



**Submission for the Consideration of the  
Expert Committee  
Drafting a New Constitution for the  
Democratic Socialist Republic of Sri Lanka  
2020**

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## **Recommendations**

### ***Fundamental Rights***

1. Ensure Continued Independence of the Right to Information Commission

### ***The Executive***

2. Prevent Executive Overreach into the Legislature
3. Introduce Fixed Ministerial Portfolios to Resolve Irrationalities in Governance
4. Introduce Independent Body to Check Executive Power Over Key Appointments
5. Ensure Transparency and Accountability in Presidential Pardon Process

### ***The Legislature***

6. Strengthen the Oversight Powers of Parliament

### ***Franchise and Elections including Referendum***

7. Introduce a Fixed Election Calendar
8. Introduction of a Campaign Finance Regulatory System
9. Adopt a Mixed Member Proportional Electoral System
10. Promote Women's Representation in Elected Bodies
11. Rationalise Crossing the Floor in Parliament
12. Empower and Ensure Independence of the Elections Commission of Sri Lanka

### ***The Judiciary***

13. Ensure Independent Judiciary and Promote Integrity Amongst Judges
  - a. Direct Constitutional Vesting of Judicial Power
  - b. Representation
  - c. The Judiciary as a Check
  - d. Checking the Power of the Judiciary
  - e. Independence of the Judiciary
    - i. Express Recognition
    - ii. Appointment
    - iii. Tenure
    - iv. Remuneration
    - v. Removal
    - vi. Retirement

14. Strengthen Pre- and Post-enactment Judicial Review
  - a. Concerns in Current System
    - i. Bills (not to be confused with draft Bills) frequently unavailable to the public
    - ii. Provisions pertaining to Urgent Bills
    - iii. The Committee Stage
  - b. Judicial Review of Legislation/Treaties/Agreements
    - i. Post enactment judicial review
    - ii. Challenging Legislation on the Basis of Policy
15. Decentralise Fundamental Rights Jurisdiction

***Public Finance***

16. Reinstate the Audit Service Commission
17. Introduce Measures to Secure Integrity in Public Procurement
18. Ensure Efficiency and Independence of State-Owned Enterprises

***Any other areas of interest***

19. De-politicisation of the Public Service
20. Strengthen the Anti-Corruption Framework
21. Uphold Gender Equality

## ***Fundamental Rights***

### **1. Ensure Continued Independence of the Right to Information Commission**

Following the passage of the 20th Amendment, the operationalisation of Sri Lanka's Right to Information (RTI) framework has been jeopardised with questions arising on the continuity and independence of the RTI Commission, a key institution in the implementation and oversight of the RTI process. It is imperative that Parliament acts swiftly to address these constitutional lacunae by introducing a mechanism for the appointment of Members of the RTI Commission prior to the expiration of the term of the current RTI Commission.

An independent RTI Commission is an indispensable element of the RTI regime and provides an important check that ensures public authorities refrain from acting outside the scope of the Right to Information Act No. 12 of 2016. The cCommission has, in its orders spanning 2017-2019 ordered public authorities to disclose information to citizens, in 84% of cases. This is a robust record which testifies to the independence of the Commission in its current composition and structure. It is almost impossible to imagine the RTI regime in Sri Lanka functioning effectively, if the RTI Commission were not to be in place as it now is.

Since its operationalisation in Sri Lanka from 3 February 2017, RTI has been used by citizens from all walks of life across the country, establishing it as a tool for the ordinary citizen, on day-to-day issues that arise with respect to public administration. When a request is not responded to, citizens may appear before the RTI Commission which, through in-person or documentary proceedings, provides a decision. Were it not for the RTI Commission's operation, a citizen would be compelled to litigate in court – an option most citizens would not engage in. It is submitted therefore that the RTI Commission's existence and operation is the reason why RTI is currently a widely used grassroots tool.

The below conditions must be taken into consideration when introducing a new constitution or adopting an amendment to the current constitution.

### **Recommendation**

When introducing such a mechanism for appointments to the RTI Commission (and other commissions), foremost consideration should be given to safeguarding their independence. This can be achieved through the appointments to the Commission being made through an independent body that has the power to recommend nominees, and not merely make observations (See Recommendation 4). of the RTI Commission. This inconsistency must be addressed swiftly in such a way that the independence of the Commission and Commissioners is not compromised.

## ***The Executive***

### **2. Prevent Executive Overreach into the Legislature**

Sri Lanka is the only country with an overly powerful executive presidency that still has a cabinet that is formed entirely from within the legislature, enabling executive capture of the legislative branch. As a result, there is a serious erosion of separation of powers and its associated checks and balances, with the legislature predisposed to not hold the executive to account for its actions and decisions.

#### **Recommendation**

If the President is to retain executive powers as envisaged by the 20<sup>th</sup> Amendment, and is the head of the cabinet of ministers, it is proposed that the cabinet should be formed outside of the legislature (parliament).

If the Executive Presidency is not abolished, it is recommended that the Cabinet is appointed from outside the Legislature and that such appointments are subject to the approval of the Legislature as an important check. Provisions should also be introduced to ensure that Cabinet Members are appointed based on their professional experience and specialisation. In the event that a Member of Parliament is appointed to the cabinet, they shall cease to be a MP. This is essential to prevent conflicts of interest arising between central government ministerial duties and electorate-politics.

Such a step to separate the Executive and Legislature must be accompanied by provisions which strengthen the oversight functions of the legislature and enable the legislature to hold to account members of the executive.

If the Executive Presidency is abolished and an Executive Prime Minister is instituted, the Cabinet remaining within the legislature causes less threat to the separation of powers, as the Prime Minister will be directly accountable to Parliament.

### **3. Introduce Fixed Ministerial Portfolios to Resolve Irrationalities in Governance**

The process and thinking behind the allocation of Ministerial portfolios has long been a cause of public concern. The constant changing of cabinet ministerial portfolios and apparent disconnect in the allocation of subjects to each Ministry causes a great deal of public resource waste. Haphazard allocation of Ministerial portfolios also damages policy and legal continuity including in the implementation of National Action Plans.

Constitutionally enshrining fixed ministerial portfolios will not only ensure parity with legislation but also promote rational and efficient governance. TISL recalls the considerable work carried out by Prof. Siri Hettige, Emeritus Professor of Sociology, University of Colombo, who through the Campaign for Sound National Policies, highlighted the appropriate ministries to be created, with all agencies and departments identified to be placed under their respective ministries in early 2015. This advice was provided after extensive consultations with senior and retired bureaucrats.

This year (2020), Verité Research published a 15 Ministry Model which could promote efficient and productive governance. The publication “15 Model Ministries to Minimise Irrationality in Government” provides a current and sustainable framework by which to structure ministerial portfolios and assign government agencies.

#### **Recommendation**

TISL recommends that the Committee of Experts refer this report to introduce constitutional provisions on cabinet positions and the allocation of fixed ministerial portfolios and assigned agencies.

***Annex 1 - A CABINET THAT WORKS, PROPOSAL FROM PROF. SIRI HETTIGE***

#### **4. Introduce Independent Body to Check Executive Power Over Key Appointments**

The Parliamentary Council which is now tasked with advising the President on high-level public service appointments such as the Chief Justice, Attorney General, Auditor General and Inspector General of Police, and appointments to the remaining post 20<sup>th</sup> Amendment commissions, lacks the power to make binding recommendations and as such is not a meaningful check on executive power and is left entirely to the discretion of the President. This highlights the need for an independent body comprising of a majority of non-partisan individuals who can act in the best interest of the public.

At present, all members of the Parliamentary Council under the Constitution are Members of Parliament. This results in the PC being an organ that falls entirely within a Parliament which also contains members of the Executive, and does not buttress its independence. MPs who hold Ministerial positions may be appointed to the PC, causing a conflict of interest in the appointments that the PC makes observations about.

In order to achieve the overall objective that appointments for key positions are made through a deliberative, accountable, consultative process that does not leave decision-making centralized in a single person, it is essential that the proposed body's integrity and independence is preserved, and not be vulnerable to politicization.

#### **Recommendation**

It is recommended that the composition of this body should be as follows to ensure independence:

- (a) the Prime Minister;
- (b) the Speaker;
- (c) the Leader of the Opposition in Parliament;
- (d) one person appointed by the President;
- (e) five persons appointed by the President, on the nomination of both the Prime Minister and the Leader of the Opposition; subject to the approval of Parliament
- (f) one person nominated by agreement of the majority of the Members of Parliament belonging to political parties or independent groups, other than the respective political parties or independent groups to which the Prime Minister and the Leader of the Opposition belong, and appointed by the President

It is proposed that the members appointed under (e) above should not be members of any political party, should represent diverse social and professional groups, and should be persons who have maintained integrity and achieved eminence in society.

A key feature of the proposed body is that a majority of members to be appointed are not members of political parties, thereby significantly reducing the risk of politicisation, but still derive legitimacy through the appointment process.

## **5. Ensure Transparency and Accountability in Presidential Pardon Process**

Presidential Pardons are a mechanism available to address miscarriages of justice or can be exercised on the grounds of compassion. However, it is important that such powers are subject to transparent procedural checks. Article 34(1) of the Constitution of Sri Lanka governs the law with regard to Presidential pardons. The Article does not require reasoning to be provided for such Pardons and in instances of pardons granted for violent crimes in the recent past, victims' and their families' have been left feeling disillusioned with the entire justice system.

According to the provisions of the constitution [Article 34(1)(d)] the president has the authority to remit the whole or any part of any punishment imposed or of any penalty or forfeiture as he/she deems fit.

Whilst at present Presidential Pardons in Sri Lanka require the President to call for a report from the trial judge accompanied by the advice of the Attorney General and the Minister of Justice, the transparency of the process is questionable and a grievance raised by families of victims and the public at large is that more often than not, the power of Presidential Pardons is used for political expediency rather than to address miscarriages of justice or on compassionate grounds.

### **Recommendation**

In order to address the lack of transparency, it is proposed that mandatory public disclosure of the report of the trial judge and the advice of the Attorney General and Justice Minister be introduced. Concurrently, the public should be able to challenge the procedure in obtaining both the report and advice from the Attorney General and be able to challenge ~~or~~ inaccuracies in the report from the trial judge, as grounds for striking down the Presidential Pardon by judicial review in the Supreme Court.



## ***The Legislature***

### **6. Strengthen the Oversight Powers of Parliament**

It is universally understood that Legislatures have two key functions, namely legislation and oversight. Key to the fulfilment of the oversight function of Parliament are the committees where a sizable portion of the business of parliament is accomplished.

Sri Lanka's unique mixture of Presidential Republic and Westminster styles of governance provide a challenge for Parliament to effectively execute its oversight functions via committees. In terms of committee oversight there exist two ends of the spectrum, the powerful standing committees of the US Congress which decide on legislative priorities and oversee executive functions and the ad hoc committees of the British parliament which have far more limited powers. Sri Lanka's system of governance provides a conundrum in deciding on how powerful oversight committees of parliament should be.

#### **Recommendation<sup>1</sup>**

If the executive presidency is to be retained and Sri Lanka is to be a fully-fledged Presidential Republic it is a necessity that standing oversight committees are given constitutional recognition with broad powers to effectively oversee executive functions and ensure executive accountability. However, even if more executive powers are transferred to the Prime Minister, there is still a need to strengthen the oversight committees including by regulating membership to preclude subject Ministers from chairing such committees.

In both cases, we recommend that provisions also be made for the inclusion of non-political professional staff to the oversight committees to provide expert advice and guidance to the elected members. The standing orders of Parliament, including standing order 111 would serve as a good foundation from which to build a constitutionally recognised sectoral oversight committee structure that would be able to meaningfully exercise the oversight function of parliament.

The annexed research paper, "[Committees in Legislatures: A division of labor](#)" published by the National Democratic Institute (NDI) provides a comprehensive analysis of the structure of different legislatures around the world identifying key strengths, weaknesses and transparency and accountability gaps. The second annexed document discusses committee systems and their contributions to multi-party systems such as Sri Lanka's. The third annexed document provides key insights into the constitutional recognition of oversight committees, their compositions and functions as set out either by statute or rules promulgated by individual legislatures.

#### ***Annex 2 - Committees in Legislatures***

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<sup>1</sup> <https://ecpr.eu/Filestore/PaperProposal/cec5f1c2-deb2-41b4-8dd4-9a89cc4001fc.pdf>  
<https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=1008&context=ijcd>

## ***Franchise and Elections including Referendum***

### **7. Introduce a Fixed Election Calendar**

Elections are the principal manner by which citizens exercise their sovereignty. It is proposed that an election calendar is developed and implemented to ensure fixed cycles of elections. This will prevent the elections being used as a tool for political opportunism by the government in power and provide stability and predictability to the system. This would prevent instances such as staggered elections and indefinite postponement of elections as have been witnessed in the recent past. Establishing and safeguarding the sanctity of elections should be of paramount importance.

A fixed election cycle will also be conducive to better manage resource allocation during elections. This could be easily managed with a combination of tight financial controls limiting the period of campaign spending and an appropriate choice of a date. Moreover, fixed dates allow electoral officers to plan in advance, reducing administrative costs.

The benefits of following a fixed election calendar could extend to improving the quality of candidates. Political careers require many sacrifices with regard to family and professional life, and fixed election dates would allow potential candidates who might not otherwise enter politics -- especially women -- the time to make those adjustments before running for office. Fixed dates would also obviate the need for the speculation and analysis of potential election calls that fill so much of our print and broadcast media, allowing more room for public discussion of policy issues.

Fixed electoral cycles would enable timely, regular voter registration, improving democratic participation. It also allows for predictability and certainty in policy implementation and the maintenance of efficient and effective budget cycles, easing the burden upon the public and private sectors.

Countries which have adopted fixed term election calendars include South Africa, New Zealand, Scotland, the United Kingdom and the United States of America.

### **Recommendation<sup>2</sup>**

Considering the many advantages of the fixed election cycle and Sri Lanka's unique system of governance which incorporates both an executive presidency and Westminster style parliament, it is recommended that a fixed election calendar be introduced bearing in mind the following pre-conditions

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<sup>2</sup> Fixed Election Cycles; A genuine alternative to responsible and responsive government- Christian Leuprecht

<https://www.australiancollaboration.com.au/pdf/Democracy/Electoral-terms.pdf>

[https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/rp/rp0809/09rp15#advantages](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/rp/rp0809/09rp15#advantages)

<https://www.australiancollaboration.com.au/pdf/Democracy/Electoral-terms.pdf>

- Regulations for the full disclosure of campaign finances and introduction of strict timelines for fund-raising and campaigning in line with the election calendar.
- Restricting the President's ability to dissolve the legislature only in the following instances and only if the previous recommendation on cabinet being outside of the legislature is concurrently implemented (Recommendation 2) -
  - Passage of two consecutive no-confidence motions against the sitting government within a three-month period.
  - Defeat in parliament of the annual budget.
  - Rejection by Parliament of President's nominee for Prime Minister on three consecutive occasions.
- Provisions for by-elections in the event of a seat/s in parliament becoming vacant
- Continuity of Parliamentary Committees notwithstanding the dissolution of parliament.
- In the event of a dissolution of Parliament under the aforementioned criteria, a snap election for the legislature may be held. A Parliament thus elected will only hold office until the next scheduled election, a snap election cannot be called if the period between dissolution and the next election, is less than 6 months.

## **8. Introduction of a Campaign Finance Regulatory System**

In order to reach electorates and to make their messages, policies and goals known effectively, political parties and candidates need access to sufficient funding. However, the unregulated use of finances could have an adverse impact on the carrying out of free and fair elections. The use of the election campaign process to launder illegal funds, the purchase of the allegiance of certain candidates, parties or voters, the abuse of state resources, media patronage, favouritism by political party leaders towards wealthier candidates and the resultant loss of focus on policy priorities and the creation of an unequal playing field are some of the problems caused.

There is a need for disclosure of campaign contributions as this will ensure that the interests of those sponsoring candidates, is publicly disclosed prior to an election and on an annual basis for non-election cycle contributions. This is particularly advisable in light of the already established practice of annually disclosing assets and liabilities of elected representatives under the Declaration of Assets and Liabilities Law No 1 of 1975.

Transparency and regulation increase the integrity of the electoral process, informs voter choice by allowing them access to relevant information regarding a particular party or candidate and creates a level playing field for candidates and parties of different social status.

### **Recommendation**

A campaign finance regulatory system should be introduced which includes the public disclosure of campaign contributions, expenditure, assets and liabilities of candidates and political parties. The system should focus on disclosure, donation bans and limits, spending limits and public funding which are the four main mechanisms used internationally to regulate election campaign finances of political parties and candidates.

### ***Annex 3 - A Brief on Election Campaign Finance in Sri Lanka***

## **9. Adopt a Mixed Member Proportional Electoral System**

The current system of proportional representation at parliamentary elections has come under much criticism as public representatives are seen to not represent the interests of their constituents and electorates. This system introduced by the 1978 constitution, has become unpopular due to the fact that large electoral districts make MPs less accessible to the public and less concerned with local issues. MPs are often more concerned with toeing the party line, and less so with electorate-related issues.

However, the First Past the Post system which existed prior to 1978 has its fair share of issues with the winner take all approach skewing the allocation of seats in the legislature, which did not proportionately reflect the public will and percentages of votes won nationally.

Whilst electoral reform at all levels of government is seen as a necessity, the Mixed Member Proportional (MMP) electoral system is seen to be the system that delivers the most representative and democratic result at the national level.

### **Recommendation**

It is proposed that a MMP system with a dual ballot should be adopted. It is the only system of representation which allows for constituency representation whilst guaranteeing a proportionate result. The need to preserve a proportionate result has become the foundational principle upon which fairness is guaranteed in a Sri Lankan general election. The anchor point of the MMP system is that Proportional Representation (PR) list seats are used to compensate in order to reflect a party's overall national performance.

#### *Fictional example:*

In a 100-member parliament - 70 constituency First Past the Post (FPTP) seats and 30 PR list seats.

If party X gets 10% of the popular vote, but only 4 constituency FPTP seats, they would ideally receive 6 PR list seats as to ensure that they have 10% of the overall number of Members of Parliament (a proportionate result). To ensure this result a dual ballot paper is needed, which has constituency FPTP candidates on one side of the ballot and parties on the other side of the ballot. This allows a citizen to vote for a candidate for their electorate (irrespective of party) and to vote for the party separately (known as 'split-ticket'). While enhancing the voter's choice, this system also safeguards against 'wasted vote' campaigning.

***Annex 4 - Policy Brief: "Adapting a Mixed Member Proportional (MMP) Electoral System in Sri Lanka"***

## 10. Promote Women's Representation in Elected Bodies

Despite being the majority of the electorate at 52% of the total population and 56% of the registered voters, female voices remain absent from electoral politics. At the 2020 Parliamentary Election held earlier this year, only 12 women (5.33%) were elected to the Ninth Parliament. The lack of women's representation in elected bodies is a glaringly visible feature not only in parliament but at other levels of government as well.

In 2016, the Local Authorities Elections (Amendment) Act (No. 1 of 2016) was adopted to increase the total number of members of local government bodies in order to assign those seats to women candidates. This move does not promote sound policies of governance, as it goes against public demand for smaller legislatures. Moreover, the necessity for quotas for women should be accommodated within the existing cadre, as to do otherwise would contravene the principle that quotas seek to uphold.

South Asia as a whole has historically low levels of women's political representation despite the region being home to high profile women leaders like the world's and Sri Lanka's first woman Prime Minister Sirimavo Bandaranaike, Indira Gandhi of India, Benazir Bhutto of Pakistan and the current Bangladeshi Prime Minister Sheikh Hasina. On average, women hold only 7% of ministerial positions and 15% in national parliaments in all the 9 countries (by UN definition) of the South Asia region. With only a 5.33% share of parliamentary seats held by women, Sri Lanka is fairing poorer than almost all our South Asian neighbours. Amongst the SAARC members, Sri Lanka fares the worst.

It must also be noted that the point of introducing a quota is that it will affect societal change that will eventually render the quota obsolete. A prime case study of the realisation of this principle is the Rwandan legislature. Rwanda leads the world in terms of women's political representation. In the 1990s, women made up an average of 18% of Rwandan Parliament members. The 2003 Rwandan Constitution set a quota of 30% women Parliament members. After the 2008 elections in Rwanda, women made up 56% of Parliament. The number jumped to 64% after the 2013 elections and the trend continued in the 2018 election where women won 61% of the 80-seat parliament. The quota has also had a spillover effect in other branches of the state; women in Rwanda make up 42% of Cabinet members, 32% of Senators, 50% of judges, and 43.5% of city and district council seats.

### Recommendation<sup>3</sup>

It is submitted that a minimum 30% quota for women's participation at all levels of elected bodies should be constitutionally enshrined in order to achieve more representative and inclusive politics that strives towards gender equality. This quota should be accommodated within the existing number of seats in elected bodies. Increasing the number of seats to accommodate the quota will defeat the purpose of the quota and result in public backlash as well.

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<sup>3</sup> <https://www.unicef.org/sowc07/docs/powley.pdf>  
<http://www.unesco.org/new/fileadmin/MULTIMEDIA/HQ/SHS/pdf/Role-Women-Rwanda.pdf>  
[https://scholarworks.gsu.edu/cgi/viewcontent.cgi?article=1001&context=anthro\\_facpub](https://scholarworks.gsu.edu/cgi/viewcontent.cgi?article=1001&context=anthro_facpub)  
<https://journals.sagepub.com/doi/epub/10.1177/2322093715580222>

## **11. Rationalise Crossing the Floor in Parliament**

In the existing proportional representation electoral system, at elections, candidates go up for elections on the mandate given to them by their party or independent group. To allow crossovers in such a context would amount to a betrayal of the vote cast in favour of that candidate's party, as the mandate flows from the party, and the voter does not distinguish between the party and the candidate.

### **Recommendation**

It is proposed that crossovers should not be allowed in Parliament, Provincial Councils or Local Authorities, if the existing electoral system were to remain.

However, if a Mixed Member Proportional dual ballot system is introduced (please refer Recommendation 9), the same ban does not need to apply as citizens vote for the candidate as distinct from the party. If the candidate is individually identifiable on the ballot paper, their legitimacy stems directly from the people and therefore it is distinct from the party affiliation and is directly derived from the sovereignty of the people. In that event, it is proposed that crossovers should not be prohibited.

***Annex 5 – Cross-over MPs: How do they affect parliament?***

***Annex 6 – Parties & Candidates in legislatures***

## 12. Empower and Ensure Independence of the Elections Commission of Sri Lanka

Article 104B (4) of the Constitution, vests the Election Commission of Sri Lanka (ECSL) with the power to prohibit the use of any movable or immovable property belonging to the State or any public corporation to promote or prevent the election of any candidate or any political party or independent group contesting at an election by a direction in writing by the Chairman of the Commission or of the Commissioner General of Elections on the instructions of the Commission.

The 20<sup>th</sup> amendment to the Constitution has limited the power of the Election Commission to issue directions to the ambit of the conduct of such election or referendum alone, and further limits its authority such that it can no longer issue guidelines with respect to the public service. This in effect restricts the authority of the Commission to prohibit the misuse of movable or immovable property by the public service during elections, as it has been doing in the past (See-[http://elections.gov.lk/web/wp-content/uploads/publication/ext-gz/2178\\_29\\_E.pdf](http://elections.gov.lk/web/wp-content/uploads/publication/ext-gz/2178_29_E.pdf)).

### Recommendation<sup>4</sup>

It is recommended to empower the ECSL to issue directives on matters relating to the public service as a necessary pre-condition to ensure free and fair elections.

It is also recommended that the Commission should be given the power to issue directions to any broadcaster utilising spectrum, or any proprietor or publisher of a newspaper, whether state or private, as the Commission may consider necessary to ensure a free and fair election. This also needs to be followed by an accountability mechanism and appeals process whereby for example if the directions are violated, the commission would then be vested with the power to take action and aggrieved parties may appeal against such action.

In fact, more effective Constitutional provisions that would enable greater accountability of political representatives as well as the public service in relation to the abuse of public resources are needed. Directions issued by the ECSL thus far only apply to public officials and not to the contesting candidates or current members of parliament. However, as any public official that commits an election related violation does so on behalf of a candidate, it is recommended that the directions should also apply to the candidates as they need to be held accountable for their actions.

As an election monitor with a sole focus on preventing the misuse of public property during election periods, TISL has amassed a wealth of experience which demonstrate the need for the implementation of the above recommendations. The reports from the most recently concluded elections have been annexed herewith. The findings of these reports indicate that misuse of public property remains a major issue during election periods and the disempowering of the ECSL could cause such violations to become more commonplace.

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<sup>4</sup> [http://elections.gov.lk/web/wp-content/uploads/publication/ext-gz/2178\\_29\\_E.pdf](http://elections.gov.lk/web/wp-content/uploads/publication/ext-gz/2178_29_E.pdf)



***Annex 7 - ELECTORAL INTEGRITY A REVIEW OF INCIDENCE OF MISUSE OF PUBLIC PROPERTY DURING 2019 PRESIDENTIAL ELECTION***

***Annex 8 - ELECTORAL INTEGRITY A REVIEW OF INCIDENCE OF MISUSE OF PUBLIC PROPERTY DURING 2020 PARLIAMENTARY ELECTION***

## ***The Judiciary***

### **13. Ensure Independent Judiciary and Promote Integrity Amongst Judges**

The approach to designing the judicial arm of government in a constitutional democracy must be one undertaken with careful consideration for the history and needs of the country, as well as basic principles of constitutional law.

#### **a. Direct Constitutional Vesting of Judicial Power**

One of the major factors that was brought into sharp focus during the impeachment of a former Chief Justice was the conflicting views on whether the Parliament was supreme over the judiciary due to the wording of Article 4(c) of the Constitution which reads as follows:

“The judicial power of the people shall be exercised by Parliament through courts, tribunals and institutions created and established, ...by Parliament according to law;”

The concept of the Parliament being supreme over the judiciary has not been recognized, in the 1978 Constitution. However, the above provision has lent itself to multiple interpretations. There is therefore, a need to clearly delineate the powers of the three arms of government, by the direct Constitutional vesting of judicial power in the judiciary, establishing parity between the executive, the legislature and the judiciary.

#### **b. Representation**

The composition of the judiciary must be of prime consideration in creating constitutional provisions for the setting up of a judiciary in whom the confidence of the public would repose.

Sri Lanka has largely restricted judicial appointments to the superior courts to existing members of the judiciary and to the official bar. However, especially but not limited to the Constitutional Court, it is essential that the judiciary be representative from the perspective of including members of the academia, the Bar, and other sectors of law.

It is recommended that there should be a constitutionally enshrined mandatory consideration of legal background.

#### **c. The Judiciary as a Check**

The principle of separation of powers between the branches of government is accompanied by the corresponding need for checks and balances between them. The judiciary has a role to play in acting as a check on the other branches of government. Whenever another arm of government exceeds its powers such action can be challenged before the judiciary. This may come into effect during elections, in checking the constitutional and/or the legality of administrative action, etc.

#### **d. Checking the Power of the Judiciary**

The judiciary is often seen as the 'last bastion of hope' for people in need of redress, to address any perceived injustice. By virtue of the role it plays, the judiciary also wields considerable power. The question 'Who guards the guards?' is therefore one of immense importance. Whether one takes a positivist role to statutory interpretation or not, the judicial interpretation of law involves a large creative component, and therefore necessitates regulation. Such regulation must include a functioning and effective appeals system, detailed statutes and the compulsory consideration of judicial precedent.

The most effective means of control over the judiciary lies in the appointment, tenure and removal of judges by other entities, and can prove particularly problematic, and will be dealt with in detail in section 1.5 below.

#### **e. Independence of the Judiciary**

The role of the judiciary can only be performed to full effect if the judiciary is able to apply the law impartially.

The manner in which judges are appointed and removed, as well as their tenure and remuneration, are matters which have a significant bearing on the independence of the judicial arm of government, and are the means by which undue influence may be exercised on the independence of the Judiciary.

The role and independence of the judiciary is also of vital importance with respect to the upholding of fundamental rights that are set in place to resist the tyranny of the majority that risks subsuming the rights of a few in the interests of the majority.

##### **i. Express Recognition**

The commitment to an independent judiciary should be expressly enshrined in the Constitution. The current Article 111C recognizes interference with the judiciary as a punishable offence. However, the principle of the independence of the judiciary is not expressly recognized. The South African model may be followed in this instance, which reads as follows:

Article 165

(2) The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.

(3) No person or organ of state may interfere with the functioning of the courts.

(4) Organs of state, through legislative and other measures, must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts.

## **ii. Appointment**

While the appointments to the superior courts may be made by the President or the Prime Minister (depending on the form of government enshrined) finally, the appointment process needs to be subject to the check of approval of an independent body vested with independent powers to do so (Recommendation 4)

## **iii. Tenure**

The matter of tenure is important to enable judges to make decisions without fear of personal reprisals or a risk to job security and welfare. While the strongest form of legal protection for the judiciary is to offer life tenure, as in Argentina and Estonia, this could lead to a lack of accountability to the other arms of government. Reappointment is also an option that may be considered. However, this may lead to the judiciary feeling compelled to please the relevant electorate in order to be reappointed. A standard age of retirement, however, would be the most suitable avenue for Sri Lanka, being the system practiced in the current Constitution. This method frees judges of reappointment concerns, and reduces the risk of obligation to political actors.

In the current system, the age of retirement for a judge of the Court of Appeal is 63, and it is 65 for a judge of the Supreme Court. This may compel judges of the Court of Appeal to be obligated to make politically popular decisions in order to avoid retirement and be appointed to the Supreme Court.

It is recommended therefore, that there should be a uniform age of retirement in the superior courts, including the Constitutional Court, if established.

(Refer 1.5.6 for section on Retirement)

## **iv. Remuneration**

Remuneration that would incentivize the best possible candidates for judicial office is a major concern, in designing a judiciary that is competent and vibrant in the performance of its duties. The current pay scale of the judiciary, even in the superior courts has been flagged as insufficient to accomplish this end.

A standard provision to safeguard the independence of the judiciary, also, is that remuneration of judges should not be subject to reduction post-appointment, to avoid political reprisals. It is recommended that such a provision is included.

## **v. Removal**

The process of removal and transfer of judges requires careful scrutiny due to the risk of arbitrary dismissals as a result of judicial conduct. However, provision must be made for removal as well, in specified and justified circumstances, in instances where the behavior of a judge warrants such

dismissal. It must be noted that removal is not necessarily the only means by which judicial misconduct could be addressed.

In the current law, the procedure for the removal of judges is set out in Standing Order 78A of Parliament. It is recommended that a detailed process for the removal of judges be prescribed in the Constitution to replace the deficient provisions in this Standing Order. Allowing the Parliament to remove judges leaves the judiciary completely vulnerable to manipulation and influence, and without redress in case of bias in the proceedings.

Procedural requirements in this regard have been aptly set out in a paper by the International Bar Association dealing specifically with the Sri Lankan situation, including but not limited to the following:

1. rules to ensure that the case against a judge is considered by a diverse body of people
2. independent of those who made the initial complaint;
3. a guarantee of the presumption of innocence;
4. rules of evidence and provisions as to standard of proof;
5. guarantees that an impugned judge will have timely notice of particularised charges;
6. full disclosure of adverse evidence, and the right to confront and call witnesses, either in person or through freely chosen legal representatives;
7. provision for open hearings at the option of the judge concerned; and 2 “A Crisis of Legitimacy: The Impeachment of Chief Justice Bandaranayake and the Erosion of the Rule of Law in Sri Lanka”, April 2013, A report of the International Bar Association’s Human Rights Institute, p. 10.
8. explicit acknowledgment that disciplinary hearings against judges are subject to judicial review in the Court of Appeal and fundamental rights applications in the Supreme Court.

Furthermore, clear grounds, upon which removal may take place, such as misconduct or infirmity, must be defined. The United Nations Basic Principles on the Independence of the Judiciary refers to removal of judges as follows:

“Judges shall be subject to suspension or removal only for reasons of incapacity or behaviour that renders them unfit to discharge their duties.”

The Commonwealth Latimer House Principles also refer to ‘incapacity or misbehaviour that clearly renders them unfit to discharge their duties’<sup>3, 4</sup> The terms ‘incapacity’ and ‘misbehaviour’ are explained by the Latimer House Guidelines, which state:

Grounds for removal of a judge should be limited to:

- (A) inability to perform judicial duties and
- (B) serious misconduct.

## **vi. Retirement**

That judicial officers should not be engaged as an attorney-at-law in any court, tribunal or institution or perform any state function upon retirement without special written dispensation of the President must be enshrined in the Constitution.

In addition to this, to alleviate concerns of judges feeling compelled to ensure that they are appointed to certain positions after retirement, and in the interests of having experienced judges in the superior courts, it is recommended that the age of retirement should be raised to 70.

## **14. Strengthen Pre- and Post-enactment Judicial Review**

### **i. Concerns in Current System**

Article 80(3) of the present constitution expressly prohibits post-enactment judicial review of legislation. Due to the above prohibition, Bills that are not considered or reviewed prior to enactment cannot be revisited. It is useful to consider the lacunae in the present system prior to an examination of the need for post-enactment judicial review.

#### **1. Bills (not to be confused with draft Bills) frequently unavailable to the public**

There is a short window of time within which a citizen may challenge a Bill in the Supreme Court. Such challenge has to be made within one week of a Bill being placed on the Order Paper of Parliament. A Bill is required to be published in the Gazette at least 14 days prior to it being placed on the Order Paper of Parliament. In the absence of post-enactment judicial review, this provides a very narrow window of opportunity for citizens to access such bills in time to examine and challenge it in the Supreme Court, as provided for by Article 121 of the Constitution.

#### **2. Provisions pertaining to Urgent Bills**

The current provision on Urgent Bills introduced via the 20th Amendment further narrows the window of opportunity granted to the public to scrutinise legislation. In fact, it also restricts the ability of Members of Parliament to properly scrutinise and adopt or amend Bills put before Parliament.

Furthermore, despite the caveat that Urgent Bills can only relate to matters of "national security" and "disasters", a clear written definition should be introduced on what Bills can be considered as Bills relating to "national security" or "disasters" and subject to judicial review.

Against a backdrop where there is no provision for post-enactment judicial review in the country, restricting the ability to exercise pre-enactment judicial review cannot be justified.

#### **3. The Committee Stage**

Even in the event of a citizen successfully challenging a Bill, or a Bill being referred to the Supreme Court for its opinion by the President as per Article 121 of the Constitution, there can be two outcomes. The Supreme Court could direct that the bill be amended, or give its opinion that the Bill is in conformity with the constitution. Such Bill would then be submitted to the Second Reading Stage of Parliament, after which any amendments would have to be incorporated at the Committee Stage. After such amendments have been made, there is no mechanism by which the Supreme Court reviews the Bill. Therefore, in either case, the final decision on what changes are incorporated into legislation remains with the legislature, in spite of possible unconstitutionality. This *de facto* makes Parliament the final arbiter of the constitutionality of legislation.

Whilst the standing orders of Parliament preclude significant changes from being made to a Bill as has been witnessed in the recent past, including with the passage of the 2017 Provincial Councils Elections (Amendment) Act No 17 of 2017, this standing order is not always upheld and there is little to no accountability for such violations.

## **ii. Judicial Review of Legislation/Treaties/Agreements**

### **1. Post enactment judicial review**

The need for judicial review of legislation springs from the principle of checks and balances, and is a cornerstone of a modern democracy. Proponents of solely pre-enactment judicial review argue that such a system offers certainty in legislation. However, it forces citizens to be dependent on political accountability to amend unconstitutional laws post-enactment, and is not desirable.

In general, and in Sri Lanka in particular, it is essential that Constitutional supremacy and the rule of law prevail. To this end, it is essential that potentially unconstitutional laws be subject to review by the judiciary at any point of time post-enactment. Also, most often, the effects of a law are only felt in the application of it. Leaving legislation open to judicial review is therefore essential, and encourages and ensures civic participation in the processes of government.

However, it is important that the roles of the different arms of government in enacting legislation not be confused, and that the responsibility of enacting legislation should lie with Parliament, in collaboration with the Attorney-General's Department. After enactment, such legislation should be liable to challenge before the judiciary for unconstitutionality. The striking down of legislation by the judiciary as being unconstitutional would then be a reflection of the failure on the part of the legislature and of the Attorney General's Department in the performance of their duties. However, it is of vital importance the entire process of enacting legislation should be transparent and accountable, in order that there may be public agitation and pressure, where necessary.

It is also recommended that Treaties or Agreements that are accorded the force of law as per Article 157 of the Constitution (or its equivalent) should also be liable to judicial review.

A concern that may arise is whether a law that is struck down would then be applicable retrospectively. To prevent this, the constitution should recognize that a law would be rendered inoperative not *ab initio*, but prospectively from the date of the judicial decision.

The only exception to the strict restriction of review to post- enactment, would be if a Bill is referred to the judiciary by the President or the Prime Minister (depending on the form of government enshrined).

It is recommended, therefore, that post-enactment judicial review be enshrined in the Constitution.



## 2. Challenging Legislation on the Basis of Policy

The Judiciary should be able to hold the legislature accountable in keeping with the principle of checks and balances between the three arms of government. As per the current position in the constitution, legislation can only be challenged on the grounds of unconstitutionality where a Bill includes a provision that is contrary to the Articles in the constitution via a petition in the Supreme Court. (Article 84)

It is recommended that a post-enactment judicial review should be enshrined in the Constitution not only on the basis of constitutionality, but also on the basis of policy. This recommendation is made especially in view of the opaque and *ad hoc* law-making process followed in Sri Lanka that allows citizens very little access to draft laws prior to being Gazetted – space for challenge is restricted to a narrow window (14 days or 7 days in the case of Urgent Bills).

This power of judicial review would be an extension of checks and balances, similar to the courts' power to hold the executive liable in instances that an authority representing the executive or where there is a direct involvement of breach or abuse of executive powers, or where an authority has acted contrary to the provisions of the constitution. However, in all such cases of challenges on the basis of policy, the Supreme Court shall give foremost consideration to upholding fundamental rights.

## **15. Decentralise Fundamental Rights Jurisdiction**

The Supreme Court at present is the court of first instance in relation to fundamental rights applications. This results in the centralization of this jurisdiction to the detriment of accessibility by those living in the peripheries of the country. A further concern is that the Supreme Court is overburdened due to the volume of fundamental rights applications.

### **Recommendation**

In order to address these concerns, it is recommended that the fundamental rights jurisdiction be devolved to the Provincial High Courts. This move would require rigorous training of judges of the Provincial High Courts. An appeal should lie from the Provincial High Court to the Supreme Court in fundamental rights applications.

## **Public Finance**

### **16. Reinstate the Audit Service Commission**

Ensuring the integrity of accounting in the entire public service is the core function of the Auditor General. This process allows for the identification of misuse or abuse of public funds due to corruption or inefficiency. When loss has been so identified, it is important that the officials responsible for such loss should be held accountable, and that the monies so lost should be recoverable to the state coffers. The abolition of the Audit Service Commission has created a lacuna in the law, that leads to a loss of revenue to the country without any administrative recourse to recover the same.

The National Audit Act sets out the duties and responsibilities of the Audit Service Commission (ASC). One of the main responsibilities of the ASC is communicating to the Chief Accounting Officer (CAO) of the auditee entity, the amount of any deficiency or loss in any transaction of such entity that has been caused as a result of corruption, fraud, negligence or misappropriation. This is the first step of the surcharging provision under section 19 of the Act. With the abolition of the Audit Service Commission, it is unclear as to who would quantify such losses caused and communicate the same to the CAO of the relevant auditee entity. Furthermore, throughout this process, it is the ASC that is empowered to monitor whether the procedure is followed - for example, the CAO sends the notice to the person responsible for the loss, and gives them the opportunity to explain themselves. This has to be reported to the ASC, and the decision of the Surcharge Appeal Committee needs to be communicated to the ASC. The recovery of the surcharge is also handled by the ASC under section 23 of the National Audit Act, and the certificate issued by the ASC is conclusive proof that the sum to be recovered has been duly assessed and is in default in any proceeding before the Magistrate.

The ASC is the body that is responsible for introducing schemes to enhance the quality of performance of the staff of the National Audit Office (Section 25). It also handles the appointment, promotion, transfer, disciplinary control and dismissal of the members belonging to the Sri Lanka State Audit Service recruited by the ASC (section 28). The ASC is vested with other important powers, such as the submission of annual budget estimates for incorporation in the national budget (Section 34).

### **Recommendation**

It is proposed that the Audit Service Commission should be re-instated through the proposed new Constitution, in order to address the lacuna in the law relating to the recovery of lost state funds through surcharge due to the actions of public officials, and to restore the processes provided for by the National Audit Act.

It is also proposed that the Surcharge Appeal Committee should also be appointed by the independent body proposed to act as a check on the Executive's powers of appointment, in order to maintain its independence and the independence of the surcharge process itself (see recommendation 4).

## 17. Introduce Measures to Secure Integrity in Public Procurement

The Government of Sri Lanka being the largest buyer of good and services for the public, invests an estimated 27% of government expenditure towards public procurement. This is a substantial amount of taxpayer money, henceforth essential reforms towards Sri Lanka's national procurement are a priority in ensuring long term economic and social development.

Prior to the constitution of the National Procurement Commission (NPC), the Ministry of Finance was the *de facto* national authority responsible for Public Procurement. The establishment of the NPC was intended to create the necessary distance between the Ministry of Finance and the procurement process, introducing independent oversight. However, in practice, the NPC was unable to finalise through Parliament a new set of national procurement guidelines which were to be an improvement upon the 2006 guidelines.

### Recommendation

In order to ensure that government procurement is carried out in a cost-effective and accountable manner, a provision should be enshrined in the constitution regulating procurement conducted by ministries, departments, statutory authorities, government corporations, government owned companies, provincial councils, local government authorities and any other institution identified in national legislation.

The provision should require procurement to be conducted in accordance to principles of:

- Maximising Economy and Quality.
- Providing fair and equal opportunities.
- Adhering to prescribed accountability and transparency standards.

This legislative framework should be further constituted through a National Procurement Bill/Act which establishes governing principles and procedures to ensure Value for Money in an efficient, fair, equitable, transparent, competitive and cost-effective procurement process by the procuring entities.

It is proposed that a regulatory body should be established to formulate policies, procedures and to facilitate implementation through standardization, monitoring, capacity development and introduction of necessary policy reforms to ensure value for money in public procurement. Importantly, this regulatory body should also be vested with the powers to ensure adherence and compliance to enacted national procurement laws and policies.

Functions of the regulatory body should include the powers to -

1. Formulate standardised fair, equitable, transparent, competitive, and cost-effective policies for the procurement of goods and services, works, consultancy services and information systems by government institutions
2. Monitor and report to the appropriate authorities on whether all procurement of goods and services, works, consultancy services and information systems by government institutions are based on procurement plans prepared in accordance with previously approved action plans;
3. Monitor and report to the appropriate authorities on whether all qualified bidders for the provision of goods and services, works, consultancy services and information systems by government institutions are afforded an equal opportunity to participate in the bidding process for the provision of those goods and services, works, consultancy services and information systems;
4. Monitor and report to the appropriate authorities on whether the procedures for the selection of contractors, and the awarding of contracts for the provision of goods and services, works, consultancy services and information systems to government institutions, are fair and transparent; and
5. Report on whether members of Procurement Committees and Technical Evaluation Committees relating to the procurements, appointed by government institutions are suitably qualified; and
6. Investigate reports of procurements made by government institutions outside the enacted national procurement policies, and to report the officers responsible for such procurements to the relevant authorities for necessary action.

## **18. Ensure Efficiency and Independence of State-Owned Enterprises**

A State-Owned Enterprise (SOE) is any public corporation, board or other body which was or is established under any written law including the Companies Act, where the State has the controlling interest. A significant contribution to the local GDP is provided by SOEs with a contribution of 13.3% by 55 SOEs alone in 2018.

However, Sri Lanka's extensive SOE infrastructure also provides ample opportunity for corruption, mismanagement, inefficiency and nepotism, leading to loss of public funds to the country.

### **Recommendation**

It is submitted that a procedure should be created to regulate appointments and management of SOEs and other entities thereunder. This should include procedures to:

- Ensure due process and independence in the establishment, restructure, dissolution, conversion of ownership
- Regulate the relationship between the State owner and the representative of the State's capital contribution portion in enterprises in which the State owns the controlling interest
- This procedure should be applicable to commercial corporations, government owned companies, statutory boards and subsidiaries of the above.
- Furthermore, SOEs should be subject to government audit as entities that discharge their functions in public trust.

## ***Any other areas of interest***

### **19. Depoliticise the Public Service through Independent Leadership**

The current system in operation allows secretaries of Ministries to be changed whenever a change of government occurs. This process hinders the ongoing work of particular Ministries, and leaves the public service susceptible to political interference, affecting the continuity of policy and project implementation. This could further lead to public officials considering themselves bound to the dictates of politicians.

#### **Recommendation**

It is recommended that Secretaries to Ministries should be given fixed-term appointments that are not amenable to change upon change of government. Appointments should not be made based on political affiliation. Specific procedures on appointment, transfer and removal should be put in place, allowing for the selection of professionals, specialists, youth, women, etc. Appointees should meet specified, merit-based selection criteria, whether they are from the administrative service and other services or from outside of the government system.

## 20. Strengthen the Anti-Corruption Framework

The Commission to Investigate Allegations of Bribery or Corruption (CIABOC) is the apex anti-corruption agency enforcement agency in the country. A constant public grievance has been that CIABOC waits for complaints to be filed to take action on cases of corruption. This was addressed somewhat when CIABOC was granted *suo motu* powers through the constitution. The now repealed Article 156A of the constitution also served to strengthen CIABOC by constitutionally enshrining its independence. Article 156A also recognises CIABOC as the prime mover in the implementation of the United Nations Convention Against Corruption.

The constitutional recognition afforded to UNCAC in the Constitution was also recognised in the final report of the UN Office on Drugs and Crime's (UNODC) intergovernmental review whose overall goal is to assist State parties in implementing the Convention. This report commended CIABOC on its National Action Plan of which UNCAC implementation is a key element whilst also making recommendations for regulating political campaign financing and the introduction of an online asset declaration system.

The withdrawal of constitutional empowerment for CIABOC to conduct these activities could jeopardise the effective implementation of UNCAC in Sri Lanka.

### Recommendation<sup>5</sup>

Bring CIABOC within constitutional remit once again and restore CIABOC's powers to initiate investigations whilst also having the definition of corruption extended to transactions between non-state parties.

Restore the constitutional recognition of CIABOC as the focal point in the implementation of the UN Convention Against Corruption, thereby allowing the Commission to continue activities in this regard and empowering it to fully implement the National Action Plan. Annexed herewith are the Final Country Report for Sri Lanka submitted through the Intergovernmental review process, the UN Convention Against Corruption and the National Action Plan (2019-2023) of CIABOC.

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<sup>5</sup>[https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2018\\_09\\_03\\_Sri\\_Lanka\\_Final\\_Country\\_Report.pdf](https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2018_09_03_Sri_Lanka_Final_Country_Report.pdf)  
[https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026\\_E.pdf](https://www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf)  
<https://ciaboc.gov.lk/images/nap/NAP-Book-ENG.pdf>



## 21. Uphold Gender Equality

A gender sensitive constitution combines the establishment of the rule of law, equality between women and men and respect for the human rights and dignity of both women and men alike. Such a constitution adopts a gender perspective and pays attention to how issues of gender are dealt with and how provisions of the constitution impact on gender. It adopts gender sensitive language and specific gender equality provisions. Although social, political and cultural contexts are different, a gender sensitive constitution is framed by norms and standards that are grounded in the universality and indivisibility of the human rights of women and men.

### Recommendation<sup>6</sup>

It is recommended to adopt gender sensitive language in drafting the new constitution, the first step being replacing the pronouns he/his with them/their instead.

It is proposed that the new Constitution of Sri Lanka include provisions that uphold equality among all persons, with specific reference to equality between men and women.

Affirmative action should be set in motion, and a mechanism set in place that would result in eventual equal representation of men and women in all strata of government, including Parliament, the judiciary, the executive, other public institutions, and decision-making bodies. In view thereof, quotas should be provided for by way of the Constitution and enabling legislation, as a mandatory temporary measure (See Recommendation 10).

Policies should also be set out in the Directive Principles of State Policy to incentivize the private sector also to uphold gender equality. The annexed policy brief produced by UN Women and the Chapter on Gender Equality in the Constitution-Making Process from the book Constitutional Politics in the EU provide a more comprehensive understanding of how constitutions can advance gender equality and the importance of mainstreaming gender equality throughout the constitution-making process.

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<sup>6</sup><https://www.unwomen.org/-/media/headquarters/attachments/sections/library/publications/2017/why-and-how-constitutions-matter-en.pdf?la=en&vs=2422>  
[https://www.researchgate.net/publication/304686840\\_Gender\\_Equality\\_in\\_the\\_Constitution-Making\\_Process](https://www.researchgate.net/publication/304686840_Gender_Equality_in_the_Constitution-Making_Process)

## **Annexures**

Annex 1 - A Cabinet That Works

[https://www.veriteresearch.org/wp-content/uploads/2020/07/A-Cabinet-that-works-Ministries\\_New.pdf](https://www.veriteresearch.org/wp-content/uploads/2020/07/A-Cabinet-that-works-Ministries_New.pdf)

Annex 2 - Committees in Legislatures

[https://www.ndi.org/sites/default/files/030\\_ww\\_committees.pdf](https://www.ndi.org/sites/default/files/030_ww_committees.pdf)

Annex 3 - A Brief on Election Campaign Finance in Sri Lanka

<https://www.tisirilanka.org/works/a-brief-on-election-campaign-finance-in-sri-lanka/>

Annex 4 - Policy Brief: “Adapting a Mixed Member Proportional (MMP) Electoral System in Sri Lanka”

<https://www.tisirilanka.org/policy-brief-adapting-a-mixed-member-proportional-mmp-electoral-system-in-sri-lanka/>

Annex 5 - Cross-over MPs: How do they affect parliament?

<http://www.manthri.lk/en/blog/posts/cross-over-mps-how-do-they-affect-parliament>

Annex 6 – Parties & Candidates in legislatures

[https://aceproject.org/ace-en/topics/pc/pcd/pcd03/mobile\\_browsing/onePag](https://aceproject.org/ace-en/topics/pc/pcd/pcd03/mobile_browsing/onePag)

Annex 7 - Electoral Integrity - A Review of Incidence of Misuse of Public Property During 2019 Presidential Election

<https://www.tisirilanka.org/wp-content/uploads/2020/06/PPPR2019-FINAL.pdf>

Annex 8 - Electoral Integrity - A Review of Incidence of Misuse of Public Property During 2020 Parliamentary Election

<https://www.tisirilanka.org/wp-content/uploads/2020/09/PPPR2020I.pdf>