



**GOVERNANCE  
REPORT  
2015-2018**

---



**GOVERNANCE  
REPORT  
2015-2018**

---

**Transparency International Sri Lanka (TISL) is an independent, non-governmental, non-profit and non-partisan organisation with a vision of Sri Lanka in which government, politics, business, civil society and the everyday lives of citizens are free from corruption. As the fully accredited national chapter in Sri Lanka of the Berlin-based Transparency International (TI), TISL partners and works with TI and its chapters worldwide.**

**[www.tisrilanka.org](http://www.tisrilanka.org)**

Transparency International Sri Lanka  
5/1, Elibank Road,  
Colombo 05,  
Sri Lanka.

Phone: +94 11 4 369 781  
Fax: +94 11 2 501 707

Email: [tisl@tisrilanka.org](mailto:tisl@tisrilanka.org)  
Web: [www.tisrilanka.org](http://www.tisrilanka.org)

[facebook.com/tisrilanka](https://facebook.com/tisrilanka)  
[twitter.com/tisrilanka](https://twitter.com/tisrilanka)

ISBN: 978-955-1281-85-4

Design: Haritha Dahanayaka

Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of June 2018. Nevertheless, Transparency International Sri Lanka cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

---

# CONTENTS

---

PREFACE	01
INTRODUCTION	02
ABBREVIATIONS AND ACRONYMS	04
THE NEED FOR PROFESSIONAL MANAGEMENT IN STATE-OWNED ENTERPRISES <b>Hon. Eran Wickramaratne, M.P. and Dr. Roshan Perera</b>	05
PUBLIC CONSULTATIONS: AN ESSENTIAL PART OF CONSTITUTION MAKING AND REFORM <b>Mr. S.C.C Elankovan</b>	11
ELECTORAL REFORMS IN SRI LANKA: MIXED-MEMBER PROPORTIONAL SYSTEM <b>Mr. Janeen Fernando</b>	16
TRANSPARENCY OF ASSETS AND LIABILITIES DECLARATIONS OF PARLIAMENTARIANS: THE INDIAN EXPERIENCE <b>Mr. Venkatesh Nayak</b>	26
THE NATIONAL AUDIT ACT – A CRITICAL EVALUATION OF KEY PROVISIONS <b>Ms. Maheshi Herat</b>	39
CONTRIBUTORS	47





# PREFACE

Transparency International Sri Lanka (TISL) is the local chapter of the global movement against corruption, which is committed to improving governance and eradicating corruption in Sri Lanka. The TISL governance report has been published periodically since 2008 and has been distributed and quoted widely among policy makers, parliamentarians and academics in Sri Lanka.

This latest edition of the TISL governance report documents and highlights significant governance issues that have arisen between 2015 to 2018. It seeks to both stimulate the governance debate in Sri Lanka by providing thought provoking articles by experts in their respective fields and record the insights on prevailing issues for posterity. To this end the report is not exhaustive but attempts to cover areas in which a constructive debate and exchange of ideas is required.

The report consists of five chapters, with each chapter taking on a thematic area that highlights governance-related policies, reforms, laws and practices, as well as malpractices, that lead to corruption in the country's economic and political spheres.

On behalf of TISL I would like to express my gratitude to all who worked towards the completion of this governance report. I wish to especially extend my sincere thanks to the chapter authors, whose research and insights form the body of this report: Hon. State Minister Eran Wickramaratne, Dr. Roshan Perera, Mr. S.C.C. Elankovan, Mr. Venkatesh Nayak, Mr. Janeen Fernando and Ms. Maheshi Herat. I would also like to recognise both the efforts of Ms. Tamara Fernando, editor of this governance report, who worked closely with the authors in reviewing the chapters and the efforts of Ms. Sashee de Mel, Senior Manager Programmes TISL, for her coordination efforts through the various stages of draft preparation and finalisation.

I would like to finally acknowledge the invaluable contribution of the Ministry of Foreign Affairs of Norway for providing support for printing and distribution.

Asoka Obeyesekere  
Executive Director,  
Transparency International Sri Lanka



# INTRODUCTION

This report invites authors from a variety of fields to reflect on pertinent and pressing contemporary issues on governance in Sri Lanka. In previous years the publication has reflected on topics ranging from the centralisation of power (2010), to sports and corruption (2012) to the militarisation of post-war Sri Lanka (2014). Unlike previous reports, which were published annually, this report spans a period of three years (October 2015 to October 2018). It is hoped that this does not detract from the value of the report, since issues of governance, like this publication, cannot always be neatly parsed into annual segments.

The aims of the report are to stimulate debate, to serve as a reference tool and to engage decision-makers. The five chapters of this report are overlapping and interrelated in their findings and recommendations. In Chapter 1, Dr. Roshan Perera and State Minister Hon. Eran Wickramaratne consider state-owned enterprises (SOEs) which represents a significant source of employment and budgetary allocation in Sri Lanka. The chapter illustrates a track record of underperformance by SOEs and outlines measures by which these industries may be turned around, such as by changing the governing structure to separate owners (state) from managers (professionals). In elucidating what steps are already being taken towards this end, they propose a way forward where SOEs could become a budget input, rather than a drain on taxpayer funds.

In comparison to this first broad overview of an entire sector, in Chapter 2, Mr. S.C.C. Elankovan focuses on a unique public engagement mechanism, the Public Representations Committee (PRC). This group was formed as part of the process of constitutional reform adopted under President Maithripala Sirisena's 'Yahapalanaya' mandate. Elankovan's experience serving on the committee allows him to provide "11 Key Lessons" drawn from the reform process. Taken together, these lessons are a strong exhortation for procedural and structural improvements for future projects on public consensus and data collection.

In Chapter 3 Mr. Janeen Fernando considers a topic which is also linked to the 'Yahapalanaya' promises—the reform of Sri Lanka's electoral system. This chapter explores the shortcomings of the existing preferential voting system and provides a number of international case studies to argue strongly that a Mixed-Member Proportional (MMP) electoral system is an optimal choice for Sri Lanka.

In Chapter 4, Mr. Venkatesh Nayak considers Assets and Liabilities disclosures in India from 1964 to 2016 to demonstrate means of making elected officials' and civil servants' assets and liabilities public, including publication of the details on official websites. This includes checking for financial gain over time in office, and assessment of officials' spouses and children's assets. Nayak's detailed legal analysis provides key reflections when considering Sri Lanka's own path towards greater transparency around officials' financial transparency.



Continuing the theme of finance and public funds, in Chapter 5, Ms. Maheshi Herat evaluates the role of the Auditor General's office and the provisions in the National Audit Act which was enacted in July 2018. This chapter uses international conventions and standards to recommend a set of best practices and critically evaluates the National Audit Act's strengths and weaknesses.

Taken together, the chapters point to a number of structural areas for growth and reform in Sri Lanka, both for one-off initiatives, such as the PRC, and in well-established sectors, such as SOEs. In addition to this, the final two chapters in particular point to financial transparency as a key area for improvement. All five chapters also demonstrate how parliamentary hold-ups can regress processes towards better governance. It is hoped that these chapters will, as they have for our authors, stimulate and inform opinions, ideas and policymaking in Sri Lanka.

Tamara Fernando  
Editor,  
TISL Governance Report 2015-2018

---

# ABBREVIATIONS AND ACRONYMS

<b>ADR</b>	Association for Democratic Reforms
<b>ASC</b>	Audit Service Commission
<b>CAO</b>	Chief Accounting Officer
<b>ECOSOC</b>	Economic and Social Council of the United Nations
<b>FPTP</b>	First-Past-the-Post
<b>GDP</b>	Gross Domestic Product
<b>INC</b>	Indian National Congress
<b>INR</b>	Indian Rupee
<b>INTOSAI</b>	International Organisation of Supreme Audit Institutions
<b>JVP</b>	Janatha Vimukthi Peramuna
<b>KPI</b>	Key Performance Indicator
<b>MLA</b>	Member of the Legislative Assembly
<b>MMP</b>	Mixed-Member Proportional Electoral System
<b>MP/MPs</b>	Member of Parliament/ Members of Parliament
<b>NAA</b>	National Audit Act
<b>NEW</b>	National Election Watch
<b>PC Act</b>	Prevention of Corruption Act
<b>PCE</b>	Public Commercial Enterprises
<b>PCOP</b>	Presidential Commission on Privatisation
<b>PEB</b>	Public Enterprise Board
<b>PERC</b>	Public Enterprise Reform Commission
<b>PIMB</b>	Public Investment Management Board
<b>PMO</b>	Prime Minister's Office
<b>PR</b>	Proportional Representation
<b>PRC</b>	Public Representations Committee
<b>PUCL</b>	People's Union for Civil Liberties
<b>RP Act</b>	Representation of the People Act
<b>RTI</b>	Right to Information
<b>SAI</b>	Supreme Audit Institution
<b>SOE</b>	State-Owned Enterprise
<b>SLFP</b>	Sri Lanka Freedom Party
<b>TFPER</b>	Task Force on Public Enterprise Reforms
<b>TISL</b>	Transparency International Sri Lanka
<b>TNA</b>	Tamil National Alliance
<b>UNP</b>	United National Party

# THE NEED FOR PROFESSIONAL MANAGEMENT IN STATE-OWNED ENTERPRISES

**Hon. Eran Wickramaratne, M.P. and Dr. Roshan Perera**

## Introduction

State-owned enterprises (SOEs), refer to commercial ventures where the government, a public corporation or a local authority directly or indirectly holds fifty percent or more of the shares of that enterprise<sup>1</sup>. Governments around the world have set up SOEs to engage in economic activity due to welfare concerns arising from market failure. Inadequate production of public goods and the existence of natural monopolies are both concerns which have been sought to be mitigated by the establishment of SOEs<sup>2</sup>.

Although most countries have moved away from state dominance in economic activity over the past few decades, SOEs continue to remain key economic players. Globally, SOEs account for 20 percent of investment, 5 percent of employment, and up to 40 percent of output<sup>3</sup>. SOEs have, however, generally underperformed and not lived up to expectations. International experience has repeatedly shown that this is primarily due to poor governance: that is, weak rules, procedures and institutions that govern the relationship between government owners and SOE managers.

This chapter begins by describing the current underperformance of commercial SOEs in Sri Lanka. The next section provides reasons for this poor performance, drawing on specific examples to illustrate why the current incentive and reporting structures both contribute to inefficiency. In the latter half of this chapter we consider pathways for corporate governance reform, such as establishing centralised ownership as was done successfully in Singapore and Malaysia. We conclude with a review of the economy wide benefits that accrue when the performance of SOEs is improved.

---

1. SOEs are defined as public corporations, boards or bodies which are established under any written law (other than the Companies Act) or companies incorporated under the Companies Act No. 7 of 2007.

2. In this paper state owned enterprises (SOEs) refer to public corporations, boards or bodies which are established under any written law (other than the Companies Act) or companies incorporated under the Companies Act No. 7 of 2007 in which the government or a public corporation or local authority directly or indirectly hold fifty percent or more of the shares of that company and which are commercial ventures.

3. World Bank Group, 2014, Corporate Governance of State-Owned Enterprises: A Toolkit

## **Status of SOEs in Sri Lanka**

SOEs play a very important role in the Sri Lankan economy. They were initially set up during the Second World War to produce essential consumer goods. However, it was the enactment of two pieces of legislation—the Government Sponsored Corporation Act No. 19 of 1955 and the State Industrial Corporation Act No. 48 of 1957—that championed state involvement in economic activity. The dominance of state involvement in economic activity was further strengthened by the Business Undertaking (Acquisition) Act No. 35 in 1971, which permitted the nationalisation of private enterprises.

Today, SOEs face increasing pressure to perform. It is vital that they are competitive and contribute to the economy's competitiveness as a whole. This reduces the public tax burden and ensures the efficient use of scarce public funds. This is especially true for Sri Lanka, where there is increasing pressure to reduce the financial burden from underperforming SOEs, in order to tackle pressing economic issues such as fiscal instability and the lack of budgetary discipline.

A report by the Advocata Institute finds that in Sri Lanka, of 55 strategically identified SOEs, a staggering Rs. 636 billion rupees were recorded as cumulative losses between 2006 and 2015. This is equivalent to 18% of Sri Lanka's 2015 Gross Domestic Product (GDP)<sup>4</sup>. Of this 636 billion, 605 billion rupees of losses is reported by five of the 55 strategic SOEs. These are the Ceylon Petroleum Corporation, the Ceylon Electricity Board, Sri Lankan Airlines, Mihin Air and the Sri Lanka Transport Board. Hence, the urgency of restructuring Sri Lankan SOEs and making them competitive enterprises is unquestionable.

## **Factors Accounting for the Poor Performance of Sri Lankan SOEs**

SOEs around the world underperform due to a host of commonly experienced governance problems which may include: complicated or contradictory mandates, the absence of clearly identifiable owners, politicised boards and management, lack of autonomy in day-to-day operational decision making, weak financial reporting and disclosure practices, and insufficient performance monitoring and accountability systems, which are all applicable to the Sri Lankan context<sup>5</sup>.

### **1. Conflicting Incentives for Politicians**

One major reason for poor performance of SOEs in Sri Lanka has been the absence of a system to hold SOEs accountable for losses, inefficiency and mismanagement. The direct control over strategic and operational decision-making by politicians and bureaucrats leads to compromises in efficiency. Politicians make political decisions rather than economic ones and these decisions tend to be focused on short term gains, ignoring long-term consequences. When politicians run businesses they are essentially using taxpayer money to continue operations regardless of performance, unlike private businesses who have a powerful incentive to improve efficiency as they have to infuse funds to cover their losses. There is a preference to postpone tough decisions than risk unpopularity, which is why state enterprises are able to keep running losses continuously.

---

4. Advocata Institute, 2016, The State of State Enterprises in Sri Lanka

5. World Bank Group, 2014, Corporate Governance of State-Owned Enterprises: A Toolkit

Budgetary support has continued to increase for these 55 strategic SOEs. It has climbed from Rs. 26.7 billion in 2012 to Rs.123.2 billion in 2014<sup>6</sup>. This 2014 allocation is “equivalent to every household paying Rs. 24,100 to keep the non-financial state entities afloat”<sup>7</sup>. In comparison, budget support for health and education sectors (collectively) was Rs. 78 billion in 2014<sup>8</sup>. As such, the fact that SOEs do not face consequences for their actions in the same way as regular businesses, results in severe wastage of the heavy public fund allocations which could have been directed towards more productive sectors of the economy.

There has also been a significant expansion in the SOE sector with the number of SOEs and employees in SOEs doubling between 2009-2015. The number of SOEs rose from 107 to 245 enterprises<sup>9</sup> while the number of employees increased from 140,500 to 261,683<sup>10</sup>. The sheer size and dominance of SOEs in the Sri Lankan economy warrants the need for proper governance, as their overall impact on the economy is significant.

## **2. Lack of Transparency and Poor Reporting**

There is a lack of up-to-date information on SOEs with detailed information on only 55 of the 245 SOEs being reported periodically by the Ministry of Finance. Delays in the presentation of annual reports and audited accounts by most SOEs make it difficult to hold these enterprises accountable. A complex governance structure arising from the existence of multiple ministries with oversight responsibility over SOEs and the lack of information on SOEs leads to a lack of accountability and performance monitoring.

## **3. Unclear Reporting Structures and Politicisation of Boards and Management**

The presence of multiple principles overseeing the SOEs such as boards, ministries, parliamentary committees etc. leads to confusion and a lack of accountability. The presence of multiple ministries monitoring the SOE weakens monitoring since there is no single agency who is held responsible. This is further compounded by the composition of the board of directors who are often appointees of the respective ministries which leads to further aggravating the problem of multiple principles.

## **4. Not Controlled by the Market: Government Bailouts**

Governments often step into bail out loss making SOEs either due to their strategic nature ('too big to fail') or the unwillingness of the governments to shut them down ('too politically sensitive to fail'). This leads to either excessive risk taking by managers or a laid-back attitude. When governments decide to provide goods or services of SOEs at below cost and the SOE is unable to bear the cost of this subsidy, the government is forced to bail out the SOE. On the other hand, the government uses SOEs, particularly financial SOEs, as a source of financing its deficits, thus leading to an erosion of capital and future growth of the SOE.

---

6. Ministry of Finance, Budget Speeches

7. Advocata Institute, 2016, The State of State Enterprises in Sri Lanka

8. Ministry of Finance, Budget Speeches

9. Ministry of Finance Annual Reports

10. Treasury Annual reports

## **Reforms in Practice: Establishing Centralised Companies for SOE Ownership**

The four factors discussed above point to weak governance. In short, “poor performance of public enterprises is a poor reflection of governance of public enterprises”<sup>11</sup>. To ensure that these obstacles are overcome it is necessary to introduce a good corporate governance structure for SOEs. Corporate governance involves “a set of relationships between a company’s management, its board, its shareholders and other stakeholders. It also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance are determined.”<sup>12</sup>

In a traditional set up, the state is both the provider of a service/product and the monitor of its own performance. This poses an inherent conflict. Today, many governments are moving away from this model and establishing separate entities in order to maintain an arm’s length relationship with SOEs. For SOEs this ensures more professional ownership, more operational independence and stronger insulation from political intervention.

Internationally, there has been a trend towards centralised ownership of SOEs under a single specialised entity. This entity either 1. carries out oversight of SOEs on behalf of the government, 2. owns SOE shares or 3. is responsible for exercising all ownership functions on behalf of the state as owner. Under this model the line ministry is only responsible for policy making and controlling the regulatory environment in which SOEs operate<sup>13</sup>.

There are two broad types of centralised entities: government-ownership agencies under the direct authority of the government and company-type structures. Company-type structures take the form of holding or investment companies which are more independent entities and have their own legal identities and governance bodies. They have been successfully established in countries like Singapore, Malaysia, Vietnam, Bhutan, Hungary and Peru.

The success of centralised companies lies in the hands-off approach taken by the state, whereby state assets are managed by a company outside the constraints of a government ministry (albeit remaining under the government).

## **Successful Company-Ownership Case Studies from around the World**

This strategy which has proven to eliminate issues of unclear objectives/ownership, also minimises the scope for political interference that is evident in decentralised models and brings greater professionalism to the state’s ownership role.

---

11. Trivedi, 2005, Designing and Implementing Mechanisms to Enhance Accountability for SOEs

12. G20/OECD, 2015, Principles of Corporate Governance

13. World Bank, 2016, Policy Note on Centralised Companies for SOE Ownership (DRAFT)

The first company-type ownership entity to be established was Temasek Holdings in Singapore. The intention was to free the Ministry of Finance to focus on its main role of policymaking and regulation, while Temasek owned and managed investments. All investment and operational decisions are made by the Temasek board, whilst companies under Temasek's portfolio are managed by their respective boards and management, with no involvement on Temasek's part in their business decisions or operations. As such, this model ensures that there is a clear separation between the ownership and management of state run commercial activities. Similarly, in Malaysia, Khazanah National was created as an investment-holding arm of the government to separate the ownership functions from the supervision functions for SOEs. Their broader mandate is to promote economic growth and make strategic investments on the government's behalf. This greatly reduced the potential for conflicts of interest.

### **SOE Reforms Going Forward**

There have been several attempts to reform SOEs previously in Sri Lanka. In 1996, the Public Enterprise Reform Commission (PERC) was established to undertake the reform of public reforms on behalf of the government. Between the period 1989 to 2006 the government privatised 92 public enterprises. Other bodies such as the Presidential Commission on Privatisation (PCOP), the Public Investment Management Board (PIMB), the Commercialisation Division in the Ministry of Finance and the Task Force on Public Enterprise Reforms (TFPER) – 1985 -1995 have made inroads and varied attempts to reform SOEs. In addition, Sri Lanka has passed a number of pieces of legislation to address SOE reform. These include the Conversion of Government Owned Business Undertakings into Public Corporations Act No. 22 of 1987, the Conversion of Public Corporations or Government Owned Business Undertakings into Public Companies Act. No. 23 of 1987.

Despite some wins, primary focus on privatisation alone made these attempts largely unsuccessful. Despite the efforts of these institutions, the key issue is that SOEs remained under a complex governance structure, where they reported to multiple entities such as the Ministry of Finance, Public Enterprise Ministry and the line Ministry. This resulted in confusion, room for politics and ultimately, losses to the state.

The focus of the government's current reform process is to restructure the existing SOE governance framework by establishing an independent entity which will be the central body of power over all SOEs. It is proposed that a Public Enterprise Board (PEB) be established by an Act of Parliament to establish oversight over all Public Commercial Enterprises (PCEs). This includes Limited Liability Companies in which the Government directly or indirectly has a majority share. The PEB would function as the centralised ownership company in Sri Lanka, consisting of both public and private sector professionals. It will be a holding company: a separate legal entity which will monitor the performance of SOEs and be the sole entity to which SOEs must comply.

There is clear evidence of the success of centralised ownership of SOEs to argue for implementing a similar model in Sri Lanka as a solution to poor SOE performance. Centralising ownership of all SOEs under one independent entity can enhance overall oversight and reduce political interference.

The functions of the PEB would potentially include diagnosing commercial viability and economic sustainability and effectiveness of PCEs, appointment/removal of individual PCE boards, making the public aware of policies and reforms that have been undertaken to enhance PCEs, formulating a charter for performance management, reporting and corporate governance. The PEB would also oversee procurement and talent management of PCE's which are on par with other listed entities in Sri Lanka and devising strategies that make PCEs more competitive and productive such that they are on a level playing field with private sector enterprises, so that they ultimately enhance returns to the state.

In order to achieve this, the PEB will professionalise the Boards and Management of PCEs, which will have to follow rules under the Companies Act, and make them accountable to deliver performance. PBE will stipulate minimum standards of corporate governance and guide PCEs to implement these and monitor their adherence to the same. For instance, every PCE will be required to publish reports and returns by dates that will be stipulated by PEB. Guidelines will also cover areas such as the composition of the Board of Directors, frequency of Board Meetings, mandatory items to be on the Board Meeting Agenda, composition of Audit and Nomination Committees, role of Internal Auditor, etc. The PEB will have necessary powers to deal with any PCEs that do not comply with these guidelines. It will also assist them to identify key performance indicators (KPIs) and thereafter, will collect management information on a periodic basis to monitor the progress made. Regular reports will be submitted to the Board and the line Ministry on the performance of each PCE and action will be taken on PCEs that consistently fail to achieve the targets set.

As such, the ongoing SOE reform process focuses on completely restructuring the existing SOE governance framework, such that the key issues of political interference, the existence of multiple authorities and the lack of a mechanism to hold SOEs accountable to deliver performance, are addressed by centralising SOE ownership and keeping the state at arm's length from its commercial operations.

## **Conclusion**

Taking steps to establish a credible corporate governance framework for SOEs is a meaningful investment of state resources, particularly because the benefits extend not only to state enterprises but to private firms as well. In particular, firms will be better positioned to access external finance via the improved confidence of investors, improved sovereign rating and lower cost of capital. These benefits boost the efficiency of SOEs and, in turn, that of the economy as a whole. If reforms are diligently implemented it would result in: more efficient allocation of resources; a reduction in the fiscal burden arising from SOEs and enable greater public and private investment in more productive sectors of the economy and infrastructure.



## CHAPTER 02

# PUBLIC CONSULTATIONS: AN ESSENTIAL PART OF CONSTITUTION MAKING AND REFORM

## LESSONS LEARNED FROM THE PRC AMID SRI LANKA'S ONGOING CONSTITUTIONAL REFORM

**Mr. S.C.C. Elankovan**

### **Building Constitutions: A New Attempt**

The Public Representations Committee (PRC) on Constitutional Reform was appointed by the Prime Minister, Ranil Wickremasinghe, in January 2017, as an integral part of the reform process initiated by the parliament resolving to formulate a new Sri Lankan constitution. This new constitution was intended to fulfil the aspirations of all sections of society in a country that had been torn apart by communal strife, which led to three decades of civil war in the north and east and two armed insurrections in the south.

The committee comprised of nominees from several political parties including professionals and politicians and was headed by Mr. Lal Wijenayake. The committee decided to follow the South African model from the early 1990's instead of the Donoughmore Commission model: collecting submissions directly from the public which expressed their aspirations, concerns and suggestions and which then became the basis for recommendations on constitutional reform. They travelled to all 25 districts of the country and received over 3700 submissions.

In the history of constitution building in Sri Lanka, public consensus has not mattered. It was partly taken into account under the colonial project in the 1930s, the Donoughmore Commission, when those in charge met with different groups to formulate the Donoughmore Constitution. These consultations were delineated along ethnic, linguistic and religious lines. In comparison, neither the 1972 socialist constitution nor the present constitution (crafted in 1978) involved processes which consulted the general public. It could be argued that in fact, both the 1972 and 1978 constitutions were pushed through by ruling parties with large-enough majorities in parliament to pursue their agenda without consultation. Neither constitution made use of the opportunity to seek a solution to long standing minority demands of the Tamil population seeking devolution of power to the north and east and that of historic injustices against the plantation worker exacerbated by being disenfranchised soon after independence. The discontent caused by structural inequalities in the south was not addressed adequately.

In comparison, this committee used a South African process-inspired-model to seek the views of the diverse populous. This exercise was an attempt to use the process of constitution making as an element of the nation building exercise. The following section of this chapter examines some of the strengths and drawbacks of this constitution making process.

## Lessons Learned

**Good Diversity in Submissions** – While the committee publicised public hearings and invited the general public to participate, there was no guarantee about who would participate in such a process. This concern was especially relevant given that the PRC was the first of this type of broad-based public consultation.

Arguably the greatest success of the process was the participation of ordinary citizens from a variety of different walks of life. These included farmers, lawyers, fishermen, university dons, housewives, professionals, former combatants, war victims, school children, elders, people with disabilities and government servants who are public service providers amongst others. There was recognition that this was the first time the people had been consulted about what their constitution ought to be. For the first-time groups of farmers, fisherman, tea pluckers and those in foreign employment presented their aspirations. People of different ages presented differing priorities from social security to more equal opportunities. The process opened a window into the thoughts of ordinary citizens from the geographical and social peripheries of society to whom a new constitution should also cater. The presence of diverse groups in the consultations is a reflection of their interest in the reform process and the citizenry's commitment to a democratic society.

It is also evident that the consultation process provided an opportunity for several different groups to present their strategic aspirations. While the aspirations of larger linguistic and religious minority groups are well represented and frequently heard, small minority and sub-minority groups face discrimination and resistance from within their larger groups. This process provided a space for these groups to come out and express their concerns and aspirations.

**Inadequate Timeline** – The PRC was mandated to complete its task within an ambitious 3-month period. This period was subsequently extended to 5 months. The limited time ensured a quick completion, but it put enormous strain on the committee members: members were compelled to work day and night with limited resources in order to put together a report and ensure that it was as representative as possible of all the views expressed. More time, better planning and more resources would have ensured that the process was not unduly rushed and allowed the reflective space and creativity of those compiling the report.

**Valuable and Thought-Provoking Submissions** – 3700 submissions were received and the large majority of them were extremely valuable. It was clear from the detailed way in which the proposals were made that ordinary citizens and civil society had gone to great lengths to study the country's present and previous constitutions as well as those of other

countries, reflecting on them and extracting salient features to make up their submissions. This suggests a politically informed people, with a robust desire to engage with democratic processes and that it matters to people that their state has a constitution that works for all.

**Missed Opportunities for Wider Public Engagement** – At the time the report was handed over and published there was expectation that parliament would move fast (within the year) to draft a new constitution taking into consideration the views expressed by the public. To date, two and a half years since the PRC handed over its report in May 2016, parliament continues to make slow and limited progress. In hindsight, this means that the PRC process could have been lengthened, which would have allowed it to reach a wider audience, and even at sub district or divisional level. The added time could also have been used to enhance public consciousness and engagement, as was the case in the South African model.

**Lack of Time for Consensus and Deliberation on Recommendations** – The committee's report aimed to present the gambit of public opinion but also to reach as wide a consensus as possible among its members regarding the recommendations. In achieving this latter aim, time was a constraint once again. The committee members mirrored society and hence had different points of view and positions which had to be discussed and accommodated. While much consensus was reached, perhaps a more far-reaching consensus could have been reached on sensitive matters if the committee had more time for deliberation.

**Frameworks can be Restrictive** – A dream constitution comes from its people's ability to dream; The American Constitution attempts to embody the American dream. There is a concern that the PRC process may have restricted people's ability to be creative by providing them with a framework. In order to inform the public of the process and seek their participation, the committee made public announcements placing newspaper advertisements and holding media conferences. The committee published a framework for making representations. This was based on the main areas of the country's present constitution adopted in 1978 with 19 amendments that had been made up until the end of 2015. At the time of making the decision, it seemed important to provide a framework for the public to provide submissions. And while submissions were not restricted to this framework, there was later reflection within the committee that the guidelines may have restricted the scope of submissions made.

**Inadequate Publicity & Limited Number of Submissions** - The PRC process in Sri Lanka was tipped to recreate the process of consultation that led to the development of the South African constitution in the 1990's in the years after apartheid. However, little thought had been put into what such a process would require. Hence although the PRC travelled to all districts of the country within a short time frame and also received submissions through post and email, only 3700 submissions were received compared to 2 million in South Africa. One of the reasons for the limited number of submissions was the limited time in the run up to the public consultation process and limited publicity about it in the media: although the PRC held several press conferences there was limited coverage

provided by the media and by the time the Prime Minister's Office had appointed specific media personnel for the task the PRC had already completed its task and submitted its report.

**Inadequate Resources** – During the process it became apparent that the government and the Prime Minister's Office, tasked with supporting the PRC, had not envisioned the requirements and had thus not allocated adequate financial, material and human resources to support the process. Hence members had to double up as translators, stenographers and logisticians in order to keep the process rolling and also to ensure that visits to every district were carried out. Furthermore, members had to evolve their own systems and processes with little administrative and financial support. Much time was lost as a result of these limitations, which led to inefficiency and ineffectiveness. The limited personnel also impacted the final report since members had to deliver the report with versions in the vernaculars within a restricted timeframe with limited resources. That the committee was not assigned even one full time permanent translator is an illustration of the challenges it faced.

**Women's Engagement and the Demand for Guaranteed Political Representation** – One factor in stark contrast to present day developments was a demand for increasing the representation of women in politics. Interestingly most proposals contained a demand for guaranteed representation ranging from 25% to 50% for women. This demand came as much from men and mixed gender groups as it did from women and women's groups and can be interpreted as the outcome of general recognition within society of this long felt need. It is also significant that women from all walks of life and from all parts of the country engaged in the process and made submissions if only to prove that they are equally concerned and want to be involved in the development of the constitution. Given that there are so few women in political parties leave alone the parliament which will decide on the constitution, their representations reflected in the PRC report has added importance.

**Unanimous Demand for a Multi-Ethnic, Multi-Religious Country that Works for all; Enshrining Economic, Social & Cultural Rights** - Although there was diversity in the submissions (different persons from different parts of the country and from differing walks of life), a common theme was a vision of a country accepting of diversity and a plural character. They articulated a hope for a constitution that respects and treats all equally and to make for a new country that works for all its citizens in the future.

The articulation of the demand for the enshrinement of economic, social and cultural rights in the constitution and guaranteeing a basic quality of life to all its citizens was another demand from people from all parts of the country. Both these suggestions were made repeatedly regardless of ethnicity, religion, gender and location. These demands were often framed as safeguards against growing disparities and to prevent a return to conflict, while also being a demand for a more secure future for all.

**Devolution and Decentralisation of Power as a Means of Empowering Ordinary Citizens** - People in all parts of the country expressed dissatisfaction due to a sense of powerlessness experienced as ordinary citizens. Many submissions articulated a disconnect between people at the grassroots level and people in the arms of government.

People in the south demanded devolution to the local bodies and village bodies and people in the north and east demanded greater and more substantial devolution to the provinces. The 'Malayaha People' and Muslim communities demanded mechanisms to ensure that smaller minority groups that currently go unrepresented can be represented through non-contiguous local councils with powers especially with regards to services and development. Although it was articulated for different reasons, the demand for more devolution of power to other tiers of government and away from the centre was clear and widespread.

## **Conclusion**

The PRC as a mechanism of engaging people in constitution making was valuable and revealing. The execution however, had a number of limitations. The limited time frame, lack of government preparedness and administrative pre-planning put undue pressures on the PRC members and undermined effectiveness. It remains debatable if the sample size of 3700 submissions in a population of 21 million was representative enough, but the submissions were articulate and thought provoking and echoed diverse views and positions in a variety of ways. The responses to the report spanned general appreciation from the public and civil society to cautious optimism from political parties, which may reflect the actual divide between people and their representatives with regards to the process and its outcomes.

While the process could have been better implemented, this should not detract from the importance which should be given to it and the report produced. The report presents the gambit of public opinion and a consensus reached among its members. It is a progressive foundation to construct a constitution for a country that embraces its diversity and seeks to work for all, regardless of their gender, class, caste, race and religion.

# ELECTORAL REFORMS IN SRI LANKA: MIXED-MEMBER PROPORTIONAL SYSTEM

**Mr. Janeen Fernando**

### **Background: The President's Promise**

In January 2015, then Presidential candidate Maithripala Sirisena published a manifesto calling for several major changes in Sri Lanka's governance structure including electoral reform.

On Sri Lanka's electoral system, Sirisena's manifesto stated:

***I guarantee the abolition of the preferential system and will ensure that every electorate will have a Member of Parliament of its own. The new electoral system will be a combination of the first-past-the post system and the proportional representation of defeated candidates.***<sup>14</sup>

Sirisena also promised that any change to the electoral system will be passed with support from all parties and that the new system would not 'change the composition' of parliament, suggesting that a new electoral system should not result in a dramatic change to electoral outcomes for political parties i.e. maintaining multi-party proportional representation within the changed electoral system.

Meeting these promises necessitates reforms which:

1. re-introduce smaller single member and multi-member electoral districts<sup>15</sup> similar to a first-past-the-post (FPTP) system,
2. remove 'preferential voting', Sri Lanka's current method of selecting candidates within a party,
3. retain proportional representation (PR) and draw PR candidates from a pool of defeated candidates at constituency level voting.

---

14. New Democratic Front, (2015). Maithri: A Stable Government. priu.gov.lk. Retrieved 15 March 2016, from [http://www.priu.gov.lk/presidential\\_manifestos/Manifesto-EN.pdf](http://www.priu.gov.lk/presidential_manifestos/Manifesto-EN.pdf)

15. The term district is used in this context in keeping with standard parlance in electoral systems discussions which refers to a direct electoral unit as an electoral district. The term constituency is also used in discussing single member electoral districts as described in this instance

This chapter considers the possibility of implementing electoral reform in Sri Lanka, by using a Mixed-Member Proportional (MMP) system which, crucially, uses a two-ballot mechanism. The chapter begins with an overview of Sri Lanka's existing electoral structure, and an outline of the demands for changes in the existing structure. It then proceeds to review the basic features of MMP systems, with a strong emphasis on international case studies where MMP is used. It will elaborate on several features in addition to the two-ballot mechanism that is important when considering democratic outcomes within an MMP system including seat distribution ratio, closed candidate lists, methods of calculating seat allocations and electoral thresholds. Following this, the chapter closes by explaining how the proposed 20th Amendment<sup>16</sup>, which currently omits the two-ballot voting mechanism, as inadequate. The chapter concludes with the recommendation that any adoption of the MMP system needs to feature a two-ballot vote if it is to successfully deliver on the president's election manifesto promise.

## **Sri Lanka's Existing Electoral System and Demands for Reform**

Until the 1978 Constitution was enacted, Sri Lanka utilised a First-Past-The-Post system (FPTP). FPTP worked on the principle that the candidate with the highest number of votes in an electoral district won that electoral seat. With very few exceptions, most electoral districts had one member of parliament per electoral district.

FPTP led to hugely disproportionate outcomes in Sri Lanka. For example, in the 1970 parliamentary election, for example, the Sri Lanka Freedom Party (SLFP) secured over 60% of the seats, despite having just 36.9% of the total vote. The United National Party (UNP) secured 37.9% of the vote and gained just 12% of the total seats. Following this the winning party was able to unilaterally introduce a new constitution that lacked a wider public mandate, resulting in wariness towards the disproportionality in electoral outcomes brought about by FPTP.

In 1978, Sri Lanka adopted a Proportional Representation system (PR). By contrast, this system had larger electoral districts and proportionally elected members from different parties. Today's 22 electoral districts largely correspond to Sri Lanka's administrative units, or 'districts'.<sup>17</sup> Sri Lanka currently utilizes a single ballot to determine seat distribution of 225 parliamentary seats among contending political parties, with 196 seats awarded based on the results of 22 multi-member constituencies (electoral districts) and 29 through the national list. Additionally, each voter is allowed to select up to three candidates (without a rank ordering) from within their chosen party as their preferred representatives. Internationally, this system is referred to as 'open list' voting, and in Sri Lanka as 'preferential voting'.

Preferential voting has become unpopular in part due to the public perception that large electoral districts make MPs less accessible to the public and less concerned about local issues. Other concerns regarding election violence and campaign financing have also (often erroneously) been seen as ills of the current electoral system.

---

16. The 20th Amendment referred to here is that proposed during the 7th Parliament of Sri Lanka after the 19th Amendment to the constitution was passed. It is to date the most comprehensive alternative recently presented to the existing parliamentary election system

17. This number differs from Sri Lanka's 25 administrative districts due to the amalgamation of Jaffna and Kilinochchi administrative districts into the 'Jaffna Electoral District' and the amalgamation of Mannar, Vayuniya and Mullaitivu administrative districts into the 'Wanni Electoral District'.

## Why does the MMP System Fulfil President Sirisena's Manifesto Objectives?

Sirisena's manifesto promised moving to a mixed electoral system. The proposed re-introduction of smaller electoral districts as per the FPTP system while retaining proportionality in voting outcomes as mentioned in the manifesto pledge necessitates the introduction of a mixed system.

This chapter provides recommendations that address Sirisena's campaign promises on electoral reform. The internationally practiced mixed system which can be designed to adequately provide for proportional electoral outcomes is the Mixed Member Proportional (MMP) electoral system.

There are two global variants of mixed electoral systems: mixed-member majoritarian and mixed-member proportional (MMP). But only MMP adequately conforms with the two principal criteria of **retaining proportionality in voting outcomes and re-introducing smaller single member electoral districts**. Further, in MMP, PR lists or any proportional system can be formulated to include defeated candidates in a systematic manner within a 'closed list' to fulfil the secondary promises outlined in the manifesto.

MMP can therefore fulfil all the criteria of the president's promise. This chapter discusses the features of an MMP system as an option for changing the parliamentary electoral system. The chapter does not discuss the arguments for and against changing the electoral system or electoral systems at other levels of government. It also does not discuss issues such as campaign finance laws and election violence. The latter are related to electoral reform but should not be conflated with the debate on electoral systems.

In the last two decades, several countries have transitioned to MMP electoral systems. These hybrid systems utilize election by plurality voting and election by proportional representation also. Both the President's pledge and the current conversation on Sri Lanka's electoral reform lend themselves well to MMP.

## How does the MMP Work?

### Features of MMP

- Two types of seats: district seats and PR seats;
- Two votes - one for local candidate and one for national/sub-national party level representation;
- District seats are won either with a majority or plurality (first-past-the-post);
- PR seats are allocated for the purpose of compensating for disproportionality that is created by plurality voting used in allocating district seats;
- PR party lists are closed; the list is determined either by a party list of a fixed order and names submitted prior to an election or can utilize a formula for incorporating the most successful defeated candidates at district level voting;
- Typically, has two tiers of representation; district representation and national/sub-national proportional representation.<sup>18</sup>

---

18. Advantages and Disadvantages of MMP. (2016). Ace Project: The Electoral Knowledge Framework. Retrieved 14 March 2016, from <http://aceproject.org/ace-en/topics/es/esd/esd03/esd03a/esd03a01>



## Dual Ballot in a Two Tier System

The most recent proposal for a new electoral system, the draft 20th amendment, is only loosely based on MMP design. Specifically, the amendment calls on voters to use a single ballot.<sup>19</sup> This ballot would be cast in favour of one of the local district candidates nominated by political parties or independent groups. Then, the aggregate result of local voting would also be used to decide sub-national and national level party PR seat allocations.<sup>20</sup>

This single ballot is atypical of MMP systems. All MMP countries with the exception of Djibouti use a two-vote system. The two ballot system is a critical part of MMP system design for two reasons. First, a dual ballot allows voters enhanced choice in declaring their preferences. While a single ballot curtails voter choice to declare the same preference at both local and national level, two ballots allow voters to 'split' their ballot. For example, in New Zealand, 37% of voters split their ballots in the first election after the change to a MMP dual voting system. Germany sees more than 20% of voters split their ticket.

Second, dual ballots reduce the effects of strategic voting on electoral outcomes. Strategic voting is defined via Duverger's law, a well-studied phenomenon in electoral systems, which demonstrates that plurality systems undermine the performance of smaller parties because large parties tend to have an advantage in winning FPTP competitions and votes for smaller parties are regarded as 'wasted votes'. Duverger calls this the psychological factor because voters defect from their natural choice in the voting process based on calculations of how the electoral rules convert their votes into seats. MMPs solve this problem by having two tiers of seats linked to two distinct ballots. When voters are allowed only one vote they face a dilemma regarding which seat category to influence. For example, if a voter's preferred party is party A, but only party B and C have sufficient support to win in that district, the voter may choose to vote strategically for B or C.

In a two-ballot MMP system, this tendency towards strategic voting has little or no bearing on the total seats in parliament; the extent of which depends on the district/PR seat ratio (discussed below). Two ballots allow voters to independently declare their preferences for a local MP and for the national composition of parliament. Two ballots also protect small parties from underperforming due to voter perceptions of 'wasted votes'.

---

19. See also, the section on the 20th amendment below

20. Electoral reforms in a vacuum | The Sunday Times Sri Lanka. (2016). Sundaytimes.lk. Retrieved 28 March 2016, from <http://www.sundaytimes.lk/150322/sunday-times-2/electoral-reforms-in-a-vacuum-140881.html>

## Ratio of District Seats to PR Seats

The ratio of district seats to PR seats also affects electoral outcomes.

Empirical research into electoral systems has led to many experts arguing for a 1:1 ratio between district and PR seats as producing the most proportionate system in a linked two-tier system because it provides enough seats to properly compensate parties with PR seats.<sup>21</sup> A 1:1 ratio largely ensures all parties receiving too few seats in the district elections can still attain their proportional share. For example, hypothetical Country X's MMP system uses an allocation of 80 district seats to 80 PR seats. Party A receives 16 district seats (10% of the total 160 seats), but according to the PR vote should hold 40% of the total seats (i.e. 64 out of the 160 seats). Party A still needs 48 more seats, or 30% of the total seats, to possess their proportional share.<sup>22</sup>

80 District Seats: 80 PR Seats					
Party	District Seats	District Seats: % of Total Seats	Total Seats According to PR vote	Compensatory PR Seats	PR Seats: % of Total Seats
A	16	10%	40%	48	30%
B	32	20%	30%	16	10%
C	32	20%	30%	16	10%
Total	80	50%	100%	80	50%

As seen below, Germany has the most proportional seat distribution of all current MMPs and Djibouti has the least proportional. In 2013, Djibouti allocated only 20% (13 out of a total 65 seats) of their parliamentary seats through proportional representation. In theory, voters have good incentives to give their vote to a small party even if its support base is too geographically dispersed to win plurality seats.

However, in Djibouti because 80% of the seats are allocated to constituencies, a PR vote for a smaller party could fail to impact the seat allocation, as there are only a few PR seats available to compensate for the disproportionality created by the constituency voting.<sup>23</sup> Thus, it is important for MMP systems to utilize a dual ballot and also to allocate adequate seats for the PR vote. In practice, a distribution of 50:50 between constituency and PR seats is adequate to ensure proportionality.

MMPs' Single Member Districts : Proportional Representation Ratio (Potential Overhang Seats Excluded)						
Germany	Bolivia	Scotland	New Zealand	Wales	Lesotho	Djibouti
299:299	68:62	73:56	70:50	40:20	80:40	52:13

21. Siaroff, A. (2013). Comparing Political Regimes: A Thematic Introduction to Comparative Politics (3rd ed., pp. 109-191). University of Toronto Press.

22. Large disparities in district voting can make even 1:1 ratio insufficient for maintaining proportionality should a party win a much higher number of district seats than their vote share. This issue is discussed in the Overhang section below.

23. Djibouti opposition ends election boycott - BBC News. (2013). BBC News. Retrieved 14 March 2016, from <http://www.bbc.com/news/world-africa-21554465>

## Closed List

A closed list is generally used in the election of candidates for the PR portion of the ballot. This list informs voters prior to the election of which candidates will be allotted seats and in what order. For example, if Mr. A is the first candidate on Party X's list and party X secured 1 PR seat, only Mr. A would be eligible to fill that seat. This informs voters on the probability of each candidate on the list being elected: candidates at the top are more likely to get elected, while candidates at the bottom of the list are not likely to enter parliament. The names on the list and rank order are binding: once the list is submitted the party does not have the discretion to substitute a candidate name with others lower down the order. Additionally, the party may not introduce candidates that were not on the original list. An open list (referred to as preferential voting in Sri Lanka) can be included in an MMP system but will not be discussed as it is outside the scope of the Presidential manifesto promises.

Sri Lanka currently allows political parties significant discretion in changing rank order and candidates on its national list. There is no binding rank order and even candidates outside the list who contested elections for district level seats but failed to get elected can be appointed. The selection process in which candidates who contested district level elections are appointed via the 'national list' is entirely at the parties' discretion. This is not in keeping with international standards and creates opacity as to which candidates will eventually be appointed. An MMP system should not maintain discretionary appointments and should instead adhere to the internationally practiced principle of a closed list.

Accommodating defeated candidates can also be done through a formula for selecting a quota of 'best losers.' This eliminates the need for discretion i.e. every fourth seat is held for a defeated candidate. Closed lists are also beneficial to minority groups and women, as quotas can be placed upon the party lists, ensuring greater representation.<sup>24</sup> With the exception of a few constituencies in the German legislature, all MMPs use closed lists in order to establish quotas for minority groups, for example, New Zealand's quota for the indigenous Māori population.<sup>25</sup>

## Methods of Calculating Party List Proportional Representation

There are three methods which can be used to calculate the allocation of seats in parliament for particular parties: The Hare quota, the D'Hondt method and the Sainte-Laguë methods. Sri Lanka currently utilizes the Hare quota, also known as the largest remainder method (Lesotho is the only MMP system which also uses the same quota<sup>26</sup>). This is considered one of the more proportional methods as smaller parties often gain slightly greater seat portions than they are owed and larger parties relatively fewer seats.

---

24. Open, Closed and Free Lists. (2016). Ace Project: The Electoral Knowledge Network. Retrieved 7 March 2016, from <http://aceproject.org/ace-en/topics/es/esd/esd02/esd02e/esd02e03>

25. Māori Representation. (2014). Electoral Commission. Retrieved 8 March 2016, from <http://www.elections.org.nz/voting-system/maori-representation>

26. IFES Election Guide | Elections: Djibouti Parliamentary 2013. (2016). Electionguide.org. Retrieved 16 March 2016, from <http://www.electionguide.org/elections/id/1654/>

The Hare quota produces especially proportional results and would be a good method to continue using with MMP in Sri Lanka. However, if parliament decides to change the current method, the Sainte-Laguë method also produces equally proportional results. Germany and New Zealand currently use the Sainte-Laguë system after utilising other less proportional methods earlier.<sup>27</sup> Scotland, Wales and Bolivia utilize the D'Hondt Method.<sup>28</sup>

## Electoral Thresholds

Electoral Thresholds refer to the minimum amount of support a party needs to gain representation.<sup>29</sup> The electoral threshold thus impacts party representation in parliament. Sri Lanka currently requires each party to attain 5% of the total votes in each electoral district.<sup>30</sup> Ensuring that thresholds are not too high can help Sri Lanka to enhance multi-party representation. Most MMPs stipulate thresholds according to percentage of the total PR vote acquired or number of district seats won. In New Zealand, parties must attain either one district seat (approximately 0.83% of seats) or 5% of the votes<sup>31</sup> and in Germany, parties must acquire either 3 district seats (approximately 0.50% of seats) or 5% of the votes.<sup>32</sup> Importantly, higher electoral thresholds lead to greater disproportionality. So countries like Djibouti, who use a 10% threshold, sharply reduce small party representation.<sup>33</sup> A lower threshold will ensure more small parties are represented.

## Key Limitations of the 20th Amendment

The government's original proposal to meet the electoral reform pledge in the President's manifesto was the draft 20th Amendment (20A) to the Constitution. The Amendment was approved by cabinet in June 2015 but was not debated in parliament prior to its dissolution. It remains the most complete proposal for a changed electoral system to be publicly presented by the government. While newer proposals exist in the form of recommendations in the interim report prepared by the steering committee of the constitutional assembly, these are presented as a variety of possible options and do not yet offer an alternative proposed electoral system.

---

27. Sainte-Laguë Allocation Formula. (2016). Elections: Electoral Commission. Retrieved 14 March 2016, from <http://www.elections.org.nz/voting-system/mmp-voting-system/sainte-lagu%C3%AB-allocation-formula>

28. Bolivia: Electoral Reform in Latin America. (2016). Ace Project: The Electoral Knowledge Network. Retrieved 9 March 2016, from [http://aceproject.org/main/english/es/esy\\_bo.htm](http://aceproject.org/main/english/es/esy_bo.htm)

29. Lijphart, A., & Aitkin, D. (1994). Electoral systems and party systems. Oxford: Oxford University Press.

30. Parliament of Sri Lanka - The Electoral System. (2012). Parliament.lk. Retrieved 15 March 2016, from <http://www.parliament.lk/members-of-parliament/the-system-of-elections-in-sri-lanka/the-electoral-system>

31. MMP Voting System. (2014). Electoral Commission. Retrieved 8 March 2016, from <http://www.elections.org.nz/voting-system/mmp-voting-system>

32. Election of Members of the German Bundestag. (2016). Deutscher Bundestag. Retrieved 8 March 2016, from [http://www.bundestag.de/htdocs\\_e/bundestag/elections/electionresults/election\\_mp/245694](http://www.bundestag.de/htdocs_e/bundestag/elections/electionresults/election_mp/245694)

33. Djibouti: Assemblée nationale, Last elections, 2013

Although the amendment was discussed as an MMP system, it had some limitations that seriously undermined its ability to deliver an electoral system that met the twinned promises of re-introducing smaller districts and preserving proportionality. 20A would re-introduce smaller (and pre-dominantly single member) districts but would do so at the expense of proportional representation. Some key limitations are discussed below.

### **One Vote is Insufficient**

The 20th Amendment would grant electors one vote to select their local candidate (who must belong to a registered political party or independent group). That single vote is used to determine both the local plurality voting and the wider sub-national and national level PR vote. The sub-national unit proposed was the larger electoral district that is currently used. As discussed in the discussion of the two-ballot principle, using a single ballot creates a dilemma for voters who may be prone to strategic voting due to plurality based selection at the local level but are then prevented from splitting their ballot when declaring preferences at national or sub-national level. Therefore, this proposed single ballot and the polarisation of the top political parties undermines the ability of the ballot to reflect voter's true preferences.<sup>34</sup>

### **Seat Proportions Skewed in Favour of District Representation**

The 20th Amendment called for a three-tiered system of 237 seats: 145 FPTP local electoral districts, 55 PR seats at the electoral district level and 37 PR seats at the national level.<sup>35</sup> This proportion, 3:2 in favour of district seats, may be insufficient to preserve proportionality.

Further, the division into three tiers, including two PR tiers, can also have a negative impact on proportionality. Since 20A leaves only 55 PR seats to be divided between 22 electoral districts (which was proposed as the subnational PR tier), this severely limits the number of PR seats per district. The break-up of PR seats into three tiers would therefore further inhibit proportional outcomes as the PR seat allocation is further divided. E.g. Under 20A the plurality/PR ratio at district level is 2:6:1

All international MMP systems examined in this chapter utilize two-tier systems. If the PR tier is provincial, as in Scotland and Wales, the results will not be as proportional as MMP systems like New Zealand which uses a national level PR tier.<sup>36</sup> Thus, in order to promote proportionality, the PR seat allocations being merged into a single national tier with a small increase in the PR seat proportion would guarantee the simplest form of ensuring greater proportionality.

---

34. Benoit, K. (2006). Duverger's Law and the Study of Electoral Systems. *French Politics*, 4, 69-83. Retrieved from [http://file:///home/chronos/u-f4a7cf4513c4eddce3c4c13245718250d09a4434/Downloads/Benoit\\_FrenchPolitics\\_2006%20\(2\).pdf](http://file:///home/chronos/u-f4a7cf4513c4eddce3c4c13245718250d09a4434/Downloads/Benoit_FrenchPolitics_2006%20(2).pdf)

35. Chandrasekara, G. (2015). Sri Lanka's cabinet approves 20th Amendment with 237 parliamentary seats. *Lanka Business Online*. Retrieved from <http://www.lankabusinessonline.com/sri-lankas-cabinet-approves-20th-amendment-with-237-parliamentary-seats/>

36. Vollan, K. (2015). Options for a Mixed Member Proportional System for the Parliament of Sri Lanka. Presentation, Colombo

If Sri Lanka is to maintain a three-tier system, the seat distribution and size of the sub-national unit may need to change. In a recent report, Kåre Vollan, an independent electoral systems researcher, argued for a better distribution of seats in a Sri Lankan MMP system in order to maintain proportionality. His method was to use 119 FPTP, 87 provincial PR and 25 national PR.<sup>37</sup> The province (as opposed to the 22 electoral districts) is a geographically larger unit and less numerous (9 provinces). Thus this allows for more proportional outcomes at subnational level. For example, even the inadequate PR allocation of 55 seats at subnational level results in an average of 6 PR seats per province to adjust for plurality voting distortions while 20A would allocate an average of 2.5 seats per electoral district. If maintaining the district as the sub-national unit, it will then be necessary to maintain the 'top-up' from the national list for inadequacies in district PR seats as stipulated in 20A and to increase the district PR seat share in comparison to the plurality seats.

Vollan contends three tiers can be used to promote geographical representation through the provincial level rather than the current electoral district which is smaller and therefore typically favours larger parties. However, this system will also need a national PR portion to make the total more proportional. Additionally, a two tier system which calculates the PR seats at the national level but allocates seats through province lists produce both geographical and proportional representation. Ultimately, PR at the national level can produce the more proportional results if the PR seat allocation is limited; yet, the provincial level promotes greater geographical representation.<sup>38</sup> Although a three-tiered system has the potential to be proportional, a two-tiered system is less complicated to implement, has been successfully used in all current MMPs and directly correlates to voters' preference.

## Closed List

As discussed above, all MMP countries use closed lists. 20A allows half of the PR seats to be allocated to defeated candidates in order of highest percentage earned at the polls.<sup>39</sup> But the process of other nominations to PR seats allow political parties significant decision making power post-election. Similar to current practices, the proposed 20A also gives political parties full discretion to select a new Member of Parliament (MP) in the event that an MP on the national list dies or resigns.

The amendment states:

***The secretary of such political party or the leader of the independent group has the authority to nominate a member for the particular polling division out of the candidates who contested the election or out of any additional candidates who have been given nominations but not contested from the polling division.***<sup>40</sup>

---

37. Vollan, K. (2015). Options for a Mixed Member Proportional System for the Parliament of Sri Lanka. Presentation, Colombo

38. Ibid

39. Ibid

40. Prime Minister and Minister of Policy Planning, Economic Affairs, Child, Youth and Cultural Affairs, (2015). The Gazette of the Democratic Socialist Republic of Sri Lanka: Twentieth Amendment to the Constitution. Colombo: Department of Government Printing.

Closed lists are the most effective way to remain accountable to the electorate. Under the current PR system, voters are not given the option of knowing who may represent them in their preferred party, and political parties can select candidates regardless of their party affiliations. Utilising a closed list with the quota for defeated candidates offers a more democratic way of including these candidates than that proposed in 20A. Further, as previously stated, closed lists are also a constructive way to increase representation of traditionally under-represented groups.

## **Bonus Seats**

Under the existing system, the political party or independent group securing the highest number of votes in each district is entitled to have one member declared elected.<sup>41</sup> The use of bonus seats distorts proportionality by giving larger parties additional seats in districts. For example, in the most recent Parliamentary election, the Janatha Vimukthi Peramuna (JVP) polled proportionally more in the national vote, yet only won four seats, while the Tamil National Alliance (TNA) attained 14 seats with 27,000 fewer votes, due to its voter base being concentrated in a few districts.

Despite the disproportionality bonus seats create, they are included in the 20th Amendment as follows: “the addition of one elector would entitle such electoral district to return an additional member, the ascertainment of the electoral district to which one such elector shall be deemed to be added”.<sup>42</sup> MMP systems use the PR portion of the vote to compensate for any disproportionality in plurality voting. Therefore, the continued use of bonus seats, which usually results in increasing disproportionality, would work against the logic of PR seats in an MMP system.

## **Conclusion**

This chapter has explored the possibility of using MMP as an alternative system of election in Sri Lanka. The chapter has drawn from a variety of international examples to show that MMP can increase representation and ensure that the ultimate make-up of parliament more closely resembles people’s choices at the ballot box. That the 20th Amendment recognizes MMP as a viable alternative is promising. However, certain key areas of successful MMP systems such as dual ballots, the correct number and size of electoral tiers, and open party lists are missing from the Amendment. Encouragingly, in 2017 the interim Steering Committee on Constitutional Reform echoed the call to utilize a dual ballot system in electoral reform. While the potential of MMP systems to improve electoral outcomes is significant, the absence of these mechanisms will hold back the impact and efficacy of the intended reforms.

---

41. Parliament of Sri Lanka - The Electoral System. (2012). Parliament.lk. Retrieved 15 March 2016, from <http://www.parliament.lk/members-of-parliament/the-system-of-elections-in-sri-lanka/the-electoral-system>

42. Prime Minister and Minister of Policy Planning, Economic Affairs, Child, Youth and Cultural Affairs, (2015). The Gazette of the Democratic Socialist Republic of Sri Lanka: Twentieth Amendment to the Constitution. Colombo: Department of Government Printing

# TRANSPARENCY OF ASSETS AND LIABILITIES DECLARATIONS OF PARLIAMENTARIANS: THE INDIAN EXPERIENCE

**Mr. Venkatesh Nayak**

## **Introduction**

More than 95% of the politicians elected to the State Legislature of Karnataka in Southern India in May 2018 are “crorepatis” (Rupee multi-millionaires) by their own admission.<sup>43</sup> The Association for Democratic Reforms (ADR) and National Election Watch (NEW) released this finding to the media within 48 hours of the election.<sup>44</sup> This assessment would not have been possible if not for a robust existing regime of disclosure of the assets and liabilities of all candidates.

Since 2003, it has become mandatory for every candidate seeking election to the national Parliament or any of the 31 Legislatures in the States and the Centrally administered Union Territories of Delhi and Puducherry, to publicly declare one’s assets and liabilities as well as those of one’s spouse and dependent family members including children. The basis of this statutory regime of disclosure is the voter’s “right to know.” Information about the background of people who seek to represent them allows voters to make an informed choice at the polling booth. The assets declarations that Members of Parliament (MPs) make every year are accessible to any citizen under The Right to Information Act, 2005 (RTI Act). This act recognises the same principle of transparency of the financial background of elected representatives. This article summarizes how these major developments came about in India, as a way to offer lessons on how similar processes might be instituted in Sri Lanka.

---

43. “97% of newly elected Karnataka Lawmakers are crorepatis: Report”, NDTV, 17 May, 2018, accessible at: <https://www.ndtv.com/india-news/97-per-cent-of-newly-elected-karnataka-lawmakers-are-crorepatis-report-1853209>, accessed on 22 May, 2018.

44. Karnataka 2018: Election Summary – Crorepatai Winners, available on the website of National Election Watch – Association for Democratic Reforms, at: [http://myneta.info/karnataka2018/index.php?action=summary&subAction=winner\\_crorepatai&sort=candidate#summary](http://myneta.info/karnataka2018/index.php?action=summary&subAction=winner_crorepatai&sort=candidate#summary), accessed on 22 May, 2018.



## 1. Assets Declaration under the Code of Conduct for Ministers

The regime of assets declaration was first instituted in the 1960's under the Prime Ministership of Lal Bahadur Shastri, who placed great emphasis on probity in public life. Soon after India attained independence from colonial rule, the government under Shastri's predecessor, Jawaharlal Nehru, was tainted by two corruption scandals as a result of the nexus between politicians and the business sector.<sup>45</sup> As a result, discussions began around the issue of requiring Ministers to declare their financial interests and assets.

Coming out of these scandals, in 1964, the Central Government issued a "Code of Conduct" for Ministers requiring them to submit declarations of assets and financial interests to the Prime Minister upon assuming office.<sup>46</sup> This was applicable to the States as well where Ministers submitted declarations to the respective Chief Ministers. Every declaration contained specific details of assets and financial interests. Some stipulations from the Code included "disclose to the Prime Minister... details of the assets and liabilities, and of business interests, of himself and of members of his family." This included "particulars of all immovable property and the total approximate value of (i) shares and debentures, (ii) cash holdings and (iii) jewellery." Furthermore, MPs were required to "sever all connections, short of divesting himself of the ownership, with the conduct and management of any business in which he was interested before his appointment as Minister." Finally, on businesses which supplied goods or services to the Government "divest himself of all his interests in the said business and also of the management thereof." Additionally, the Code cast a duty of annual declaration on every Minister at the Central and the State level, so long as they remained in office.

Note that this 1964 Code was akin to an executive instruction and lacked any statutory backing. This is a significant difference to the law on assets disclosure enacted in Sri Lanka in 1975.<sup>47</sup> It was also surprising that none of the State Governments protested the imposition of the Code, even though the centre clearly lacked any constitutional backing. One explanation for this is the fact that the Indian National Congress (INC) was in power in most states so the Code seems to have been unquestioningly accepted.

---

45. In 1948, the Jeep scandal came to light involving the purchase of 200 jeeps for the Indian army from a foreign firm. The deal was said to have been authorised by India's High Commissioner in the United Kingdom, ignoring financial protocols. See, Jeep Scandal on Wikipedia, accessible at: [https://en.wikipedia.org/wiki/Jeep\\_scandal\\_case](https://en.wikipedia.org/wiki/Jeep_scandal_case), accessed on 22 May, 2018. Ten years later, in 1958 the Mundhra investment scandal hit the headlines, thanks to the perseverance of the Late Feroze Gandhi, MP of the ruling Indian National Congress and son-in-law of Pandit Nehru. Businessman Mr. Haridas Mundhra used his considerable political influence to persuade Life Insurance Company to invest funds in six floundering companies in which he held shares in order to shore up their business, bypassing the investment protocols and oversight mechanisms. This scandal eventually led to the nationalisation of the insurance business across the country. See Haridas Mundhra on Wikipedia, accessible at: [https://en.wikipedia.org/wiki/Haridas\\_Mundhra](https://en.wikipedia.org/wiki/Haridas_Mundhra), accessed on 22 May, 2018.

46. Code of Conduct for Ministers (Both Union and State); Ministry of Home Affairs, Government of India, 1964, accessible on the website of the Union Home Ministry at: <https://mha.gov.in/sites/default/files/CodeOfConduct-280513.pdf>, accessed on 22 May, 2018.

47. Declaration of Assets and Liabilities Law, 1975, accessible on the website of Sri Lanka's Commission to Investigate Allegations of Bribery and Corruption, at: [https://www.ciaboc.gov.lk/images/pdf/acts/Declaration\\_of\\_Assets\\_and\\_Liabilities.pdf](https://www.ciaboc.gov.lk/images/pdf/acts/Declaration_of_Assets_and_Liabilities.pdf), accessed on 22 May, 2018.

An important caveat here is that nothing in the Code required the declarations to be made public. Moreover, the Code did not require similar declarations from the Prime Minister or from the Chief Ministers. There was no mechanism to ensure compliance with the Code or to verify the contents of the declarations submitted. To the best of this author's knowledge, no citizen or organisation launched any strategic litigation in the constitutional courts to make this information public. There was hardly any discussion about this Code even when the infamous Bofors scandal hit the headlines during the late 1980s.<sup>48</sup>

## **2. Code of Conduct for Ministers enters the Public Domain**

The first public discussion on the Code of Conduct for Ministers was initiated by the Second Administrative Reforms Commission set up by the United Progressive Alliance Government in 2006. In a report on 'Ethics in Governance', the Commission examined various codes of conduct and behaviour applicable to functionaries in the public sector, including the political establishment, the civil services, the judiciary and regulatory agencies. Taking note of the fact that the Code for Ministers had never been placed in the public domain, the Commission recommended the publication of the code so that people knew of the ethics applicable to Ministers. It also recommended the following measures to make compliance with the Code more meaningful:

- a) establishment of dedicated units in the offices of the Prime Minister and the Chief Ministers to monitor compliance with the declaration requirements;
- b) empowering such units with the power to receive complaints of non-compliance from the public, although the Commission was silent on who should inquire into such complaints; and
- c) submission of an annual report regarding compliance with the Code to Parliament and the State Legislatures, as the case may be along with details of action taken in case of any violation of the code.<sup>49</sup>

## **3. Asset Declarations become Publicly Accessible and Debatable**

After waiting in vain for two years for the publication of the Code, this author submitted an information request to the Prime Minister's Office (PMO) in 2009, seeking a copy of the Code and the status of compliance with the assets declaration requirement. The information supplied by the PMO revealed poor levels of compliance.<sup>50</sup> Meanwhile, a senior investigative journalist working with a prominent weekly news magazine also picked up the issue of non-compliance.<sup>51</sup> In 2010, the Government reacted by extending the deadline for

---

48. This scandal was about the alleged payment of kickbacks by middlemen to politicians and senior members of the governments in India and Sweden to secure a business deal for supply of 155mm howitzer guns to the Indian army. The taint is alleged to have coated the high office of the Prime Minister. As a direct result of this scandal, the INC government was voted out of power in 1989.

49. Second Administrative Reforms Commission, Fourth Report: Ethics in Governance, pp. 22ff, accessible on the website of the Department of Administrative Reforms and Public Grievances at: <https://darp.gov.in/sites/default/files/ethics4.pdf>, accessed on 22 May, 2018.

50. "Key men in PM's team go slow on assets declaration", Times of India, 17 November, 2009, accessible on their website at: <https://timesofindia.indiatimes.com/india/Key-men-in-PMs-team-go-slow-on-assets-declaration/articleshow/5237354.cms>, accessed on 22 May, 2018.

51. Noted investigative journalist, Mr. Shyamlal Yadav who was then working with the news weekly- India Today sought copies of the assets declarations submitted by Ministers under RTI. Initially, he was stonewalled by the authorities. See: "Open Secret", India Today, 19 June, 2008, accessible on its website at: <https://www.indiatoday.in/magazine/nation/story/20080630-open-secret-736637-2008-06-19>, accessed on 22 May, 2018.

submission of assets declarations by two months.<sup>52</sup> Eventually, the PMO started uploading the status of compliance by Union Ministers with the Code and publicly displayed the contents of the declarations. The Prime Minister himself also started complying with the declaration requirement.

As a result of this pressure, today, any person with an internet connection is able to access the assets and liabilities declarations of Union Ministers under the current Government.<sup>53</sup> The declarations contain information about the extent and market value of residential, agricultural or commercial land, cash-in-hand figures, investment in bank deposits (along with bank account numbers) and other savings instruments including mutual funds, investments in shares and debentures of corporations, vehicles owned along with registration number, weight and market value of jewellery owned. Additionally, the declarant is required to indicate the source of the funds utilised for purchasing these movable and immovable assets.<sup>54</sup> Similar information is disclosed for the declarant's spouses and dependents, where applicable.

Every new cycle of declaration and disclosure results in the media analysing the assets and liabilities details for the information of the citizenry.<sup>55</sup> For one example: during the demonetisation exercise launched by the Government in 2016 (to withdraw all currency notes of Indian Rupee [INR] 1,000 and INR 500 denomination from circulation, in order to encourage the citizenry to adopt digital methods instead of cash transactions) this author was able to showcase how much cash-in-hand Ministers had declared prior to the launch of this exercise, based on an analysis of the publicly available assets declarations of some Union Ministers.<sup>56</sup> The ever-watchful media constantly publishes stories of delayed compliance with the disclosure requirement. This acts as an effective pressure point on those who miss the deadline.<sup>57</sup>

---

52. "MHA revises code of conduct for Ministers", India Today, 04 February, 2010, accessible on its website at: <https://www.indiatoday.in/india/story/mha-revises-code-of-conduct-for-ministers-66649-2010-02-04>, accessed on 22 May, 2018.

53. See Prime Minister's website at: <http://www.pmindia.gov.in/en/assets-and-liabilities-of-the-union-council-of-ministers/>, accessed on 22 May, 2018.

54. For example, see the detailed declaration submitted by the Union Finance Minister for the year 2016-17 on the PMO website at: [http://www.pmindia.gov.in/wp-content/uploads/2017/06/aron\\_jatiley\\_Mo\\_Finance\\_Defence-1.pdf](http://www.pmindia.gov.in/wp-content/uploads/2017/06/aron_jatiley_Mo_Finance_Defence-1.pdf), accessed on 22 May, 2018.

55. "Assets and liabilities of Prime Minister and Council of Ministers", Be Money Aware Blog, accessible on its website at: <https://www.bemoneyaware.com/blog/assets-and-liabilities-of-prime-minister-and-council-of-ministers/>, accessed on 22 May, 2018.

56. "Did Ministers queue up to exchange their currency notes, asks RTI activist", The Wire, 01 December, 2016, accessible on its website at: <https://thewire.in/economy/ministers-queue-exchange-currency-notes-asks-rti-activist>, accessed on 22 May, 2018.

57. "Majority of PM Modi's Cabinet miss deadline to disclose assets", News18.com, 02 September, 2017, accessible on its website at: <https://www.news18.com/news/politics/majority-of-pm-modis-cabinet-miss-deadline-to-disclose-assets-1507585.html>, accessed on 22 May, 2018.

#### 4. Assets Declarations of Ministers in Bihar

Let us take a regional case study. Since the 1980's the State of Bihar was often criticised for high levels of corruption and laggard economic development.<sup>58</sup> Responding to this, in 2011, the newly-elected Government under its reformist Chief Minister launched a massive assets disclosure exercise. Once again executive policy was used in order to bring greater probity in the dealings of ministers and civil servants.<sup>59</sup> All Ministers including the Chief Minister and all ranks of bureaucrats (including clerks and stenographers) were required to annually declare their assets and liabilities as well as that of their spouses and dependents.<sup>60</sup> A dedicated web portal was launched and is updated from time to time. The portal is designed to provide unrestricted access to the declarations by Ministers since 2011-12, in English, free of charge to any person. This obviates the need for people to make formal requests for this information under the RTI Act.

An innovative feature that Bihar has adopted is to require all declarants to publicly disclose the amount of income tax they pay every year along with their unique tax identification number (PAN).<sup>61</sup> For example, the Chief Secretary of Bihar – the highest ranking civil servant has declared that he and his wife together paid more than INR 1 million as income tax during the financial year 2017-18.<sup>62</sup> Interestingly, the Ministers have not disclosed income tax details in their declarations, ever. The scheme of declaration under the Central Government's Code of Conduct for Ministers also did not include this requirement.

Ordinarily, information about the taxes paid by an individual and the tax identification number are treated as sensitive personal information in many developed and developing countries. Public disclosure of such information is abhorred as it is likely to be misused. However, ever since the implementation of the disclosure regime in Bihar, to the best of the author's knowledge, no complaints about the misuse of this information have surfaced.

---

58. "BIMARU club still has 4 States", Times of India, 13 August, 2015, accessible on its website at: <https://timesofindia.indiatimes.com/india/BIMARU-club-still-has-4-states/articleshow/48461107.cms>, accessed on 22 May, 2018.

59. "Assets of 85,000 Bihar Government Officials online", Outlook, 10 March, 2011, accessible on its website at: <https://www.outlookindia.com/newswire/story/assets-of-85000-bihar-government-officials-online/714677>, accessed on 22 May, 2018.

60. See Declaration of Assets by government servants and other civil servants, including the police on the website of the Government of Bihar <http://gov.bih.nic.in/AssetDocs.htm>, accessed on 22 May, 2018.

61. See Declaration of Assets by Ministers on the website of the Government of Bihar, accessible at: <http://csd.bih.nic.in/Scripts/Asset/Asset.asp>, accessed on 22 May, 2018.

62. See the Chief Secretary's declaration of assets and liabilities on the dedicated portal of the Government of Bihar at: <http://210.212.23.53/Assets2018/AssetDetails/2018/Departments/Cabinet%20Secretariat%20Department/Sinchai%20Bhawan/201720181040000CAB005000001.pdf>, accessed on 22 May, 2018.

The jury is still out on whether transparency of the assets declarations of Ministers and civil servants has contributed to contain corruption in Bihar. According to a corruption perception survey released recently, 45% of the households surveyed in Bihar felt that corruption in public services had reduced during the last one year.<sup>63</sup> Whether transparency of assets declaration is a contributory factor in the shaping of this perception requires further probing.

## 5. Assets Declarations of Electoral Candidates

While the mechanism for disclosure of assets of ministers and other public servants was accomplished through executive fiat, the system of disclosure of assets of MPs and State Legislators took a different and more litigious trajectory in India. Evidently, the Code of Conduct for Ministers did not cover this category of public representatives. The push for greater transparency did not come from a need in the establishment to bring parity between Ministers and MPs. Instead, it was one of the successful outcomes of civil society's efforts to clean up the electoral system through strategic litigation launched in the constitutional courts.

During the 1980's and 1990's multiple government-appointed committees and commissions found money and muscle power invariably determining the outcomes of the electoral process.<sup>64</sup> Despite the election-related laws stipulating the limits of campaign spending by candidates, every political party or a candidate's well-wishers spent well above and beyond that figure.<sup>65</sup> Despite widespread calls for cleansing the electoral system, the political establishment failed to arrive at a consensus on the manner and extent of reform required.

Responding to this, civil society organisations such as ADR, Loksatta and the People's Union for Civil Liberties (PUCL) launched strategic litigation efforts, as a result of which the Supreme Court of India underlined the imperative of providing every voter with specific information about the financial, criminal, and educational background of any candidates contesting elections to Parliament, the State Legislatures or the offices of the President and Vice President. In 2002, a three-judge Bench of the Apex Court directed the Election Commission of India to require all candidates contesting elections to declare their movable and immovable assets on affidavit and submit them along with the nomination forms to the returning officer responsible for conducting the elections.<sup>66</sup> As the electoral reforms committees had found that politicians often deposited wealth in the names of their spouses and dependents to escape tax scrutiny, the Court also directed that the details of assets of

---

63. See Table 4 in Corruption Study 2018- 2005 to 2018: How well are States placed?, CMS-India, New Delhi, 2018, page 5, accessible on CMS-India website at: [http://cmsindia.org/cms\\_ics18/CMS\\_ICs\\_2018\\_Report.pdf](http://cmsindia.org/cms_ics18/CMS_ICs_2018_Report.pdf), accessed on 22 May, 2018.

64. For example, see- a) Dinesh Goswami Committee on Electoral Reforms, 1990 (unfortunately, the text of this report is no longer available at the link hosted on the website of the Union Ministry of Law, Government of India) and b) Indrajit Gupta Committee Report on State Funding of Elections, 1998, report accessible on ADR's website at: [https://adrindia.org/sites/default/files/Indrajit\\_Gupta\\_Committee\\_on\\_State\\_funding\\_of\\_Elections.pdf](https://adrindia.org/sites/default/files/Indrajit_Gupta_Committee_on_State_funding_of_Elections.pdf), accessed on 22 May, 2018.

65. The current ceiling is INR 4 million in large sized Parliamentary constituencies. It is INR 1.6 million in large sized State Assembly constituencies. The figure differs from State to State. See queries #31-34 in FAQs – Contesting for Elections, on the website of the Election Commission of India at: [http://eci.nic.in/eci\\_main1/Contesting.aspx](http://eci.nic.in/eci_main1/Contesting.aspx), accessed on 22 May, 2018.

66. Union of India vs Association for Democratic Reforms, AIR 2002 SC 2112, judgement accessible on ADR's website at: [https://adrindia.org/sites/default/files/Supreme\\_Court's\\_judgement\\_2nd\\_May\\_2002.pdf](https://adrindia.org/sites/default/files/Supreme_Court's_judgement_2nd_May_2002.pdf), accessed on 22 May, 2018.

spouses and their dependents also be disclosed by every candidate on the same affidavit.<sup>67</sup> The returning officers of every constituency were made duty bound to display these assets declarations on their notice boards, to supply copies to the press and also cause the same to be uploaded on the official website of the Election Commission of India.

In the absence of any law that required public declaration of assets by electoral candidates, the Supreme Court broadly interpreted the constitutional powers vested in the Election Commission to conduct “free and fair elections” to identify the source of power to collect information from the electoral candidates. Drawing from international human rights instruments to which India had acceded in the past, the Apex Court reasoned as follows:

“4. To maintain the purity of elections and in particular to bring transparency in the process of election, the Commission can ask the candidates about the expenditure incurred by the political parties and this transparency in the process of election would include transparency of a candidate who seeks election or re-election. In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted.

5. The right to get information in democracy is recognised all throughout and it is natural right flowing from the concept of democracy. At this stage, we would refer to Article 19(1) and (2) of the International Covenant of Civil and Political Rights which is as under:-

“(1) Everyone shall have the right to hold opinions without interference.

(2) Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.”...

7. Under our Constitution, Article 19(1)(a) provides for freedom of speech and expression. Voters’ speech or expression in case of election would include casting of votes that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is must. Voter’s (little man-citizen’s) right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. The little man may think over before making his choice of electing law breakers as law makers.” (emphasis supplied)

---

67. Additionally, the Apex Court directed every candidate to declare on affidavit any criminal charge faced by the candidate which is at least six months old, including cases where he or she had been acquitted or discharged.

A panic-stricken political establishment moved quickly to authorise the Central Government to bring an Ordinance to amend the election laws to nullify the effect of the Supreme Court's directions. However ADR, Loksatta and PUCL challenged the constitutionality of the Ordinance on several grounds including that it truncated the voter's fundamental right to know the financial antecedents of electoral candidates in an unreasonable manner. A three-member Bench of the Apex Court struck down the Ordinance as being unconstitutional and reiterated its directions.<sup>68</sup>

It may be recalled here, that as a universally recognised human right, every individual's right to seek, receive and impart information is a claim that lies against the State, its agencies and functionaries. Its dual dimensions include: a) a negative obligation on the State and its functionaries to not interfere with the free flow of information as is necessary in an open and democratic society; and b) a positive obligation on the government and other public authorities to provide access to information about their functioning, voluntarily, from time to time and also on request. Clearly, the duty holders who are required to ensure the enjoyment of this basic human right are the agents of the State and its most visible arm—the government.

However, the voter's right to know as recognised by the Supreme Court of India is a unique species of information access rights where a duty is cast upon State agencies to collect personal information from politicians many of whom are private individuals (except those MPs seeking re-election) with no perfect obligation to be transparent to the public unlike the functionaries of the State or the Government. In a separate but concurring opinion, Justice Venkatarama Reddi took note of this dilemma in the following words:<sup>69</sup>

“97. For the first time in *Union of India v. Association for Democratic Reforms* case, which is the forerunner to the present controversy, the right to know about the candidate standing for election has been brought within the sweep of Article 19(1)(a). There can be no doubt that by doing so, a new dimension has been given to the right embodied in Article 19(1)(a) through a creative approach dictated by the need to improve and refine the political process of election. In carving out this right, the Court had not traversed a beaten track but took a fresh path. It must be noted that the right to information evolved by this Court in the said case is qualitatively different from the right to get information about public affairs or the right to receive information through the Press and electronic media, though to a certain extent, there may be overlapping. The right to information of the voter/citizen is sought to be enforced against an individual who intends to become a public figure and the information relates to his personal matters. Secondly, that right cannot materialize without State's intervention. The State or its instrumentality has to compel a subject to make the information available to public, by means of legislation or orders having the force of law....

---

68. *People's Union for Civil Liberties (PUCL) & Anr., vs Union of India (UoI) & Anr.*, AIR 2003 SC 2363, judgement accessible on the website of Right2info at: [https://www.right2info.org/resources/publications/case-pdfs/india\\_union-for-civil-liberties-pucl-and-another-v.-union-of-india-and-another](https://www.right2info.org/resources/publications/case-pdfs/india_union-for-civil-liberties-pucl-and-another-v.-union-of-india-and-another), accessed on 22 May, 2018.

69. *Ibid.*



One more observation at Paragraph 30 to the effect that “the decision making process of a voter would include his right to know about public functionaries who are required to be elected by him” needs explanation. Till a candidate gets elected and enters the House, it would not be appropriate to refer to him as a public functionary. Therefore, the right to know about a public act done by a public functionary to which we find reference in *Raj Narain's case*<sup>70</sup> is not the same thing as the right to know about the antecedents of the candidate contesting for the election. Nevertheless, the conclusion reached by the Court that the voter has such a right and that the right falls within the realm of freedom of speech and expression guaranteed by Article 19(1)(a) can be justified on good and substantial grounds.”

In other words, the basic human right to run for public office<sup>71</sup> was contingent on the performance of a duty of public disclosure of the assets and liabilities of self, one's spouse and dependents. Even more interesting is the fact that this duty of disclosure was found to be indispensable for giving effect to the voter's right to choose his or her representative in an informed manner.

Subsequently, the Representation of the People Act, 1951 (RP Act, 1951)- one of the two election-related laws in India was amended to provide statutory cover to the Supreme Court's directions regarding disclosure of assets and liabilities of candidates contesting elections to Parliament and the State Legislatures.<sup>72</sup> So, now by law, the Election Commission collects details of assets and liabilities of electoral candidates, their spouses and dependents, if any and makes all the information public on official websites prior to elections – both general elections and by-elections.<sup>73</sup>

## 6. Assets Declarations of Sitting MPs

Soon after the 2002 judgment issued by the Supreme Court elucidating the voter's right to know the financial and other antecedents of electoral candidates, Parliament inserted a new chapter in the RP Act of 1951 making it compulsory for all elected MPs to submit

---

70. *State of U.P. vs Raj Narain & Ors.*, AIR 1975 SC 865, judgement is accessible on the website of Indiankanoon.org at: <https://indiankanoon.org/doc/438670/>, accessed on 22 May, 2018. In this case the Supreme Court of India recognised the citizen's right to know what the government is doing in his or her name as a fundamental right deemed to be a part of the fundamental right to speech and expression guaranteed under Article 19(1)(a) of the Constitution. This was the first instance of judicial recognition of the citizen's right to access information from the Government.

71. The right to vote and to be elected in genuine periodic elections is recognised as a basic human right in the International Covenant on Civil and Political Rights, 1966 (entry into force in 1976). See Article 25(b) of the Covenant on the website of the Office of the UN High Commissioner for Human Rights at: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>, accessed on 22 May, 2018.

72. See Rule 4A of the Conduct of Election Rules, 1961, notified under the RP Act, 1951, accessible on the website of the Election Commission of India at: [http://eci.nic.in/eci\\_main/forms/F26.pdf](http://eci.nic.in/eci_main/forms/F26.pdf). See Form 26 for the template of the affidavit required to be submitted with assets related details along with the nomination paper on the same website at: [http://eci.nic.in/eci\\_main/forms/F26.pdf](http://eci.nic.in/eci_main/forms/F26.pdf), accessed on 22 May, 2018.

73. The affidavits containing the assets and liabilities declarations are available on a dedicated portal set up by the Election Commission of India at: <http://affidavitarchive.nic.in/>, and the website of the Chief Electoral Officer (CEO) of each State and Union Territory. See the assets declarations on affidavits uploaded for candidates contesting the State Assembly elections in Karnataka in May 2018 on the CEO's website at: [http://ceokarnatakatemp.kar.nic.in/ceo2/SearchContestingCandidate\\_Ac2018.aspx](http://ceokarnatakatemp.kar.nic.in/ceo2/SearchContestingCandidate_Ac2018.aspx), accessed on 22 May, 2018.



declarations of their movable and immovable assets and financial liabilities due to any State agency within ninety days of assuming office.<sup>74</sup> The Houses of Parliament were empowered to make rules for the manner and periodicity of disclosure. Interestingly, while the amendment to the RP Act required disclosure of assets only upon assuming office, the Rules adopted by both Houses in 2004 require the MPs to declare any changes in their assets position at the end of every financial year.<sup>75</sup> The rules go further than the enabling enactment. The assets and liabilities declarations are included in a register maintained by the respective Secretaries General of the Houses.

Interestingly, the rules adopted by the twin Houses converged on the issue of restricting access to the citizenry. The rules adopted by the Upper House permit access to the Register of Assets and Liabilities to any person (including MPs) only on the written permission of the Chairman of the House.<sup>76</sup> The Rules of adopted by the Lower House treat the information contained in the Register of Assets and Liabilities of that House as confidential information – not to be disclosed to any person without the leave of the Speaker.<sup>77</sup>

However, in the wake of the controversy over access to information about the assets declaration of judges of the Supreme Court of India, in 2008, the Speaker of the Lower House ruled that all assets and liabilities declarations of MPs would be accessible to any person under the RTI Act.<sup>78</sup> This was a logical decision to make, because an MP would have publicly declared his or her financial details during the previous elections and would have had to repeat this while seeking re-election. It would be unjustifiable to refuse access to asset declarations in the interregnum.

---

74. Chapter VIIA containing Section 75A was inserted in the RP Act, 1951 in 2002. See text of the Chapter on the India Code website at: <https://indiacode.nic.in/bitstream/123456789/2096/1/A1951-43.pdf>, accessed on 22 May, 2018.

75. See The Members of Rajya Sabha (Declaration of Assets and Liabilities) Rules, 2004, accessible on the website of the Upper House at: [https://rajyasabha.nic.in/rsnew/members/declaration\\_assets\\_rules\\_2006.pdf](https://rajyasabha.nic.in/rsnew/members/declaration_assets_rules_2006.pdf), and The Members of Lok Sabha (Declaration of Assets and Liabilities) Rules, 2004, accessible on the website of the Lower House at: [http://164.100.47.194/loksabha/writereaddata/Members/Downloads/Rules\\_L\\_A\\_2004\\_E.pdf](http://164.100.47.194/loksabha/writereaddata/Members/Downloads/Rules_L_A_2004_E.pdf) accessed on 22, May, 2018.

76. See Rule 4(4) of The Members of Rajya Sabha (Declaration of Assets and Liabilities) Rules, 2004, accessible on the website of the Upper House at: [https://rajyasabha.nic.in/rsnew/members/declaration\\_assets\\_rules\\_2006.pdf](https://rajyasabha.nic.in/rsnew/members/declaration_assets_rules_2006.pdf), accessed on 22, May, 2018.

77. See Rule 4(4) The Members of Lok Sabha (Declaration of Assets and Liabilities) Rules, 2004, accessible on the website of the Lower House at: [http://164.100.47.194/loksabha/writereaddata/Members/Downloads/Rules\\_L\\_A\\_2004\\_E.pdf](http://164.100.47.194/loksabha/writereaddata/Members/Downloads/Rules_L_A_2004_E.pdf), accessed on 22, May, 2018.

78. "To check MPs' assets, just send RTI to Speaker", Economic Times, 25 April, 2008, accessible on its website at: <https://economictimes.indiatimes.com/news/politics-and-nation/to-check-mps-assets-just-send-rti-to-speaker/articleshow/2980989.cms>, accessed on 22 May, 2018. The controversy arose over an information request made by a seasoned RTI activist – one Mr. Subhash Chandra Agrawal. He sought to know whether all judges of the Supreme Court were complying with the Resolution of the Full Court adopted in 1997 that required them to submit their assets details to the Chief Justice of India. The Registry of the Supreme Court resisted a clear answer to this query at every stage. The Central Information Commission established under the RTI Act ruled that all that the information seeker was asking was status of compliance and not access to the assets declarations of judges, so there was no harm in informing him about the status of compliance with the Resolution. The Delhi High Court also upheld this ruling in 2010. Moved by the widespread public debate over their assets declarations, and the unprecedented initiative taken by several High Courts to voluntarily disclose their judges' assets declarations, the Supreme Court also created a webpage to disclose the assets declarations of its judges. This information is accessible on its website at: <https://www.supremecourtindia.nic.in/assets-judges>, accessed on 22 May, 2018. However these declarations are not being updated annually.

## 7. Moving beyond Transparency of Assets Declaration to Scrutiny and Remedial Action

The Supreme Court of India upheld the voter's right to know the financial background of electoral candidates and reasoned that transparency would help them make a reasoned choice on polling day. If assets declarations are publicly available, citizens would be able to see for themselves whether any MP or State Legislator had used public office for personal gain. They would be able to compare the declarations to make an assessment as to whether the assets of an elected representative grew disproportionately to their known sources of income. This exercise is particularly successful because of a vigilant civil society and mass media in India.

For example, in 2015, Lok Prahari, a Delhi-based civil society organisation approached the Supreme Court of India through a public interest litigation (PIL) suit requesting a formal mechanism that examined the growth in the assets of MPs and Legislators in a periodic manner and ascertained whether there was undue accretion of wealth. After doing a comparative analysis of the assets declarations submitted by legislators over two successive elections, the Petitioner had found that in several cases there was a more than five-fold increase in their declared financial worth over a period of five years. The Petitioner prayed for directions to require the electoral candidates to disclose their source of income along with the assets details on affidavit while submitting their nomination papers. The Petitioner also demanded that the declaration include details of government contracts secured by the MP or State Legislator and their spouses and dependents.<sup>79</sup> The Election Commission of India also supported this prayer.

The Court accepted the Petitioner's contention and directed in February 2018 that the format of the affidavit used by electoral candidates to declare their assets must be amended to include the source of income and details of government contracts secured before the election. This requirement would apply to the spouse and the dependents of the candidates also.

The Court applied the following reasoning:<sup>80</sup>

"57. We have already taken note of (i) the fact that increase in the assets of the LEGISLATORS and/or their ASSOCIATES disproportionate to the known sources of their respective incomes is, by compelling inference, a constitutionally impermissible conduct and may eventually constitute offences punishable under the PC Act [Prevention of Corruption Act, 1988] and (ii) 'undue influence' within the meaning of Section 123 of the RP Act of 1951. In order to effectuate the constitutional and legal obligations of LEGISLATORS

---

79. It is not uncommon for MPs and State Legislators to abuse their official positions to secure procurement or service contracts for themselves or their family members from the government or local authorities. This is rampant in the absence of a stringent law on conflict of interests for elected representatives. Disclosure of this category of information was already included in the Code of Conduct for Ministers six decades ago, but it was not applicable to MPs who were not holding ministerial portfolios. See Section I above.

80. *Lok Prahari etc. vs Union of India and Ors.*, WP(C) 784 of 2015, judgement dated 16 February, 2018, accessible on the Supreme Court's website at: [https://www.supremecourtindia.nic.in/supremecourt/2015/32225/32225\\_2015\\_Judgement\\_16-Feb-2018.pdf](https://www.supremecourtindia.nic.in/supremecourt/2015/32225/32225_2015_Judgement_16-Feb-2018.pdf), accessed on 22 May, 2018.

and their ASSOCIATES, their assets and sources of income are required to be continuously monitored to maintain the purity of the electoral process and integrity of the democratic structure of this country...

58. The citizen, the ultimate repository of sovereignty in a democracy must have access to all information that enables critical audit of the performance of the State, its instrumentalities and their incumbent or aspiring public officials. It is only through access to such information that the citizen is enabled/empowered to make rational choices as regards those holding or aspiring to hold public offices, of the State." (emphasis supplied).

The Court moved further to direct the establishment of a permanent mechanism to collect, compare and analyse the assets declarations from time to time and recommend criminal action against every MP or State Legislator who has reported a disproportionate increase in their wealth. The Court applied the following reasoning while issuing this direction:

"59. The State owes a constitutional obligation to the people of the country to ensure that there is no concentration of wealth to the common detriment and to the debilitation of democracy. Therefore, it is necessary, as rightly prayed by the petitioner, to have a permanent institutional mechanism dedicated to the task. Such a mechanism is required to periodically collect data of LEGISLATORS and their respective ASSOCIATES and examine in every case whether there is disproportionate increase in the assets and recommend action in appropriate cases either to prosecute the LEGISLATOR and/or LEGISLATOR'S respective ASSOCIATES or place the information before the appropriate legislature to consider the eligibility of such LEGISLATORS to continue to be members of the concerned House of the legislature.

60. Further, data so collected by the said mechanism, along with the analysis and recommendation, if any, as noted above should be placed in the public domain to enable the voters of such LEGISLATOR to take an informed and appropriate decision, if such LEGISLATOR chooses to contest any election for any legislative body in future." (emphasis supplied)

The Supreme Court stopped short of spelling out what the permanent mechanism for scrutiny should look like and how its autonomy may be ensured from the government and the political establishment. Currently, all eyes are on the Central Government and the Election Commission which are required to comply with the Court's directives.

One such mechanism was proposed through The Lokpal and Lokayuktas Act, 2013 that Parliament enacted in response to the vociferous demand for a establishing an independent and strong anti-corruption agency to investigate both high and low public officials.<sup>81</sup> Section 44 of this law made it mandatory for the public disclosure of the assets and liabilities of all categories of public servants, their spouses and dependents.

---

81. See the text of the enactment and a brief history of the political developments leading to the adoption of this legislation in the Compendium of Parliamentary Enactments: The Lokpal and Lokayuktas Act, 2013 published by the Rajya Sabha (Upper House of India's Parliament) and accessible on its website at: [https://rajyasabha.nic.in/rsnew/publication\\_electronic/Lokpal\\_LokayuAct%202013.pdf](https://rajyasabha.nic.in/rsnew/publication_electronic/Lokpal_LokayuAct%202013.pdf), accessed on 22 May, 2018.

This requirement covered all levels of public officials, executives and managers of government corporations and non-governmental organisations receiving government or foreign funding. Every department was mandated to display the declarations made by public servants on their official websites. The Lokpal would have inquired into the assets declarations while investigating any complaint of corruption against a public servant. However, the Government has dragged its feet on the constitution of the Lokpal for more than five years.

Meanwhile, the spouses of some civil servants opposed the disclosure requirements on grounds of violation of the right to privacy in the constitutional courts. The bureaucracy succeeded in convincing the Government to table a Bill to amend the assets disclosure provisions in the Lokpal Act. In 2016, Section 44 of this law was amended to require only public servants to make declarations of only their assets and liabilities to their departmental heads. The amendment also removed the requirement of publishing these declarations on official websites. However, this amendment does not affect the erstwhile regime of transparency of assets declarations applicable to Ministers under the Code of Conduct or the disclosure requirements applicable to electoral candidates and MPs under the RP Act, 1951.

## **Conclusion**

There is no universally accepted standard for the disclosure of assets of public servants. The United Nations Convention Against Corruption (UNCAC) also does not go the whole length of the way to explain who all in the State sector should be required to publicly disclose their assets and in how much detail. In the absence of international consensus, the disclosure regime will have to be shaped by domestic imperatives and aspirations. Experience shows that merely making a “declaration” of one’s assets is no guarantee that it will be publicly accessible. Conversely, a “declaration” made in private behind closed doors is no ‘declaration’ at all. Declaration in common parlance is understood as an “announcement” or a “proclamation”. In other words, what is “declared” or announced or proclaimed is meant for the attention of more than one person. Else, it remains a mere conversation between two individuals. So an act of ‘declaring’ one’s assets on paper may not amount to much unless the declaration is accessible to the general public and is scrutinised for its veracity.

In the ultimate analysis, if one feels no sense of shame in earning wealth because if one’s earnings are legal and ethical, there should be no sense of fear in disclosing one’s assets. When disclosed publicly, such information is not easily liable for misuse. When the assets declaration remains in the hands of a few, however, it could open the doors for oppression and blackmail.

# THE NATIONAL AUDIT ACT – A CRITICAL EVALUATION OF KEY PROVISIONS

**Ms. Maheshi Herat**

## 1. Introduction

A Supreme Audit Institution (henceforth, SAI) is the national agency vested with the responsibility of auditing government revenue and expenditure.<sup>82</sup> Whilst their legal mandates, manner of reporting findings and effectiveness could differ from country to country, depending on the different governmental policies and structures, their primary purpose to oversee the management of public funds, the quality and credibility of governments' reported financial data remains the same.<sup>83</sup> A duly established and properly functioning SAI guarantees good governance by promoting state accountability and transparency.<sup>84</sup> However, in order to realize these objectives, it is essential that the SAI is independent and that its functions are specified and guaranteed in both the Constitution and national legislation.<sup>85</sup>

On 17th July 2018, Sri Lanka enacted the National Audit Act (henceforth NAA). Until this time the country lacked a comprehensive legal framework that empowered the SAI (consisting of the Auditor General and his staff) to carry out its function. To address this, a draft Audit Bill was prepared in 2004.<sup>86</sup> It was proposed as a means of curbing corruption in the public sector.<sup>87</sup> However, in the following years, the Bill was not enacted into law.<sup>88</sup>

---

82. The World Bank, The Features and Functions of Supreme Audit Institutions at <http://www1.worldbank.org/prem/PREMNotes/premnote59.pdf>

83. Ibid

84. OECD, Good Practices in Supporting Supreme Audit Institutions, p. 9 available online at <https://www.oecd.org/dac/effectiveness/Final%20SAI%20Good%20Practice%20Note.pdf>; UN General Assembly Resolution, A/66/209.

85. INTOSAI, Eight Pillars defining the Independence of Supreme Audit Institutions (SAIs), available online at [http://www.intosai.org/fileadmin/downloads/downloads/4\\_documents/Folder\\_Englisch\\_2012.pdf](http://www.intosai.org/fileadmin/downloads/downloads/4_documents/Folder_Englisch_2012.pdf)

86. Uditha Kumarasinghe, 19 March 2017, Sunday Observer, Government Pledges to Table National Audit Bill within Two Months available online at <http://www.sundayobserver.lk/2017/03/19/news/govt-pledges-table-national-audit-bill-within-two-months>; Bandula Sirimanna, 20 August 2017, The Sunday Times, National Audit Bill Blocked by Vested Interests available online at <http://www.sundaytimes.lk/170820/business-times/national-audit-bill-blocked-by-vested-interests-254967.html>

87. A Toothless National Audit Bill Draft, Ceylon Today, 13 October 2017, online at <http://www.ceylontoday.lk/columns20170401CT20180430.php?id=1011>

88. Disna Mudalige, 11 October 2017, Daily News, Cabinet approves National Audit Bill, available online at <http://dailynews.lk/2017/10/11/political/130921/cabinet-approves-national-audit-bill>; A Toothless National

In 2015 the then Presidential Candidate Maithripala Sirisena reintroduced the Audit Bill as part of his “100 day Program.”<sup>89</sup>

The reintroduced Bill received several pointed objections, primarily focused on the ‘surcharge provision.’ This provision empowered the Auditor General to hold a person personally liable for the loss caused to a state entity through fraud, negligence, or corruption.<sup>90</sup> Opponents of the reintroduced Bill contended that this bestowed too much power on the Auditor General to interfere with the public sector.<sup>91</sup>

On the other hand, some others recognised the need for a law, but clearly lacked understanding on the contents of the proposed framework. Both sides, the opponents and those who advocated for a law, were thus inadequate in terms of providing constructive input into strengthening the administration of public finance. Ultimately it took more than a decade for this draft law to be enacted into a law.<sup>92</sup>

Transparency International Sri Lanka (TISL) analysed in detail the Bill which was gazetted on 16th March 2018 and found several areas that required further clarifications/amendments in order to strengthen accountability and transparency in the proposed processes. Based on this analysis, TISL prepared a Legislative Brief proposing that these changes be incorporated at the Committee Stage of Parliament.<sup>93</sup> As a result of our advocacy, several members of Parliament, from across the political spectrum, raised these concerns and suggestions at the Committee Stage of Parliament.<sup>94</sup>

This Chapter will critically evaluate the NAA, in light of the changes proposed by TISL in the Legislative Brief, highlighting the response to such proposals at the Committee Stage of Parliament. Firstly, a brief introduction into the framework that existed prior to the NAA is provided, followed by the reasons for the need for a legal framework on public auditing. Next, international principles governing public auditing will be considered briefly. Thereafter the NAA will be critically evaluated, highlighting the changes proposed by TISL at the Committee Stage of Parliament and positive features of the law. The chapter will conclude underscoring that principles of transparency and accountability have been sidelined whilst focusing on the power structure underpinning the public auditing system.

---

89. A Toothless National Audit Bill Draft, Ceylon Today, 13 October 2017, online at <http://www.ceylontoday.lk/columns20170401CT20180430.php?id=1011>

90. Article 21 of the Bill that preceded the framework proposed by the Auditor General’s Department.

91. Damith Wickremasekera, 13th August 2017, the Sunday Times, Cabinet defers National Audit Bill for 24th Time: Says too much Power for AG, available online at <http://www.sundaytimes.lk/170813/news/cabinet-defers-national-audit-bill-for-24th-time-says-too-much-powers-for-ag-254501.html>

92. The Audit Bill has been amended without being presented to the Parliament 24 times, where it has been so far reviewed by two Cabinet appointed Committees. See for example A Toothless Nat Audit Bill Draft, Ceylon Today, 13 October 2017, online at <http://www.ceylontoday.lk/columns20170401CT20180430.php?id=1011>

93. As per Standing Order 56 of the Parliament of the Democratic Socialist Republic of Sri Lanka, online at [http://www.parliament.lk/files/pdf/standing\\_orders\\_english.pdf](http://www.parliament.lk/files/pdf/standing_orders_english.pdf)., “Any amendment may be made to a clause, or clauses may be deleted or new clauses may be added, provided the same be relevant to the subject matter of the Bill, and be otherwise in conformity with the Standing Orders.”

94. Parliamentary Debates (Hansard), Volume 261 - No. 10 page 99 of 5th July 2018, available online at <http://parliament.lk/uploads/documents/hansard/1531478463021150.pdf>

## **2. What was Sri Lanka's Domestic Legal Framework on Public Auditing prior to the enactment of the NAA?**

The 1978 Constitution of Sri Lanka mandates the Auditor General to audit public sector institutions.<sup>95</sup> These include the accounts of all Departments of Government, the Offices of the secretary to President, the Offices of the Secretary to the Prime Minister, the Offices of the Cabinet of Ministers, the Judicial Service Commission, the Constitutional Council, the Commissions referred to in the Schedule to Article 41B, the Parliamentary Commissioner for Administration, the Secretary General of Parliament and the Local Authorities, Public Corporations as well as businesses vested in the government under any written law and registered companies in which the government or a public corporation or local authority holds fifty per centum or more of the shares.

This constitutional mandate was expanded on by several other statutes pertaining broadly to public finance regulation, and administration.<sup>96</sup> Each of these additional frameworks stipulate the auditing of different public entities: for example, the Provincial Councils Act specifies the manner in which the Auditor General must audit provincial councils. Moreover, after the enactment of the 19th Amendment to the Constitution, national audit processes were amended, for example the Audit Service Commission was established to make rules relating to recruitment, appointment, transfer, dismissal and disciplinary control of the State Audit Service.<sup>97</sup> The constitutional change envisaged subsequent legislation that would further detail the framework, making it complete and workable.<sup>98</sup> This gap was intended to be filled by the enactment of the NAA.

## **3. Why do we need a Comprehensive Legal Framework for Public Auditing?**

The role of the public auditor is to provide an objective review of whether public resources are effectively and responsibly managed to achieve results. An important outcome of this is the reduction of corruption and ensuring transparency.<sup>99</sup> This is because the results of the audit allow people to hold the public sector accountable. It also boosts confidence in public

---

95. Article 154 of the 1978 Constitution of the Democratic Socialist Republic of Sri Lanka

96. Part II of the Finance Act, No. 38 of 1971 which provides for audit of Public Corporations, section 23 of the Provincial Councils Act, No. 42 of 1987 - which provides for audit of Provincial Councils, section 219 of the Municipal Councils Ordinance (Cap. 252) which provides for audit of Municipal Councils, section 181 of the Urban Councils Ordinance - (Cap. 255) which provides for audit of Urban Councils, section 172 of the Pradesiya Sabhas Act, No. 15 of 1987 - which provides for audit of Pradesiya Sabhas, section 58 of the Agrarian Development Act, No. 46 of 2000 - which provides for audit of Agrarian Development Councils, section 9 of the Sports Act, No. 47 of 1993 - which provides for audit of Sports Associations. Auditor General's Department official website accessible at <http://www.auditorgeneral.gov.lk/web/index.php/en/roles-responsibilities>

97. Article 153 C (2) (a) of the Constitution of the Democratic Socialist Republic of Sri Lanka

98. Article 153 C (2) (c) of the Constitution of the Democratic Socialist Republic of Sri Lanka

99. The Institute of Internal Auditors, Supplemental Guidance: The Role Of Auditing In Public Sector Governance 2nd Edition Release Date: Jan. 2012, page 5 available online at [https://na.theiia.org/standards-guidance/Public%20Documents/Public\\_Sector\\_Governance1\\_1\\_.pdf](https://na.theiia.org/standards-guidance/Public%20Documents/Public_Sector_Governance1_1_.pdf)



bodies.<sup>100</sup> Simultaneously, public sector institutions are able to improve their operations and work with accountability and integrity.<sup>101</sup> The lack of a mechanism that provides for independent review of public administration would ultimately lead to the corrosion of public trust in institutions.

According to the Auditor General, the absence of a legal framework was challenging for the Auditor General's Department, to conduct their functions internally and externally. For example, there have been instances where audit reports have pointed to corrupt activities, but because of the inadequate power of the Auditor General to enforce findings, follow-up action has been left to the will of Parliament.<sup>102</sup> In addition, without adequate laws, the internal functioning of the body is also alleged to have been compromised: the Audit Service Commission was set up to deal with the appointment, removal and disciplinary control of the Sri Lanka Audit service, but full provision for its function was not made. Since this legislation was not in place, it was alleged that it caused several practical difficulties in human resource management in the Auditor General's office.<sup>103</sup>

#### **4. What are the Key International Precepts on Independent Government Auditing?**

The main international principles governing public auditing are formulated by the International Organisation of Supreme Audit Institutions (INTOSAI), which is an autonomous, independent, non-political, and non-governmental organisation with special consultative status with the Economic and Social Council of the United Nations.<sup>104</sup> INTOSAI provides “an institutionalised framework for SAIs to promote development and transfer of knowledge, improve government auditing worldwide and enhance professional capacities, standing and influence of member SAIs in their respective countries”.<sup>105</sup>

The Lima Declaration and Mexico Declaration formulated by INTOSAI are the cornerstones for the proper functioning of SAIs.<sup>106</sup>

---

100. The Institute of Internal Auditors, Supplemental Guidance: The Role Of Auditing In Public Sector Governance 2nd Edition Release Date: Jan. 2012, page 5 available online at [https://na.theiia.org/standards-guidance/Public%20Documents/Public\\_Sector\\_Governance1\\_1\\_.pdf](https://na.theiia.org/standards-guidance/Public%20Documents/Public_Sector_Governance1_1_.pdf)

101. The Institute of Internal Auditors, Supplemental Guidance: The Role Of Auditing In Public Sector Governance 2nd Edition Release Date: Jan. 2012, page 5 available online at [https://na.theiia.org/standards-guidance/Public%20Documents/Public\\_Sector\\_Governance1\\_1\\_.pdf](https://na.theiia.org/standards-guidance/Public%20Documents/Public_Sector_Governance1_1_.pdf)

102. Ranjith Gunawardena, Sunday Leader, Audit Report Alerts Parliament on CPC, available online at <http://www.thesundayleader.lk/2017/08/20/audit-report-alerts-parliament-on-cpc/>

103. Disna Mudalige, Daily News, August 19, 2017, Auditor General requests Govt. To gazette National Audit Bill, available online at <http://www.dailynews.lk/2017/08/19/local/125673/auditor-general-requests-govt-gazette-national-audit-bill>

104. International Organisation of Supreme Audit Institutions (INTOSAI) official webpage <http://www.intosai.org/>

105. International Organisation of Supreme Audit Institutions (INTOSAI) official webpage <http://www.intosai.org/about-us.html>

106. INTOSAI, The Lima Declaration 1977, <http://www.intosai.org/issai-executive-summaries/view/article/issai-1-the-lima-declaration.html>; INTOSAI, The Mexico Declaration on SAI Independence, 2007, <http://www.intosai.org/issai-executive-summaries/view/article/issai-10-the-mexico-declaration-on-sai-independence.html>



The Lima Declaration contains principles relating to the following aspects of SAIs:

- Independence: including financial independence.
- Powers: including auditing, investigation and enforcement of findings.
- Structure: including the relationship between internal and external auditing, as well as the SAI's relationship to Parliament, Government and other administrative bodies.
- Best auditing methods and procedures.

SAIs around the world consider the Lima Declaration guidelines to be valuable (though non-binding) recommendations. Commendably, the current NAA also contains and identifies some of these principles.

## 5. A Critical Evaluation of the NAA

The NAA provides for the powers, duties, and functions of the Audit Service Commission, establishes the National Audit Office and Sri Lanka State Audit Service, and specifies the role of the Auditor General over public finance.<sup>107</sup> TISL highlighted four key recommendations to strengthen the NAA in the Legislative Brief: namely strengthening of the surcharge appeals process and improving transparency in decision making under surcharging power, the strengthening of the investigative powers of the Auditor General, and the protection of the fundamental right to information as recognised in the Constitution and Right to Information Act No. 12 of 2016.

In this report, only some of the key concerns that were highlighted in the Legislative Brief and corresponding suggestions will be discussed, together with crucial positive features of the Act.

### I. Power to impose personal financial responsibility (power to surcharge)

As a response to the criticism to place the power of surcharge in the hands of the Auditor General, the NAA empowers the Chief Accounting Officer (CAO) to impose the surcharge once the Audit Service Commission notifies them of any loss/deficiency caused to the entity, as a result of fraud, negligence, misappropriation or corruption.<sup>108</sup>

The power to surcharge is argued to be anchored in the Lima principle that requires a SAI to be empowered to approach the authority which is responsible for taking necessary measures and mandate the accountable party to accept responsibility.<sup>109</sup>

This power is not totally alien to Sri Lanka's public auditing: in the context of local authorities, the Auditor General has the power to recover losses from the responsible person.<sup>110</sup> Additionally, according to the Auditor General's Department, the power to surcharge has been proposed over the years as a positive provision to be included into the law of Sri Lanka.<sup>111</sup>

---

107. NAA preamble <http://www.parliament.lk/uploads/acts/gbills/english/6086.pdf>

108. Section 19 (1) (a) and (2) of NAA

109. Lima Principles, Section 11 (2)

110. Auditor General's Department, Power to Impose Surcharge <http://www.auditorgeneral.gov.lk/web/index.php/en/scope-of-audit>

111. A report prepared by the Auditor General's Department titled "Surcharge" cites four instances where this power has been proposed as necessary. For example in 1985, 12th Report of the Parliamentary Committee on Public Accounts. See online <http://www.auditorgeneral.gov.lk/web/images/Intranet/publication/Surcharge-print.pdf>

It is noted that whilst the concept of surcharging is acceptable, empowering the CAO to impose the surcharge is problematic. The CAO is usually the Secretary to a Ministry and giving this power to that office could give rise to conflict of interest situations that would hamper the effective implementation of surcharging. Further, through careful reading of section 19 with its subsections, it appears that although he is mandated to impose the surcharge, he is given discretion to consider representations by the person who is responsible for causing the loss. When the surcharge is imposed, the CAO needs to give reasons.<sup>112</sup> After considering the representations, if he decides against the surcharge, reduces, varies or amends the amount there is no express and clear provision requiring him to give reasons.

As highlighted in the Legislative Brief, the best option would have been to appoint an independent authority that imposes the surcharge. However, this suggestion was not made through the Legislative Brief, as such an amendment would require policy discussions that are contrary to Standing Orders of Parliament which governs the Committee Stage of Parliament.

## **II. Appeal mechanism against surcharge**

Any person affected by a decision of the CAO can appeal to the Surcharge Appeal Committee consisting of not less than five experts in the fields of auditing, law and public finance management, public administration and engineering appointed by the Constitutional Council.<sup>113</sup>

There are few concerns stemming from the appeal process. Firstly, there is no express provision that gives the Audit Service Commission (ASC) the power to appeal against a decision of the CAO (e.g. not to surcharge, reduce, or alter the amount that needs to be recovered) to the Surcharge Appeal Committee or Court Appeal.

Secondly, the Act is silent on the need for the Surcharge Appeal Committee to provide reasons for their decision, which will ensure impartiality and accountability. As per section 20 (2), they have the power to allow, disallow an appeal, or amend, alter or vary the decision of the CAO.

Thirdly, if a CAO is responsible for causing the loss, the Secretary to the Treasury imposes the surcharge on such person (in the gazetted Bill this authority was with the president).<sup>114</sup> The Act is silent as to the process that would follow if the responsible person for the loss is the Secretary to the Treasury.

As solutions, in the Legislative Brief TISL submitted that the Audit Service Commission must be expressly enabled to appeal, that reasons for decisions must be given by the Surcharge Appeal Committee and that the Audit Service Commission must impose the surcharge when the responsible party is a CAO, with the Auditor General recusing himself as the Chairman of the Audit Service Commission to preserve impartiality.

---

112. Section 19 (3) (e) (i)

113. Section 20 (1) read with 21 (1)

114. Section 23 (10)

At the Committee Stage, the last two of the mentioned suggestions were raised and were expressly rejected by the governing party.<sup>115</sup> They suggested the adoption of a provision that requires the CAO to report the representations made by the responsible party to the ASC - though this is positive, it falls short of our proposal to disclose reason and basis of the decision to change/decide against the surcharge. With regard to enabling the Audit Service Commission to appeal, a Minister suggested the Auditor General be able to appeal.<sup>116</sup> Though the category of persons who can appeal is wide (by recognising it as “a person aggrieved by a decision”), it is essential that the ability of the Audit Service Commission that communicates the deficiency caused, is expressly recognised.

### **III. Investigative power of the Auditor General**

Prior to the Committee Stage discussions, when a person is requested to appear before the Auditor General such person can nominate another to appear on their behalf if he/she is unable to comply with the request due to unavoidable circumstances.<sup>117</sup> TISL advocated that this nomination must be done with the Auditor General’s concurrence. This was raised at the Committee Stage and was included into the Act.<sup>118</sup>

It is also positive that the NAA gives the Auditor General the authority, in the interest of the national economy, to examine and audit accounts of any person to uncover money fraudulently, irregularly or wrongfully paid into these accounts from audited entities.<sup>119</sup> In earlier draft versions of the Act, this provision could raise serious concerns on the privacy rights of individuals, because there were no judicial safeguards in exercising this power. In the NAA, when the Auditor General is intending to examine personal accounts, he is mandated to obtain the permission of the Magistrate Court.<sup>120</sup> In practical application, this would require prompt action of the courts and confidentiality. If confidentiality is not maintained, crucial information/data could be lost, defeating the objective of tracing the money illegally drawn from state entities.

### **IV. Right to information**

Section 9 of the NAA contains a separate non-disclosure regime that restricts the right to information established by Article 14A of the Constitution and the RTI Act. As per section 9, it is an offence to disclose information obtained by persons appointed under the Act, including the Audit Service Commission in the performance of their duties. If such person is to disclose information without committing an offence, he/she would need to ensure that consent is obtained by the relevant person and the report or statement containing such information is presented in Parliament. In addition to these sections, the persons appointed under the Act including the Audit Service Commission are required to take an oath of secrecy prior to the commencement of their duties that will continue to be effective even after their term of office ends. The oath is to the effect that information will not be disclosed except in accordance with sections 9 (1) (a) and (b). This means that there is certain information that will not be subject to right to information permanently.

---

115. Parliamentary Debates (Hansard), Volume 261 - No. 10 pages 105, 106 of 5th July 2018, available online at <http://parliament.lk/uploads/documents/hansard/1531478463021150.pdf>

116. Parliamentary Debates (Hansard), Volume 261 - No. 10 page 105 of 5th July 2018, available online at <http://parliament.lk/uploads/documents/hansard/1531478463021150.pdf>

117. Section 7 (4)

118. Parliamentary Debates (Hansard), Volume 261 - No. 10 page 100 of 5th July 2018, available online at <http://parliament.lk/uploads/documents/hansard/1531478463021150.pdf>

119. Section 7(1) (d) of the Act

120. Section 7(1) (d) of the Act

Further section 13 prohibits the Auditor General from publishing a report that has been presented to Parliament if he has or intends to provide the information in such report or information obtained in the course of the audit to the law enforcement agencies.

TISL proposed the deletion of section 9 and 13 because these are restrictive of the right to information. At the Committee Stage of Parliament our suggestions were expressly rejected.<sup>121</sup> The main concern in adopting these sections appears to be the release of information that could jeopardise the audit process of the Auditor General and compromise any investigation that could follow based on the information received in the course of the audit process/audit report. However, all these concerns are adequately addressed through the right to information regime where the information officer can reject disclosing information based on section 5 (1) of that Act. The effect of section 9 and 13 is to hamper the public from even requesting information from the National Audit Office.

#### **V. Financial Independence of the National Audit Office**

Financial independence is an important principle that has found expression in the Lima principles.<sup>122</sup> Accordingly, a SAI must possess the financial means and strength to accomplish their tasks. The NAA allows for better financial independence of the SAI by enabling the Audit Service Commission to prepare and directly submit the annual budget estimates to the Speaker who in turn tables the report in Parliament for review.<sup>123</sup> Once it is forwarded to the Speaker, he engages the Minister of Finance and the Chairman of the Audit Service Commission to decide the date on which it will be presented to Parliament. When it is submitted to Parliament, the speaker must include the observations made by the Minister of Finance.

This method is a deviation from the normal budget making process; in the normal process the budget is submitted to the Ministry of Finance, which has authority to make adjustments to the same before making a final submission to the Parliament. This new method ensures that the Audit Office's budget allocation does not undergo politically motivated cuts and would only be modified if the Parliament collectively deems it fit.

### **6. Conclusion**

Whilst recognising the positive features as detailed above, it is highlighted that considerations of transparency and accountability have been sidelined, which could lead to an erosion of peoples' trust in the system set up through the NAA. This in turn will hamper the proper implementation of the Act. Therefore, it is imperative that the implementers of the Act try their level best to ensure that the process is implemented in such a manner that it builds trust, respecting the principles of natural justice, transparency and accountability.

---

121. Parliamentary Debates (Hansard), Volume 261 - No. 10 pages 101, 102 of 5th July 2018, available online at <http://parliament.lk/uploads/documents/hansard/1531478463021150.pdf>

122. Lima Declaration, Section 5

123. Section 34 of the Bill

---

# CONTRIBUTORS

**Dr. Roshan Perera** is currently the Additional Director of the Central Bank of Sri Lanka. Prior to this, she worked with the Central Bank in various other capacities: as a Senior Economist and a Deputy Director. She obtained her BA. in Economics (Honours) from the University of Colombo, after which she obtained her PhD in Economics from the University of Melbourne. She has also been a consultant for the World Bank and the United Nations Development Program (UNDP), as well as a research fellow at the University of Melbourne and at the Institute of Policy Studies, Sri Lanka.

**State Minister Hon. Eran Wickramaratne** is the current State Minister of Finance, and was formerly the Deputy Minister of Public Enterprise Development and Deputy Minister of Investment Promotions and Highways. He holds a Bachelor's Degree in Economics and Politics and a M.Sc. in Economics from the University of London. He is also an Eisenhower Fellow. Mr. Wickramaratne began his professional career at Citibank where he became the Vice President. He then moved to National Development Bank (NDB) as the CEO and transformed the NDB Group. State Minister Wickramaratne was the founder Chairman of the Information Communication Technology Agency (ICTA). He pioneered the Government of Sri Lanka's ICT led development programme, e-Sri Lanka and spearheaded the first ICT Act of the Sri Lankan Parliament.

**Ms. Maheshi Herat** is an Attorney – at- Law who obtained her LLB from the University of Colombo, and LL.M from Washington College of Law, American University, USA, specialising in human rights and gender studies. She is currently heading the Research and Policy unit of Transparency International Sri Lanka. Her areas of interests include international frameworks combating safe havens for corrupt funds, and correlations between human rights and corruption, particularly utilising returned stolen funds for the benefit of the people. She has represented TISL in the drafting committee, appointed by the Stolen Assets Recovery Taskforce (START), providing input into the draft legislative framework on the Proceeds of Crime Act (POCA).

**Mr. Janeen Fernando** at the time of writing, was a Senior Analyst and Head of Politics at Verite Research. In the past he has worked with international organisations on water resource management and consulted for a North American logistics service provider on enhancing resource allocation for market research. Janeen holds a BSc. in Sociology from the University of London and an MPhil in International Relations from Cambridge where he was a Gates scholar. He is also a lecturer in Security Studies and International Organisations and a keen follower of the politics of the Indian Ocean region.

**Mr. S. C. C. Elankovan** has received degrees in Philosophy and Law, as well as a Masters in Public Administration from the University of Madras. While pursuing his higher education in India, Mr. Elankovan acted as an advocate for an organisation which worked with refugees – having himself spent 17 years as a refugee in India. A substantial extent of his professional career has been in the areas of rehabilitation and community development, working among refugees, IDPs and war affected communities. Mr. Elankovan has worked in the NGO sector for the last 23 years, 16 of which have been spent in Sri Lanka working for INGO'S such as ZOA and Oxfam. He has also worked in varied capacities with the Sarvodaya Shramadana movement. Mr. Elankovan is presently a Consultant for the National NGO Action Front (NNAF). He is also a consultant for Diakonia.

**Mr. Venkatesh Nayak** is the Coordinator of the Access to Information Programme and is presently a key public training resource on Right to Information across South Asia, Africa & the Caribbean. He has trained more than 6000 officers of government and more than 600 executives of public sector enterprises for implementing India's new transparency law. Previously a Doctoral Research Fellow in History, he has authored research and public education documents on the right to information, the basic structure of the Indian Constitution, issues of social justice, electoral reforms, efficacy of public audit mechanisms and fact-finding mission reports on human rights violations.



# GOVERNANCE REPORT 2015-2018

---

Transparency International Sri Lanka  
5/1  
Elibank Road  
Colombo 05  
Sri Lanka

Phone: +94 0114369781  
Fax: +94 011 2 501 707

[tisl@tisrilanka.org](mailto:tisl@tisrilanka.org)  
[www.tisrilanka.org](http://www.tisrilanka.org)

[facebook.com/tisrilanka](https://facebook.com/tisrilanka)  
[twitter.com/tisrilanka](https://twitter.com/tisrilanka)

