

# PRESIDENTIAL REPORT CARD



## 1. INTRODUCTION

Transparency International Sri Lanka (TISL) periodically undertakes evidence-based national assessments based on context and relevance. One important national assessment involves the Executive.

Given TISL's above mandate, the organization undertook the task of evaluating the performance of the Executive President with regard to the delivery on the pledges contained in the presidential manifesto of 2010 specifically dealing with good governance and curbing corruption.

The following evaluation was completed treating the pledges contained in President Mahinda Rajapakse's re-election manifesto titled "*Mahinda Chintanaya the Vision Ahead*" as the basis. The objective is to promote the concept of accountability of the Executive in relation to reducing the levels of corruption in the country and the enhancement of accountability and governance. The period covered is the second and third quarter in 2010.

According to page 38 of the manifesto, the Presidential pledges include as the follows.

***"I will appoint an independent board comprising of independent and politically unbiased intellectuals under a new Constitutional Amendment, to eliminate all forms of corruption, frauds and malpractices.***

***As the First Act of Parliament, I will introduce a special act to eliminate fraud and corruption, malpractices and violation of tender procedures in government corporations, boards and financial institutions.***

***Within the 100 days of enacting such legislation, the legal and institutional framework will be strengthened and implemented.***

***To ensure transparency in the utilization of state funds in village development projects, I will formulate a legal framework to establish committees comprised of religious leaders and credible persons trusted by the community at the level of the Jana Sabha Secretariat<sup>1</sup>.***

In addition, the President also made specific pledges in pages 52-58 of the said manifesto.

These pledges referred to the convening of an All Party Conference to create a truly national forum, promote supremacy at village level in a bid to empower citizens to arrive at a peaceful political solution, re-establish the Northern Provincial Council under the Thirteenth Amendment to ensure power devolution at the periphery, Parliament to function as a State Council that will include District and National Level Proportional Representation System to provide representation for minority political trends and ethnic groups, an open dialogue on the Executive Presidency, the conversion of the Presidency to a Trusteeship and to seek wide national consensus that is required for national cohabitation.

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<sup>1</sup> See page 38 of the *Mahinda Chintanaya the Vision Ahead*.

This evaluation was based on the changes in policy that relate to transparency, accountability and governance; laws/ bills/ motions presented to the parliament that includes provisions for governance mechanisms and legislature brought into effect or repealed by the administration; changes brought to governments structures and administrative systems; the setting up of and facilitating the proper functioning of independent democratic institutions and the changes brought to the economic/ monetary policy with regard to governance.

## 2. CHANGES IN LEGISLATIVE POLICY

Two main legislative policy changes were introduced by the Government during the period under review which is the period after the Presidential Election 2010. They are: the Eighteenth Amendment<sup>2</sup> to the Constitution and the Local Government (Amendment) Bill.

The Eighteenth Amendment in effect removed the checks and balances imposed by the Seventeenth Amendment with the removal of the two- term limit on any individual being elected President. It further centralized, the powers in the Cabinet with respect to appointments, promotion and transfer in public sector employment.

The Seventeenth Amendment was unanimously passed in Parliament in March 2001 with the intention of depoliticizing key institutions of the State which were largely politicized. However, the policy decision to revert back to the pre-Seventeenth Amendment sans a cap on the number of terms on the Presidency amounts to political retrogression towards a failed system that had been tried and tested against the standards of transparency, accountability and good governance.

The Local Government (Amendment) Bill was introduced to Parliament and the Supreme Court ruled that it was consistent with the Constitution.<sup>3</sup> This Bill sought to introduce and test a new electoral system which is a combination of the Proportional Representation and the First Past the Post Systems. Though several political parties challenged the constitutionality of the Bill on the basis of it granting an unfair advantage to larger political parties and may adversely affect the concept of sovereignty, the need for a new electoral system needs to be recognized. However the introduction of a new electoral system *per se* would not improve electoral integrity unless other complementary laws and regulations are in place and strictly enforced.

## 3. CHANGES TO THE GOVERNANCE STRUCTURE AND ADMINISTRATIVE SYSTEMS

Since the conclusion of the two main elections in 2010, some key changes have been made to the administrative structure. The Attorney General's Department, Legal Draftsman's Department and Sri Lanka Customs were all brought under the President. The Attorney General is a position that is

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<sup>2</sup> See Position Paper "Adverse Impact of the 18<sup>th</sup> Amendment on Governance" available at <http://www.tisrilanka.org/?p=6430> (Last visited on 18.11.2010)

<sup>3</sup> The bill is to be taken up for debate on January 4 2011. <http://www.parliament.lk/news/ViewNews.do?recID=NWS2072> (Last visited on 17.12.2010)

essentially required to remain independent.<sup>4</sup> After the President assumed office in 2005 for the first time, an Attorney General (AG) was appointed by the Executive without following the procedure laid down under the Seventeenth Amendment when making such appointment. However, the Attorney General's Department always remained under a Ministry but largely for administrative purposes. But since the AG's Department has been brought directly under the President, the independence of the AG has been compromised.

There is a history to the politicization of this vital office. There had been instances where the Attorney General has been appointed Chief Justice of the country. However, the present context is a serious compromise given that the AG is now directly under the control of the President.

Similarly the Urban Development Authority (UDA) was brought under the Ministry of Defense. There are several reported instances where the military was used to remove certain civilian settlements in Colombo in the guise of development, in contravention of the State's obligation to protect the rights of its people.<sup>5</sup>

#### **4. FACILITATION OF THE PROPER FUNCTIONING OF INDEPENDENT DEMOCRATIC INSTITUTIONS**

The Seventeenth Amendment provided for the appointment of independent commissions and protected the independent character of the Judiciary the Superior Courts, the Auditor General etc.<sup>6</sup> The Commission to Investigate Allegations of Bribery or Corruption (CIABOC), the Public Service Commission (PSC), Election Commission, Finance Commission, National Police Commission and the Delimitation Commission functioned in a relatively independent manner raising the level of accountability following the Seventeenth Amendment to the Constitution.

However post Eighteenth Amendment, the independent character of key positions in government and the vital independent commissions have been compromised. This was achieved through the repeal of the provisions contained in the Seventeenth Amendment and the creation of a Parliamentary Council which enjoys only 'observer' status to any of the key appointments made to these commissions or positions in the Government.

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<sup>4</sup> See TISL press release "Directly under the President" available at <http://www.tisrilanka.org/?p=5080> (Last visited on 18.11.2010).

<sup>5</sup> See "Outrage in Mews St. as UDA demolishes houses" available at [http://www.sundaytimes.lk/100509/News/news\\_02.html](http://www.sundaytimes.lk/100509/News/news_02.html) (Last visited on 18.11.2010).

<sup>6</sup> See TISL Position Paper "The Forgotten Constitutional Council" available at <http://www.tisrilanka.org/?p=229> (Last visited on 18.11.2010).

## 5. CHANGES BROUGHT TO THE ECONOMIC/ MONETARY POLICY

On August 15 2010, the European Union withdrew the Generalized System of Preferences plus (GSP+) facility granted to Sri Lanka, citing Sri Lanka's poor commitment to human rights and good governance. As a result, Sri Lanka's apparels and many other products will not be able to compete with products from other countries in the coming years. In addition to this, the US market has also been impacted as a result of the withdrawal of the concession.<sup>7</sup>

In July 2009, the International Monetary Fund (IMF) agreed to loan Sri Lanka US\$ 2.6 Billion as a stand by measure to help revive Sri Lanka's economy.<sup>8</sup> This loan also increased the per capita debt manifold. Some of the key conditions of the loan were to reduce consumption, reducing waste and to effectively bridge the budget deficit. However the third tranche of the loan was delayed as the Government was not able to reduce the budget deficit.

By Presidential Order, an allocation of Rs. 440 billion from the Consolidated Fund was released to meet the expenses of the public service and to settle loan installments for the period April 22- July 22, 2010. In Sri Lanka such allocation can be made only by Parliament as the Parliament has the prerogative over public finance.<sup>9</sup>

## 6. MISCELLANEOUS

Media Freedom is a *sine qua non* in any democracy. . While the attacks on the independent media have decreased significantly post war, the prevailing political culture has caused the media to practice self censorship. It is also disturbing to note that during the period under review, no attempt was made to investigate journalists murdered and attacked during the past few years. .

However, subsequently in May 2010, the President pardoned senior journalist J.S. Tissainayagam who was convicted under the Prevention of Terrorism Act and the Emergency Regulations for a period of 20 years.

The government has so far failed to introduce the Right to Information law which would undoubtedly strengthen the citizens' rights and enhance their participation in public decision making processes. The former Justice Minister, Milinda Moragoda, conducted many consultative meetings with respect to finalizing a draft bill. Following his defeat at the 2010 Parliamentary Elections, no significant attempt had been.

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<sup>7</sup> See "Apparel Exports Dwindling: SLGBOA" available at <http://www.dailymirror.lk/print/index.php/news/front-page-news/27445.html> (Last visited on 18.11.2010).

<sup>8</sup> See <http://www.imf.org/external/np/sec/pr/2009/pr09266.htm> (Last visited on 20.11.2010).

<sup>9</sup> See Articles 148, 149 and 150 of the Constitution of Sri Lanka

## **7. CONCLUSION**

When one compares the pledges made by the President as per page 38 of his manifesto with the actions he has so far taken to ensure the achievement of such objectives, there appears to be a significant disconnect. The first legislative enactment as pledged was not one aimed at curbing corruption and to improve governance but one that sought to weaken the independent commissions and centralized appointments in the public sector.

## **8. RECOMMENDATIONS**

In conclusion, this assessment paper recommends that the Executive President needs to make independent the commissions, key public offices such as the Attorney General in order to improve the level of governance in the country.

In addition, it is also recommend that the Executive ensures a constant dialogue process with his advisors to address issues connected to governance as a matter of priority.

It is also proposed that there should be stricter applications of the laws and regulations relating to corruption and stringent financial regulation along with strengthening of the democratic institutions would reduce the country's level of corruption and malpractice. .

By the time of undertaking this evaluation, the Eighteenth Amendment has indeed become law. In that light, it is highly recommended that the Executive takes conscious steps to enhance integrity through the appointment of people with integrity to vital public offices through a transparent process with full disclosure of the criteria for such appointments.

It is also recommended that the next quarter would witness the revival of the pledges made in the presidential manifesto referred to in this evaluation and there would be every effort made to deliver on the same.