, whereby Article 4(c) specifically states that judicial power may only be exercised by Parliament in limited circumstances in accordance with law, and Standing Order 78A, which is not law, sets out a procedure for Parliament to exercise judicial power.

An analysis of the sections of Standing Order 78A reveals a breach of the principle of separation of power. The procedure laid out offends Article 13(5) which safeguards the presumption of

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7. Section 2 of Standing Order 78A

8. Section 3 of Standing Order 78A

9. Section 4 of Standing Order 78A

10. Section 5 of Standing Order 78A

11. Section 6 of Standing Order 78A

12. Section 7 of Standing Order 78A

13. Section 8 of the Standing Order 78A

14. Article 170 of the Constitution

innocence as the burden of proving his or her innocence is placed on the judge against whom allegations are levelled. The rule against bias is also breached by the standing order, in that the select committee is comprised of members of the legislature who are both the prosecutors and investigators, as well as the judges at the stage the resolution is passed. The scheme for impeachment of a judge of the Supreme Court also violates the rule of law as there is in effect no 'law' enacted by parliament to govern the impeachment process. The lacunae jeopardises the certainty required of the law.

### **C.ii Legal Framework Governing Impeachment Of Judges In Comparative Jurisdictions**

The Supreme Court of the State of New Hampshire, quoted President Madison as saying that the union of judicial power with legislative and executive powers, "may justly be pronounced the very definition of tyranny" and quoted Mr. Jefferson as saying that such a union "is precisely the definition of despotic Government".<sup>15</sup>

Fundamental principles of separation of power and independence of the judiciary although reasserted by academics and jurists struggle to find expression in practice. Examples of impeachment

procedure and impeachment trials from other jurisdictions demonstrate how these principles are breached in political manoeuvres generally orchestrated by powerful executives. It is said that "a study of the origin of impeachment laws in England discloses the clearly apparent purpose on the part of the framers of those laws to gain political control over the high officers of the Nation and thereby enable themselves to wrongfully profit by the use of the power rather than to serve the people by according fair and impartial hearings to high officials charged with misconduct... It would be one of the easiest of easy tasks to change the method by which high officials are removed from office and thus rid ourselves of the injustice of present procedure. Why such a hybrid as the present impeachment law is tolerated is an unsolved enigma".<sup>16</sup>

Political realities aside framers of constitutions and law relating to governance have attempted to secure as independent and fair a process as possible within their given frameworks. We shall consider the Indian Constitution and laws on impeachment as such an example. The Indian framework is the closest to the Sri Lankan legal framework in that it too draws from its colonial jurisprudence.

The Indian Constitution provides the procedure and the grounds on which a judge of the higher judiciary

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15. J. D Lydick, "Tyranny of impeachment procedure", 8 NYULQ Rev. 257 1930-1931, at page 257.

16. J. D Lydick, "Tyranny of impeachment procedure", Op cit at page 269.

is to be removed. A judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by majority of the total membership of that House and by a majority of not less than two thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the grounds of proved misbehaviour or incapacity.

The Judges (Inquiry) Act 1968 was passed prescribing the investigation procedure and the proof of misbehaviour and incapacity. The Act states that the notice of the motion to present an address to the President to remove a judge signed by the requisite number of members in either the House of the People or the Council of States. The Speaker or Chairman, is empowered to admit or reject the motion as he thinks fit and permitted to consult persons or inspect documents in this regard.<sup>17</sup> If the motion is admitted a committee is constituted for the purpose of investigating the allegations. The committee shall comprise of one from among the Chief Justice and other Supreme Court judges, one from among the chief justices of the High Courts and a distinguished

jurists.<sup>18</sup> Thereafter charges will be framed by the committee and the charges along with a statement of grounds is to be submitted to the judge sought to be impeached and reasonable opportunity of presenting a written statement of defence is afforded.<sup>19</sup> After considering the written statement the committee may amend the charges and afford the judge an opportunity to present a fresh written statement of defence.<sup>20</sup> The committee shall give a reasonable opportunity to the judge to cross-examine witnesses, adduce evidence and of being heard in his defence.<sup>21</sup> The committee is to have powers of a civil court to conduct its investigation.<sup>22</sup> At the conclusion of the investigation the report stating the findings on each charge of the committee is submitted to the Speaker or Chairman. If the report contains a finding of guilt the motion before the House shall be taken up for debate together with the report.<sup>23</sup> If the motion is adopted, in the manner set out in the constitution, by parliament, the charges are deemed to be proved and an address seeking the removal of the judge is presented to the President.<sup>24</sup>

For example in the case of Justice Soumitra Sen of the Calcutta High Court, removal from office

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17. Section 3 (1) of Judges (Inquiry) Act 1968.

18. Section 3 (2) of Judges (Inquiry) Act 1968.

19. Section 3 (3) of Judges (Inquiry) Act 1968

20. Section 3(8) of the Judges (Inquiry) Act 1968

21. Section 4(1) of the Judges (Inquiry) Act 1968

22. Section 5 of the Judges (Inquiry) Act 1968

23. Section 6(2) of the Judges (Inquiry) Act 1968

24. Section 6(3) of the Judges (Inquiry) Act 1968

was sought on the grounds of (i) misappropriation of large sums of money in his capacity as the receiver appointed by the High Court of Calcutta; and (ii) misrepresentation of facts with regard to this misappropriation of money before the High Court of Calcutta. The Upper House voted in favour of his impeachment. A copy of the Report of the Judicial Inquiry Committee was forwarded to Justice Soumitra Sen to file his reply. At his request, Justice Soumitra Sen was given approximately one month's time to file a written reply on the findings of the Report and copies of his reply were circulated to all the Members of Rajya Sabha. It was further decided that the motion would be discussed in the House on two days and an opportunity would be given to the concerned Judge to make his submission from the Bar of the House and to this end arrangements were made to erect a bar with raised lectern within the House. On the date of the debate, one of the signatories of the impeachment motion moved on the motion and spoke thereon. The Judge then presented his defence from the bar of the House and withdrew. After that the House proceeded to consider the motion for two days and several Members spoke on it. The motion as adopted and a copy containing an address to the President was transmitted to the Lok Sabha. However, the Judge concerned, resigned from office before the motion could be taken up in the Lok Sabha. The Speaker of the

Lok Sabha decided not to proceed and on communicating same to the Chairman of the Rajya Sabha that matter was treated as closed.

The above description of the legal framework governing impeachment in India exhibits some key features built in to protect the separation of powers in governance and maintain the independence of the judiciary. Also considered are similar features enshrined in other legal frameworks.

Most jurisdictions provide by law for the procedure by which Commissions are appointed and function to investigate and report on judicial misconduct and incapacity. In Australia, Article 72[ii] of the Constitution which provides for the removal of a judicial officer is supported by Judicial Misbehaviour and Incapacity Act of 2012. In South Africa it is the Judicial Service Commission Act 9 of 1994 that sets out the procedure for the power to remove judges provided for in Section 177 of the Constitution.

Comparative practice is for the law to provide for an investigation committee consisting of bearers of high office from within the judiciary, thereby separating the entity which moved for the impeachment from that which conducts the investigation and thereby makes a considered decision on the merits of the allegations. Indian law provides for a committee consisting judges.<sup>25</sup>

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25. Section 3 (2) of the Judges (Inquiry) Act 1968

Australian law provides for a three member Commission, consisting of former judicial officers<sup>26</sup> appointed to investigate and report on alleged misbehavior.<sup>27</sup> As a further check it is prescribed that appointments are made by the Prime Minister in consultation with the Leader of the Opposition. In South Africa, Section 177 of the South African Constitution makes provision for the impeachment of members of the judiciary by stipulating that a judge may only be removed from office if the Judicial Service Commission, in the form of a disciplinary committee of five judges, finds that the judge is guilty of gross misconduct.

The supremacy of the Parliament is retained in that the decision, after consideration of the judicial inquiry committee report, is with members of the legislature. In India the bi cameral system ensures a further check on the decisions of the legislature. In Australia after the finding of the Judicial Services Disciplinary Committee the National Assembly calls for the judge to be removed, by at least two-thirds of its members voting in favour of a resolution. In South Africa, a tribunal maybe appointed by recommendation of the Judicial Services Commission, the tribunal would consist of two judges and one non judicial officer from a pre approved list.<sup>28</sup>

The process of fair trial is secured by means of the opportunities to respond to the charges at the stage of the investigation by the committee and thereafter in response to the report of the committee in the form of an address to the legislature, the decision making body. The arrangements to erect a lectern within Parliament to accommodate this address, preserves the dignity of the office of the judicial officer and emphasizes the gravity of the process of impeachment. In Australian law, a detailed emphasis on natural justice and procedure to ensure justice in provided for<sup>29</sup>. In South African law sections 28 and 29 of the Judicial Services Commission Act deal with the right to adequate notice, representation and participation at the inquiry.

The comparative domestic processes as laid out and practiced in India, Australia and South Africa allow an appreciation of the legal realities in impeachment trials. One is able to contrast and thereby also assess whether the procedure and practice of the impeachment proceedings against the Dr. Shirani Bandaranayake, the 43rd Chief Justice of Sri Lanka met basic standards and provided basic protection of constitutionally enshrined principles.

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26. Described in the Section as one a former commonwealth judicial officer and one a former Supreme Court Judge of a State or Territory.

27. Section 13(3) of the Judicial Misbehaviour and Incapacity Act of 2012.

28. Section 22 of the Judicial Services Commission Act 1994.

29. Section 20 of the Judicial Misbehaviour and Incapacity Act of 2012.

## D: The Impeachment Process

### D. i: Parliamentary Select Committee

On 6th November 2012, a notice of resolution in terms of Article 107 to impeach Dr. Shirani Bandaranayake, specifying 14 charges and signed by 117 members of parliament was presented to the Speaker. The Speaker accepting the motion, on 14th November 2012, appointed a Parliamentary Select Committee [PSC] in terms of Standing Order 78A. The committee consisted of eleven Members of Parliament<sup>30</sup>. On the same day, the PSC commenced investigations<sup>31</sup> and confined the investigation to charges one to five of the fourteen charges.

The Secretary General of Parliament informed the Chief Justice of the notice of resolution, the appointment of the PSC, the PSC's meeting on the 14th November and was required to submit a written statement of defence on or before the 22nd of November. She was also informed to appear before the PSC at 10:30am on 23rd November personally or by a representative. On 15th November 2012, the Chief Justice thorough her lawyers, responded to the PSC by refusing to accept its competence to exercise judicial powers or to reach a judicial

determination.<sup>32</sup> She also rejected all charges and requested for all documents pertaining to the charges framed against her. Without prejudice to her right to object to the jurisdiction of the PSC, she also requested for six weeks time as opposed to the one week afforded, to prepare her defence. On 17th November 2012, the Secretary General of Parliament informs the Chief Justice that the PSC had decided not to accept the letter by her legal representatives and that any request for further time would have to be made after appearing on the 23rd of November 2012.

On 23rd November 2012, the Chief Justice appeared before the PSC and requested for further time to prepare her defence. She was granted one week's time. On 29th November 2012 another request was made to the PSC for time to prepare the defence. At the inquiry on 4th December 2012, the request for further time was denied. Thereafter the Counsel appearing on behalf of the Chief Justice objected to two of the PSC members on grounds of bias. The objection to the two PSC members was rejected by the Chairman of the PSC without reasons. On 5th December 2012 documents pertaining to charges were circulated to all members of the PSC. On 6th December 2012, the Chief Justice was handed 80 documents, amounting to over 1000 pages, in

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30. Nimal Siripala de Silva, A.D. Susil Premajayantha, Dr. Rajitha Senarathne, Dilan Perera, Wimal Weerawansa, Niyomal Perera (Government party) John Amaratunge, Lakshman Kiriella, Vijitha Herath, R. Sampanthan (opposition)

31. Parliament publications. No. 187, vol. 1, pp. 8-10

32. Parliament publications. No. 187. vol. 2. p. 1327

support of the charges. The Chief Justice was informed that the inquiry into charges 1 and 2 would be taken up on 7th December 2012 at 1:30pm. The request made at this stage for further time study these documents was denied. The counsel for the Chief Justice requested for a list of the witnesses to be called by the PSC and was informed that the charges would be proved by the documentary evidence before the committee and that it would be for the Chief Justice to rebut the presumption of guilt by presenting evidence including witnesses. Citing unfairness of the procedure adopted and intimidating treatment by members of the PSC the Chief Justice walked out of the proceedings. Opposition members in the PSC formally requested the Chairman of the PSC to ensure that cardinal principles of fair procedure be adhered to by the PSC, to which request there was no adequate response. Thereafter four opposition members announced their withdrawal on the basis that they were not satisfied with the manner in which the inquiry was being carried out and that they had no confidence in the committee. They further stated that the treatment meted out to the Chief Justice was intimidating and insulting, and that

she should be afforded the privileges necessary to uphold the dignity of her office. On 7th December 2012 the PSC in approximately five hours heard evidence of 16 witnesses and examined over 1000 pages of documents consisting of financial statements. On 8th December 2012, the PSC, notably without attendance from any members of the opposition, adopted the final decision to find the Chief Justice guilty of three charges (charges 1<sup>33</sup>, 4<sup>34</sup>, and 5<sup>35</sup>).<sup>36</sup>

The impeachment procedure adopted by the PSC was heavily criticised by local and international experts for absence of a clear procedure by the Committee, the failure to produce a list of witnesses and documents pertaining to the charges, denial of adequate time to prepare responses and defences to the charges, the absence of clarity regarding the standard of proof, refusal to hear objections based on partiality of Committee members and degrading treatment meted out to the Chief Justice during the course of the inquiry.

On 10th and 11th December 2012, the impeachment motion based on the PSC report was debated in Parliament. The motion was voted

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33. Charge relating to the Chief Justice having adjudicated on a fundamental rights application to which one party was a company from which the Chief Justice had purportedly purchased as power of attorney holder premises that belonged to the said company.

34. Charge relating to non declaration of assets required to be submitted by judicial officers. Twenty accounts were alleged not to have been declared and seven of such purported accounts were identified.

35. Charge relating to unsuitability to continue in office as a result of legal action relating to bribery and corruption being initiated against the husband of the Chief Justice

36. Parliament publications. No. 187, vol. 2 pp. 1574, 1575

on at 6:30 pm on 11th December 2012 and passed by a majority of 106 votes, with 155 voting for, and 49 against. On 13th December 2012 the Proclamation by the President to remove the Chief Justice was delivered to her official residence.

#### D. ii: **Judicial Interventions**

At various stages of the unfolding of events before the PSC, several applications were canvassed before the Court of Appeal and the Supreme Court to seek judicial intervention and exert a check on what appeared to be a concerted exertion of unbridled power by the executive. A brief description of the cases filed will be followed by an analysis of the inter play, or lack thereof, between the judicial pronouncements in these cases and the impeachment trial.

### **Applications To The Court of Appeal To Restrain PSC:**

Four days after the constitution of the PSC, seven petitions were supported, on 18th November 2012 before the Court of Appeal, praying for a writ of certiorari restraining the eleven members of the PSC from proceeding with the inquiry. The petitioners claimed that impropriety and corruption are matters that should be inquired by a court of law and that the PSC was not

competent in law to proceed with their inquiry. The Court of Appeal requested the Supreme Court for a determination on the interpretation of Article 107(3) taken together with Article 125 of the Constitution. On 20th November 2012, three days before the Chief Justice was to make her first appearance before the PSC, the Supreme Court made a recommendation to Parliament that in view of the comity between the different arms of government, that the PSC should refrain from sitting until the matter before the Supreme Court has been resolved.<sup>37</sup> However the PSC proceeded with the inquiry. On 1st January 2013, 10 days before Parliament was to vote on the impeachment, the Supreme Court, in its decision in the reference from the Court of Appeal held that under Article 107(3), investigation and proof of charges brought against a judge in an impeachment motion must be exercised by a body established by an Act of Parliament, and not by Standing Orders of Parliament. On 3rd January 2013 the Court of Appeal informed the Petitioners of the Supreme Court interpretation.

### **Supreme Court Applications Challenging the Standing Order 78A:**

Three fundamental rights applications<sup>38</sup> were filed seeking declarations from the Supreme

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37. Supreme Court application No: 2012/4,5,6,7,8 and 9

38. Supreme Court Application Nos. SC (FR) 665/2012, SC (FR) 666/2012 & SC (FR) 667/2012

Court that Standing Order 78A of the Constitution is ultra vires and null and void and of no force or effect in law in terms of the petitioners' fundamental rights guaranteed under the Constitution. Leave to Proceed was granted on 23rd November 2012. The Chief Justice first appeared before the PSC later the same day. The fact that the Supreme Court had deemed prima facie Standing Order 78A under which the PSC was operating, may be inconsistent with the Constitution had no affect on the PSC.

On 21st January 2013, one week after the Chief Justice had been removed from office, on a date for hearing, the Deputy Solicitor General made an oral application to Court that steps be taken under Article 132(3)(iii) of the Constitution to refer the cases to the new Chief Justice to constitute a divisional bench (comprising 5 or more judges) in view of the importance of the matter. Objections were taken to this application by the Counsel for the Petitioners on the basis that that the matter could not be submitted to the new Chief Justice, in view of the fact that the actual holder of the office of the Chief Justice (de jure Chief Justice) in terms of the findings and pronouncements of courts was being excluded from her Chambers and it was now being occupied by a person (a de facto Chief Justice) who is not the legitimate Chief Justice, sitting in usurpation of the office. The newly appointed Chief Justice

would essentially be involved in a matter in which he was an interested party. However the Supreme Court directed the Registrar to transmit the cases to the newly appointed de facto Chief Justice for consideration, as soon as the Attorney General indicates in writing the basis on which an application is made under Article 132(3)(iii) of the Constitution.

The Supreme Court delivered a judgment dismissing these cases on preliminary issues. Together with these the cases filed challenging the purported appointment of the 44th Chief Justice of Sri Lanka were also dismissed on a preliminary objection relating to presidential immunity.

### **Court of Appeal Application by Chief Justice to quash findings of PSC:**

On 19th December 2012, after the PSC had submitted their report to Parliament, the Chief Justice applied to the Court of Appeal for a writ of Certiorari quashing the findings of the Parliamentary Select Committee.<sup>39</sup> On 21st December 2012 the Court of Appeal issued notice on the respondents in the writ application. The Court also cautioned Parliament not to act on the PSC report until the petition filed by the CJ was "heard and concluded" as it could lead to chaos. On 7th January 2013, before Parliament debated the PSC report, the Court of Appeal granting the writ

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<sup>39</sup>. Court of Appeal (Writ) Application 411/2012

of certiorari quashed the findings of the PSC report on the basis that the PSC had no legal power or authority in terms of standing order 78A to make such findings.

Thereafter the Attorney General, who was not a party to the Court of Appeal Application, and had merely assisted Court as *amicus curiae*, filed a special leave application to the Supreme Court<sup>40</sup> seeking to overturn the decision of the Court of Appeal. The application of the Attorney General was supported and leave granted<sup>41</sup> without notice to the parties in the original case which was a breach of Supreme Court procedure<sup>42</sup>. The Attorney General supported the appeal without notice to the respondents in the case. Some respondents having learnt of the appeal filed motions in Court stating that the Attorney General had violated compulsory requirements of notice to parties in making this unusual appeal. Permission of court was sought to be heard on the irregularity which had been perpetrated on Court and for an order to set aside the order granting leave.

On 29th May 2013 the Supreme Court set aside the *ex parte* order granting special leave, permitted the Respondents to file caveat to give notice of intention to object to granting of leave and the

application was fixed for support for leave to appeal on 10th June 2013.

On 10th June 2013, the Supreme Court heard the Respondents on the irregular procedure adopted by the Attorney General in attempting to prefer an appeal in a case to which it was not a party. Other maladies faced by the appeal petition included absence of a supporting affidavit, an inference of partiality consequent to stepping outside the established role of the AG and the futility in attempting to overturn a judgment which had been clearly ignored by the executive. The Attorney General submitted he was acting in the public interest and that his interpretation of the constitution allowed such an appeal by the AG. On 28th November 2013, the Supreme Court after hearing parties reserved its judgment.

In the interaction between the legislature and the judiciary, let us take a lesson from Hamilton in the *Federalist* where it is stated that “No legislative act contrary to the constitution can be valid. To deny this would be to affirm that the deputy is greater than his principle; that the servant is above his master; that the representatives of the people are superior to the people themselves; that men acting by virtue of powers may do not only what their

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40. Supreme Court (Special) Leave to Appeal 24/2013

41. Supreme Court (Appeal) No. 67/2013

42. Rule 8 of the Supreme Court Rules 1990

powers do not authorize, but they forbid.”<sup>43</sup> When the Supreme Court held that the investigation and proof of charges against a judge in an impeachment motion must be exercised by a body established by an Act of Parliament, and not by Standing Orders of Parliament it had made a pronouncement on the constitutional validity of the Parliamentary Select Commission. It was the exertion of check that is part of the intricate system of checks and balance that seeks to prevent an authoritarian expression of power. The Sri Lankan legislative apparatus, in choosing to ignore firstly that the matter was being considered by the Supreme Court and secondly the findings of the Supreme Court fall prey to the allegation that they have acted in contravention of the Constitution, and of more concern were acting in manner forbidden to it by the Constitution.

## **Response to the impeachment process from the domestic and international legal community**

The impeachment procedure adopted by the PSC was heavily criticised by local and international experts for absence of a clear procedure by the Committee, the failure to produce a list of witnesses

and documents pertaining to the charges, denial of adequate time to prepare responses and defences to the charges, the absence of clarity regarding the standard of proof, refusal to hear objections based on partiality of Committee members and degrading treatment meted out to the Chief Justice during the course of the inquiry.

On 10th December 2012, a protest march was carried out by members of the opposition, trade unions and members of the bar.<sup>44</sup> On 12th December 2012, lawyers across the country protested against moves to impeach the Chief Justice. The United National Party called upon the government to introduce new laws in relation to the removal of judges, in keeping with the Latimer House Principles, pursuant to the Supreme Court determination. Two legal opinions were commissioned by the Commonwealth Secretary General on the question of compatibility of the impeachment procedure with the Commonwealth values and principles. Justice P N Langa of Johannesburg concluded inter alia that “the decision of the government to ignore the rulings of the Supreme Court as unconstitutional and sowing the seeds of anarchy. ... It is also a serious violation of the doctrine of the Separation of Powers which is enshrined in the Constitution of Sri Lanka.

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43. The Federalist No 78 [Hamilton] edited by Jacob Ernest Cooke, Wesleyan University Press at page 524.

44. Reported in The Hindu news website on 12th December 2013 found at <http://www.thehindu.com/news/international/sri-lankan-lawyers-go-on-strike-over-cjs-impeachment-process/article4191692.ece>

On 11th December 2012, President stated that an independent committee would be appointed to study the report of the PSC, based on which he would decide on a course of action.<sup>45</sup> However no information about such independent committee was available to the public. On 4th January 2012, the External Affairs Minister G.L. Peiris responded to the letter by United Nations Special Rapporteur Gabriela Knaul on the independence of judges and lawyers, stating in his response that this was a domestic matter, and was being undertaken in compliance with domestic laws, and reflected basic democratic values.

wielding of executive power. And whereas the impeachment trial is a heightened example of subverting the country's constitution and bulldozing use of executive power, it is also a reflection of the general malaise of malgovernance, ignorance of the rule of law and disregard for safeguarding fundamental principles of separation of powers in governance.

## E: Conclusion

The above analysis sets out the legal lacunae in the framework in place for impeachment of judges of the Supreme Court in Sri Lanka. These gaps in the law have created uncertainty and allowed a procedure which is opposed to the letter and spirit of the Constitution of Sri Lanka to persist. The impeachment trial experienced brought to light these many defects in the procedure. It also brought to light the lack of political will to ensure that the constitution is upheld. This lack of political will draws on a prevailing political culture of arbitrary and excessive

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45. Reported in The Hindu news website on 7th January 2013 found at <http://www.thehindu.com/news/international/rajapaksa-appoints-panel-to-review-cjs-impeachment/article4282829.ece?textsize=small&test=2>, the Live Mint and Wall Street Journal news website on 7th January 2013, found at <http://www.livemint.com/Politics/RBP5J60MfQlXnK2YTpmxCI/Rajapaksa-appoints-panel-to-review-chief-justices-impeachme.html>

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# Illegal Dispossession of Lands

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## Introduction

The right to land is inextricably linked to survival. For individuals, particularly in developing countries, land is essential for life and livelihood. For this reason, significant attention is paid to land administration, which is evinced by the numerous laws enacted to deal with land issues, ranging from land tenure to environmental standards. In Sri Lanka, land was one of the central issues in the ethnic conflict that prevailed in the country for almost thirty years. It now remains at the centre of post-war discourse on important subjects such as development, the devolution of powers and resettlement.

In December 2013, R. Sampanthan MP, in a speech in Parliament observed:

Land...is a fundamental issue. It has enormous influence on vital aspects of human activity and is crucial, particularly from the point of view of the affected people...<sup>1</sup>

It is therefore crucial that land issues are dealt with carefully and without prejudice in rebuilding civilian life after the war.

Land dispossession, in particular, is an issue which has a significant impact on the citizen's right to land. Land dispossession essentially takes place when individuals are prevented from occupying, using or accessing lands that they previously owned or used. There are several factors that can contribute to dispossession. Land acquisition, for instance, is one of the more conventional means of land dispossessions. However, dispossession can also occur through other indirect means, such as improper application of legal procedures and improper action by responsible parties.

The following key factors are discussed in this chapter:

- i. Disregard for legal procedures
- ii. Abuse of powers
- iii. Bias on the part of officials

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<sup>1</sup>. Speech by TNA MP R. Sampanthan in Parliament, 'Sampanthan Speech on Land Issues', Ilankai Tamil Sangam, 14 Dec 2013, Accessed 12 Jan 2014, at <http://sangam.org/sampanthan-speech-land-issues/>.

- iv. Weaknesses in the law governing land acquisition
- v. Failure to address the needs of communities deprived of their land

This report seeks to provide a synopsis of the current crisis of land dispossession in Sri Lanka and to assess the legality of the methods used to deal with land. It provides an overview of the legal and policy framework in Sri Lanka and seeks to address some of the key practices that remain inconsistent with a legal framework pertaining to land. While land dispossession may take place in various parts of the country, this analysis mainly focuses on the issues that have arisen in the North and East of Sri Lanka in the post war period. In this context, the report presents suggestions and recommendations to solve some of the key issues raised.

## Methodology

The authors conducted a literature review covering publicly available reports, articles, official speeches, policy documents and legislative instruments relating to land. Based on this literature review, significant incidents in the North and East of Sri Lanka, as well as specific examples from the Western Province, were examined under five thematic sections. Thereafter, the authors evaluated existing recommendations made by the (LLRC) Lessons Learnt

and Reconciliation Commission and in the National Action Plan for the Protection and Promotion of Human Rights 2011-2016, as well as other policies in place to address shortcomings in land administration.

## I. Legal and Policy Framework in Sri Lanka

This section describes the broader legal and policy framework in Sri Lanka applicable to land, and thereafter attempts to locate the issue of land dispossession within this framework.

The constitutional provisions relating to land in Sri Lanka are contained in Article 14 and 27 of the Constitution.<sup>2</sup> Article 14(1)(h) of the Constitution provides that every citizen is entitled to the freedom of movement and of choosing his residence within Sri Lanka. Further, under Chapter VI of the Constitution,<sup>3</sup> Article 27(2)(c) provides that the State is to ensure that all citizens are provided an adequate standard of living for themselves and their families. While the provisions of Article 14(1)(h) are justiciable, i.e. enforceable in a court of law through the Supreme Court's fundamental rights jurisdiction, Article 27(2)(c) is part of the Directive Principles of State Policy, and therefore, only has persuasive force.

The Thirteenth Amendment to the Constitution provides for the

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2. Constitution of the Democratic Socialist Republic of Sri Lanka. 1978.

3. See Chapter VI of the Constitution: Directive Principles of State Policy.

devolution of land to the provinces, under Item 18 of the PC (Provincial Council) List.<sup>4</sup> The powers of the PC in respect of land include rights in or over land, land tenure, transfer and alienation of land, land use, land settlement and land improvement<sup>5</sup> and land needed for these subjects are to be made available to every PC. These powers are subject to the special provisions set out in Appendix II, which provides that central government control will remain in respect of State land, inter-provincial irrigation and land development projects and the National Land Commission. Land required for any of the subjects that fall within the Reserved List<sup>6</sup> and Concurrent List<sup>7</sup> will be utilised by the Centre, however, with the consultation of the relevant PC.<sup>8</sup>

The legislative framework governing land law in Sri Lanka includes indigenous personal laws, i.e. Tesawalamai, Kandyan and Muslim Law, as well as other statutory laws passed by successive parliaments. Land is of two types

in Sri Lanka, i.e. state land and private land. State land is most commonly governed by the LDO (Land Development Ordinance),<sup>9</sup> the SLO (State Lands Ordinance)<sup>10</sup> and the Land Grants (Special Provisions) Act.<sup>11</sup> These provisions of the LDO and SLO provide for the alienation of state lands to private individuals by way of permits and grants. The Land Grants (Special Provisions) Act deals specifically with agricultural and estate land which is already vested in the Land Reform Commission, which enables such land to be easily transferred to the landless. The procedure for alienation of state land is also provided for under Land Circular No. 2008/4. Ownership of private land is respectively governed by the Registration of Documents Ordinance<sup>12</sup> and the Registration of Title Act.<sup>13</sup>

The dispossession of land can be effected through legislative means, as certain laws explicitly provide for the acquisition and requisition of land by the state. These enactments include the Land Acquisition Act,<sup>14</sup> Requisitioning of

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4. List I of the Ninth Schedule to the Constitution.

5. Subject to Appendix II of the Ninth Schedule to the Constitution.

6. List II of the Ninth Schedule to the Constitution.

7. List III of the Ninth Schedule to the Constitution.

8. The precise demarcation of powers over land between the central government and the provincial councils is a matter of significant debate, possibly exacerbated by the recent judgment of the Supreme Court in S.C. Appeal No. 21/13. For an in-depth discussion of the issue, see Verité Research, *Devolving Land Powers: A Guide for Decision-makers*, July 2013.

9. Land Development Ordinance, No. 19 of 1935.

10. State Lands Ordinance, No. 08 of 1947.

11. Land Grants (Special Provisions) Act, No. 43 of 1979.

12. Registration of Documents Ordinance, No. 23 of 1927.

13. Registration of Title Act, No. 21 of 1998.

14. Land Acquisition Act, No. 09 of 1950.

Land Act,<sup>15</sup> State Lands (Recovery of Possession) Act,<sup>16</sup> Land Resumption Ordinance,<sup>17</sup> Land Reform Law<sup>18</sup> and the State Lands Encroachment Ordinance.<sup>19</sup> In addition to these laws, it is also possible to declare certain lands inaccessible to the public through Emergency Regulations promulgated under the Public Security Ordinance.<sup>20</sup> While dispossession within this framework may be treated as technically 'legal', dispossession of land, which occurs outside this legislative framework, may be described as 'illegal'.

## II. Key Factors Contributing to Illegal Dispossession of Land

### i. Disregard of legal procedures

The aim of legal procedures is to ensure consistency and fairness in the disposal of land. This principle is embodied in Article 12(1) of the Constitution of Sri Lanka, which provides that all persons are equal before the law and are entitled to the equal protection of the law. It is therefore necessary to ensure that legal procedures are applied

uniformly to all citizens. Three examples may be cited to illustrate the issue further.

In Panama, Ampara District, almost 350 families were displaced when government security forces reportedly forced them out of their homes.<sup>21</sup> 1,200 acres of farmlands in the area were thereafter fenced off by the Sri Lanka Navy, thereby denying villagers access to their source of livelihoods.<sup>22</sup> It was reported that the land had been acquired to construct a tourist hotel, and there were also attempts to utilise the lagoon near Panama, which local residents depended on for fishing, as a landing area for seaplanes to transport tourists to the proposed hotels.<sup>23</sup> The Sri Lanka Navy spokesman, Commander Kosala Warnakulasuriya, however, denied claims that residents' lands had been grabbed. He also claimed that the new camp was built on a land provided by the Ministry of Defence and Urban Development.<sup>24</sup>

Notwithstanding the various claims made with respect to the

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15. Requisitioning of Land Act, No. 33 of 1950.

16. State Lands (Recovery of Possession) Act, No. 07 of 1979.

17. Land Resumption Ordinance, No. 04 of 1887.

18. Land Reform Law No. 01 of 1972

19. State Lands Encroachment Ordinance, No. 12 of 1840.

20. Public Security Ordinance No. 25 of 1947

21. See Letter by Asian Peasant Coalition (APC) to Mr. Olivier De Schutter, Special Rapporteur on the Right to Food, from the Office of the United Nations High Commissioner for Human Rights, dated 2 October 2013; People's Alliance for Right to Land, The Occupation of land in Panama by Navy and Special Task Force (STF), at <http://www.parlsrilanka.org/issues/tourism/item/193-the-occupation-of-land-in-panama-by-navy-and-special-task-force-stf> ['PARL Report'].

22. Ibid.

23. See 'Written statement submitted by the Asia Forum for Human Rights and Development', 19th Session, UN Human Rights Council, 22February 2012.

24. 'Navy accused of land grab in Ampara', BBC Sinhala.com, 4 July 2011, Accessed 21 Jan 2014, at [http://www.bbc.co.uk/sinhala/news/story/2011/07/110704\\_navy\\_panama\\_land.shtml](http://www.bbc.co.uk/sinhala/news/story/2011/07/110704_navy_panama_land.shtml).

Panama issue, it is clear that no formal acquisition process or other legal procedures were followed. For instance, it was reported that provisions under the Coast Conservation Act,<sup>25</sup> which requires the Department of Coast Conservation to grant approval prior to any developmental activity being carried out in a coastal zone,<sup>26</sup> were ignored.<sup>27</sup> Further, the unauthorised clearing and fragmentation of the forest and building of permanent structures were deemed to be in contravention of Section 20 of the Forest Ordinance.<sup>28</sup> In addition to this, the Navy also failed to comply with a Regulation<sup>29</sup> under the National Environmental Act,<sup>30</sup> which requires written approval to be obtained for any developmental activity carried out within an area over one hectare of forestland, subject to an EIA (Environmental Impact Assessment).<sup>31</sup>

In Sampur, Trincomalee district, ongoing development activities have resulted in the continuing protracted displacement of residents. Several legal procedures have not

been complied with. For instance, it was reported that the CEB (Ceylon Electricity Board) had built a fence enclosing the land with cement and barbed wire, which blocks agricultural and paddy land belonging to the IDPs (Internally Displaced Persons).<sup>32</sup> The Agrarian Development Act<sup>33</sup> makes it an offence for a person to use any extent of paddy land for a purpose other than an agricultural purpose, or construct any structure within the extent of the paddy land, without obtaining written permission from the Commissioner-General.<sup>34</sup> Further, if any area falls within the authority of a Farmers' Organisation, the organisation is to be informed of the proposed project (such as the construction of a tank, dam canal, watercourse or other development project).<sup>35</sup> None of these conditions have been complied with in regard to the CEB fence and any other developments in the area.<sup>36</sup> Sampur is also an example of the failure to comply with the provisions of the Land Acquisition Act,<sup>37</sup> which allows for private land to be acquired for 'public purposes'. Section 2 of the Act

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25. Coast Conservation Act, No. 57 of 1981

26. *Ibid*, Section 14

27. See PARL Report.

28. Forest Ordinance, No. 16 of 1907.

29. Gazette Notification No. 772/22 of 24 June 1993.

30. National Environmental Act, No. 47 of 1980.

31. N. Kannangara, 'Land Grab at Panama?', *The Sunday Leader*, 5 May 2013, Accessed 21 Jan 2014, at <http://www.thesundayleader.lk/2013/05/12/land-grab-at-panama>.

32. B. Fonseka and D. Jegatheeswaran, 'Politics, Policies and Practices with land acquisitions and related issues in the North and East of Sri Lanka', Centre for Policy Alternatives, November 2013: 52 ['CPA Report – November 2013'].

33. Agrarian Development Act No. 46 of 2000.

34. *Ibid*, Section 32.

35. *Ibid*, Section 82(1).

36. SC (F.R) No. 309/2012.

37. No. 9 of 1950.

authorises the relevant Minister to call for investigations of any land which is deemed necessary for a public purpose. If any land is considered suitable and thereby acquired for a public purpose, Section 4 of the Act provides for the manner in which the owners of the land are to be notified of the acquisition and the procedure through which the owners could make objections to the intended acquisition. In Sampur, it was reported that notices required under Sections 3 and 4 of the Act have not been posted in respect of land in the four Grama Nildhari divisions, aside from the area of land which is being used to build a coal power plant.<sup>38</sup>

In Valikamam North, Jaffna district, the requisite procedures were not followed in respect of large acquisitions of land. According to a petition filed by 2,176 petitioners, the government had issued notices under Section 2 of the Land Acquisition Act in April 2013 for the acquisition of 6,317 acres of land. However, the government had failed to comply with all the necessary requirements of this section, which required that owners of lands be identified.<sup>39</sup> These owners have established title to the

lands, as their titles were previously verified by a committee appointed by the Supreme Court in 2006.<sup>40</sup>

## ii. Abuse of Powers

Several institutions are empowered by law to exercise powers relating to land. At the central level, land issues are to be dealt with by the Ministry of Lands and Land Development, and the Land Commissioner General's Department.<sup>41</sup> There are also several Deputy and Assistant Land Commissioners, as well as 'Provincial Land Commissioners'. At the provincial level, the Provincial Minister of Lands is the political authority responsible for each province. Administrative authority lies with the Provincial Land Commissioner, although in practice, Divisional Secretaries carry out the devolved powers on land.<sup>42</sup> Additionally, the Mahaweli Authority of Sri Lanka<sup>43</sup> is responsible for land administration in respect of inter-provincial irrigation and land development projects.

Abuse of power arises either when institutions act in excess of

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38. CPA Report – November 2013: 52-53.

39. T.M. Thaenmozhi, 'Land Grabs: Exultant State V. Agonized Citizen', The Colombo Telegraph, 9 August 2013, Accessed 11 January 2014, at <https://www.colombotelegraph.com/index.php/land-grabs-exultant-state-v-agonized-citizen>.

40. See M.A. Sumanthiran, MP, 'Replaying History: Land Grabs in the North and East', Global Peace Support Group, 18 November 2013, Accessed 12 January 2014, at <http://www.globalpeacesupport.com/2013/11/replaying-history-land-grabs-in-the-north-and-east-by-m-a-sumanthiran-member-of-parliament>; SC (F.R.) Application No. 646/2003, S.C. Minutes dated 25 April 2011.

41. Verité Research, 'Devolving Land Powers: A Guide for Decision-makers', Verité Research, July 2013 : 16-17.

42. Ibid.

43. Incorporated under the Mahaweli Authority of Sri Lanka Act No. 23 of 1979.

their powers or deal with subjects pertaining to land when there are not authorised to do so. A particular concern in this respect is role of the military in land issues.

Following the conclusion of the war, several instances of land grabs by the military have been recorded. Due to restrictions in access to information, there is currently no comprehensive data on the subject. However, the following examples serve to illustrate the severity of the issue.

In Mullikulam, Mannar district, 1,000 acres of land and five irrigation tanks have been made inaccessible to farmers in order to establish a naval base in the area.<sup>44</sup> It is also reported that Sinhalese families of Navy personnel have been settled in that land.<sup>45</sup>

Similarly, in Sannar, Mannar district, the military is reported

to have acquired approximately 3,600 acres of land to build a camp, thereby depriving residents from accessing these lands.<sup>46</sup> In other areas in Mannar, such as in Karadakulli and Iranatheevu, the Navy continues to impose restrictions on fishing and farming activities. There are no legislative provisions that authorise the military to impose such restrictions.<sup>47</sup>

It is also reported that the military has also taken on a role in settling land issues. The presence of military personnel in alternative land dispute resolution committees was a matter of controversy in 2011, when the Land Circular No. 2011/04 was challenged in the Court of Appeal and Supreme Court.<sup>48</sup> The impugned circular was withdrawn and the military's involvement was removed in the new Land Circular

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44. People's Alliance for Right to Land, 'Land Grabs in North and East Contradict LLRC Recommendations', The Colombo Telegraph, 1 May 2013, Accessed on 10 Dec 2013, at <https://www.colombotelegraph.com/index.php/land-grabs-in-north-and-east-contradict-llrc-recommendations>.

45. Ibid.

46. M. Raheem and P. Thangarajah, 'Tamil – Muslim Tensions and Coexistence in Mannar : Land Disputes in Sannar and Uppukulam', Centre for Policy Alternatives, March 2013 : 18. [CPA Report – March 2013]

47. Ibid. It was reported that there are restrictions placed on night fishing, even though prior to 30 January 2013, the people were allowed to fish unrestricted over-night. Moreover, fishermen are also reportedly restricted in terms of the area over which they can fish, as they are only allowed to fish in a 1 km radius, whereas prior to 26 December 2012, the people were permitted to fish along the entire 2.5km stretch of coastline between the Modaragama River and Pemunthal. Other restrictions include the requirement for fishermen to subscribe to a 'pass system' authorising them to fish in the same waters that they used to fish in unrestricted prior to their displacement. See Watchdog, 'Mullikulam: Restrictions on fishing, cultivation, access to the church and school continue', Groundviews.org, 15 March 2013, Accessed 15 Dec 2013, at <http://groundviews.org/2013/03/15/mullikulam-restrictions-on-fishing-cultivation-access-to-the-church-and-school-continue>.

48. CA (Writ) Application No. 620/2011 and SC (F.R.) Application No. 494/2011, Land Circular 2011/04 provides for the appointment of two Committees of Inquiries and special mediation boards, in order to settle competing claims to state lands in the North and East. The composition of these committees includes military personnel. This Circular was withdrawn in January 2012.

No. 2013/01.<sup>49</sup> Yet, the military's previous involvement in settlement of disputes is well documented, as exemplified below.

In Mullikulam, Mannar district, buildings including a church and a school were under army occupation since September 2007. Subsequently in 2012, the villagers sought to regain access to these buildings, but were only given partial access to the church by the Navy, which had since come to control the area. In order to settle question of the school, it is reported that a meeting chaired by the North Western Naval Commander and attended by six other Navy Officers was organised.<sup>50</sup>

Political actors have also been reported to have usurped powers with respect to land.

In 2010, in Parapukkadan, Mannar district, it was reported that a politician was involved in the process of clearing out a jungle area of 500 acres. It was reported that the operation was for the purpose of settling twenty-five persons from another location, while none of the

local families were included in the beneficiary list.<sup>51</sup>

In an incident in Uppukulam, Mannar district, a dispute between the Muslim and Tamil fishing community resulted in the intervention of multiple stakeholders, including the District Secretary, a catholic priest and a military commander, in order to settle the dispute. Further, when a court action was filed by the Tamil fishing community in the Magistrate Court of Mannar, it was reported that a government Minister had attempted to intimidate the court.<sup>52</sup>

Similarly, in Batticaloa, it was reported that certain politicians had directly intervened in order to ensure that 4,000 acres of forest lands would be given to a particular community for farming purposes.<sup>53</sup>

Certain institutions authorised to deal with lands have also acted beyond their mandate.

The Mahaweli Authority, incorporated under the Mahaweli Authority of Sri Lanka Act,<sup>54</sup> has been conferred wide ranging powers

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49. S.S. Selvanayagam, 'State withdraws impugned land circular on management of land in north east', Financial Times, 13 May 2012, Accessed 21 Jan 2014, at <http://www.ft.lk/2012/07/13/state-withdraws-impugned-circular-on-management-of-land-in-north-east/>.

50. The other parties who were at the meeting were the Vicar General of the Catholic Diocese of Mannar, Assistant Government Agent, Assistant District Secretary and the Mannar Project Officer for the Northern Reawakening Project, Parish Priest of Mullikulam and Secretary and Coordinator of the Malankaady temporary resettlement camp.

51. B. Fonseka and M. Raheem, 'Land in the Northern Province: Post-war politics, policy and practices', Centre for Policy Alternatives, Dec 2011: 187. [CPA Report – Dec 2011]

52. CPA Report - March 2013: 26.

53. Interview conducted with Former Commissioner of Land K. Gurunathan in Batticaloa, 'Tamils re-settling in East denied land permits', Vimarsanam, 20 Feb 2013, Accessed on 12 Dec 2013, at <http://vimarsanam-vimansa.org/report/tamils-re-settling-in-east-denied-land-permits/>.

54. Mahaweli Authority of Sri Lanka Act, No. 23 of 1979.

over land and development under the Act.<sup>55</sup> Notwithstanding the limits of these powers, there have been reports of incidents in which the Authority has exploited the given powers for illegal purposes.

Some of the reported incidents indicate that the Mahaweli Authority fails to apply a transparent system in the allocation of lands. For instance, in the village of Mavilaaru, Trincomalee district, it was reported that this Authority had not allotted land to residents who have lived there for decades, but instead claimed that the government had ordered land to be given to Army and civil security personnel or government employees.<sup>56</sup> According to a newspaper report, officials in this Authority accepted bribes and favoured certain parties over others in allocating lands.<sup>57</sup> The Andarawewa Forest Reserve, Nochchiyagama, is a wildlife protected zone and falls under the purview of this Authority. It is reported that politicians have been allowed to freely grab land from this reserve.<sup>58</sup> Further, this land has reportedly been allocated for the construction of a hotel

without ensuring compliance with the necessary regulations under the National Environmental Act.<sup>59</sup> The Authority has also been accused of attempting to illegally clear land within forest reserves in Weli Oya and Mullaitivu, in order to establish new settlements,<sup>60</sup> and using its power to acquire land to encourage new settlers, while the original owners were denied their lands.<sup>61</sup>

### **iii. Bias on the part of officials**

Article 12 of the Constitution seeks to ensure that all citizens are treated equally. In this respect, officials ought to use their powers without prejudice and without discrimination. However, there have been several incidents which demonstrate a failure to comply with this constitutional provision.

In this respect, the failure to adopt a neutral stance in such administrative matters will amount to a violation of this duty to ensure equal treatment of citizens. In Irakkandy, Trincomalee district, disputes with regard to the ownership of lands in the area

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55. Ibid Section 13.

56. T.P. Senarathna-Agbopura and M. Kariyawasam-Seruwila, 'Land Grab in the Mavilaaru area', Ceylon Today, 24 July 2013, Accessed on 07 Dec 2013, at <http://www.ceylontoday.lk/59-35791-news-detail-land-grab-in-the-mavilaaru-area.html>.

57. Ibid

58. 'Construction of Hotels in Andarawewa Forest', People's Alliance for Right to Land (PARL), Accessed on 07 Dec 2013, at <http://www.parl.lk/186-construction-of-hotels-in-andarawewa-forest>.

59. No. 47 of 1980.

60. S. Jayawardana, 'Mahaweli Authority trying to clear forest reserves', The Nation, 20 Oct 2013, Accessed on 07 Dec 2013, at <http://www.nation.lk/edition/news-online/item/22099-mahaweli-authority-trying-to-clear-forest-reserves.html>.

61. International Crisis Group, 'Sri Lanka's North I: The denial of minority rights', International Crisis Group, 16 March 2012: 25.

arose between the Sinhalese, Tamil and Muslim communities. These disputes were marked by complaints of bias on the part of certain officials. Some of the Sinhalese owners believed that the DS (Divisional Secretary) of Kuchchaveli was acting on behalf of the minorities currently residing in these lands, as these residents had acquired permits for these lands through the DS.<sup>62</sup> Other reports claim that the Sinhalese were being encouraged to return to these areas and claim properties with the backing of politicians in the central government, the Government Agent and with the protection of the Navy and the Police.<sup>63</sup> Actions through which particular ethnicities are favoured or given special benefits over other ethnicities clearly demonstrate how authorities often fail to play a neutral role in land administration.

Issues of bias also arise when specific action is taken to encourage or facilitate resettlement of a particular community or class of persons in specific areas at the expense of other communities.

In the Mannar District, a 'special resettlement' programme was reported to have been carried out in order to relocate 500 Sinhalese IDPs.<sup>64</sup> This was evidenced by a letter titled the 'Resettlement of Sinhalese IDPs in the Mannar district', issued by the Government Agent of Mannar M.Y.S. Deshapriya on 18 July 2013.<sup>65</sup> This letter directed the Divisional Secretary of Musali to identify suitable land to relocate these families.<sup>66</sup> As a result of this resettlement programme, Muslim families who were displaced during the civil war were effectively deprived of resettlement in these areas, as part of the land allotted to them was now being allocated to resettle Sinhalese families.<sup>67</sup>

In another incident, in Kokilai, Mullaitivu district, it is believed that migrant Sinhalese farmers and fishermen, were being encouraged to settle on land traditionally occupied by minority communities. A Gazette Notification dated 01 February 1965, reportedly listed the names of individuals allowed to use the padus (i.e. traditional shared fishing

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62. B. Fonseka and M. Raheem, 'Land in the Eastern Province – Politics, Policy and Conflict', Centre for Policy Alternatives, May 2010: 22.

63. Ibid.

64. 'Northern Sinhalese: Government to settle 500 Sinhala Families in Mannar despite Muslim Anger', 17 Aug 2013, Colombo Telegraph, Accessed on 11 Dec 2013, at <https://www.colombotelegraph.com/index.php/northern-sinhalese-government-to-settle-500-sinhala-families-in-mannar-despite-muslim-anger/>.

65. 'Resettlement of Sinhalese IDPs in Mannar District', Letter dated 2013.07.18, from the GA of the Mannar District to the Divisional Secretary of Musali, Accessed on 11 Dec 2013, at <http://www.lankastandard.com/wp-content/uploads/2013/08/resettlement-of-Sinhalese-in-Mannar-.pdf>.

66. Ibid.

67. 'Northern Sinhalese: Government to settle 500 Sinhala Families in Mannar despite Muslim Anger', 17 Aug 2013, Colombo Telegraph, Accessed on 11 Dec 2013, at <https://www.colombotelegraph.com/index.php/northern-sinhalese-government-to-settle-500-sinhala-families-in-mannar-despite-muslim-anger/>.

grounds) on the Mullaitivu coast.<sup>68</sup> However, with the end of the war, there has been increased unregulated migration from the South to these areas. Local fishermen have since complained that people not listed in the Gazette were being allowed to use padus, as the government had given them access to this area and issued temporary licenses.<sup>69</sup>

#### **iv. Weaknesses in the law governing land acquisition**

The focus on conflict-induced displacement, which existed during the period of the war, has now shifted to 'development induced displacement'. The acquisition of land for large-scale development projects has result in widespread displacement, thereby exposing certain weaknesses in the legal regime applicable to land acquisition.

In Sampur, Trincomalee district, the acquisition of land for SEZ (Special Economic Zone) is of particular importance, as it demonstrates some serious weaknesses in the current land acquisition process. There are several aspects to this particular case study that requires discussion. First, the acquisition was carried out in an unclear and complex manner,

and there was no clarity on the exact status of the land. In October 2006, the land was declared a Licensed Zone under the BOI Act.<sup>70</sup> Subsequently in May 2007, part of the land, which covered eleven GN (Grama Nildhari) divisions, was declared a HSZ (High Security Zone).<sup>71</sup> While the SEZ did not restrict movement within the area, the HSZ restricted movement of persons except under the written authority of the Competent Authority. The Regulations declaring these zones were challenged in the Supreme Court,<sup>72</sup> and the Supreme Court agreed that these Regulations were 'not intended to deprive any person of his place of residence or occupation'.<sup>73</sup> In October 2008, another Gazette<sup>74</sup> was published, which redefined the areas that came under the HSZ to four GN divisions, and some families were allowed to return to their lands. Thereafter, in 2011, despite the termination of the state of emergency, the military continued to restrict land owners who had land in the former HSZ from entering the land. In May 2012, a Gazette was published to create a 'Special Zone for Heavy Industries'<sup>75</sup> and this special zone encompassed the remaining areas in the former HSZ. However, property owners in the area are still being denied access to their lands.<sup>76</sup>

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68. CPA Report – Dec 2011: 195-196.

69. Ibid.

70. Section 22A of the BOI Act , No. 04 of 1978.

71. Emergency (Muttur (East) / Sampur High Security Zone) Regulations No. 02 of 2007 published under Section 5 of the Public Security Ordinance No. 25 of 1947.

72. SC (F.R.) Applications No. 218/2007 and No. 219/2007.

73. Judgment in SC (F.R.) Application No. 218/2007.

74. Gazette Extraordinary No. 1573/19, dated 30 October 2008.

75. Within the provisions of Section 22A of the Board of Investment of Sri Lanka Law No. 04 of 1978.

76. CPA Report - November 2013: 50-55.

Moreover, the information available to affected persons regarding the land acquisition process was also inadequate. In July 2008, a Section 2 notice under the Land Acquisition Act was published by the Sri Lankan government, in order to acquire land for a coal power plant in Sampur. These notices were reported to have been placed in the Muttur DS Office and IDP camps. However, there were no proper consultations with the IDPs to explain this process and the IDPs were also not provided with sufficient information regarding the land to be acquired.<sup>77</sup> It was reported that even though the government had issued notices regarding land acquisition, few IDPs were aware of these notices, and virtually none of them were aware that this process would result in them losing their rights over land.<sup>78</sup>

## **v. Failure to address the needs of communities deprived of their land**

While the conventional notion of IDPs relates to displacement due to conflict, displacement can also take place due to natural disasters and

economic development. Conflict-induced displacement covers situations where people are forced to leave their lands due to dangerous conditions, as well as situations where lands are taken over for the purpose of establishing High Security Zones or for other military reasons. Displacement due to economic development covers situations where private lands are acquired for the purpose of development projects.

The United Nations Guiding Principles on Internal Displacement<sup>79</sup> has developed guidelines that should be followed in order to address the specific needs of IDPs.<sup>80</sup> The Principles provide that steps should be taken to avoid or at least minimise the displacement,<sup>81</sup> to address the return, resettlement and reintegration,<sup>82</sup> as well as the compensation of displaced persons.<sup>83</sup>

However, the existing law on land acquisition, i.e. the LAA<sup>84</sup> (Land Acquisition Act) is wholly inadequate in these areas. Under Section 38 of the Act,<sup>85</sup> land can be acquired on an urgent basis, within a space of 48 hours, and therefore would not

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77. Centre on Housing Rights & Evictions (COHRE), 'High Security Zones and the Rights to Return and Restitution in Sri Lanka – a case study of Trincomalee District', COHRE, April 2009: 26.

78. B. Fonseka and M. Raheem, 'Trincomalee High Security Zone and Special Economic Zone', Centre for Policy Alternatives, September 2009: 8.

79. United Nations Guiding Principles on Internal Displacement (1998).

80. According to the Guidelines, 'internally displaced persons are persons or groups of persons who have been forced or obliged to flee or to leave their homes or places of habitual residence...'. Even though development-induced displacement is not explicitly mentioned in the definition, it is not specifically excluded either.

81. Ibid Principle 5, 6 and 7(1).

82. Ibid Principle 28.

83. Ibid Principle 7(3)(b) and 28.

84. Land Acquisition Act, No. 09 of 1950

85. Ibid

require compensation to be paid prior to acquisition. Further, the Act also fails to deal with the aspect of resettlement of displaced persons. The NIRP (National Involuntary Resettlement Policy) was approved by the Cabinet in 2001 to address the shortcomings of the LAA.<sup>86</sup> This policy specifically addresses issues relating to resettlement and compensation. The NIRP was successfully applied in the Lunawa Environmental Improvement & Community Development Project. This project involved the resettlement of 833 families and steps were taken to ensure that they were resettled, or compensated, in accordance with the principles contained in the NIRP. Attempts were also made to comply with the NIRP in the STDP (Southern Transport Development Project).<sup>87</sup> In the STDP, steps were taken to develop RIPs (Resettlement Implementation Plans) and ensure compensation through the establishment of LARCs (Land Acquisition and Resettlement Committee).<sup>88</sup> It was discovered that on average the compensation accorded by the LARC was double the amount determined under the

LAA.<sup>89</sup> However, this policy is yet to be formally adopted into the legislative system of Sri Lanka. Since the policy is not a legally enforceable instrument, it cannot supersede the LAA and there is no compulsion to comply with this policy, nor can formal action be taken on the grounds that acquisitions were being carried out in contravention of the policy.

In Colombo, there were several instances of displacement of families in order to acquire land for the 'City of Colombo Development Plan'. In May 2010, 45 families in Mews Street, Slave Island, were forcibly evicted and their houses demolished. In April 2011, 1,500 houses were demolished in Borella to make way for a 'modern housing complex', and according to some reports, almost 150 houses were demolished within an hour after a pre-warning.<sup>90</sup> In both these instances, the affected persons had not been offered compensation prior to displacement, and compensation that was subsequently provided, was inadequate.<sup>91</sup> Further, there was no resettlement action plan put forward

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<sup>86</sup>. The NIRP was introduced in 2001, in order to establish a framework through which involuntary resettlement would be an integral part of the project design and affected people would be treated in a fair and equitable manner. This policy is applicable to all development induced land acquisitions and recoveries of possessions by the state. This policy ensures that all affected persons are involved in the project planning and implementation stages.

<sup>87</sup>. Refer Gehan Gunatilleke & Vidya Nathaniel, 'Sri Lanka: The National Involuntary Resettlement Policy', Verité Research (Forthcoming – 2014).

<sup>88</sup>. The LARC was based on two important principles, namely that compensation was to be calculated at 'replacement value' that covered all types of losses, and that people were to be provided the space to participate in and be consulted during the process of determining compensation.

<sup>89</sup>. S. Jayawardena, 'Right of Way: A journey of resettlement', Study Series, No 5, Centre for Poverty Analysis, December 2011: 10 -11

<sup>90</sup>. D. Wickremasekara, 'Demolition for Development', The Sunday Times, 17 April 2011, Accessed 05 Jan 2013, at [http://www.sundaytimes.lk/110417/News/nws\\_81.html](http://www.sundaytimes.lk/110417/News/nws_81.html).

<sup>91</sup>. For further discussion, see Gehan Gunatilleke & Vidya Nathaniel, 'Sri Lanka: The National Involuntary Resettlement Policy', Verité Research (Forthcoming – 2014).

by the relevant parties, and the affected persons were not involved in the resettlement process or project planning and implementation stage.

The resettlement of families displaced from Sampur, Trincomalee district, has yet to be addressed, and as of May 2013, it was reported that 1,262 families were still living in IDP camps.<sup>92</sup> Further, it is reported that some Sri Lankan families whose land was acquired for road development, have not received compensation for more than 25 years.<sup>93</sup>

In cases such as these, the failure to convert this policy into law, adversely affects the needs of these displaced persons.

In Echchalavakkai and Pallamadu, Mannar district, although persons who had been displaced by the war had been assured that they could return to their lands in March 2010, they were unable to do so, as an army camp had been erected on this land. In 2007, these people had been promised documentation, but could not receive them due to the conflict.<sup>94</sup> Nevertheless, even after the war, the government has failed to take steps to provide alternative relocation sites

or compensation, or at least provide basic information with regard to relocation.<sup>95</sup>

### III. Recommendations

This section presents recommendations pertaining to each of the issues raised in the preceding section. These recommendations take into account previous recommendations presented by official institutions, including the LLRC.

#### i. Disregard for legal procedures

Formulate a Comprehensive policy on Land: The policy framework pertaining to lands is often confusing due to the number of legislative instruments and policies, and the various institutions and actors involved in land. It is therefore necessary to develop a clear, comprehensive and systematic policy, which would clarify all the aspects pertaining to land. In this context, the following key recommendations ought to be considered:

- Expedite action on the establishment of a NLC (National Land Commission) in order to propose appropriate future national land policy guidelines as required under the Thirteenth

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<sup>92</sup> Law and Society Trust, 'ESCR Newsletter' Issue 5, Law and Society Trust, March 2013, Accessed 31 Dec 2013, at <http://www.lawandsocietytrust.org/PDF/resource/ESCR%20Newsletter%20Issue%205%20English.pdf>.

<sup>93</sup> J. Hathiramani, 'Land acquisition: Lankan families wait for more than 25 yrs for compensation', The Sunday Times, 01 Aug 2010, Accessed 21 Jan 2014, at <http://www.sundaytimes.lk/100801/BusinessTimes/bt09.html>.

<sup>94</sup> B. Fonseka, 'Commentary on Returns, Resettlement and Land Issues in the North of Sri Lanka', Centre for Policy Alternatives, September 2010: 18.

<sup>95</sup> B. Fonseka and M. Raheem, 'Land Issues in the Northern Province: Post-war politics, policy and practices, Centre for Policy Alternatives, December 2011: 171-172.

Amendment.<sup>96</sup>

- Formulate clear policies on the areas available to be resettled; create more awareness about such policies and options available to public.<sup>97</sup>

## ii. Abuse of powers

Devolve powers on the subject of 'land' to PCs as provided for in the Thirteenth Amendment to the Constitution. Central control over all aspects of the land may be inadequate to deal with issues which are unique to particular provinces. The devolution of powers to PCs would be important for the close regulation of land in the provinces and prevent abuse of powers. In this context, the following key recommendations ought to be considered:

- Every Province should succeed to all other state land within the province, subject to the rights of persons in lawful possession or occupation of such land. A Provincial Government shall be entitled to exercise rights in or over such land, including land tenure, transfer and alienation of

land, land use, land settlement and land improvement.<sup>98</sup>

- A Provincial Government may, after due consultation with the Central Government, require the Central Government to make available to the Provincial Government, such State land held by the Centre at that time as may be reasonably required for the purpose of a subject or function in the Provincial List, and the Central Government shall comply with such requirement.<sup>99</sup>

Address demilitarisation of the North and East: Despite the lapse almost five years since the end of the war, these areas continue to remain heavily militarized i.e. an unreasonably high number of military personnel are currently deployed in the North and East.<sup>100</sup> Therefore, the military continues to play a significant role in these areas, and exercises significant powers over land issues. The following key recommendations ought to be considered:

- Phase out the involvement of the Security Forces in civilian

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<sup>96</sup>. LLRC Report, at para.9.150. The All Party Representative Committee - Experts Panel (Majority Report) also recommended: '[A] National Land Commission with equal representation of the central government and Provinces and equitable representation of all major communities. The Commission is to formulate national land use policy and make recommendations to the Central and Provincial Governments with regard to the protection of watersheds, appropriate amount of forest cover in each environment and is to monitor land use and compliance with policy and recommendations so formulated.' See Section 17:5 and 17:6 of the Committee Report dated 6 December 2006 [APRC Experts Report].

<sup>97</sup>. LLRC Report, at para.9.106.

<sup>98</sup>. R. Yogarajan MP and M Nizam Kariapper (eds.), *Proposals made by the All Party Representative Committee to form the basis of a new Constitution* ['Unofficial APRC Report'], at Section 13.2. Also see APRC Experts Report, at Section 17.2.

<sup>99</sup>. Unofficial APRC Report, at Section 13.3; APRC Experts Report, at Section 17.3.

<sup>100</sup>. See for example, illustrations presented in a speech by TNA MP R. Sampanthan in Parliament on 8 August 2013, *Parliamentary Debates (Hansard)*, dated 8 August 2013.

activities and use of private lands by the security forces,<sup>101</sup> and revert the Northern Province to civilian administration in matters, which among others, includes land.

- Revert the Northern Province to civilian administration in matters relating to the day-to-day life of people, and in particular with regard to matters pertaining to economic activities such as agriculture, fisheries, land, etc. Recede military presence to the background.<sup>102</sup>

Prevent actors outside the land framework from making decisions relating to land: Officials constituted to deal with land issues should take a more pro-active role. An improved knowledge on land matters and familiarity with these areas may give them more confidence to challenge improper and illegal actions. The following key recommendations ought to be considered:

- Conduct training programmes on land dispute resolution through the Land Commissioner General's Department for officers and community leaders based on a simple and clear training manual.<sup>103</sup>

### iii. Bias on the part of officials

Prevent political actors from

using land as a tool for political gain:

- Arrive at a bi-partisan understanding that restitution of land is a national issue and will not be used as a tool by political parties to gain narrow political advantage.<sup>104</sup>

Restrict opportunities and scope for bias:

- Ensure that land policy of the government does not become an instrument to effect unnatural changes in the demographic pattern of a province.<sup>105</sup>

This is an important recommendation, as the support given by certain powerful actors to particular communities to settle in various areas, may be based along the lines of trying to change the demographic makeup of that area. It is necessary to take action to curb the possibility of such actors from using state policies to fulfil their political agendas.

Take action to address the particular grievances of marginalised communities:

- Appoint a special committee to examine durable solutions and formulate a comprehensive state policy on the issue of Muslim IDPs displaced from the North after extensive consultations with the IDPs and the host communities.<sup>106</sup>

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101. LLRC Report, at para.9.171.

102. LLRC Report, at paras. 9.171 and 9.227.

103. LLRC Report, at para.9.132.

104. LLRC Report, at para. 9.152.

105. LLRC Report, at para.9.124b.

106. LLRC Report, at para.9.113.

#### **iv. Weaknesses in the law governing land acquisition**

Take steps to prevent the ad-hoc acquisition of private land:

- Develop a land use plan for each district in the North and East with the participation of district and national experts drawn from various relevant disciplines.<sup>107</sup>

Amend the existing law governing land acquisition:

- Implement key amendments to the LAA, in order to bring in line with the NIRP. Such amendments should include the requirement for community consultation prior to the implementation of development projects; the formulation of resettlement action plans; and the payment of equitable compensation including compensation for loss of income.

#### **v. Failure to address the needs of communities deprived of their land**

Address inadequacy of the LAA through legislative reform:

- Amend the LAA in order to reflect the principles of the NIRP. As mentioned above, these amendments should include a guarantee to formulate resettlement action plans, which would address key displacement and resettlement issues such as alternative project options,

compensation for those who do not have title to land, consultations with displaced persons on resettlement options and full social and economic rehabilitation of displaced persons. Such plans also guarantee that affected persons are to be fully and promptly compensated prior to dispossession of land.

Enhance protection for displaced persons:

- Establish a comprehensive protection framework and mechanism for displaced persons to take into account all forms of displacement through the adoption of a National Policy on Displacement.<sup>108</sup> This Policy should take into account all forms of displacement, which includes conflict, natural disasters and economic development.
- Enhance the current legal, procedural and policy frameworks in order to better protect the rights of internally displaced persons including the right to housing and restitution.
- Give, within a specific timeframe, alternative lands or compensation to families who have lost their property due to SEZs or ad hoc security related needs.<sup>109</sup>

The factors contributing to the

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<sup>107</sup>. LLRC Report, at para.9.151.

<sup>108</sup>. Rights of Internally Displaced Persons (IDPs) – Goal 1.1 - National Action Plan for the Protection and Promotion of Human Rights – 2011-2016]

<sup>109</sup>. LLRC Recommendations – Para 9.142b

dispossession of land are widespread and do not exist only in the North and East of Sri Lanka. However, the empirical evidence examined in this chapter suggests that such factors have become more prevalent in the North and East following the conclusion of the war. While promoting post-war reconciliation remains an important national priority, it is important to acknowledge the fundamental relevance of land to this reconciliation process. It is therefore crucial that the crisis of land dispossession is dealt with equitably and expeditiously, and without prejudice to any particular community. This chapter has attempted to deconstruct some of the complexities of this crisis and to present a way forward towards its resolution.

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# Sports and Corruption

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Sports allow billions of individuals to experience emotions and learn values such as following a set of commonly accepted rules and respect for others. Sports by its very nature maintain stimulation, harmony and passion. Sport is also a multibillion dollar business with intricate ties with political and private interests. It is now recognized that sports have great potential for corruption due to its exploitation by vested interest for personal gain, huge investment opportunities, opportunities to exploit emotions, and influence of sports in politics and business. In many countries, including Sri Lanka, control of sports is connected to political power of the state and therefore, the political patronage decisively influence sports, both in and out of the playground. This Chapter looks at few identified areas relating to the impact of mal-governance and corruption in sports administration, and how general governance structure adversely affects sports integrity in Sri Lanka.

## **Sports governance & Structural Politicization of Sports Administration**

Deviating from the self regulation of sports by sports associations and clubs, in 1973, the Sports Law was introduced, in line with the policies of the then government. The Law provided for the establishments of a National Sports Council, sports committees and national sports associations. The salient feature of the Law is the unbridled powers vested in the Minister, to directly interfere with the national sports at every level. Summary of such permissible interferences include the following

- a) The National Sports Council consists of appointees of the Minister. Those members are removable by the Minister without reasons (sections 4 & 7)
- b) The Minister may establish district sports committees, and the members of those

committees are also removable by the Minister without reasons (sections 11 & 14)

- c) National Associations of each sport are required to be registered, with the Ministry of Sports, and the decision to recognize such association, is left to the Minister (sections 28 & 29). The Minister also has appellate powers, on his own, against his own decision. (section 30). It is the Minister who prescribed regulations on the recognition of associations. (section 31). It is the Minister, who refuses registration, suspends or cancels the registration, or dissolves a national association of sports (sections 32 & 34)
- d) The sports associations are elected. However, section 33 of the Sports Law read with the Regulations made under the Sports Law<sup>1</sup>, permits the Minister, to make “interim arrangements after suspending an association”
- e) The Minister also controls the participation in sports in Sri Lanka or abroad of any

individual participants or teams, representing Sri Lanka.

In Sri Lanka, we have also witnessed, during the last decade of continuous suspensions of associations, and Ministers appointing Interim Committees to run sports governing bodies.<sup>2</sup> The situation has been aggravated with politicians, active or retired, becoming heads of national associations of sports.<sup>3</sup> An interesting development is the inexplicable increase of serving and retired military officials being involved in sports administration<sup>4</sup>, bringing in a different dimension affecting overall civil sports governance structure. It is in that background that sports governance can be truly understood in Sri Lanka.

Sports governance related challenges were often limited to closed door isolated discussions but occasionally, in the recent time, the importance of sports autonomy and need to be independent of political interference was raised in the context

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1. See Gazette extraordinary 193/3 15th January 2013

2. Sri Lanka Gymnastics Federation, Sri Lanka Body Building Federation, Sri Lanka Cycling Federation and Sri Lanka Shooting Federation; - Elections were however scheduled soon. Available online <http://www.sundaytimes.lk/131110/sports/four-more-interim-committees-to-face-elections-in-december-68562.html> [accessed on 19 December 2013]

3. Hon. Sarath Ekanayaka is the President of the Sri Lanka Basket Ball Associations, Hon. Dilan Perera, Hon. Minister of Foreign Employment is the President of the Sri Lanka Volleyball Association. available online at <http://www.sportsmin.gov.lk/main/index.php/federations> [accessed on 19 December 2013]

4. Rear Admiral Shamal Fernando, the president of the National Federation of Shooting Sport. Brigadier J.R.Ampe Mohotte, the president of the National Federation of Disable Sports. Colonel .M. Deepal Mahindapriya Thennakoon, is the Treasurer of Sri Lanka Amateur Baseball/Soft Ball Associations, Commodore H.A.U.B.Hettearachchi is the Secretary , and Wing Commander P.M.Fernando is the Treasurer of the Sri Lanka Amateur Kabai Association, Commodore H.U.Silva, is the President of the Sri Lanka Archery Association, Major General Palitha Fernando is the President of Sri Lanka Athletes Associations etc., available online at <http://www.sportsmin.gov.lk/main/index.php/federations> [accessed on 19 December 2013]

of National Olympic Committee (NOC). It is pertinent to note that 25 sports Federations/Associations are affiliated to the NOC<sup>5</sup> and many of those associates are run by interim administrations appointed by the Minister. The tussle between the Sports Ministry and the NOC into the question of autonomy of the sports recently ended up with certain agreements reached between the International Olympic Federation and Ministry of Sports, which can be summarized as follows<sup>6</sup>:

- The sports law (in force since 1973) will be revised within nine months, and the specific government regulations derived from the sports law will be reviewed within six months in order to make them compatible with the basic principles which govern the Olympic Movement. To that effect, and to ensure proper consultation with all concerned parties, a working group will be established immediately between the Sports Ministry and the NOC/ national sports federations, also involving the IOC (representing the Olympic Movement as a whole)
- All national sports federations will have to liaise with their respective International Federations to review their constitutions/ statutes in accordance with the International Federations standards and the principles of

the Olympic Movement. This process must be completed within six months under the supervision of each International Federation concerned, which will also decide, on a case-by-case basis once this process is completed, whether new elections will be required in the respective national federations.

- The NOC Constitution will also be reviewed with the IOC in order to ensure full compliance with the Olympic Charter and the IOC's requirements. Then, the revised draft Constitution will have to be submitted to the NOC General Assembly for adoption, and be approved formally by the IOC. The new NOC Constitution will serve as a basis to conduct the NOC elections. This process (including the revision of the NOC Constitution and the NOC elections) will also be completed within six months. Until the NOC elections take place, the current NOC's office-bearers will remain in place.

Despite the aforesaid agreements and a working paper being submitted by the NOC on how to make sports legal regime compatible with international practices and Olympic Charter removing intrusive provisions, there is no evidence of any commitment on the part of the Sports Officials to implement the agreement. Unless these agreements

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5. <http://www.srilankaolympic.org/national-federations-2/>

6. <http://www.ceylontoday.lk/34-47776-news-detail-ioc-summons-sports-minister.html> & [http://www.lankanewspapers.com/news/2013/11/85755\\_space.html](http://www.lankanewspapers.com/news/2013/11/85755_space.html)

are fulfilled, there is likelihood of Sri Lanka being suspended from the Olympic movement as happened in India in 2012.

With the present system of Constitutional governance where power is concentrated in the hands of the President while the public service is strappingly politicized, the sports administration may not find the required level of autonomy. However, as appears from the above, the national sports administrations are required to follow international standards in relation to sports as well as sports administration. It is pertinent however to remind ourselves of the Olympic Charter and the Fundamental Principles of Olympism, initially contained a philosophy but have now become virtually binding instruments on sports authorities. Given below are three of the seven Fundamental Principles<sup>7</sup>, which may be relevant for the purpose of this Chapter:

- “4. The practice of sport is a human right. Every individual must have the possibility of practicing sport, without discrimination of any kind and in the Olympic spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play.
5. Recognizing that sport occurs within the framework of society, sports organisations within the Olympic Movement shall have

the rights and obligations of autonomy, which include freely establishing and controlling the rules of sport, determining the structure and governance of their organisations, enjoying the right of elections free from any outside influence and the responsibility for ensuring that principles of good governance be applied.

6. Any form of discrimination with regard to a country or a person on grounds of race, religion, politics, gender or otherwise is incompatible with belonging to the Olympic Movement.”

All international sports bodies such as International Olympic Committee, International Cricket Council and Federation of International Football Association (collectively called for the purpose of this chapter as International Councils) are nongovernmental organizations established to promote and regulate specific sports; and all national sports associations are members and stakeholders of those International Councils which standardize the international sports. Through the respective Charters and founding documents and decisions, all national sports bodies are bound to honour the fundamental values and decisions of those International Councils. In view of these international sporting obligations, and to be part of international sporting Councils, it is necessary for the Sri Lankan authorities to ensure

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7. [http://www.olympic.org/documents/olympic\\_charter\\_en.pdf](http://www.olympic.org/documents/olympic_charter_en.pdf)

sports autonomy, freedom from political discrimination and good governance standards in all types of sports administrations.

## **National Sports Policy & Practice**

The Sports Ministry, in its website sets out the overview and the functions of the Ministry of Sports. It discloses the objectives of the Ministry, which are as follows;

- To make Sport and integral part of Sri Lankan Culture and Society.
- To utilize Sports to improve health and physical well being and enhancing the living conditions of all Sri Lanka.
- To provide knowledge, space and opportunities to everyone to participate in sports.
- To provide resources and infrastructure facilities required to develop sports as a whole.
- To assist every Sri Lankan to rise to the highest level in sports and converting Sri Lanka to substantial status reflecting clearly the image gained by it internationally as a successful nation endowed with skills in sports.
- To improve the sports industry in Sri Lanka and develop the economy by providing new job opportunities.

- To use sports as a major foreign exchange earning field in Sri Lanka

In addition, on 16 May 2012, the Minister of Sports have published 11 paged Gazette notification detailing the National Sports Policy of Sri Lanka, highlighting, among others, the policy to create the environment necessary to ensure the independence of sports organizations<sup>8</sup>.

Unfortunately, there is no independent evaluation available in public domain to assess whether the Sports Ministry has achieved its objectives. There is no independent verification whether the sports authorities in Sri Lanka has followed National Sports Policy, particularly to ensure independence of sports organizations. Having regard to the structural politicization, one can conclude that the practice seems to be contrary to these disclosed policies.

It is significant however, that there are no disclosed criteria in many vital aspects of sports such as recognizing a new sport as a national sport, allocation of resources (including for infrastructure), selection criteria of players, how sports economy is managed. Unfortunately there is no evidence in the public domain to promote good governance and transparency in sports organizations or in the Ministry, though the National Sports Policy emphasizes the need to

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8. Published in Gazette notification No.1758/23 dated 16 May 2012 – item 16.

ensure accountability through good governance and transparency<sup>9</sup>.

## Broadcasting / Telecasting Rights of Sports

Sports such as cricket, has competitive international value for TV sponsorships. The Carlton Sports Network (CSN), secured from Sri Lanka Cricket (SLC), the TV rights for 3 years, for a sum of Rs 125 million in 2012. CSN has commenced its operations only on 7th March 2011. An investigative article published in a leading Sunday newspaper, traced the profile of CSN, connecting to the ruling party and its political hierarchy of the government<sup>10</sup>. There is no doubt that CSN had received TV sponsorship without any proper evaluation by Sri Lanka Cricket<sup>11</sup>. To make things worse, the Secretary of SLC is the Chief Executive Officer of CSN. There is an obvious conflict of interest of the CEO of CSN. Had there been any bids or bid evaluations on the performance

of bidders and financial viability, and evaluation of past audited accounts of the bidders, CSN could not have secured TV sponsorship. There is also inexplicable silence, on the part of the State owned television stations (Rupavahini and ITN), or the private TV stations such as MTV, why they have not submitted bids for TV sponsorship. It was later revealed that there was no wide publicity given for the calling of bids. Those TV stations have previously secured the bids in competitive market.

Investigations into the TV rights of CSN also discloses interestingly, how Sri Lanka's TRC grants TV operation license and how sports related corruption is linked to wider governance issues in the country. Telecommunication Regulatory Commission - TRC (established under Act No 25 of 1991 amended by 27 of 1997) is headed by the Secretary to the Ministry. Presently the Ministry of Media is a portfolio held by the President. The Director General of TRC, who is a paid employee, is also a

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9. National Sports Policy Gazette sets out in section 15 - A strong Sports Organizational Network through Institutional development:

Establishing and streamlining the legal framework of sports Association development of management structures and sport programs.

It is important to strengthen the legal, governance, management and operational aspects relating to Sports Institutions and agencies so as to ensure that they are dynamic, responsive and efficient in sport development, keep abreast of modern social trends and deliver their target outputs efficiently. To ensure accountability, action should be taken to ensure good governance, transparency in all activity and decision making and productivity in all institutes concerning sports with special emphasis on respect for law and decorum. A mechanism also needs to be established to ensure uniformity and collaboration between the various agencies involved in the administration of sport."

10. [www.thesundayleader.lk/2011/07/24/carlton-sports-network-and-somerset-entertainment](http://www.thesundayleader.lk/2011/07/24/carlton-sports-network-and-somerset-entertainment)

11. Weliamuna on Surrendering Airwaves and Liberty to Nepotism <http://groundviews.org/2012/06/11/surrendering-airwaves-liberty-to-nepotism/>

member of the Board. There are series of allegations of TRC of having being involved in direct political activities, such as sending free SMS messages from a presidential candidate (The President, who is also the Minister) during election campaigns. After President Rajapaksha assumed office on 19th November 2005, 12 new TV channel licenses were given, amongst them CSN. However, CSN commenced operations only on 7th March 2011. This shows how the political authorities have had a hand in firstly securing a TV broadcasting license, and then, in securing financial gold mine of cricket broadcasting license for a meager amount.

## Infrastructural Developments and Corruption

Sports are closely linked to infrastructural development, particularly when such sport is a national game involving a large population. In Sri Lanka we have seen many such infrastructural developments in the game of Cricket. Sri Lanka presently has 11 cricket stadiums<sup>12</sup>. In 2009, two new stadiums were built in Thanamalwila

(Mahinda Rajapaksa International Cricket Stadium) and Pallekelle, with a capacity of 35000 spectators<sup>13</sup> in each stadium, in preparation of the 2011 World Cup. There is no evidence of feasibility study or need assessment of such new stadium for Sri Lanka, in addition to the existing 10 stadiums. It was reported in 2013 October that the Sri Lanka Cricket is negotiating with the Government to have Rs.3.2 Billion debt incurred for the building of stadiums written off<sup>14</sup>.

In 2011, COPE questioned the former interim committee members of Sri Lanka Cricket, after the Auditor General's Department's report on Sri Lanka Cricket. According to the media, the Report revealed a Rs. 290 million overdraft, and expenditure of Rs. 4 billion in excess of the amount allocated for preparing three play grounds for the cricket world cup and negligence on the part of the administration.<sup>15</sup>

Though new stadiums were built, the Sri Lanka Cricket has no funds or capacity to manage these stadiums. Military, which is occupying the building, is maintaining these infrastructures, again at the public cost<sup>16</sup>. Sri Lanka cricket has a massive

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12. Asgiriya Stadium, Kandy Colombo Cricket Club Ground, Colombo Galle International Stadium, Galle Mahinda Rajapaksa International Cricket Stadium, Hambantota P Sara Oval, Colombo Pallekele International Cricket Stadium, Kandy R.Premadasa Stadium, Colombo Rangiri Dambulla International Stadium, Dambulla Sinhalese Sports Club, Colombo Tyrone Fernando Stadium, Moratuwa Welagedara Stadium, Kurunegala

13. <http://www.cricketworld4u.com/grounds/00189.php>

14. <http://www.therepublicsquare.com/sports/2013/10/22/cricket-stadium-debt-to-cost-public-rs-3-2bn/>

15. Island 8th July 2011.

16. [http://www.colombopage.com/archive\\_11B/Nov03\\_1320327252KA.php](http://www.colombopage.com/archive_11B/Nov03_1320327252KA.php) & <http://www.dailymirror.lk/news/14565.html?task=view>

cadre over 280<sup>17</sup>. These details disclose the internal management failures and how overall political commands dictate to the sports governance.

One famous sports commentator, Vaibhav Vats, comments on this cricket stadium as follows<sup>18</sup>.

“After a monotonous hour long drive, the cricket stadium appeared. Two floodlights towers rose above the surrounding jungle. MAHINDA RAJAPAKSA INTERNATIONAL CRICKET STADIUM — the name was inscribed in baroque capital lettering. There was little hum an activity in its vicinity. I could not think of a stranger location for a cricket stadium.”

As pointed out above, Official website and the sports policy announced that sports would be an active contributor to the economic development of the country, and therefore one would expect the Sports Ministry in sports governance to bear in mind the value for money in huge investments made in the name of sports. However, the unanswered questions of these new stadiums, economic losses and secrecy of decision making reveal the context in which games are exploited for personal gain, through infrastructure development opportunities.

## Recommendations

Politicization of sports associations has created multiple challenges to sports integrity, particularly the autonomy of sport and social acceptance of the sports. Politicization of sport has made sports associations extremely vulnerable for all forms of corruption such as conflict of interest, misappropriation, fraud, manipulations etc., with the risk of taking the game away from the sports loving citizens. Thus it is critical that the Sports Law is amended taking away the Minister’s intrusive interferences into sports associations. Such amendments should ensure that sports associations are accountable to public and to the stake holders, while protecting the game against vested interests.

Sri Lankan sports require a review of its internal governance. It should also ensure Transparency and accountability in its decision making process and operations. In addition to auditing of their accounts, the associations should be more open on use of their funds and policies. This should commence initially with major sports such as cricket, volley ball, foot ball, rugby and athletics. However, this will not be sufficient unless the Ministry of Sports encourages international governance within its own Ministry as well.

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17. <http://www.sundaytimes.lk/sport/42403.html>

18. Available online Cricket and Power Politics in Sri Lanka [http://india.blogs.nytimes.com/2013/08/05/cricket-and-power-politics-in-sri-lanka/?\\_php=true&\\_type=blogs&\\_r=1](http://india.blogs.nytimes.com/2013/08/05/cricket-and-power-politics-in-sri-lanka/?_php=true&_type=blogs&_r=1) [accessed on 19 December 2013]

All those who are involved in sports should understand the governance structures, policies, procedures and the finances of the sports associations. This would be futile unless detailed financial reporting of funds is not made.

The sports associations must be open to outside scrutiny. Their attitude of an “old boys’ network”, ‘our click’ will vitiate such standards. Sports associations should have a public policy of zero tolerance of corruption in all vulnerable stages such as selection of players, contracting, infrastructure development, TV broadcasting, ticket sales etc., All sports associations should encourage independent whistle blower protection policies. Whistle blower procedures should be confidential and accessible to all the stake holders of the game.

In Sports involving agents and intermediaries such as cricket, there should be clear guidelines for due diligence checks on all members of syndicates or franchises. Private promoters should be subjected to strong scrutiny. Each sport association should have an anti corruption policy and an anti corruption unit, consistent with global practices.

National sport administrations are part of international sports bodies, which operate under founding documents and Charters containing certain international standards and values. It is incumbent upon national authorities to operate

the games in keeping with those international standards. Therefore, it is necessary to change the existing laws and practices in keeping with international standards and the implement it candidly. Importance of introducing National Policies and National Rules Governing Sports will be negated by not implementing core values of those policies.

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# The Dilemma of the Sri Lankan Media

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The multiple crises that Sri Lanka has faced today may be explained to be an issue directly linked with the pettiness or immaturity of the social consciousness. Despite having a very high rate of literacy, Sri Lankan society still lags behind as far as the intellectual advancement is concerned. In the circumstance, the multiple crises that the country has encountered can be explained as a direct outcome of the level of immaturity manifested in the social consciousness.

In this context, had the Sri Lankan media been able to recognize its role in its correct perspective and acted with a sense of professionalism and social responsibility in fulfilling the multiple tasks expected from them, the social consciousness may not have degenerated into such an unprogressive level as it stands today; and the media could have made a significant contribution in changing the shape of the multiple crises the country has faced today. Even now, it is not too late to make an immediate and desirable change in uplifting the present image of the

country, provided that the media identifies its responsibility and works sincerely and honestly. Then it can serve as a catalyst in building the nation. However, it calls for a deep sense of professionalism and social responsibility.

Yet, it is doubtful whether the Sri Lankan media is presently placed in a position capable of making such a rapid transition and change its role to suit the current need. Unfortunately, the journalists lack the enthusiasm and acumen required for such a transition. The media institutions are working in a disorganized and corrupt atmosphere that prevents the emergence of the kind of enthusiasm required for drastic changes from among them. Therefore, a desirable change in the media institutions in Sri Lanka would only be possible with a transformation in the socio-political system in the country. The object of this article is to make a brief review of historical evolution of the Sri Lankan media and the dilemma it has encountered today and also to explore and pin point the reasons affecting it.

## Sri Lankan crisis and media

The present crisis that the Sri Lankan media and the Sri Lankan society has encountered can be described as two different scenarios originated from similar historical causes and nurtured on dependence of each other.

I wish to commence this appraisal with some comments on the capitalist system in Europe. The birth of the capitalist system in Europe was a direct outcome of a historical process caused by the breakdown of the ancient feudalistic system due to resistances stemmed from within the system itself. It was within this evolutionary process, the ancient feudal system was gradually transformed into a modern society.

The overwhelming process that emerged in Europe known as the Great Renaissance that witnessed grand events such as the rapid decline of the dominance of theology, profound advancements and discoveries in the field of science, discovery of the printing machine and newspapers, downfall of feudalism and emergence of capitalism, decline of the monarchical system of government and establishment of the system of peoples' governments, industrial revolution, the burst of great stimulation in the field of arts and literature made a far reaching and overwhelming impact on Europe in transforming it into a modern society endowed with new thinking free of outdated and parochial

feudalistic attitudes and rich in plural values and attitudes and sensitive to individual freedoms and human rights.

However, the capitalist system in Sri Lanka is not an outcome of such an intrinsic process. It came as a result of the impact of external influences. It was the impact of the British colonial rule that caused the decline of the priority placed on the feudalism and superimposition of the commercial plantation economy in its place which ultimately turned out to be the mainstay of the economy. However, this did not cause to make a significant change in the social milieu and effecting a major transformation in the feudalistic attitudes. Undoubtedly, though this process made a change in the society, it was only a limited change and was not adequate to make a distinct impact on turning it into a modern society capable of assimilating modern thinking and adopting new attitudes.

The nation state and the democratic system of governance can be described as endowments from the British. Creation of a united nation and a democratic society (modern society) is an essential prerequisite for successful consolidation and sustainability of the system of nation state and the democratic system of government. But the Sinhalese, Tamil and Muslim leaders who spearheaded the independence struggle do not seem to have had a proper understanding of this need.

On the contrary, the approach of the Indian leaders in the independent struggle was different from that of Sri Lankan leaders (then Ceylon). They did not restrict the public struggle launched for independence only for liberating the country from colonial rule. Instead, they used it as a powerful instrument for building unity among the people and creating a united nation and a plural society with new attitudes which were adequately sensitive to safeguarding the freedoms and human rights. Accordingly, India was able to build a united nation and a strong democratic system of government which remains an essential prerequisite to consolidate the nation state and the democratic system of governance inherited from the British. This process had its impact on the Indian media as well. Some of the leaders of the independent struggle consisted of media men; it was these media men who were inspired by the independent struggle later became the owners of the media organizations and the editors who managed them in the post independence era. They were fully conversant with their responsibility and aware of their role as Journalists. But, those who took the reins of the independence struggle in Sri Lanka did not have a vision for building a united nation and a plural society with new attitudes. The leaders of the national congress who launched the struggle lacked the strong vision required for that. Though, the leftist leaders who came to the scene somewhat later comprised of more educated and intelligent group of

activists, they too, failed to recognize the need for building a united nation and realize the importance of creating a modern society because they were overtly confined themselves in an extremist Marxist frame of mind. The Sri Lankan media too, slavishly followed this unadventurous process being unable to overtake them and assuming a frontline position.

Sri Lanka was eventually able to liberate the country without any direct or active participation of the society in the process. Yet, even after gaining independence, it did not make any attempt to build a united nation and a democratic society in its forward march. Instead of adopting a policy of promoting common welfare of the people, it adopted a policy of discrimination - favoring certain races, castes and religions. This invariably led to the creation of an unprecedented crisis and distortion in the system of governance and the social system. The Media desperately failed in performing a progressive role in this connection. The role that Media played, in fact contributed more to aggravate the crisis than alleviating it.

Introduction of a presidential system of government in the shape of a semi dictatorship conferring all the powers to an executive president who is above

The law of the country in 1977, replacing the Parliamentary system of government that was in operation since independence, not only accelerated the momentum of the

degenerative process of distortion set in the social system but also brought it to its climax soon.

## **Main features of the historical evolution**

Though, the history of newspapers in Sri Lanka goes as far back to 1831, the newspapers published during this period were intended only for the British or European officers, planters and the businessmen who lived in Sri Lanka. They were not meant for the benefit of the native readership. The Observer and the Commercial Advertiser, the first ever newspapers published in English in 1840 which later became the Colombo Observer and the Ceylon Times (published in 1846) were exclusively meant for foreigners who lived in Sri Lanka and not the native populace for a considerable length of time. By 1901, only 2.8% of the native male population could read and write English.<sup>1</sup> The number of copies sold of the newspapers published in English during the early days not exceeding 300-400 copies is a clear indication that they were published for the British and the Europeans lived in the country and not intended for the native readers<sup>2</sup>.

In fact, the Publication of magazines and newspapers aimed at

native readers actually begins with the religious renaissance movement which emerged as a protest against the Christian domination at the end of the 19th century. By this time, with the spread of the school education, the literacy level of the native population had made a considerable progress.

The local religions served as the driving force of the religious renaissance movements initiated during this period. The colonial rule had suppressed the local religions assigning a dominant place to the Christian religion. The local religions, primarily the Buddhism and Hinduism which had been neglected and relegated into a submissive level launched a strong campaign against the Christian domination in order to restore the dignity that it enjoyed in the past. The religion constituted the main focus of the renaissance, while it was not confined only to the religion. The race and the caste too, had an important share in it becoming important topics that came under public debate.

This was a period of transition in which people were divided in terms of race, castes, language and religion. It represented an intermediary stage in which the feudalism was gradually decaying giving its place to the newly emerging capitalist system. The overwhelming interest and the inspiration created among the

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1. Michael Roberts-Elite formation and elites 1832-1931, in *'Collective identities, nationalisms and protest in modern Sri Lanka.'* Edited by Michael Roberts (Marga 1975) p. 192.
  2. K.M. De Silva-The Origins of Sri Lanka's press 1802-1850, in *'studies on the press in Sri Lanka and South Asia,* Edited by G.H. Peiris (International Center for ethnic studies, 1997) p. 110

native populace through religious debates and the other issues such as castes and racial issues provided a fertile ground for the native journalists to thrive in. It was during this period that a large number of wide and varied magazines and newspapers were added to circulation.

The attitudes promoted in the religious renaissance movements (Buddhist, Hindu and Muslim) in Sri Lanka were relatively backward compared to those of the similar movements in India. The leaders of the Hindu and Muslim renaissance movements in India did not restrict their campaigns to resist the external threats only. They made them an instrument of reforming the outdated and unprogressive aspects of respective religions. The leaders of the Hindu renaissance movement voiced against the caste system based on quadruple or Chatur Varna caste system. They campaigned against the "sathi poojaa" and child marriages. The Muslims expressed their views against the unequal status given to women in the religion. The Leaders of renaissance movement of both religions- Hindu and Muslim made an attempt to unite the people divided on the lines of religion and caste. They also made an attempt to promote and instill modern attitudes in them.

However, the leaders of the religious renaissance in Sri Lanka comprised of a circle of people who were relatively narrow minded and unprogressive in their outlook

towards social issues when compared to those who gave leadership to the religious renaissance movements in India. The Buddhist leaders of the caliber of Anagarika Dharmapala never made an attempt to criticize the unprogressive ideas crept into the Buddha Sasana such as caste discrimination which were contrary to the Buddhist doctrine. Arumuga Naavalar, the leader of the Hindu renaissance movement firmly approved and strongly supported the Hindu Chatur Varna caste system. Regrettably, these two leaders sow the seeds of hatred against the other religions. Unlike the renaissance leaders in India, they never attempted to promote the inter- religious harmony. They never tried to instill new ideas and attitudes in their adherents. Their role in fact, caused to worsen the racial discord rather than alleviating it.

The irony is that Arumuga Naavalar and Anagarika Dharmapala were pioneering journalists. Both of them had their own newspaper agencies and they worked as the editors of the respective newspapers published by them. Directly or indirectly both of them were considered to be the mentors of journalists who had joined the media sphere at that time. It is not an exaggeration to say that they were the media heroes of the time emulated by the journalists who worked in the vernacular - both Sinhala and Tamil.

Anagarika Dharmapala can be described as a leader who sowed the seed of hatred against not only

the Christian influence but also against the Tamils and Muslims. The "Sinhala Baudhdhaya" (Sinhalese Buddhist) newspaper edited by Anagarika Dharmapala states that "trading practices, moral values and customs of the Sinhalese race began to decline from the date the white man set his foot on our soil. Now the Sinhalese people are compelled to prostrate before the Muslims and the Tamils. The editor of the Sinhala Jaathiya newspaper has made an appeal to the Sinhalese to refrain from buying merchandise from the shops run by Muslims, Tamil and the foreign traders."<sup>3</sup>

The Muslim rioting erupted in 1915 can be considered an outcome of the hatred spread by Anagarika Dharmapala among Sinhalese people against Muslims. Consequently, the damage caused to Muslims was much greater than the damage caused to Sinhalese. But the sympathy of all newspapers published in Sinhala, Tamil and English was on the Sinhala people. There was hardly a single news paper that showed concern over the damage caused to Muslims.

The Sinhala Muslim rioting in 1915 marked an important cross road in the political movement of the country. Consequent to the rioting, the agitations for political reforms assumed a more organized and intensified character. The Sinhalese leaders taken into custody in connection with the rioting were raised in high esteem as national

heroes and at the next stage of the independence struggle they were propelled into prominence as national leaders.

During the period followed by the Sinhala Muslim rioting, there arose new changes in the media sphere of Sri Lanka and its path of evolution. Several magazines and newspapers published by individual editors could no longer hold on to their publications and were compelled to divest their management to a single media organizations equipped with modern facilities. This resulted in the ceasing of the proliferation of wide and varied number of individual magazines and newspapers as editor publications. A situation arose in which the rights of several individual editors were vested in one single agency which in turn assumed the responsibility of releasing several publications under one roof. Similarly, the journalists who previously worked as the owners and the editors of their own individual publications eventually became the paid journalists of the modern newspaper agencies. The editor publications did not have a significant commercial object whereas the newly born modern newspaper agencies worked on commercial objectives.

D.R.Wijewardena, the founder of the Lake House can be cited as the best example of this new trend. He purchased the publication rights of the several newspapers such as

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3. Kumari Jayawardena-*The rise of the labor movement in Ceylon* (Sanjiva books 2004) p. 170.

Dinamina, The Observer, Ceylonese, Ceylon Independent, and The Morning Leader and established the Associated Newspapers of Ceylon Limited, also known as Lake House, acquiring a near monopolistic control of the newspaper industry. Lake House published newspapers in all three languages. "The Times" restricted its publications only for English until 1947, and thereafter in 1947 it began the publication of Lankadeepa in Sinhalese language. Consequently, until 1947, Lake House retained its monopoly over the publication of Sinhala newspapers.

D.R.Wijewardena, despite being a skillful owner of a leading newspaper company and a media magnate cannot be held to be the type of media man who was conversant with the social role of the newspapers and one who respected the rights of the journalists. He invariably carried his influence on the content of the newspapers. At the initial stage, there was no editor for The Daily News. According to his biography, his friends who used to visit him in the evening had undertaken to write the newspaper editorials. Even when an editor was appointed, the editorial was written only after the editor having had a discussion with Wijewardena, it further states<sup>4</sup>.

Wijewardena belonged to a family which was very closely linked to the family circles of

D.S.Senanayake, John Kothalawala and J.R.Jayewardene who constituted the leading figures of the United National Party. He was an eminent figure in these family circles. Wijewardene's sister was the mother of J.R.Jayawardena. Ranjith, Wijewardene's son got married to the daughter of Robert Senanayake, the son of D.S.Senanayake.

Wijewardene made a decisive influence on the politics of National Congress which was formed after the rioting of 1915. Wijewardene's newspapers played a significant role in propelling the members of his family circle into prominence in the independence movement and also to ensure that the political power of the country is transferred to this family circle. Upon the sudden death of D.S.Senanayake, the first Prime Minister of Sri Lanka, Wijewardena played a crucial role in bringing Dudley Senanayake, the son of D.S.Senanayake to power making him the Prime Minister thereby depriving John Kothalawala, the deputy leader of the government, of the opportunity. Until the SLFP was formed, the leftist movement remained the major rival of the United National Party. Wijewardena's newspapers maintained a persistent and ruthless attack on the leftist's parties. When the SLFP was formed, Wijewardena's newspapers adopted a similar policy against Bandaranaike, the leader of the SLFP.

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4. H.A.G. Hulugalle-*The life and the times of D.R. Wijewardane* (The Lake House investments Ltd-1992) p. 98

Except for the UNP, this situation caused to generate a strong protest against The Lake House among the other major political parties. In the circumstance, an explicit conviction arose among the other political parties that the excessive power wielded by the Lake House in shaping the public opinion should necessarily be controlled.

Mrs. Sirima Bandaranaike, Prime Minister of the SLFP government who assumed office in 1960, stated in her throne speech that the necessary laws will be formulated to convert the Lake House and The Times newspaper companies into public companies. In September 1963, SLFP government appointed a press commission to review the ownership, alliances and the practices of the newspaper companies.

M.D. Gunasena Company, the major book publishing company at that time had ventured into the newspaper industry. It set up The Independent Newspaper Company limited and had commenced publishing newspapers in Sinhala, Tamil and English. It had also acquired the monopoly of publishing school text books. It began the publication of newspapers in July 1961. It appears that The Independent Newspaper Company limited had been set up to fill the vacuum created by the conversion of The Lake House and The Times newspaper companies into public companies as was pledged in the throne speech. The press commission made a detailed study

on the ownership of the newspaper companies, the political alliances of the ownership, false reporting and reporting that causes division in the society. The commission recommended that the ownership of these three companies be broad-based and stressed the need for Srilankanisation of the ownership of the Veerakeshari Company. Submitting a detailed list of proposals to be implemented, the commission stressed the need for abolishing the family ownership and the monopoly enjoyed by one company and the need for converting the ownership of the Associated Newspapers of Ceylon Limited into a cooperative system of management.

In November 1960, the government tabled two Acts of parliament one for converting the Lake House into a state corporation and the other for appointing an advisory committee for the press. These three newspaper companies in alliance with the United National Party launched a vehement effort to defeat the adoption of the two acts. This alliance ultimately succeeded in defeating the throne speech of the SLFP /LSSP government on the 3rd December 1964 by buying over 13 members of Parliament. This was the first occasion when a government was defeated by buying over the members of Parliament. The United National Party was able to win the general election held soon after the defeat of the throne speech. Later, the SLFP/LSSP/Communist coalition returned to power in 1970 and the Associated Newspapers of Ceylon

Limited or the Lake House was taken over by the government in July 1973.

Thereafter, the Independent Newspaper Company Limited adopted a strong anti government policy which eventually resulted in the Davasa newspaper being proscribed under the emergency regulations on 10th April 1974. The main reason for the Independent Newspaper Company limited to adopt an anti government policy was the government's decision to publish and distribute school text books free of charge thereby depriving the Gunasena Company of its monopoly in the publication of text books . The proscription of the Davasa newspaper ended only in February 1977 when the emergency regulations were lifted.

The ownership of the Lake House was not expanded after it was taken over by the government. Instead, it was managed under the direct control of the government. Even when the UNP was elected to power in 1977, President J. R. Jayewardene did not make any attempt to transfer the ownership of his uncle's newspaper company back to its previous owners. Nor did he take measures to expand its ownership as per the conditions laid down in the Act. By 1977, the ownership of The Times changed. It turned out to be a newspaper supporting the SLFP. When the UNP was returned

to power in 1977, it was taken over by the government under the business acquisition act in August 1977.

## The Great Decline

The UNP which came to power in 1977 amended the parliamentary system of government using the overwhelming 5/6th majority it commanded in the parliament. It introduced a presidential system of government conferring all the powers to an executive president who is above the law and is not held responsible to the parliament. With that the legislature lost the power it had over the executive. The legislature was reduced to a level of a mere rubber stamp of the executive<sup>5</sup>. The new system of government deprived the opposition parties of their legitimate right to come to power, weakened their activities and made it an extremely difficult for them to capture the ruling power. This system created an atmosphere enabling the Ministers to amass wealth in illegitimate ways in order to keep them happy and ensure their alliance to the government.

The Parliamentary Privileges Act was amended empowering the parliament to prosecute journalists and punish them after a trial. This was done with the intention of intimidating journalists. The two major newspaper agencies remained

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5. Tara Coomaswamy-parliamentary representation in Sri Lanka (Unpublished Ph.D. Thesis, university of Sussex 1988) p. 190

under the control of the government. The Independent Newspaper Company Limited which published the Davasa and the Sun Newspapers was the only newspaper agency that remained outside government control. That too, acted as a trumpet of the government. The only radio channel available also was under the control of the government. Only the newspapers published by the opposition parties had the freedom of criticizing the government.

However, the influence they could make in the public opinion was scant as the sale of newspapers published by opposition political parties was limited. When the need arose for silencing the opposition newspapers, the government adopted a system of proscribing them for a certain period of time.

In order to weaken the opposition, Mrs. Bandaranayke, the leader of the main opposition party was deprived of her civic rights. The trade union movement was suppressed and reduced their existence to mere name boards. Hooligans and gangsters were used to suppress the student movements. The official term of the government which commanded a 5/6th majority in the parliament was extended for a further term through a corrupt referendum. None of the mainstream newspapers objected to the policy of the government in extending its term through a corrupt referendum. They presumably endorsed it as a legitimate and democratic action initiated with the approval of the

people. This scenario caused to weaken the opposition parties and prompting violent movements which invariably led to create an unending blood bath in the Sinhala South and the Tamil North.

The journalists who were sympathetic or appeared to be sympathetic towards the violent movements were assassinated by the government forces or by para military units. Similarly, the journalists who supported or appeared to be supporting the government were assassinated by the JVP or the LTTE. Disappearances and abductions became the order of the day. The Parliamentarians and Provincial Councilors were allowed to keep private armed forces consequent to death threats received on their lives. In most cases, usually it was the noted local criminals who were often recruited for such forces. As they were made official security personnel of the politicians they got an opportunity to rampage in criminal acts freely and with impunity. This resulted in a rapid increase in the rate of criminal offences all over the country.

Similarly, there was a rapid development in the black economy as the members of the governing party were left with an unprecedented freedom and opportunity to amass wealth by illegal means. In the circumstance, a fertile ground was created for politicians and the noted criminals to plunder the public resources and become extremely rich and affluent.

## New trends

During the UNP rule Upali Wijewardene, a close relation of President JR Jayewardene and an eminent businessman, initiated the Upali Newspapers Limited in 1981. It published newspapers in both Sinhala and English languages. The Times Group was closed down by the government in 1985 and the government transferred the publication rights of the newspapers published by the Times Group to Ranjith Wijewardene, the son of D.R.Wijewardene. He set up the Wijaya newspapers Limited in 1987 publishing Lankadeepa as a weekend Sunday newspaper in Sinhala. In 1991 the Lankadeepa was made a daily publication. Later, Sunday Times and Daily Mirror were added to the range of publications making the Wijaya Newspapers Limited a powerful newspaper company.

Though a coalition of opposition parties was able to oust the UNP regime and form a new government in 1994, except for some external and superficial changes, it was not able to bring any far reaching change in the corrupt system that was firmly rooted over a long period of time. Both, President Chandrika Kumaratunga who came to power in 1994 and her successor President Mahinda Rajapaksa who assumed office in 2005, despite their pledge to make a fundamental change in the Executive Presidential System, refrained from effecting far reaching positive changes in the political system except for adopting a policy

of defending the prevailing corrupt system which had enabled them to wield an extraordinary power. They did not take remedial measures to control the black economy, other than strengthening it further. The close alliance between the politicians and the criminals were let to be further strengthened.

Despite the negative aspects outlined above, the change of the government in 1994 gave more space for the media to act freely. The optional newspapers played a decisive role in the defeat of the UNP government. Consequently, the United Front Government was compelled to project an image of a pro-media government.

After the change of government in 1994, private radio channels were permitted to broadcast news. It was in 1979 that the television media was introduced to Sri Lanka. Yet it remained a monopoly of the government. Later, after the change of the government in '94, the circumstances changed and the private channels were allowed to operate. However, the issue of permits for television networks was made on an ad hoc basis and corrupt manner. Only the cronies of the government could obtain licenses which were issued for a nominal sum. The beneficiaries of permits often used to sell them to other businessmen for a massive sum of money. This corrupt practice was begun during the latter part of the reign of Premadasa and it persists even up to now. The

majority of the businessmen who purchases these permits at an exorbitant price to run private television networks presumably fall into the category of businessmen who thrives on black money. Most of the private newspaper agencies too, fall into this category. This situation has invariably resulted in aggravating the state of distortion that prevails in the media sphere in Sri Lanka. Lack of an adequate level of professionalism and sense of social responsibility in the media sphere can be considered the main cause of this distortion.

Most of the printed and electronic media organizations are maintained not with the direct earnings of such organizations, but with the money pumped from other businesses of their owners. Often, the media institutions are being run at a loss and with funds injected from other business ventures. It is not only the special recognition they enjoy but also the power and the opportunity that it renders in making money from other indirect sources that prompts the media owners to stay in the media industry. The Journalist who serves these organizations are aware that their remuneration package does not depend on the income generated from the media business but the earnings of the other businesses run by their owners. The salaries paid to the staff remains relatively at a higher level. This state of affairs has resulted in the Journalist developing a special allegiance towards their employers.

It is natural for them to assume that they are paid not from the revenue they have earned for the company but from the funds siphoned from the other sources of income and as such they should work in obedience to the owner and also patiently endure even the unlawful practices that their employers may engaged in.

The media owners of this category cannot be expected to have a proper understanding of the subject of media. They don't have a proper knowledge of the subject or feeling of the social responsibility rested on media. They lack aesthetic sense and it remains at a very low level. They tend to manage the media business the way they manage the other business ventures. Apparently, for them, there is no difference in the management approach between the management of a media house and any other business. The owners often fail to understand the difference between an editor and a manager of any other business venture. All of them are treated in a similar manner. This situation undoubtedly, has caused to make not only the Journalist deprived of the professional pride, but also to diminish the quality of the content of the media.<sup>6</sup>

This situation prevailing in the media ownership has created a space for any government in power to influence them. The governments know that the owners of the media organizations are engaged in the

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6. Victor Ivan - Innocence of the Pen Questioned (Ravaya Publishers -2010) p. 320

media industry not because they can earn profit from it; but because the media owners value the opportunity it offers them to have various back door dealings with the government. Thus, helping the media entrepreneurs to realize their aspirations, the governments in power often tend to fulfill the government's agenda with the support of the media owners. This situation has not only created an ambiance where the public is deprived of a reasonable picture of what is happening in the country but also have become a powerful force that spreads superstitious beliefs among the people. Today, the media agencies do not compete with each other for dissemination of good news. The competition exists for offering the public with more and more exciting stories based on superstitious beliefs. Presently, a good number of space of the Sinhala newspapers and the air time of the electronic media are assigned for such bizarre episodes. Thus, the Sri Lankan media has become an institutional system that masks the political reality and drives the people of the country into an abyss of darkness plagued with superstition.

Sri Lankan media since of its historical beginnings obviously suffered from the paucity of professionalism and conceptual knowledge. Yet, it had the capacity to absorb quickly the technical advancements in the global sphere. However, it always lacked the capacity to absorb the conceptual knowledge that is fast changing in the global scale. Consequently, the Sri

Lankan media despite being modern in terms of technical advancement have always lagged behind the rapid changes in the conceptual advancements in the media sphere. It is therefore, obvious that the Sri Lankan media lacks the capacity to make a positive contribution and act as a redeemer in resolving the multiple crises the country has faced. It had always maintained a back seat position adopting a negative approach and thereby aggravating the crisis

The threats that the Sri Lankan media faced from within is much greater than those posed by the external (state ) sources. However, this must not be construed that the media is free from any threat from the state. There were always different types of threats and suppressions from the government. In fact, with the change of the constitution in 1977, the situation became worse. As already explained in this article elsewhere, even before 1977, the development of monopolistic tendencies in several newspaper institutions and their close alliance with the United National Party, resulted in creating a conflict between those newspaper agencies and the non UNP governments. This conflict ultimately came to an end only after the Lake House; the major newspaper agency was taken over by the government.

Even after the UNP was restored to power, they too, refrained from reversing the situation. After 1977, it became a normal thing and a peculiar

feature of the political culture of the country to suppress the media agencies and journalists whenever, they posed a serious threat to the government in collaboration with the opposition. The ruthless attack on Sirasa and the assassination of Lasantha Wickrematunga can be cited as the most recent examples of this tendency. As already pointed out elsewhere in this article, there is a peculiar trait, a kind of idiosyncrasy or distortion in the behavior of the Sri Lankan media just as much as there is a similar phenomenon in the Sri Lankan state as well. This distortion can be seen even in the conflicts that arise between the government and the media. Irrespective of this scenario, I must stress that the real threat to the media comes not from outside but from within itself. The internal disorganization and the extent of corruption in the media organizations themselves have invariably made them vulnerable to direct or indirect control of the government even without having the need for resorting to violent or suppressive measures on the part of the government.

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# The Problem of Governance in Sri Lanka: Do they really matter?

## An examination of Governance Indices

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### Why do we care about governance?

What is governance? Naturally there is a tendency to equate governance with good governance as the latter concept became a catchword in the 80s through 90s due to increasing policy significance conferred on this concept by the international donor community and to a certain extent academic research around the world, which have brought up various issues of corruption as a governance problem in many countries. However, governance and good governance, although related, do not mean the same. Governance is about the polity, its sets of rule and the procedures followed in the process of effecting control by rulers over the ruled. Governance can occur in various forms and does not necessarily mean something benevolent or beneficial all the time. The dictatorship, for example, is one type of governance while at the other end of the

spectrum one could speak about liberal democracy.

According Kaufmann et al at the World Bank governance is "... the traditions and institutions by which authority in a country is exercised for the common good. This includes (i) the process by which those in authority are selected, monitored and replaced, (ii) the capacity of the government to effectively manage its resources and implement sound policies, and (iii) the respect of citizens and the state for the institutions that govern economic and social interactions among them".<sup>1</sup>

The United Nations in which Sri Lanka is a member state, defines governance as

"The exercise of political, economic and administrative authority to manage a nation's affairs. It is the complex mechanisms, processes and institutions through which citizens and groups articulate their interests, exercise their legal

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1. World Bank; <http://info.worldbank.org/governance/wgi/pdf/govmatters1.pdf> accessed on the 18th March 2014.

rights and obligations, and mediate their differences"<sup>2</sup>.

A glance at the two definitions above is sufficient to understand the positive connotations attached commonly to the concept of governance. Both definitions contain key words; common good, rights and interest, legitimacy, control, management of human and physical resources, and citizens.

When does governance become 'good governance'? The UNDP adds that "Good governance - addresses the allocation and management of resources to respond to collective problems; it is characterized by participation, transparency, accountability, rule of law, effectiveness and equity"<sup>3</sup>. It is evident that optimism increases when governance makes an upward transition to good governance. Arguably, positive connotations of both these concepts is not just the interest displayed by the centers of power; it rather reflects the growing awareness that the opposite of good governance, which can be a complex conglomeration of conditions including but not limited to anarchy, disorder, authoritarianism, suppression, war and violence, corruption and so on, has serious

impact on human wellbeing. Research around the world has found weak governance to be related to war and violence, starvations and famines, underdevelopment. Development literature subscribes to the view that democratic rights are an essential component of development rather than a means to it (Collier and Hoeffler. 2005; Herath 2008; Moor, 2001; Sen, 1983; Sen 2000)<sup>4</sup>. Therefore, there is reason why, ordinary citizens, academics, religious leaders, and civil society should have an utmost concern on issues of governance.

## **Is governance an alien concept to Sri Lanka?**

It is undeniable that governance as an academic research area and also policy concept in its current format has its origins in the West. However, the essential meaning behind governance is not alien to the global south and its culture. For example, historiography as well as literature on religion confirms that there has always been a popular concern towards justice and righteousness which encompassed what is subsumed under the rubric of governance today. For example, Dharmadasa notes that Buddhist

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2. UNDP. Governance for Sustainable Human Development: policy document. <http://mirror.undp.org/magnet/policy/glossary.htm> accessed on the 18th March 2014.

3. Ibid.

4. Collier, Paul and Anke Hoeffler. 2005. Democracy and Resource Rents. GPRG-WPS-016. Global Poverty Research Group: Website: <http://www.gprg.org/>; Herath, Dhammika. 2008. 'Development Discourse of the Globalists and Dependency Theorists': Do the Globalization Theorists Rephrase and Rework the Central Concepts of the Dependency School? *Third World Quarterly*: 29(4): 817-32; Sen, Amartya. 1983. 'Development: Which Way Now?'. *The Economic Journal*, 93: 745-62; Sen, Amartya. 2000. *Development as Freedom*. Anchor Books. New York.

literature as well as texts in Sri Lanka has shown an interest on the issue of corruption and how it has been tackled in the ancient society<sup>5</sup>. Hence, time and again, governance has proved to be important for human wellbeing.

## Governance Indices

How do we get a sense of governance? It is possible to gather limited picture about governance through qualitative studies carried out by academics and policy research institutes. Further, the department of Auditor General compiles annual reports which contain important information about management of public finance. Nevertheless, it is important to understand how Sri Lanka, as a country, performs broadly in relation to many dimensions of governance and compares itself with other countries in the world. Unfortunately, we do not find governance indices with a global reach produced at present in Sri Lanka. Therefore, global governance indices fill an important vacuum left by the absence of locally produced indices. It is important to remember that although these are called global indices, there can be substantive local contribution to some of the 'global' indices.

In this examination of governance

indices, we make a careful selection among the available indices based on mostly, our subjective understanding of which of these indices yields most relevant information to the local context. Also important for our selection are whether Sri Lanka is included in assessments, whether other south Asian countries included, reliance of the indicator to current political and policy discourses, soundness of the methodology followed, depth of the data sources, reputation of the compilers and accessibility. This does not however mean that we provide an exhaustive exploration into governance indices but only a selected set within the limits of feasibility.

The governance indices may also need some cautions in their use. For example, quantitative indices may appear to give a false sense of precision, although in fact, they must be treated as pointing towards broad trends and as rough estimates describing approximate conditions. Nevertheless, overtime, such indices have shown that irrespective of these complexities, governance indicators are able to reflect governance situations in different countries commensurate popular perceptions, experiences as well as academic studies. The indices use triangulation of data in order to maximize accuracy and minimize error<sup>6</sup>.

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5. Dharmadasa, K.N.O. 2004. Ancient and Pre-colonial Sri Lanka: Attitudes to Bribery, Corruption and Other Social Evils. Ethnic Studies Report. XXII: No 1: 1-18

6. Co-relation of data from two or more other indexes or components of indexes and between different country data.

## Human Development Index (HDI)

Sri Lanka is a member state of the United Nations and the country has a stake and a certain element of ownership in the assessments made by the UN. The Human Development Index is produced by the United Nations Development Programme (UNDP). Although HDI is strictly not a governance index, many of its components have either direct or indirect relationship with governance and has a direct bearing of kind of lives lived by people within a country. According to the UNDP, 'human development' is about *"creating an environment in which people can develop their full potential and lead productive, creative lives in accord with their needs and interests"*.<sup>7</sup> The UN's Human Development Report (HDR) tries to capture critical aspects of human development, ranging from political freedoms and empowerment to sustainability and human security. In the year 2013, Sri Lanka's HDI rank among 186 countries headed by Norway at top and trailed by Niger at the bottom, is 92. Sri Lanka's HDI ranking indicates high human development levels. Sri Lanka's neighbor India is placed at 136.

However, there are areas where Sri Lanka needs quite substantial improvement. For example, women's representation in parliament is alarmingly low with merely 6% of the seats occupied currently by

women. Sri Lanka's expenditure on education is one of the lowest in the world. In fact, the country with lowest human development, Niger spends 3.8% of the GDP while Sri Lanka spends just 2.1%. Among the countries with 'very high' and 'high' human development, the great majority of over 70% of countries spend over 4% while many countries spend over 6%. It is disturbing to note that among all the countries ranked in the HDI, there are only 22 countries which spend less than 3% on education including Sri Lanka. From another angle, Sri Lanka finds itself in a group of 8 countries which report the world's lowest expenditure on education as a percentage of GDP. More or less the same is true of spending on health. Between 2005-2010, average expenditure on health has been 1.3% of GDP.

From a governance perspective, the problematic nature of expenditure on health and education becomes apparent if one compares the figures with military expenditures which stood at 5% and 3% in 2000 and 2010 respectively, although there seems to be a moderate decline at war's end. Most of the countries among very high human development keeps military expenditure between 1-2%. Sri Lanka is an exception in the developing world for very high achievements in health and education standards mainly due to pre and post-independent state investments but the current low allocation levels risk stagnation or decline in standards.

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7. Website of UNDP accessed on 8 March 2011: <http://hdr.undp.org/en/humandev/>

## Corruption Perception Index (CPI)

In everyday discussions, corruption is defined in many ways; ordinarily a range of actions is described by the overarching concept of corruption such as petty and grand bribes, embezzlement of public funds, diversion of public funds or property for private purposes, nepotism, use of public resources to benefit relatives, friends, political supporters etc. This complexity and variety of behavior that comes under the rubric of corruption defining corruption becomes notoriously difficult. One of the most common ways to define corruption is as the abuse of entrusted power for private gain and TI also uses the same definition.<sup>8</sup> This definition involves some sort of simplification and may conceal some cultural nuances. For example, in many societies corruption may not be just about private gain but about group interest such as particular fraction, political party, tribe, an ethnic group or members of a kin group (Phelp, 2012). Nonetheless, compilation of corruption information with the possibility of cross-country comparability is an enormously challenging task and therefore, some sort of simplification becomes practical necessity.

The Corruption Perception Index (CPI) is produced annually by Transparency International (TI), a

global anti-corruption organization. According to TI, it aims for a 'world in which government, business, civil society and the daily lives of people are free of corruption'. CPI is the only global index of its kind devoted to measurement of corruption. It is important to note that CPI ranks countries according to the level corruption that is believed to prevail rather than actual occurrences of corruption. Corruption is an extremely secretive social phenomenon as corrupt individuals leave as little evidence as possible. Therefore, scientifically, measurement of corruption in the academic and policy field, takes places almost exclusively at the level of perceptions except in small qualitative studies. Overtime, perceptions have proved to be a reliable indicator of corruption indicating broad trends which are quite compatible with what people generally experience.

Moreover, 'non-perception' data about corruption is not available in many countries including Sri Lanka. Even when such data is available, they cannot effectively be indicators of the prevalence of corruption as other factors such as the freedom of the press or the efficiency of the judicial system affect the availability of such data.

According to TI, "The Corruption Perceptions Index (CPI) ranks countries and territories based on

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8. See Transparency International website at: [http://www.transparency.org/news\\_room/faq/corruption\\_faq](http://www.transparency.org/news_room/faq/corruption_faq)

how corrupt their public sector is perceived to be. It is a composite index – a combination of polls – drawing on corruption-related data collected by a variety of reputable institutions. The CPI reflects the views of observers from around the world, including experts living and working in the countries and territories evaluated<sup>9</sup>.

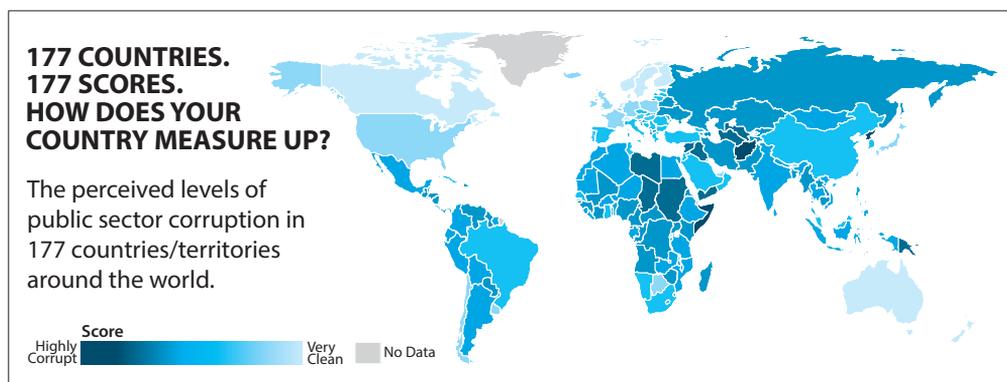
## Methodology of CPI

CPI 2013 includes 177 countries and territories. For country to be included in CPI, there has to be at least three data sources. CPI 2013 is constructed with data collected in the preceding 24 months by business entities and governance related organizations. CPI is a scale running from 0-100 in which 0 indicates highest levels of corruption while 100 indicates lowest levels or absence of corruption based on perceptions. CPI rank tells about the relative position

of a country or territory among the countries ranked. Although the rank itself is meaningful, the rank can also change when the number of countries ranked change year to year and hence the country score gives a better indication of perceived levels of corruption. CPI measures corruption only in the public sector but there can be corruption in the private sector, informal and non-profit sectors as well. Further, CPI gives no indication about public reactions and attitudes towards corruption and how endemic it is and so countries should not be judged solely based on the index<sup>10</sup>.

CPI 2013 ranks Sri Lanka at 91st place with a score of 37 indicating perceived high level of corruption. Respondents have believed in a slight increase in corruption compared to 2012 when the score was 40. CPI 2013 used data from 7 data sources. According to CPI 2013, there are 3 countries with a score of 37; Sri Lanka, Malawi and Morocco.

Figure 1: Corruption Perception Index



9. Accessed on the 19th March 2014. [http://www.transparency.org/cpi2013/in\\_detail](http://www.transparency.org/cpi2013/in_detail)

10. Read more on the methodology and other indexes in TI at [http://www.transparency.org/cpi2013/in\\_detail#myAnchor1](http://www.transparency.org/cpi2013/in_detail#myAnchor1) accessed on the 19th March 2014.

### Does the index makes sense?

Between 2010 and 2011, Transparency International conducted a research study on public views regarding corruption and their governments' efforts to fight corruption in six South Asian countries – Bangladesh, India, Maldives, Nepal, Pakistan and Sri Lanka covering with more than 7500 respondents. More than 50% of the respondents believed that corruption had increased 'within the past three years'. Most of the respondents believed that police and the political parties were the most corrupt. Further, 23% of the respondents reported paying a bribe to a service provider 'within the past 12 months'. The table 1 shows the percentage of respondents who perceived each service to be corrupt. The table 1 shows, among the services, tax revenue is considered to be corrupt by substantial percentage of the respondents while customs, land services, and police are also considered corrupt by significant numbers of respondents<sup>11</sup>.

CPI findings resonate well with this present study on public perceptions in South Asian countries. In the final analysis, however, given the sensitive and secretive nature of corruption, acceptance of its prevalence is also a subjective decision based on one's direct or vicarious experiences

Table 1: **Public perceptions towards corruption in services**

Education System	17
Judiciary	19
Medical Services	6
Police	32
Registry and permit services	16
Utilities	5
Tax revenue	63
Land Services	30
Customs	33

### The Failed States Index (FSI)

The Failed States Index (FSI) is produced by the Fund for Peace, a nonprofit educational and research organization based in the United States of America. FSI captures vulnerability of state collapse and examines state stability or vulnerability to violence. What is State Failure? According to the Fund for Peace (FFP)<sup>12</sup>, 'the loss of physical control of its territory or a monopoly on the legitimate use of force' is a common indicator of state failure but there can be other signs such as 'the erosion of legitimate authority to make collective decisions, an inability to provide reasonable public services, and the inability to interact with other states as a full member of the international community'.

11. Transparency International. Daily Lives and Corruption: Public Opinion in South Asia. 2011. [http://www.transparency.org/whatwedo/pub/daily\\_lives\\_and\\_corruption\\_public\\_opinion\\_in\\_south\\_asia](http://www.transparency.org/whatwedo/pub/daily_lives_and_corruption_public_opinion_in_south_asia) accessed on the 20th March 2014.

12. Fund For Peace. <http://ffp.statesindex.org/faq#5> accessed on the 20th March 2014.

## Methodology of the FSI

FFP mentions that FSI collects data from three primary sources which includes 1) use of online data from various sources, 2) quantitative data obtained from other institutions, such as the UNHCR, WHO, UNDP, Transparency International, World Factbook, Freedom House, World Bank, and other sources and 3) separate qualitative review of each indicator for each country. FSI uses content analysis on the online data such as online articles, essays, magazine pieces, speeches, and government and non-government reports. FFP uses a content analysis software to scan the documents using Boolean phrases on indicators. The data used for the index in a particular year comes from the preceding 12 months. FSI normalize

the aggregated data and prepares a scale running from 0-10 to obtain final scores for 12 social, economic and political/military indicators for 177 countries. A score of 0 indicates a highest stability or lowest intensity of an indicator while a score of 10 would mean the highest intensity or least stability. The total scores of the combined index run from 0 to 120.

## The FSI uses the following 12 indicators<sup>13</sup>

### Social Indicators:

1. Mounting Demographic Pressures
2. Massive Movement of Refugees or Internally Displaced Persons
3. Legacy of Vengeance-Seeking Group Grievance or Group Paranoia

Figure 2: Failed States Index

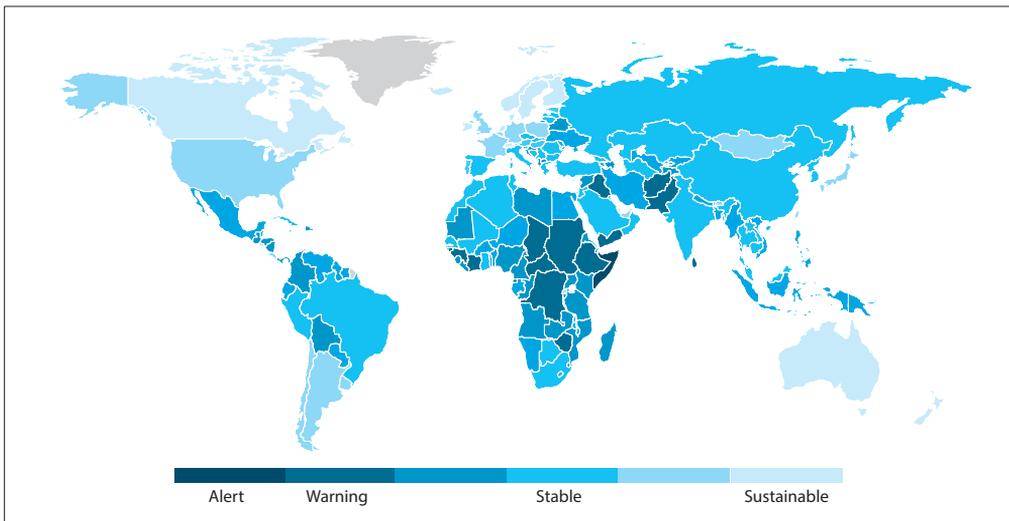


Figure 2: Source <http://ffp.statesindex.org/rankings-2013-sortable>

13. For more information on the indicators see Fund For Peace. The Indicators. <http://ffp.statesindex.org/indicators> accessed on the 20th March 2014.

4. Chronic and Sustained Human Flight

**Economic Indicators;**

- 5. Uneven Economic Development along Group Lines
- 6. Sharp and/or Severe Economic Decline

**Political and Military Indicators**

- 7. Criminalization and/or Delegitimization of the State
- 8. Progressive Deterioration of Public Services
- 9. Suspension or Arbitrary Application of the Rule of Law and Widespread Human Rights Abuse
- 10. Security Apparatus Operates as a “State Within a State”
- 11. Rise of Factionalized Elites
- 12. Intervention of Other States or External Political Actors

FSI 2013 ranks 178 countries among which Somalia with a score of 113.9 is positioned as the least stable country in the world while Finland with a score of 18 is named as the most stable country. Sri Lanka with a score of 92.9 is placed at the 28th position in the groups of countries which the FSI identifies as in ‘Alert’ zone which is quite close to those in critical situations. India with a score of 77.5 is placed at 79th position and has better records compared to Sri Lanka. Immediately above (worse) Sri Lanka are Cameroon, Myanmar and Eretria. There is minor change towards a higher (worse) direction compared to the scores of 92.2 in 2012.

As seen from the table 2, Sri Lanka has particularly poor scores on some indicators: Refugees/IDPs (8.4), Group Grievance (9.5), Human flight

Table 2: Failed States Index 2013: scores for selected countries

		Total	Demographic Pressures	Refugees and IDPs	Group Grievance	Human Flight	Uneven Development	Poverty and Economic Decline	Legitimacy of the State	Public Services	Human Rights	Security Apparatus	Factionalized Elites	External Intervention
7	Afghanistan	106.7	9.3	9.2	9.2	7.2	7.8	8.2	9.4	8.8	8.4	9.9	9.4	10.0
13	Pakistan	102.9	8.9	9.1	9.7	6.9	7.9	7.5	8.4	7.3	8.7	9.8	9.2	9.6
26	Myanmar	94.6	7.6	8.5	9.0	5.4	8.4	7.3	9.0	8.1	8.3	7.8	8.6	6.6
27	Cameroon	93.5	8.3	7.3	7.8	7.2	7.8	6.1	8.5	8.4	8.1	8.0	9.2	6.8
28	Sri Lanka	92.9	6.8	8.4	9.5	7.3	7.8	5.9	8.2	5.5	9.0	8.5	9.3	6.8

Table 2: Source <http://ffp.statesindex.org/rankings-2013-sortable>

(7.3), Uneven Development (7.8), legitimization of State (8.2), human rights (9.0) Security Apparatus (8.5) and Factionalized Elites (9.3). Sri Lanka's position has seen moderate improvement if one examines the overall condition from 2005 onwards although there have been ups and downs -- 25th in 2007, 20th in 2008 and 22nd in 2009 respectively.

A careful look at the scores above shows that almost all the grievances where Sri Lanka scores poorly related to the ethnic conflict and violence or its legacies in the aftermath of the war. One could argue that this could be 'normal' in a situation of war but the fact of the matter that these indicators show only marginal improvement four years after the end of the war. It is possible that the situation with regard to some indicators may have improved by the time this article is written as the scores for 2013 FSI comes from 2012. Therefore, optimistically, one could hope that scores for refugee/IDPs, human flight, human rights, security etc may have improved although problems such as group grievances, uneven development, and factionalized elites needs deep and radical policy shifts which are sometimes politically unpopular to make. Deep political divisions as well as the presence of extremist political and religious groups may complicate the situation further by making it harder for a democratically elected government to take important decisions as governments depend on the political will of the people for their survival. Hence,

any mobilization of people on emotive grounds such as ethnicity and religion, as it witnessed in 2012 onwards, can take some optimism away unless actions are taken to curb increasing radicalization and extremism.

Improving the current situation may require government to reconsider its development priorities, approach to human rights protection, political solution to the ethnic conflict, military expenditures and the role of the military in civilian affairs. It is noteworthy that there are somewhat favorable conditions with regard to poverty and economic decline and public services.

FSI and CPI as well as HDI discussed before hand, although there are some minor contradictions, point to same directions

## **Worldwide Governance Indicators (WGI)**

The World Bank annually produces the Worldwide Governance Indicators (WGI), for 215 economies over the period 1996–2012, for six dimensions of governance and can be considered as the most extensive and systematic source of information about quality of governance in the world. It can be used for cross country comparisons and to fathom broad trends. However, WGI does not make wide claims to be able to suggest reforms for individual countries, which requires specific country studies.

The WGI examines the following categories of governance:

1. **Voice and accountability** - perceptions of citizens' participation in selecting government, freedom of expression, freedom of association and a free media.
2. **Political stability and absence of violence** - perceptions of the likelihood for destabilization or overthrow of government by unconstitutional or violent means.
3. **Government effectiveness** - perceptions of the quality of public services, the civil service and its independence from political pressures, the quality of policy formulation and implementation.
4. **Regulatory quality** - perceptions of capacity of the government to formulate and implement sound policies and regulations that permit and promote private sector development.
5. **Rule of law** - perceptions of the quality of contract enforcement, property rights, the police, the courts and the likelihood of crime and violence.
6. **Control of corruption** - perceptions of petty and grand forms of corruption and "capture" of the state by elites and private interests.<sup>14</sup>

## Methodology of WGI<sup>15</sup>:

The WGI draws data from 31 individual data sources produced by a variety of survey institutes, think tanks, non-governmental organizations, international organizations, and private sector firms. The WGI does not rank countries although its data and findings enable comparison among any select set of countries as well as comparison over time<sup>16</sup>. The six aggregate indicators are reported in two ways: (1) in their standard normal units, ranging from approximately -2.5 to 2.5, and (2) in percentile rank terms from 0 to 100, with higher values corresponding to better outcomes. WGI maintains that since it is difficult to measure changes in governance year to year, WGI is better be used to understand long term trends.

Figure 3 displays Sri Lanka's percentile ranking for each governance indicator, which signifies the percentage of countries worldwide that falls below Sri Lanka on those governance indicators. Higher values denote a better governance situation. For instance, Sri Lanka's rank for 'Voice and accountability' for 2009 is 30, which means an estimated 30 per cent of the countries rate worse and 70 per cent better than

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14. Quoted directly from the website of the Worldwide Governance Indicators accessed on 3 January 2011: <http://info.worldbank.org/governance/wgi/resources.htm>

15. See the following for a detailed description of the methodology: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1682130](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1682130)

16. World Bank. WWGI. <http://info.worldbank.org/governance/wgi/index.aspx#home> accessed 20th March

Figure 3: Worldwide Governance Indicators

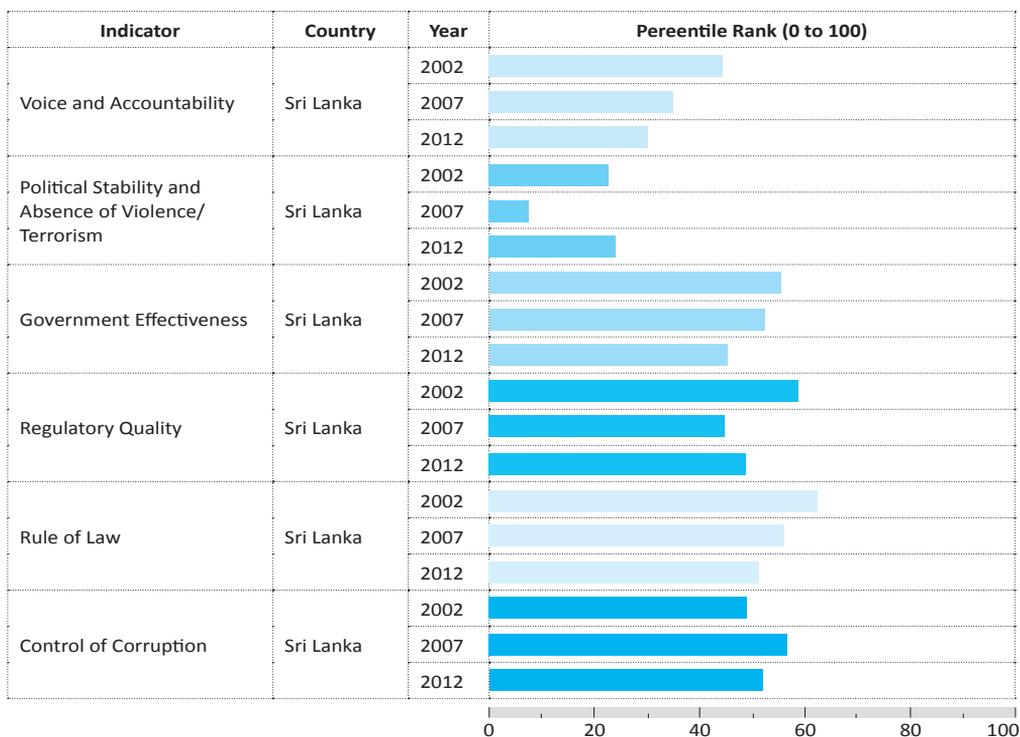


Figure 3: Source WGI: <http://info.worldbank.org/governance/wgi/index.aspx#reports>

Sri Lanka.<sup>17</sup> However, in the year 2002, the score for the same variable was 44 while in the year 2007 it was 35 demonstrating a gradual erosion in ‘voice and accountability’. Important to notice is that in the years 2009 and 2010 the respective ranks were 32 and 30 when the war was in its full swing showing that the end of the war had not yet led to positive increase in this respect.

In terms of political stability and absence of violence/terrorism Sri Lanka’s rank in years 2002, 2007 and 2012 were 22, 8 and 23. The poor

rank of 8 in 2007 may be related to the high intensity violence of the period and there is a marginal improvement towards 2012. The results are closely redolent of the picture painted by the Failed States Index but it is possible that by the time this article is published, the scores may have acquired a positive spin due to the end of war and the defeat of the LTTE and the tools of terror it used. Thus, one would hope that eradication of terrorism would reflect an improvement in stability and absence of violence/terrorism.

17. The exact percentiles can be viewed at the following table: <http://info.worldbank.org/governance/wgi/index.aspx#reports> The percentiles are given at the 90% confidence interval.

The ruling UPFA government has been able to secure two thirds control in the parliament and has a strong executive president in power. Sri Lanka's rank for 'Government Effectiveness' for years 2002, 2007 and 2012 respectively are 55, 52 and 46. It is a common misunderstanding that strong governments or in other words, 'benevolent' dictators correlate with higher economic development and better fiscal discipline. Nobel Lauriat Amarta sen, prominent democracy theorist Arend Liphart<sup>18</sup> and many other distinguished scholars have refuted this claim with empirical evidence to which Sri Lanka should lend further credence with the above scores.

There has also been a gradual lowering of Sri Lanka's percentile rank in the regulatory quality as well. While the rank in 2002 was 60, it went down to 45 in 2007 and recovered marginally to 48 in 2012. What does a lowering of the regulatory quality implies and more so what sort of impact it may have on foreign and local investments. Scores reflect the current perception that the government capacity to formulate and implement sound policies and regulations which support private sector investment are weak and this may seriously impact on the investment portfolio.

Similar gradual and consistent fall in the rule of law indicators is

reported. Therefore, questions are raised about the quality of contract enforcement, property rights, the police, the courts and the likelihood of crime and violence. The percentile ranks for the years 2002, 2007 and 2012 are 61, 57 and 52 respectively showing a significant slump. What is covered by the indicators are about peoples fundamental rights—reliability of the economic model, being able to live safe, being able to seek redress if rights are violated and so on. Hence one has to realize that declining rank may correlate with a reduction in the quality of life.

The control of corruption also presents a mixed picture. According to the perceptions recorded, petty and grand corruption and state capture have varied over the years with a rank of 49 in 2002 and then improving to 57 in 2007 only to fall again to 52 in 2012. When large numbers of people believe that corruption is widespread, they think it as the rule and the non-corruption behavior as the exception<sup>19</sup>. This leads to a downward spiral which attracts more and more people to resort to bribery and corruption.

It is noteworthy that Sri Lanka's percentile ranks in 2012 in all the indicators have fallen significantly compared to the ranks in 2002 except political stability and absence of

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18. Lijphart, Arend. 1977. *Democracy in Plural Societies: A Comparative Exploration*. New Haven: Yale University Press; Lijphart, Arend. 1999. *Patterns of Democracy*. New Haven. Yale University Press  
Sen, Amartya. 2000. *Development as Freedom*. Anchor Books, New York.

19. J. P. Olivier de Sardan (1999). *A moral economy of corruption in Africa?*. *The Journal of Modern African Studies*, 37, pp 2552

violence/terrorism which recorded marginal improvements. In comparison to 2007, the situation is largely similar with two exceptions; political stability/violence/terrorism indicates a significant improvement from a low rank of 8 to 23 from 2007 to 2012 while the regulatory quality shows a marginal improvement compared to 2007. On the whole however, the fact that Sri Lanka does better than the 50th percentile only in two of the six indicators is evidence of a questionable governance scenario.

## Countries at the Crossroads Survey (CCS) - Sri Lanka below standard

Countries at the Crossroads Survey (CCS) investigates government performance in four spheres as delineated below.<sup>20</sup> 2012 assesses 35 countries. CCS is produced annually since 2004 by Freedom House, a US-based civil society organization. CCS 2013 notes that despite the democracy movements in the Middle-East and North Africa, overall, democratic situation in the world has suffered setbacks in many aspects and point to alarming conditions in some countries.

The CCS provides both detailed narrative reports and quantitative

data to compare over time. The country narratives, authored by prominent scholars and analysts, contribute to further explain and reinforce the quantitative data.<sup>21</sup> CCS uses expert opinion and collects data from a range of other sources.<sup>22</sup> CCS rates the countries' performance on each methodology question on a scale of 0-7, with 0 representing the weakest and 7 the strongest performance. According to Freedom House, the scoring scale is as follows:<sup>23</sup>

- **0–2:** very few adequate protections, legal standards or rights in the rated category. Laws are insufficient, while legal protections and enforcement are weak.
- **3–4:** 'some' adequate protections, legal standards or rights in the rated category. Legal protections are weak and enforcement of the law is inconsistent or corrupt.
- **5:** many adequate protections, legal standards or rights in the rated category. Rights and political standards are protected, but enforcement is affected by uncertainty and abuses. The basic standard of democratic performance, however, prevails.
- **6–7:** all or nearly all adequate protections, legal standards or rights in the rated category.

20. Freedom House. Countries at Crossroads Survey. <http://www.freedomhouse.org/report/countries-crossroads/countries-crossroads-2010> accessed on the 27th March 2014.

21. For a detailed description of the methodology, see <http://freedomhouse.org/template.cfm?page=140&edition=9&ccrpage=45>

22. For sources relating to Sri Lanka please see Freedom House. CCS. <http://www.freedomhouse.org/report/countries-crossroads/2010/sri-lanka> accessed on the 27th March 2014.

23. Ibid

Legal protections are strong and enforced fairly. Access to legal redress is good and the political system functions smoothly.

## Constituent elements of CCS and Sri Lankan scores

### Accountability and Public Voice covers

1) Free and fair electoral laws and elections, 2) Effective and accountable government, 3) Civic engagement and civic monitoring, and 4) Media independence and freedom of expression. CCS 2012 gives a score of 3.08 for accountability and public voice.

### Civil Liberties covers

1) Protection from state terror,

unjustified imprisonment, and torture, 2) gender equality, 3) Rights of ethnic, religious, and other distinct groups 4) Freedom of conscience and belief and 5) Freedom of association and assembly. According to CCS 2012 Sri Lanka's score for civil liberties is 3.58.

### Rule of Law covers

1) Independent judiciary 2) Primacy of rule of law in civil and criminal matters 3) Accountability of security forces and military to civilian authorities and 4) Protection of property rights. For 2012, rule of law has a score of 2.48.

### Anticorruption and Transparency covers

1) Environment to protect against corruption 2) Anticorruption

Figure 4: CCS

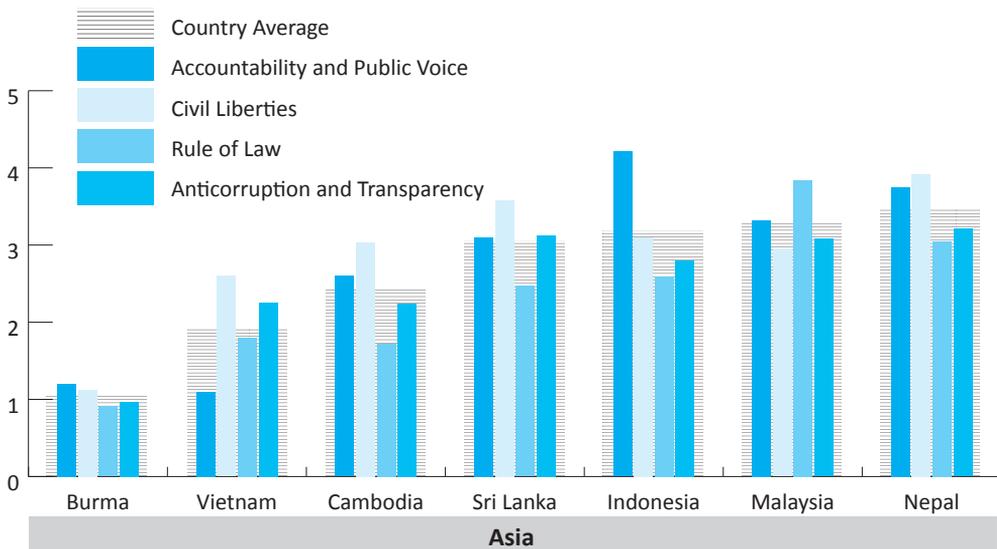


Figure 4: Source: <http://www.freedomhouse.org/report/countries-crossroads/countries-crossroads-2010>

Framework and Enforcement, 3) Citizen Protections against Corruption, and 4) Governmental transparency. For anticorruption and transparency, Sri Lanka's score for 2012 is 3.12

The rule of law score indicates that there is very weak protection in terms of rule of law and that laws are weak or inadequate. This subcategory represents Sri Lanka's lowest scores in the CCS. The scores for the rest of the indicators are below 4 and show that although there is some level of protection, enforcement is still weak and inadequate and can suffer from inconsistencies or corruption.

Figure 4 shows scores for Sri Lanka and the Asian countries assessed. The figure also shows that no country in this category reaches a score of 5 in any of the four dimensions of governance. Sri Lanka Indonesia, Malaysia and Nepal have more or less similar scores, while Burma, Cambodia and Vietnam have slight lower scores although differences are marginal. According to CCS, scores below 5 indicate absence of basic standards of democracy. Thus, Sri Lanka falls below the basic standard of democratic performance and is a country in which protections are portrayed to be inadequate and the enforcement of law is considered unreliable and liable to abuse.

The CCS country (narrative)

report of 2012<sup>24</sup> highlights certain events which it treats as recent setbacks including the 18th amendment to the constitution, the impact on the judiciary and challenges to the overall democratic quality in Sri Lanka. The reports states that passage of the 18th Amendment accelerated the concentration of power for example by augmenting executive control over the election process and eliminating the independent commissions which were key instruments to prevent the politicization of vital state functions. The narrative report also alleges about increasing politicization of the judicial system. The report further refers to the jailing of former army general Sarath Fonseka shortly after his elections loss in 2010 presidential election as an example.<sup>25</sup>

According to the report the passage of the 18th constitutional amendment in 2010 resulted in the executive securing control over the electoral process and the judiciary, and prosecutors. It further alleges that the "the courts have shown less ability or willingness to pursue allegations of wrongdoing by government officials". The constitutional amendment which removed the term limits to the presidency is mentioned as a strong set back on democracy. CCS findings are redolent with some of the recent academic writings on the conditions

24. Freedom House. 2014. Sri Lanka: Introduction. <http://www.freedomhouse.org/report/countries-crossroads/2012/sri-lanka#.UzPeZPmSySo> accessed 27th March 2014.

25. <http://www.freedomhouse.org/sites/default/files/Countries%20at%20the%20Crossroads%202012%20-%20Booklet.pdf>

of democracy in Sri Lanka<sup>26</sup>.

## Conclusions

The governance indices examined in this paper paint not so much a rosy picture about dimensions of governance in Sri Lanka. The indices presented have covered a fairly broad range. These indices use different tools, methods and theoretical foundations and hence they are bound to have significant variations in how they approach different aspects of governance. This may also explain some of the differences which can be observed from one index to the other. Nevertheless, it is remarkable to notice that, the overall trends depicted by the indices about various governance issues in Sri Lanka and elsewhere, show marked consistencies. While Sri Lanka has been able to record high performance in human development indicators, other aspects of governance indicate serious setbacks. There is however worrying signs that government investment on human development is dwindling.

Some dimensions of governance, as the indices have shown, point to upward and downward changes year to year but some have suffered consistent deterioration. These global governance indices are

reflective of what people generally think and experience. As mentioned, given that governance dimensions are constituent parts of what we now understand as development and human wellbeing, the messages from the indices deserve very serious attention not just from the policy makers, but also from the citizens of all walks, academics and civil society.

From an optimistic line of argument, one would hope that end of the war would contribute to improving governance in Sri Lanka although so far the indices do not reflect such development significantly. Some of the positive change might have been offset by the adoption of the 18th amendment to the constitution and its spin off effects on the dimensions of governance.

In addition to the instrumental value of the dimensions of governance, and also their intrinsic value as constitutive elements of development, there is another reason why, citizens should be more concerned about governance. Widespread, endemic and long-term corruption in its various manifestations sometimes lead to what is termed as a 'Collective Action problem'<sup>27</sup>, that is, corruption becomes so integral to the way of life, that it becomes the 'normal' and it becomes unwise and irrational for someone to be non-corrupt.

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26. Wickramasinghe, Nira. 2014. Sri Lanka in 2013 Post-war Oppressive Stability. *Asian Survey*. 54 (1): 199- 205; Kumarasingham, H. 2014. Elite patronage over party democracy – high politics in Sri Lanka following independence. *Commonwealth and Comparative Politics*. 52 (1): 166-186; Devotta, Neil. 2014. Parties, Political decay and democracation regression in Sri Lanka. *Commonwealth and Comparative Politics*. 52 (1):139-165

27. Persson, A., B. Rothstein, and J. Teorell. "Why Anticorruption Reforms Fail – Systemic corruption as a Collective Action Problem". *Governance* 6, no.3 (2013), 449-471

# Contributors

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Dr Nimal Sandaratne holds M.A. and Ph.D. degrees from the University of Wisconsin, M. Sc. degree from the University of Saskatchewan and a B.Sc. (Economics) degree from the University of London. He was conferred the Doctor of Science (Honoris Causa) degree by the University of Peradeniya in 2004.

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Ermiza Tegal is an Attorney-at-Law practicing in Sri Lanka. Her practice mainly involves litigation in the areas of public law, civil law and commercial law. She read for her Bachelors in Law degree from the University of London and for her Masters in Law from the School of South Asian Oriental Studies (SOAS) London. Her Master's degree is specialized in Law, Governance and Development. Ms. Tegal has been associated with human rights work in Sri Lanka since 2000. She has been involved in awareness campaigns and advocacy programmes on access to justice.

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J.C. Weliamuna, LL.M was the first Executive Director of the TISL. He is a senior lawyer specialized in Constitutional and Human Rights Law and appeared in hundreds of leading governance related cases and human rights cases. Presently he is the Chairman of the TI Sri Lanka and serves as a member of Transparency International global board. He is an Eisenhower Fellow and a senior Ashoka Fellow. He was awarded the Citizens Peace Award of the National Peace Council in 2013. He is a regular contributor to local and foreign media on governance, anti corruption and human rights.

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In 2011, he was invited by the German Government to be a member of the international jury to choose a universally recognized human rights logo and in September 2013, he was invited by US President Barack Obama to attend his High Level Event on Civil Society, in New York.

He is also a founder director of the Sri Lanka Chapter of Transparency International and a founding Co- Convenor of the Centre for Monitoring Election Violence (CMEV), which has monitored all the major elections in Sri Lanka since 1997. He also became an Eisenhower Fellow (2004). Currently, he is a Member of the Gratian Trust.

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## **Mr. Mirak Raheem**

Mirak Raheem is a researcher and activist, currently working as a freelance consultant. He has significant research experience with many local and foreign organisations including the Centre for Policy Alternatives, Oxfam

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Amal Jayasinghe heads AFP operations in Sri Lanka and the Maldives. He joined the agency in August 1987 after working for over five years as a reporter for Sri Lanka's main English-language newspaper, the Daily News. He has been on special reporting assignments for AFP in war-torn areas of the world, including Afghanistan and Iraq.

The 1988 coup in the Maldives, the 1993 assassination of Sri Lankan president Ranasinghe Premadasa and the May 2009 killing of Velupillai Prabhakaran were some of his world scoops. He is also acknowledged to be the first international agency reporter to announce the December 2004 Asian tsunami. His reporting on Sri Lanka's drawn out Tamil separatist conflict earned him accusations of bias by both sides of the ethnic divide and a medal and title, Chevalier, Order National du Merite (Knight of the National Order of Higher Merit), from the Government of France in 2005.

Amal has covered Sri Lanka's peace processes extensively, including the peace negotiations in Thailand, Japan and Europe between 2002 and 2006. He has also covered South Asian summits, especially during the height of nuclear tensions in the region and reported on regional issues while working in Hongkong, India, Pakistan and Dubai.

Amal is also a media trainer having worked with the BBC Trust, the Sri Lanka College of Journalism as well as the media in the Maldives. He is a past president of the Foreign Correspondents' Association of Sri Lanka and is one of its few honorary life members. He has been a member of the panel of judges at Journalism Award for Excellence organized by the Editors' Guild of Sri Lanka, since its inception in 1999.

## **Mr. B.L.H. Perera**

B.L.H.Perera, BA (Vidy) Sri Lanka, MA (Vic) Sport and Recreation Management, Australia, Post Grad Dip (Vic) Sport and Recreation Management and Design, Australia.

As a young school kid excelled in sports, managed to win a government scholarship to continue secondary education at Taxila Central College, Horana. As a senior level school athlete he maintained his sports excellence by establishing a number of National Senior and Central Schools Track and Field records and won the 'Best Athlete' award in 1966. Apart from his sport performance he successfully completed his school education to continue the sports scholarship to pursue a Bachelor of Arts (BA) degree at Vidyalankara University. At university level he excelled in Track and Field, Cricket and Football, won University of Kelaniya Colours insignia for his alma mater's tribute to his 'loyalty and performance' in sports.

In 1970 he began his teaching career at St Peter's College, Colombo 4 and in 1973 joined the University of Sri Lanka, Vidyalankara campus and served as an instructor and later became the Director in the Department of Physical Education. During his many years of active involvement in sports administration he served as the Secretary of the National Gymnastic Association and Sri Lanka Basketball Federation. He earned his Master's Degree in Sport and Recreation Management, Post Graduate Diploma from the Victoria University of Technology, Melbourne Australia. While serving in the university, he initiated a thoughtful project to introduce sport education in to Sri Lanka university curriculum. He also Served as a Senior Lecturer in Sport and Recreation Management at the Faculty of Social Sciences, University of Kelaniya and has served as the Director, National Institute of Sport Science, Ministry of Sports.

As a sport an academic, his research emphasis is focused on sport organizational development and application of management concepts in driving sport organizations. He teaches sport Management at undergraduate and post graduate level in a number of institutes in Sri Lanka and abroad. Apart from the above he serves as a facilitator and resource person for Olympic Solidarity, Lausanne training Advanced Sport Management Course Directors and currently heads the Olympic Solidarity Advanced Sport Management Programme in Sri Lanka and leads the Academic Programmes in the National Olympic Committee in Sri Lanka.

## **Dr. Asoka Silva**

Dr Asoka Silva is a Senior Lecturer in Law with over 20 years of experience in educating students at undergraduate and post-graduate levels in Sri Lanka as well as foreign universities. He is a graduate of the Faculty of Law, University of Colombo. Dr.Silva obtained his LLM degree from the University of Southampton, UK and the Dissertation he wrote during his LLM studies on human rights & emergency rule won him the prestigious “Sally Kiff” prize awarded by the Faculty of Law, University of Southampton. In 2000 Dr.Silva was awarded the Degree of Doctor of Philosophy by the University of Southampton, UK, on submission of a thesis that dealt extensively with the subjects of human rights and criminal justice administration. In addition to teaching and research work Dr.Silva has also held a number of Senior Administrative positions at the Open University of Sri Lanka. In 2007 Dr.Silva was elected to the post of Dean, Faculty of Humanities and Social Sciences and prior to that he served for over four years as the head of the Legal Studies Department of the Open University. His teaching and research interests are in the fields of legal theory, international law, human rights law and criminal justice administration.

## **Mr. Javed Yusuf**

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## **Ms. Shyamala Gomes**

A Lawyer by training, Shyamala taught law at the Faculty of Law, University of Colombo for over eight years. She was Gender Advisor to the UN Office of the Resident Coordinator in Colombo for five years. She also served as Senior Programme Officer, Women and Housing Rights at the Centre on Housing Rights and Evictions (COHRE) for many years.

She has written and published extensively in the areas of violence against women, masculinities, rights of migrant workers, land rights of women, women, peace and security and more generally on women's rights.

She currently works as Programme Advisor to FOKUS Women, a women's organization based in Colombo, that partners with nine organizations working in the North and East. Her work includes conceptualizing the projects undertaken by FOKUS women, providing strategic direction to the projects and research on women, peace and security.

She is a Fulbright Scholar and has an LLB from the University of Colombo and a Masters in Law from Georgetown University, Washington DC.

## About TISL

Transparency International Sri Lanka (TISL) is a National Chapter of Transparency International (TI), the leading global movement against corruption. TISL commenced active operations at the end of 2002 and has since built a strong institution arduously fighting corruption in Sri Lanka. It functions as a self financing, autonomous Chapter of TI with its own strategic directions and priorities.

Envisioning a nation that upholds integrity, TISLs goal is to support the collective effort to eradicate corruption in order to build a future Sri Lanka which is equitable, peaceful and just. TISL works closely with government departments in training public officials on good governance and anti-corruption tools.

TISL will work in partnership with coalitions and other likeminded organizations in all their interventions.