



**NATIONAL INTEGRITY  
SYSTEM ASSESSMENT  
SRI LANKA 2014**



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ISBN: 978-955-1281-66-3

Published by Transparency International Sri Lanka, 2014

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Printed by Karunarathne & Sons (Pvt) Ltd

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## PREFACE

The National Integrity System (NIS) assessment is a concept introduced in 1990s by Transparency International to understand the governance system of a country. The framework developed for assessment of the country's integrity system has been applied over the years by many national chapters including the Transparency International national Chapters in the South Asian region and a regional report consolidating the integrity systems of the countries was launched recently in Kathmandu, Nepal.

In Sri Lanka the first NIS report was published in 2011 having surveyed the 13 pillars of the integrity system of the country. It was a comprehensive report. The current report is an update of the 2011 report as there have been considerable changes in certain pillars during the last three years. Although 18th Amendment to the Constitution was introduced in 2010, its impact could be seen in the subsequent years. As indicated in the methodology section, the report relies more on qualitative data which were further reinforced with interviews. The findings help us understand the current level of governance of the country and also provide a basis for policy makers who are committed to good governance to address the existing weaknesses of the pillars. The report is a useful source of information for civil society activists in diverse areas of actions to embark on advocacy programs to put pressure for change.

Many people have contributed in preparing this report. The assessment was principally done by Dr Maneesha Wanasinghe Pasqual and technical support came from Andrew McDevitt of the Transparency International Secretariat. The process was initially guided by an advisory group of eminent persons whose inputs were useful to maintain the quality of the report. Ms Sashee de Mel of TISL did the most challenging task of coordinating this work from the inception of assessment to launching of the report. All of them deserve a big thank from TISL.

**S Ranugge**  
Executive Director

11 July 2014

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## ABBREVIATIONS

ADB	Asia Development Bank
APFASL	Association of Public Finance Accountants of Sri Lanka
APG	Asia/Pacific Group
ASOSAI	Asian Organization of Supreme Audit Institutions
ASP	Assistant Superintendent of Police
BIDTI	Bandaranaike International of Diplomatic Training Institute
BOI	Board of Investment
CAFFE	Campaign for Free and Fair Elections
CBO	Community-Based Organizations
CEB	Ceylon Electricity Board
CEDMHR	Commission for Eliminating Discrimination & Monitoring of Human Rights
CHOGM	Commonwealth Heads of Government Meeting
CIABOC	The Commission to Investigate Allegations of Bribery or Corruption
CID	Central Intelligence Department
CIDTP	Cruel, Inhuman or degrading Treatment of Punishment
CPIA	Country Policy and Institutional Assessment
CIPFA	Chartered Institute of Public Finance and Accountancy
CLA	Commonwealth Lawyers Association
CLEA	Commonwealth Legal Education Association
CMJA	Commonwealth Magistrates' and Judges' Association
COPA	Committee on Public Accounts
COPE	Committee on Public Enterprises
CPA	Centre for Policy Alternatives
CPI	Corruption Perception Index
CPJ	Committee to Protect Journalists

CSE	Colombo Stock Exchange
CSO	Civil Society Organizations
DG	Director General
DIG	Deputy Inspector General
DNA	Democratic National Alliance
EPF	Employee provident fund
ETF	Employment Trust Fund
EU	European Union
FUTA	Federation of University Teachers' Association
GAP	Government Accountability Project
GDP	Gross Domestic Product
GOSL	Government of Sri Lanka
HRC	Human Rights Commission
HRTF	Special Task Force on Human Rights
IBAHRI	International Bar Associations Human Rights Institute
ICC	International Coordinating Committee
ICCPR	Covenant on Civil and Political Rights
IDP	Internally Displaced People
IGP	Inspector General of Police
INGO	International Non Governmental Organizations
IOI	International Ombudsman Institute
IOSCO	International Organization of Securities Commissions
ISA	International Standards on Auditing
JSC	Judicial Service Commission
JVP	Janatha Vimukthi Peramuna
KDU	Kotelawala Defense University
LLRC	Lessons Learnt and Reconciliation Commission
LTTE	Liberation Tigers of Tamil Eelam
MLA	Mutual legal assistance
MP	Member of Parliament
NCC	National Cooperative Council
NCPRDA	North Central Province Road Development Authority

NGO	Non Governmental Organizations
NICSA	National Integrity Context and Systems Analysis
NIS	National Integrity System
NIS SL	National Integrity System Sri Lanka
NPO	Non Profit Organizations
NSB	National Savings Bank
OCHA	Office of the Coordination of Humanitarian Affairs
OECD	Organization for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
OPA	Organization of Professional Associations
PAFFREL	People's Action Front for Free and Fair Elections
PCCSL	Press Complaints Commission of Sri Lanka
PPB	Public Performance Board
PSBS	Private Sector Pension Bill
PSC	Public Service Commission
PSO	Parliament Standing Orders
RDA	Road Development Authority
RTI	Right to Information
SEAC	Support Efforts and Action against Corruption
SEC	Securities and Exchange Commission
SLAASMB	Sri Lanka Accounting and Auditing Standard Monitoring Board
SLAS	Sri Lanka Administrative Service
SLFP	Sri Lanka Freedom Party
SLMC	Sri Lanka Muslim Congress
STF	Special Task Force
TI	Transparency International
TISL	Transparency International Sri Lanka
TNA	Tamil National Alliance
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNCAC	United Nations Convention Against Corruption
UNCHR	United Nations Commission on Human Rights

UNDP	United Nations Development Fund
UNHRC	United Nations Human Rights Commission
UNICEF	United Nations International Children's Emergency Fund
UNIDO	United Nations Industrial Development Organization
UNP	United National Party
UPFA	United People's Freedom Alliance
USA	United States of America
VAT	Value Added Tax
WFP	World Food Programme
WHO	World Health Organization
WIN	Women In Need

## ABOUT THE NATIONAL INTEGRITY SYSTEMS ASSESSMENT

The National Integrity System assessment approach used in this report provides a framework to analyse the effectiveness of a country's institutions in preventing and fighting corruption. A well-functioning NIS safeguards against corruption and contributes to the larger struggle against abuse of power, malfeasance and misappropriation in all its forms. When the NIS institutions are characterized by appropriate regulations and accountable behaviour, corruption is less likely to thrive, with positive knock-on effects for the goals of good governance, the rule of law and protection of fundamental human rights. Strengthening the NIS promotes better governance across all aspects of society and, ultimately, contributes to a more just society overall.

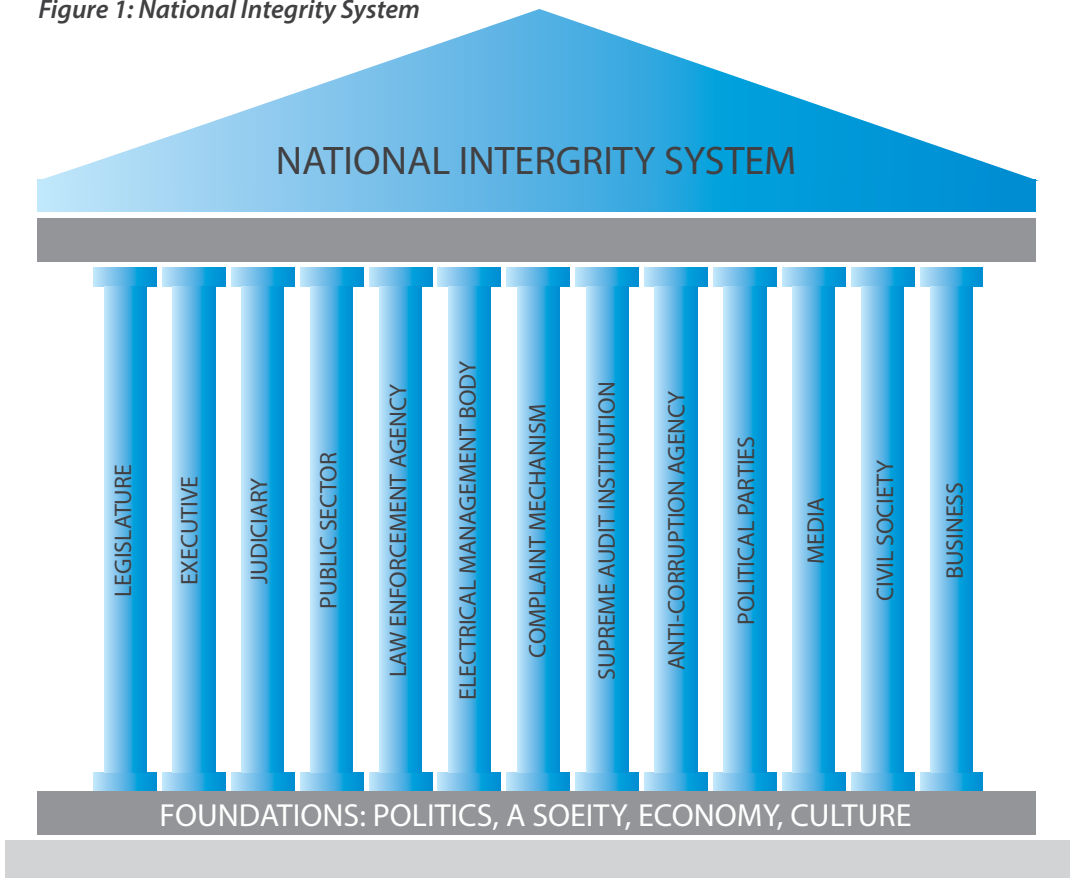
### BACKGROUND AND HISTORY OF THE NIS APPROACH

The concept of a "National Integrity System" originated within the TI movement in the 1990s as TI's primary conceptual tool of how corruption could be best fought, and, ultimately, prevented. It made its first public appearance in the TI Sourcebook, which sought to draw together those actors and institutions which are crucial in fighting corruption, in a common analytical framework, called the "National Integrity System". The initial approach suggested the use of 'National Integrity Workshops' to put this framework into practice. The focus on "integrity" signified the positive message that corruption can indeed be defeated if integrity

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reigns in all relevant aspects of public life. In the early 2000s, TI then developed a basic research methodology to study the main characteristics of actual National Integrity Systems in countries around the world via a desk study, no longer using the National Integrity Workshop approach. In 2008, TI engaged in a major overhaul of the research methodology, adding two crucial elements – the scoring system as well as consultative elements of an advisory group and reinstating the National Integrity Workshop, which had been part of the original approach. To date, 40 assessments using the new methodology have been published across the globe. These are available at [http://transparency.org/policy\\_research/nis/](http://transparency.org/policy_research/nis/)

*Figure 1: National Integrity System*



The Sri Lanka NIS country report addresses 13 “pillars” or institutions believed to make up the integrity system of the country.

*Table 1: Different Pillar Categories*

Government	Public sector	Non-governmental
1. Legislature	4. Public Administration	10. Media
2. Executive	5. Law Enforcement Agencies	11. Civil Society
3. Judiciary	6. Electoral Management Body	12. Political Parties
	7. Ombudsman	13. Business
	8. Supreme Audit Institution	
	9. Anti-corruption Agencies	

Each of these 13 institutions is assessed along three dimensions that are essential to its ability to prevent corruption: First, its overall **capacity** in terms of resources and legal status, which underlies any effective institutional performance. Second, its internal **governance** regulations and practices, focusing on whether the institution is transparent, accountable and acts with integrity, all crucial elements to preventing the institution from engaging in corruption. Thirdly, the extent to which the institution fulfils its assigned **role** in the anti-corruption system, such as providing effective oversight of the government (for the legislature) or prosecuting corruption cases (for the law enforcement agencies). Together, these three dimensions cover the institution's ability to act (capacity), its internal performance (governance) and its external performance (role) with regard to the task of fighting corruption.

Each dimension is measured by a common set of indicators. The assessment examines both the legal framework of each pillar as well as the actual institutional practice, thereby highlighting discrepancies between the formal provisions and reality on the ground.

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**Table 2: Pillar dimensions and indicators**

Dimension	Indicators ( <i>law, practice</i> )
Capacity	Resources Independence
Governance	Transparency Accountability Integrity
Role within governance system	<i>Between 1 and 3 indicators, specific to each pillar</i>

The assessment does not seek to offer an in-depth evaluation of each pillar. Rather, it seeks breadth, covering all relevant pillars across a wide number of indicators in order to gain a view of the overall system. The assessment also looks at the interactions between institutions to understand why some are more robust than others and how they influence each other. The NIS presupposes that weaknesses in a single institution could lead to serious flaws in the entire system. Understanding the interactions between pillars also helps to prioritize areas for reform. In order to take account of important contextual factors, the evaluation of the governance institutions is embedded in a concise analysis of the overall political, social, economic and cultural conditions, the *foundations*, on which these pillars are based.

### ABOUT THE NIS UPDATE

Transparency International Sri Lanka conducted an NIS assessment in 2010. This report represents an update to the previous assessment. The primary purpose of this NIS update is to: (a) assess whether there has been any progress over time with regards to the country's integrity system, (b) identify specific changes (both positive and negative) which have occurred since the previous NIS report was published, and (c) identify recommendations and advocacy priorities for improving the country's integrity system.



## METHODOLOGY

The NIS assessment is a qualitative research tool based on a combination of desk research and in-depth interviews. A final process of external validation and engagement with key stakeholders ensures that the findings are as relevant and accurate as possible before the assessment is published.

The assessment is guided by a set of indicators developed by the TI Secretariat. Each indicator consist of an “indicator question”, supported by further guiding questions for each pillar.

*Table 3: Sample Indicator*

Sample indicator: Legislature <i>Capacity – Independence (law)</i>	
<b>Indicator question</b>	<b>To what extent is the legislature independent and free from subordination to external actors by law?</b>
<b>Guiding questions</b>	Can the legislature be dismissed? If yes, under which circumstances? Can the legislature recall itself outside normal session if circumstances so require? Does the legislature control its own agenda? Does it control the appointment/ election of the Speaker and the appointments to committees? Can the legislature determine its own timetable? Can the legislature appoint its own technical staff? Do the police require special permission to enter the legislature?

In total the assessment includes over 150 indicators, approximately 12 indicators per pillar. The guiding questions for each indicator were developed by examining international best practices, existing assessment tools for the respective pillar as well as using TI’s own experience, and by seeking input from international experts

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on the respective institution. To answer the guiding questions, the lead researcher relied on three main sources of information: national legislation, secondary reports and research, and interviews with key experts. For this NIS update 23 key informants were interviewed.

For this NIS update the findings from the previous NIS assessment are summarised and any changes which have occurred since then are analysed under each indicator.

The assessment represents the current state of integrity institutions in 2014, using information cited from the last two to three years. It reflects all major legislative changes as of June 2014.

### CONSULTATIVE APPROACH AND VALIDATION OF FINDINGS

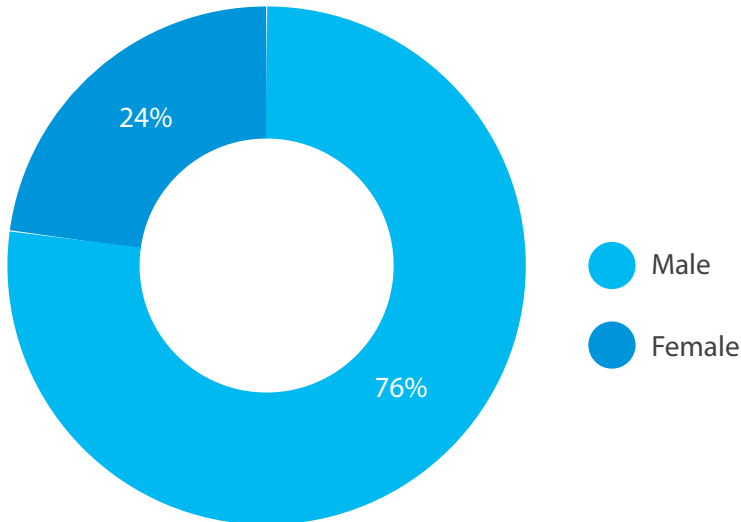
The NIS assessment process in Sri Lanka had a strong consultative component, seeking to involve the key anti-corruption actors in government, civil society and other relevant sectors. This approach had two aims: to generate valid evidence and to engage a wide range of stakeholders with a view to building momentum, political will and civic demand for reform initiatives. The consultative approach had two main parts: a high-level Advisory Group and a National Stakeholder Workshop.

*Table 4: NIS Advisory Group*

NIS Advisory Group	
Name	Affiliation
Mr. S.C. Mayadunne	Former Auditor General
Dr. P. Sarawanamuththu	Executive Director CPA/Civil Society Activities
Mr. M.D.A. Harold	Former Deputy Auditor General
Mr. Elmo Perera	Attorney at Law / Specialist in Constitutional Affairs

The members of the advisory group were consulted during this process.

**Chart 1: Gender Composition of Interviewees**



It is important to impress that the views presented through the interviews were of the interviewee and not of the interviewer. These sources represent academics to business executives with post-graduate qualifications to small-business owners with minimum formal education. It also includes those with professional backgrounds in the private sector to public sector officials. Moreover, the interviewees included individuals in their early 30s to those in their late 70s and from Colombo to Ampara to Jaffna to Kandy. Added to this diversity was that these individuals – from different ethnicities and religions – represented the lower classes and the upper classes of the social strata.

The secondary data utilizing perceptions of authors, journalists, statisticians and politicians is not representative of the position of the writer. The views expressed by the specialists in the different fields and the Hansard dominate the information in the pillars. This prevents any bias of the writer/researcher from entering the report.

Furthermore each chapter was reviewed by at least two subject experts to ensure the accuracy of the content presented. On 8<sup>th</sup> and 9<sup>th</sup> May 2014 TISL presented

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the methodology and emerging findings of the assessment at a National Stakeholder Workshop. The draft report was available in advance to participants and the workshop drew significant attendance from representatives of public and key governance institutions. The workshop helped to further refine the report, particularly by adding and prioritizing recommendations.

Finally, the full report was reviewed and endorsed both by TISL and the TI Secretariat.

# EXECUTIVE SUMMARY

## INTRODUCTION

The National Integrity System Sri Lanka 2010 Assessment (NIS-SL 2010 Assessment) was conducted in order to gain a comprehensive understanding of the integrity system in Sri Lanka. The 2014 update examines the changes or lack thereof within the 13 Pillars during the subsequent period since 2010. The 13 Pillars introduced by the NIS-SL 2010 is religiously and rigorously covered in the 2014 report. The re-naming of some pillars – for instance ‘Ombudsman/Human Rights Commission’ was changed to ‘Complaints Mechanisms’ - remains the only major change to the structure of the report.

## OVERVIEW OF PILLARS 2010 AND 2014

It is important to note that whilst these Pillars have witnessed dynamic and complex changes especially in its practice, the overall performance of the pillars continues to be weak or moderate. The update reiterates the NIS-SL 2010 Assessment’s conclusion that “while all areas need improvement, the ‘role’ of the pillars is the weakest element in the integrity equation, whereas ‘capacity’ ... is relatively higher than the other dimensions.”<sup>1</sup>

The 13 pillars can be summarized into three categories. These categories are known as the ‘Politico-Administrative Structure, the ‘Prosecution and Enforcement Arm’ and the ‘Oversight Institutions’.

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1 Ibid. p. 15

**Table 5: Normative dimensions of pillars**

POLITICO-ADMINISTRATION STRUCTURE	PROSECUTION & ENFORCEMENT	OVERSIGHT INSTITUTIONS
<ul style="list-style-type: none"> <li>• Legislature</li> <li>• Executive</li> <li>• Judiciary</li> <li>• Public Sector</li> </ul>	<ul style="list-style-type: none"> <li>• Law Enforcement Agencies</li> <li>• Ombudsman/HR Commission</li> <li>• Anti-Corruption Commission</li> </ul>	<ul style="list-style-type: none"> <li>• Election Commission</li> <li>• Auditor General</li> </ul>

The Chart below presents the overall pillar performance for this Report

As illustrated in the table above, the performance of the politico administrative structures has remained unchanged. Even though the performance remains by and large the same, it is important to note that four of the main pillars of Sri Lanka’s integrity system are bordering around weak. An individual assessment of the executive pillar does reveal an increase in the capacity of the pillar. This increase which came about through the 18<sup>th</sup> amendment is a disproportionate one and has gone on to affect the capacity, especially the independence, of a number of other pillars including the judiciary, election commission and the anti-corruption commission. The overarching influence of the executive has weakened the entire system rather than strengthening it.

The Anti-corruption commission (CIABOC), political parties and business pillars have all experienced a slight decline in performance since 2010. Evidence gathered and collated in the update suggests that the governance level of the anti-corruption commission has worsened significantly over the past couple of years, during which time the CIABOC has been criticized heavily for its ineffectiveness. While the

Table 6: Comparison of integrity across normative dimensions

Pillars	2010			2014		
	CAPACITY	GOVERNANCE	ROLE	CAPACITY	GOVERNANCE	ROLE
Politto Ad- ministrative Structure	Moderate (some provi- sions but key gaps exist)	Weak (minimal provisions / processes)	Weak (Minimal provisions / Processes)	Moderate (some provi- sions but key gaps exist)	Weak (minimal provisions / processes)	Weak (Minimal provisions / Processes)
Law Enforcement Agencies Complaint Mechanisms Anti-Corruption Commission	Weak (Minimal provisions / Processes)	Medium Low (some provi- sions but key gaps exist)	Weak (Minimal provisions / Processes)	Weak (Minimal provisions / Processes)	Weak (Minimal provi- sions / Process- es)	Weak (Minimal provisions / Processes)
Oversight Insttu- tions	Medium Low (some provi- sions but key gaps exist)	Moderate (some provi- sions but key gaps exist)	Very Weak (Minimal provisions / processes)	Moderate (some provi- sions but key gaps exist)	Moderate (some provi- sions but key gaps exist)	Weak (Minimal provisions / Processes)
Non State Actors*	-	-	-	Weak (Minimal provisions / Processes)	Weak (Minimal provisions / Processes)	Weak (Minimal provisions / Processes)

\*Information on 2010 as per NIS-SL 2010 report

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media reported on incidences of large scale corruption, due to legal limitations, the commission did not pursue those cases. The cases which were followed up on, seemed to be tainted with a political bias. Information about the decision making processes and the status of pending cases is not available to the public easily, while serious questions have been raised regarding the accountability of the CIABOC both to the legislature and the public. The need to update the laws pertaining to anti-corruption has been pointed out as a need of the hour.

The capacity and role in combating corruption of political parties has weakened further since 2010. The public is unable to obtain information regarding the financial practices of political parties, especially when it comes to party funding during elections. The ever increasing misuse of public resources has led to an unequal distribution of resources for political parties, leaving smaller political parties struggling to find the adequate resources to reach out to the public. It is also important to note that the majority of the parties that come to the forefront are founded on political ideologies rather than social needs. This is a major concern because parties play a crucial role in the governance of the country, as the major needs and concerns of the people are often not represented by their political representatives.

An analysis of the business pillar reveals that there are considerable interferences by outside forces, affecting the integrity and independence of the pillar. Sri Lanka's Bribery Act is yet to be amended to include business sector corruption which is a significant hindrance in ensuring better governance in the private sector. Therefore, the business sector plays a minimal role in ensuring better governance and reducing corruption in the country.

The Auditor General's department has made considerable efforts over the years to hold State institutions accountable. The department submits audit reports on public enterprises to both COPE and PAC who have been unable to take necessary actions based on the audit reports thereafter.



The independent functioning of both media and civil society continues to be challenged in the present political environment. The freedom of expression and association is undermined by the threat of new legislation and the culture of self censorship among media. Meanwhile, new legal provisions are also required to strengthen accountability in web based media outlets.

The 18<sup>th</sup> Amendment to the Constitution came into effect in 2010 and since then its implications on the entire governance system of Sri Lanka has been significant. Its effect on the independence of the public service has been significant with heavy politicization of almost all public institutions and personnel. Appointments, transfers, retirement and disciplinary action in the sector are determined by political considerations and public officials are often made to take part in electioneering and propaganda work. The integrity of the public sector has deteriorated and requires immediate action to restore the public's faith in it once more.

Furthermore, the absence of a law that guarantees Right to Information and the need for comprehensive code of ethics and conduct to ensure professional behavior have come across as cross cutting issues.

## Core Recommendations

Just as in the NIS-2010 report, a number of recommendations have emerged in pillars as crucial for the improvement of national integrity. The proposed changes require implementation in order to ensure positive improvements on the entire integrity system. These changes can become the catalyst for greater transparency and accountability.

### ⊕ **Self-Regulation**

1. A Code of Conduct for Members of Parliament (MPs), and other professional bodies must be rigorously implemented. This recommendation appeared in the NIS-2010 report and despite half-hearted attempts, this recommendation was not acted upon in the government sector.

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Table 7: Emerging Trends

TRENDS WITNESSED IN 2010	TRENDS WITNESSED IN 2014
The pre-requisite for future gains is to improve internal governance and enhance the role of the politico-administrative structure.	Internal governance is strikingly inadequate and requires strengthening of the implementation of laws and amendments to existing draconian laws to ensure <b>integrity of the politic-administrative structure.</b>
Drastic reforms are required in terms of the prosecution and enforcement of integrity.	Drastic reforms are required in terms of the <b>prosecution and enforcement</b> of integrity.
The lack of an adequate role within which to operate effectively is a crucial inhibiting factor for the key oversight institutions.	The function of <b>Oversight institutions</b> significantly compromised due to the external control brought on by the 18 <sup>th</sup> Amendment. The trust placed by the public in these institutions is deteriorating.
Cross-cutting findings indicate that “the strong negative influence of inappropriate and antiquated laws and regulations that promote secrecy, the reluctance of institutions to use the full gamut of their powers, good laws ... which are observed in the breach, the absence of whistleblower, witness and victim protection legislature, the impunity enjoyed by the political elite and their cronies, and the absence of a broad public dialogue and anticorruption movement, all of which is compounded by huge capacity gaps in monitoring and enforcement by key institutions” <sup>1</sup>	Cross-cutting findings include the fact whilst laws do exist, some of these laws are ineffective or unimplemented and thereby harm the integrity of the country. The non-existence of whistleblower and victim protection and the right to information, the increasing accusations of impunity for the powerful, nepotism and corruption further tarnish the country.

2. A track record of voting in Parliament by MPs should be presented to the people annually to ensure transparency and accountability.

⊕ ***Appointments and Performance***

1. The protection granted to civil servants and their responsibility enshrined in the Establishment Code must be publicized in order for it to be accepted and the independence – in decision-making and in control of finances – of the public sector ensured in practice as well as in law.
2. Efficient ‘Performance-based Appraisal’ process must be implemented to public servants to reduce politicization of the public sector and to ensure that the deserving individual is promoted.
3. To prevent allegations of corruption and nepotism or questionable appointments, a media project should be implemented to emphasize that ‘transparency in decision-making’ is a right of the people.
4. Pro-active investigation should be included in an expanded mandate of the CIABOC, which only focuses on ‘reactive’ investigations. This recommendation was also included in the NIS-2010 report.
5. All new recruits to the public sector, the Police, the Military, and other government and semi-government offices and departments must be required to learn a second language – Sinhala or Tamil – prior to confirmation of their employment status. This requirement must also be enforced for existing employees if they are to receive increase in salary.

⊕ ***New Legislation***

1. Due to the consistent ‘cross-over’ of MPs, there is an increased dissatisfaction by the voters with the political system. Laws should be implemented so that cross-over politicians are removed from their political office.

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2. Laws should be enacted to reduce/limit the size of the Cabinet, which is part of the Executive.
3. Transparency in election funding and placement of a ceiling for election funding should be introduced. The laws should allow for the Inland Revenue Office to offer tax breaks for those who contribute and also for the CIABOC to investigate suspect transactions.
4. Political parties should disclose sources of funding.
5. 'Hate Crime' laws must be introduced and rigorously implemented to protect the unity of the country from divisive forces within and outside of the country. Any 'hate speech', whether related to religion, ethnicity, gender, or etc. must be met with the full force of the law and its progress in the courts must be transparent.
6. Academic freedom should be protected so that criticism of the government or the judiciary or law enforcement is not seen a traitorous.
7. Legislation is required for whistleblower, victim and witness protection.

## COUNTRY PROFILE

The three year period since the previous NIS-SL 2010 Assessment has not witnessed drastic changes<sup>1</sup> except in the area of relations with the external world and its development initiatives in the North and in the East. The country continues to exist in the post-war status discussed in the 2010 Assessment. The domination of the United People's Freedom Alliance (UPFA) coalition government continues to thrive although there have been a number of setbacks at elections, especially those held in the North of the country. Some changes have occurred in terms of the removal of the Emergency Regulations. However, the Prevention of Terrorism Act continues to impact the lives of ordinary Sri Lankans. The 18<sup>th</sup> Amendment, discussed with grave concern in the NIS-SL 2010 Assessment, has not had much impact on the day-to-day workings of the pillars. The different commissions – from Elections Commission to the Bribery Commission – continue to function but with constraints. The centralization of the powers of the Executive resulted from the 18<sup>th</sup> Amendment and continues to be a concern. The President has not appointed an independent commission and this highlights the unbridled powers of the Executive.

The “weak and ineffectual opposition” discussed in the NIS-SL 2010 Assessment has been fractured further and public support for the opposition appears to have dwindled. The ever-increasing crossovers, where politicians elected by the people under a specific mandate cross over to the ruling party, have further deteriorated people's belief in the ability of the opposition to be strong. The “over-arching

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1 Please refer to the *National Integrity System Assessment Sri Lanka*. Op cit. p. 34 – 38

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paradigm of shame-avoidance which acted as a deterrent against corruption”<sup>2</sup> has deteriorated further as “political patronage and influence-peddling for financial gain have increasingly cast their shadow over all aspects of governance and accountability”.<sup>3</sup> People remain cynical as to the integrity and effectiveness of the individuals elected to office.

The effectiveness of the Lessons Learnt and Reconciliation Commission (LLRC) report called into question any cynicism regarding Commissions of Inquiry being the dumping ground for difficult issues. The international community insisted that disappearances during the last stages of the war and the subsequent period since the end of the war be investigated<sup>4</sup> in the North and East, and this has resulted in the appointment of a Commission to investigate these allegations. The United Nations Human Rights Commission (UNHRC), under the leadership of the USA has demanded an international inquiry into the last stages of Sri Lanka’s conflict. As noted by an external relations practitioner, the flat denial of the Sri Lankan government that human rights and humanitarian law violations did not occur at the end of the war hinders any equitable resolution to the increased tension in relations between the US-UNCHR and Sri Lanka. The stance regarding human rights norms as being a Western-imposed concept has increased within Sri Lanka. The acceptance of the notion that “certain human rights expectations are unrealistic”<sup>5</sup> is another concern. Despite these, the Lessons Learnt and Reconciliation Commission (LLRC) recommendations have led to the creation of a National Plan of Action for the Implementation of LLRC Recommendations<sup>6</sup>. This action plan has completed a number of the 285 recommendations of the LLRC<sup>7</sup>, while others appear to need more time<sup>8</sup>. Indeed, the LLRC report and the implementation of the recommendations

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2 Ibid. p. 35

3 Ibid.

4 Lanka Newspapers (2013) “Cameron issues ultimatum on Sri Lanka” *National Integrity System Assessment Sri Lanka*. Op cit. p. 12

5 *National Integrity System Assessment Sri Lanka*. Op cit. p. 35

6 <http://www.llrcaction.gov.lk/>

7 <http://www.llrcaction.gov.lk/completed>

8 <http://www.llrcaction.gov.lk/on-going>

have been seen as a core requirement for sustainable reconciliation by the international community.

The concern expressed in the NIS-SL 2010 Assessment was regarding the reconstruction and resettlement of IDPs, which is fraught with problems due to “lack of political will”<sup>9</sup>. This was brought into sharp focus by certain documents and interview sources that present a highly coordinated, criteria-driven, strategized and intensely-focused program of demining and resettlement. By the end of 2013, the ‘Nagenahira Navodaya’ (Reawakening of the East) - which was to resettle internally displaced (IDP) people of the Eastern province - and the ‘Uthuru Vasanthaya’ or the ‘Vadakkinn Vasantham’ (Northern Spring) - to resettle those in the Northern Province - had been implemented. The accelerated program saw the Government overcoming two basic challenges – the existence of landmines and the lack of infrastructural advancement in these areas.

The International Committee of the Red Cross notes that “By end-2012, the number of people held in relation to the past conflict significantly decreased to about 1,300, both in places of temporary and permanent detention and in rehabilitation centers”<sup>10</sup>. Data provided by such reputed sources have been substantiated by those that took part in the ‘Nagenahira Navodaya’ (Reawakening of the East) and Uthuru Vasanthaya’ or the ‘Vadakkinn Vasantham’ (Northern Spring) programs and Tamil and Muslim individuals living in that area. Indeed, the Head of the UN Office of the Coordination of Humanitarian Affairs (OCHA) Agnes Asekenye Oonyu “mentioned her sincere appreciation to the Secretary of Defense on immense support extended by the Sri Lankan Government to the communities in North and East [and] ... praised the efforts taken by the government in the post-war development process.”<sup>11</sup> At the same time, a major concern expressed by Tamil interviewees was the continued presence of the military on non-governmental land.

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9 *National Integrity System Assessment Sri Lanka*. Op cit. p. 35

10 ICRC (2013) “Sri Lanka 2012”. <http://www.icrc.org/eng/assets/files/annual-report/current/icrc-annual-report-sri-lanka.pdf>

11 Ministry of Defense and Urban Development (2013) “UN representative impressed on the evolution of North and East” [http://www.defence.lk/new.asp?fname=UN\\_representative\\_impressed\\_on\\_the\\_evolution\\_of\\_North\\_and\\_East\\_20130807\\_03](http://www.defence.lk/new.asp?fname=UN_representative_impressed_on_the_evolution_of_North_and_East_20130807_03)

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The basic tenants of governance in Sri Lanka being “modeled on the British colonial administrative norms of secrecy, hierarchical authority and benevolent non-accountability”<sup>12</sup> continues to effect efforts to ensure transparency in Sri Lanka. These anarchic bureaucratic traditions hinder accountability and the public sectors’ relations with the governing parties. At the same time, the individuals tasked with the accelerated program for the development of the North especially are said to have sidestepped this bureaucratic red tape. It is therefore possible to overcome red tape. Yet, at the same time, the fact that “decisions taken at every level, even when they are made on the basis of careful consideration of pros and cons, are hardly ever explained, and therefore poorly understood and non-credible”<sup>13</sup> as discussed in the NIS-SL 2010 Assessment, continues irrespective of the fact that some of these decisions appear to be correct.

The demand for unwavering loyalty from the people is reiterated through naming and shaming those who question or challenge the state. Loyalty is paramount but, for those in position to question the decisions of the elite, silence is preferred. There have been instances of anonymous whistleblowers informing organizations such as Government Accountability Project (GAP)<sup>14</sup> or Centre for Policy Alternatives (CPA)<sup>15</sup> or the Support Efforts and Action against Corruption in Sri Lanka (SEAC) Project<sup>16</sup>. This is other than the work of the Transparency International which has consistently highlighted corruption. Even here, there is no systematic assessment of the public sector nor documented best practices.

There are 1419 registered Non-Governmental Organizations (NGOs) in Sri Lanka<sup>17</sup>, the registering of which was seen as a mechanism of ensuring compliance by the NGO sector. The tension mentioned between the government and the (I)NGOs in the NIS-SL 2010 Assessment has exacerbated during the subsequent 3 years.

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12 *National Integrity System Assessment Sri Lanka*. Op cit. p. 36

13 Ibid.

14 <http://www.whistleblower.org/program-areas/international-reform/sri-lanka-corruption>

15 <http://www.cpalanka.org/governance/>

16 UNDP (2009) “Support Efforts and Actions against Corruption in Sri Lanka (SEAC Project Sri Lanka” Colombo: UNDP

17 [http://www.ngosecretariat.gov.lk/web/index.php?option=com\\_statistics&Itemid=67&lang=en](http://www.ngosecretariat.gov.lk/web/index.php?option=com_statistics&Itemid=67&lang=en)



## Overall Situation Analysis

During the period covered by this update, the country has undergone numerous challenges, from within and without.

**Politically** the UPFA government was further strengthened because of politicians' crossing over from the opposition parties. A number of pressure groups emerged, some focusing on ancient history (i.e. *Maha Ravana Balakaya*<sup>18</sup>) while others invoked religion (i.e. *Bodu Bala Sena*<sup>19</sup>). The security situation was relaxed with security convoys provided only to a select few in politics. At the same time, the problems related to the last stages of the war (2008-2009) persisted with the United States of America (USA), among others, taking the lead in questioning Sri Lanka's conduct. One crucial requirement of the international community – with the United Nations (UN) and the United Nations Commission on Human Rights (UNCHR) at the helm – is that the recommendations of the Lessons Learnt and Reconciliation Commission (LLRC), completed and submitted to the President in November 2011, be implemented. In March 2013, a UNHRC resolution (A/HRC/22/L.1/Rev1) was passed which was highly critical of Sri Lanka's activities during the last stages of the war. Ms. Navi Pillay, the UN High Commissioner for Human Rights even visited Sri Lanka for seven days in August 2013 in order to observe the human rights situation in Sri Lanka. This has in turn led to further parochialism and an increasing anti-UN and anti-US as well as anti-NGO stance within Sri Lanka.

Sri Lanka's security situation is viewed with concern by the international community, especially South India. There are allegations of election intimidation and gross human rights violations. However, it is important to note that the North and the East has seen a resurgence of economic activity and, according to those living in the North and East (both North East and South East of Sri Lanka), this has resulted in changes to their way of life. As noted by one interviewee, the people of Jaffna have

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18 <https://www.facebook.com/MahaRawanaBalakaya>

19 <http://bodubalasena.org/sinhala/index.php>

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better health facilities, better access to water for agricultural purposes, and do travel more outside of the North than before the termination of the war. At the same time, claims of disappearances have prevented the government's attempts to win-over the people of these areas. The situation in the North and the East of the country witnessed accelerated infrastructural development and, despite military presence, returnees (from IDP camps and a few refugees) strive to maintain a semblance of normalcy. The military's presence in the North and the East is seen both favorably and critically. The prosecution and subsequent jailing of the army General Sarath Fonseka for corruption highlighted the impact of post-war politics. Fonseka was released in 2012 after serving two years in prison and has subsequently begun campaigning under the Democratic National Alliance (DNA) banner.

The gains in security and safety, as noted in the NIS-SL 2010 Assessment, have not transferred to gains in governance and transparency. It is perhaps presumptuous to assume major changes to the governance structure or to the legal sector nor to attitudinal transformation in such a short period of time. In summary, the war situation resulted in the acceptance of a status quo that was not transparent. The culture of apathy and servility mentioned in the NIS-SL 2010 Assessment, the result of over four decades of conflict, cannot be altered overnight. Any steps towards transparency, even though minute, should be viewed positively. These small steps would lead in time towards a re-emergence of society focused on ethical equality.

The cynicism and apathy discussed in the 2010 Assessment continue although a number of government offices have become more streamlined. The identity card providers issue National Identifications in one day and the Employment Trust Fund has also been streamlined in order for retirees to gain access to their funds quickly. However, the concern expressed in the NIS-SL 2010 Assessment of the difficulty in assessing public sector performance, is reiterated in this update. The ad hoc and unprincipled decision making exacerbates the transparency issues discussed in the NIS-SL 2010 Assessment. Perceptions on 'whistleblowers' and 'watchdogs' along with acceptance of accelerated promotions in certain sectors as a political reality

continue to hinder transparency in the public sector of the island. At the same time, the Government Accountability Project notes how anonymous whistleblowers in Sri Lanka provided relevant information to highlight corruption<sup>20</sup>.

**Economically**, Sri Lanka continued its growth despite the increased global crisis where turbulent markets outside of Sri Lanka were impacted<sup>21</sup>. The cost of living rose considerably and a number of strikes demanding an increase in salaries occurred. The World Bank country data illuminates the fact that Sri Lanka is performing better than other South Asian countries. Indeed,

Sri Lanka posted the fastest growth in South Asia in 2011 and was expected to achieve the same in 2012. Growth remained strong in the first half of 2012 at 7.2%, but for the year as a whole it is expected to decline to around 6.5% – largely owing to the weakening external demand and tighter credit conditions domestically.<sup>22</sup>

The World Bank also notes the 22 financed activities – ranging from transportation (\$439.45 million), water sanitation (\$291.55 million), education (\$136.00 million), public administration and justice (\$12.75 million), agriculture and forestry (\$121.48 million), health and social services (\$81.21 million), among others, were operating in 384 mapped locations<sup>23</sup>. The impact of these changes is perceived positively by some in the Eastern parts of the island. Others view this as a means of skating over crucial reconciliation attempts.

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20 <http://www.whistleblower.org/blog/31-2010/1429-sri-lankan-whistleblower-nihal-sri-ameresekere-discusses-international-corruption-and-fraud>

21 RAM (2012) Economic Outlook Sri Lanka. [http://www.ram.com.lk/reports/Sri\\_Lanka\\_Economic\\_Outlook\\_2013\\_2.pdf](http://www.ram.com.lk/reports/Sri_Lanka_Economic_Outlook_2013_2.pdf)

22 <http://www.worldbank.org/en/country/srilanka/overview>

23 <http://maps.worldbank.org/sa/srilanka#&location=7.266360,81.204167,7&sectors=agriculture,communications,education,energy,finance,health,industry,public,water,transportation,&indicator=Poverty>

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While noting the improvement of Sri Lanka's economy, the U.S. Bureau of Economic and Business Affairs notes that "growth could be hampered by the lack of diversification of the export base, economic problems in the United States and EU, which are Sri Lanka's main export markets, and the absence of private investment."<sup>24</sup> At the same time, according to the Secretary to the President, P. B. Jayasundera, "Sri Lanka has several milestones"<sup>25</sup> and its progress has facilitated the reduction of public debt. Despite this rosy outlook, Sri Lanka's external debt continued to rise in 2013, although at a lesser rate than in July 2012<sup>26</sup>. The need for international loans to develop the country is hampered by an anti-NGO and anti-donor stance<sup>27</sup>. The struggle to get aid for the development of the country is a growing concern<sup>28</sup>. This, along with the anti-(I)NGO and anti-UN stance, influences state relations with civil society. Thus, as noted in the NIS-SL 2010 Assessment, the "required enabling environment for increased integrity faces additional setbacks from cross-cutting factor[s]"<sup>29</sup> which in turn hinder civil society consultation on and contribution to legislative and policy-formation discussions.

**The socio-cultural** background of a country is intricately linked to its past and does not transform drastically. Yet, there are short-term and long-term effects of the multi-decade long violence played out through youth insurrections, militancy, war and terrorism. Stories of trauma – from the Tamil, Muslim and the Sinhalese are abundant in the post-war Sri Lanka.

The socio-cultural backdrop of any country consists of diverse histories, ethnicities as well as the "psychological factors, such as high rates in collectivism and

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24 <http://www.state.gov/e/eb/rls/othr/ics/2013/204735.htm>

25 P. B. Jayasundera (2012) "Sri Lankan Economy in Perspective" Speech given at the Sri Lanka Economic Summit 2012. <http://www.treasury.gov.lk/depts/mofp/mediaunit/speecheconomic-summit-20120711.pdf>

26 Forex/CDF Trading Online (2013) "Sri Lanka's External Debt" <http://www.tradingeconomics.com/sri-lanka/external-debt>

27 See: <http://www.sundaytimes.lk/080615/FinancialTimes/ft312.html>;

28 Amantha Perera (2013) "Dwindling Aid Slows Sri Lanka" Inter Press Service <http://www.ipsnews.net/2013/11/dwindling-aid-slows-sri-lanka/>

29 *National Integrity System Assessment Sri Lanka*. Op cit. p. 12

power distance, repressive education, influence of foreign cultures, religion, and posttraumatic stress symptoms<sup>30</sup>. Sri Lanka is a country rich in history – from chronicles to archeological evidence to oral traditions – and this impacts the understanding of the people’s place within the island nation. The Sinhalese attribute their presence to either King Vijaya in the *Mahavamsa*, *Deepavamsa* and other chronicles or since the 21<sup>st</sup> century, to King Ravana of the epic *Mahabaratha*. The Tamil people use the same sources to counter the Sinhalese claim of original settlers

According to 2012 statistics from the Department of Census and Statistics, the (provisional) population in 2012 was 20.263 million<sup>31</sup>. This population consists of the Sinhalese, Sri Lankan Tamils, Indian Tamil, Sri Lankan Moor, Burghers and Eurasians, Malay, Veddhas, Sri Lanka Chetty, and Bharatha<sup>32</sup>. While most Sinhalese are Buddhists, there are a number of Sinhalese, Sri Lankan Tamils and Tamils of Indian origin who are Christian and Roman Catholic. Hinduism is the second largest religion by population and Islam is the third. Sinhalese people speak Sinhalese, and Tamil people speak Tamil. Moors of Sri Lanka predominantly speak Tamil as well, although they also begun to use Arabic.

The ethnic/separatist/civil war impacted the socio-culture of the island nation. The ‘cage mentality’ or the ‘conflict culture’, where homes become shelters, where ‘bullets’ and ‘bombs’ became the fences that imprisoned a generation<sup>33</sup>, continues to impact the people. There is a ‘collective trauma’ in Sri Lanka. The alleged militarization of the country, a victors’ justice, and the politicization of everyday lives of people appear to impact the people years after the termination of the war<sup>34</sup>.

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30 Waltraud Bolz (2002) “Psychological Analysis of the Sri Lankan Conflict Culture with special reference to the high suicide rate” in *Crisis: Journal of Crisis Intervention and Suicide Prevention*, Vol. 23 (4): 167. Hogrefe Publication.

31 <http://www.statistics.gov.lk/Pocket%20Book/chap02.pdf>

32 Ibid.

33 Ideas developed from Miriam Cooke (1996) *War’s Other Voices: women writers on the Lebanese Civil War*. New York: Syracuse University Press.

34 Ideas developed from Eva Gerharz (2014) *The Politics of Reconciliation and Development in Sri Lanka*.

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**Sri Lanka's relations with the international** community has seen a number of challenges and triumphs. The country hosted a number of international events, including the Commonwealth Heads of Government Meeting in 2013. The country was successful in courting China, Iran and other emerging powers while at the same time keeping India influence – strained somewhat – limited. Intrusion of powerful countries such as the United States of America and intergovernmental organizations – such as the United Nations – with regard to the human rights and humanitarian law issues pertaining to the last months of the war has tainted Sri Lankan relations with the west.

The conclusion of the NIS-SL 2010 Assessment is that the “overarching social and institutional environment ... has not been conducive to enhanced systematic integrity”<sup>35</sup> due to the war. This has been reiterated in the NIS-SL 2014 update. However it is not easy for a country which was at war for over three decades to transform itself within a short period of time and to expect it to do so would oversimplify the tremendous socio-economic, cultural and political transformations that occurred in the midst of the war. Thus it is not merely “bureaucratic delays and archaic procedures [which] serve as obstacles to good governance”<sup>36</sup>. Rather, the country has been forced to deal with the post-war national aspirations of the different ethno-linguistic/religious groups which have contributed to the re-emerging of the question on national cohesion.

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35 *National Integrity System Assessment Sri Lanka*. Op cit. p. 10.

36 *Ibid.* p. 11

## CORRUPTION PROFILE

According to Transparency International, corruption is

The abuse of entrusted power for private gain". Corruption can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs.

Corruption can and does occur amongst public servants, sports personalities, educators and media to name a few. The bribes can be in terms of giving items for free or it can be an outright payment in cash or kind<sup>1</sup>. Sri Lanka is one of 36 countries out of 107 that "perceived the police to be among the institutions most affected by corruption"<sup>2</sup>. The Military and the education system were not seen as corrupt in Sri Lanka (or any of the 107 countries) and surprisingly, Sri Lankans did not view NGOs and media as being corrupt.<sup>3</sup>

Whilst "bribery and corruption are of great concern in Sri Lanka"<sup>4</sup>, at the same time, Olken notes how "in most contexts, there is relatively little stigma associated with paying bribes."<sup>5</sup>. Moreover, "statistics on investigations, prosecutions, convictions,

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1 Ibid.

2 <http://www.transparency.org/gcb2013/results>

3 Ibid.

4 *National Integrity System Assessment Sri Lanka*. Op cit. p. 39

5 Benjamin A. Olken (2011) "Corruption in Developing Countries" Abdul Latif Jameel Poverty Action Lab's Governance Initiative <http://www.hks.harvard.edu/fs/rpande/papers/Corruption%20in%20Developing%20Countries.pdf>

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and sanctions for passive and active domestic bribery in Sri Lanka are not available.”<sup>6</sup> The Commission to Investigate Allegations of Bribery or Corruption (CIABOC), also known amongst Sri Lankans as the ‘Bribery Commission’ is – as noted in the National Integrity System 2010 Assessment – a reactive institution that is hampered by unattainable and limited mandate, political interference and trust issues<sup>7</sup>.

There have been allegations of corruption leveled by the Council of Legal Education against educators is recent allegations. However, bribery and corruption appear rampant in customs administration<sup>8</sup> in the defense sector<sup>9</sup>, in the airline sector (Sri Lankan Airlines and Mihin Lanka)<sup>10</sup>, in the land sector with regard to petty and grand corruption practices<sup>11</sup>, and in the housing sector.<sup>12</sup> This costs the country in numerous ways, not merely in terms of annual growth and GDP<sup>13</sup>. The health sector is “plagued by petty corruption, bribery and nepotism ... and some of the major reasons cited by households for paying bribes to hospital employees were to get better care/attention and to release a body from the mortuary.”<sup>14</sup> It impacts international investments and harms Sri Lanka’s potential for development<sup>15</sup>.

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6 OECD (2012), OP CIT. P. 479

7 National Integrity System Assessment (2010), op cite.

8 See: Global Enabling Trade Report 2012 <http://www.weforum.org/reports/global-enabling-trade-report-2012>

9 Transparency International (2013) *Government Defence Anti-Corruption Index 2013*.<http://government.defenceindex.org/sites/default/files/documents/GI-main-report.pdf>

10 <http://www.business-anti-corruption.com/country-profiles/south-asia/sri-lanka/corruption-levels/licences-infrastructure-and-public-utilities.aspx>

11 See: <http://www.transparency.org/research/gcb/overview> and <http://www.business-anti-corruption.com/country-profiles/south-asia/sri-lanka/corruption-levels/land-administration.aspx>

12 Mangala Samaraweera (2013) “Sri Lanka: changing Colombo demography, ‘Lycamobile’ money, human body parts and Rajapakshas” <http://www.srilankabrief.org/2013/12/sri-lanka-changing-colombo-demography.html>

13 See <http://www.business-anti-corruption.com/country-profiles/south-asia/sri-lanka/corruption-levels/licences-infrastructure-and-public-utilities.aspx>

14 Ibid.

15 See: <http://www.weforum.org/> and <http://www.enterprisesurveys.org/> and <http://www.transparency.org/research/gcb/overview>



Freedom House lists Sri Lanka as a country at crossroads. It notes election irregularities in Presidential, Parliamentary and Provincial Council elections since 1989<sup>16</sup>. Some of these include violence and intimidation, lack of bureaucratic independence, contributions of civil society ignored in the drafting of legislature and deterioration of media freedom<sup>17</sup>. According to the Global Corruption Barometer 2010/2011, a majority of those interviewed perceived an increase in the level of corruption (49%) while the same question in 2013 elicited a different answer with 35% believing that corruption has increased a lot while 29% accepted that corruption has increased a little, with a total of 54% of those surveyed. The most corrupt of which was the Police (64%).

The NIS-SL 2010 Assessment concluded that there are deficiencies in the Penal Code and the Bribery Act, lacked whistleblower protection; the Declaration of Assets and Liabilities Law lacked monitoring mechanisms; the Executive, Legislative and Judiciary and Parliamentary oversight were considered weak. Laws however exist but cronyism and nepotism and half-hearted implementation of laws hinder the full impact of the regulations from being felt<sup>18</sup>. These aspects of corruption along with campaign financing irregularities continue to plague the country.

In the three year period since the NIS-SL 2010 Assessment the perception of corruption within Sri Lanka has witnessed changes. The 2011 Corruption Perception Index observed how Sri Lanka improved in ranking from 91 in 2010 to 86<sup>th</sup> in 2011. The Sri Lankan situation once again improved in 2012 as seen by the Global Corruption Perception Index. However the concluding remarks of the NIS-SL 2010 Assessment are reiterated in this report that, "Corruption should be high on the agenda again"<sup>19</sup>.

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16 Robert C. Oberst (2012) *Countries at the Crossroads, 2012 – Sri Lanka*. Freedom House <http://www.refworld.org/docid/505c17292c.html>

17 Ibid

18 *National Integrity System Assessment Sri Lanka*. Op cit.

19 Ibid. p. 44



## ANTI CORRUPTION LAWS AND ACTIVITIES

Over the years, both the state and non state actors of Sri Lanka have taken several initiatives to fight corruption and the persisting abuse of authority. However, Sri Lanka has been able to develop and establish a legal framework that can effectively fight corruption only in theory.

Bribery is an offence under the Penal Code of 1883 and the Bribery Act of 1994<sup>1</sup>. While the Bribery Act covers the offering and giving of bribes, there are still numerous deficiencies in the legislation. For instance, it is not clear if bribery covers only promising a bribe, and if a bribe offered but not received by the public servant is still considered to be an offence under the Penal Code.

In recent years, new legislation has been passed that has improved the legal framework of the country: Extradition Act 2002 under which bribery is considered to be an extraditable offence; the Money Laundering Act No 5 of 2006 which prohibits money laundering and provides measures to combat and prevent money laundering; the Companies Act No 7 of 2007 which entitles whistleblowers to a reimbursement of any kind of legal expenses from the fines levied in the action<sup>2</sup>. These are some of the tools that have been put in place to ensure good governance.

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1 *National Integrity System Assessment Sri Lanka*. Op cit. p. 45

2 *National Integrity System Assessment Sri Lanka*. Op cit. p. 45-49

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Moreover in 2004, Sri Lanka became the first country in Asia and second in the world to sign the UN convention Against Corruption (UNCAC) and has been the member of Asia/Pacific Group on Money Laundering (APG) since its inception in 1997<sup>3</sup>. This legal framework has led to further collaboration with international donors on anti-corruption related activities. It led to the initiation of the reform programs that focus on improving anti corruption in practice. Sri Lanka Anti Corruption Program (ACP) in partnership with USAID and ARD, developed a program that assessed the training and resources needed for the Bribery Commission and the Auditor General's Department, and developed an education and training curriculum. Also later in 2009, UNDP supported another anti-corruption programme of the CIABOC titled "Support Efforts and Action against Corruption in Sri Lanka" which looked to improve the legislative and institutional framework, build the operational capacity of the Commission, train public officials and conduct awareness campaigns.

However these projects have been criticized for being ineffective and too costly. The ACP allegedly cost US\$ 2.3 million while the SEAC project is expected to cost US\$ 858,500.<sup>26</sup><sup>4</sup>.

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3        **ibid**

4        **ibid**

## THE LEGISLATURE

*“There shall be a Parliament which shall consist of two hundred and twenty-five Members elected in accordance with the provisions of the Constitution.”<sup>1</sup>*

### SUMMARY

Sri Lanka’s third Constitution since independence came into effect in 1978. As noted in the 2010 NIS Assessment compiled by TISL, whilst a Presidential system was introduced, the Parliament continued to exist but with “the notion that an M.P. [Member of Parliament] is merely a member of a party and that Parliament consists of an aggregation of political parties”<sup>2</sup>. This view has gained constitutional recognition. The Legislature, “In theory ... is superior to the executive since the executive must act according to the laws passed by the legislature”. However both the 2010 NIS-SL Assessment and this present update highlight the extent of the *unbridled power* accumulated by the Executive. Under Article 43, the Cabinet directs and controls the Government<sup>3</sup> and the President heads the Cabinet.

There are Constitutional procedures found in Articles 78-80 which ensures that every bill introduced to the Parliament, is Gazetted prior to being introduced. While

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- 1 Government of Sri Lanka (2011) “Article 62” *The Constitution of the Democratic Socialist Republic of Sri Lanka*. Revised Edition. Sri Jayawardenepura: The Parliament Secretariat: p. 45.
  - 2 Rohan Edrisinha and Naganathan Selvakkumaran (2000) “The Constitutional Evolution of Ceylon/Sri Lanka” in W. D. Lakshman, ed. *Sri Lanka’s Development since Independence: socio-economic prospective and analysis*. New York: Nova Science Publishers, Inc. p. 106.
  - 3 Constitution, Articles 43(1), 43(2), 43(3) op. cit. and <http://www.cabinetoffice.gov.lk/>

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NIS-SL 2010 Assessment notes that the transparency of parliamentary proceedings are “quite good”, there are certain specific irregularities in the way bills are presented to Parliament<sup>4</sup>.

Thus, the Constitution provides laws to ensure that the capacity of the Legislature, in terms of laws and resources, is maintained. But, due to the Executive system that is in place along with the practice of MPs crossing-over from the opposition to the government, questions can be raised with regard to the independence of the Legislature. The Legislature maintains a semblance of transparency but the laws that grant immunities to the MPs has resulted in a lack of accountability. There is little change in terms of the existence of integrity mechanisms or in the role played by the Legislature from 2010 and 2014.

### THE STRUCTURE

Article 4(a) of the Sri Lankan Constitution stipulates that “the legislative power of the People shall be exercised by Parliament, consisting of elected representatives of the People and by the People at a Referendum.”<sup>5</sup> The Legislature consists of a group of people with the power to create new laws. In Sri Lanka, the Legislature is termed the ‘Parliament’ and, “Article 90 of the Constitution sets down the basic provision that every person who is qualified to be a voter is also qualified to be elected as a Member of Parliament unless such person is disqualified under the specific provisions enumerated in Article 91.”<sup>6</sup> Furthermore, the Constitution states that there should be 225 MPs elected for a term of six years<sup>7</sup>. Of those 196 members are elected through proportional representation from 25 districts. The other 29 members are given seats in the Parliament based on each party’s performance at the national level.

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4 Nihal Sri Ameresekere (2011) *Transparency and Public Accountability: Fiscal Mismanagement lack of Public Accountability Case Study – Sri Lanka*. Central Milton Keynes: Author House UK Ltd.

5 Constitution op. cit. p. 1.

6 <http://www.parliament.lk/en/members-of-parliament/the-system-of-elections-in-sri-lanka/qualifications-to-be-elected-as-a-member-of-parliament> (accessed 27.04.2013).

7 <http://www.ipu.org/parline-e/reports/2295.htm>

The current Parliament was appointed on 22<sup>nd</sup> April 2010 and is the 7<sup>th</sup> Parliament of Sri Lanka. The President is the Head of State and Commander-in-Chief of the Armed Forces and the Prime Minister is appointed by the President. The Sri Lankan legislative hierarchy is as follows:

1. The Speaker
2. The Cabinet Ministers
3. The Deputy Ministers
4. The other MPs

Despite NIS-SL 2010 Assessment Reporting noting how the “Parliament has control over public finance and ... It is Parliament’s role to approve the allocation of funds ... and to supervise and scrutinize the expenditure of such public funds”<sup>8</sup>, the Constitution allows for the president, as the Head of the Cabinet, to exercise political influence, thereby controlling the Parliament.

In recent years the number of MPs in the Government and the Opposition has been in a state of flux with several MPS crossing over to the Government, often for personal rather than political reasons. This, according to Interviewee 19 and reiterated by Interviewee 22, have undermined the trust placed upon the legislative by the voters<sup>9</sup>. As noted by Uyangoda, the ethnic representation in Parliament is a major concern as it often results in ‘majoritarian’ democracy.<sup>10</sup> Despite gaining universal franchise in 1931 and electing the first female Prime Minister in the world, and female Executive President, the representation of females in the Parliament is extremely low.<sup>11</sup> In a Parliament of 225, there are only 13 female representatives. There are also religious dignitaries voted into the Parliament.

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8 *National Integrity System Assessment Sri Lanka*. Op cit. p. 51

9 Interview #19: Academic, name withheld on request (December 19<sup>th</sup> 2013) and Interview #22: Academic, name withheld on request. (January 25<sup>th</sup> 2014).

10 Jayadeva Uyangoda (2006?) “Working and Outcomes of Democracy in Sri Lanka” <http://www.democracy-asia.org/qa/srilanka/Jayadeva%20Uyangoda.pdf>

11 Satarupa Bhattacharjya (2011) “Just 10 Women in Parliament – a disappointing showing” [http://www.sundaytimes.lk/100411/News/nws\\_17.html](http://www.sundaytimes.lk/100411/News/nws_17.html) (accessed 10th June 2013).

## ASSESSMENT

### 1.1. CAPACITY

#### 1.1.1. Resources (Law) – To what extent are there provisions in place that provide the legislature with adequate financial, human and infrastructure resources to effectively carry out its duties?

The Constitution states that the “Parliament shall have full control over public finance.”<sup>12</sup> The Office of the Secretary-General of Parliament is headed by the Speaker and provides facilities and services for all MPs and their corresponding parliamentary activities<sup>13</sup>. The Office of the Secretary-General of Parliament consists of 836<sup>14</sup> members of staff with eight departments.

The total parliamentary expenditure for 2012 was Rs. 1,685 million. From this amount, Rs. 614 million was spent on facilities allocated for the MPs<sup>15</sup>. In addition to their own salary, a MP gets telephone, fuel, transport, and entertainment allowances as well as Rs. 500/- for attending each parliamentary session<sup>16</sup>. Moreover a system was introduced which entitled an MP to a full pension after five years in office<sup>17</sup>. It is interesting to note that an ordinary government servant has to serve up to the age of 55 years in order to get a full pension. The MPs are also entitled to a duty free luxury car every five years although a parliamentary term is only six years<sup>18</sup>. They

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12 Constitution, Article 48. op. cit. p. 105

13 Parliament of Sri Lanka (2013) Annual Performance Report – 2012, available at [http://www.parliament.lk/uploads/documents/paperspresented/performance\\_report\\_parliament\\_of\\_srilanka\\_2012.pdf](http://www.parliament.lk/uploads/documents/paperspresented/performance_report_parliament_of_srilanka_2012.pdf)

14 Ibid. p. 3

15 Ibid. p. 4

16 Ibid

17 This pension scheme was introduced in 1990. See: <http://srilankalaw.lk/revised-statutes/volume-vi/890.html>

18 Victor Ivan (n.d.) “Bribery or Corruption and the Political System of Sri Lanka” <http://www.ruleoflawsrilanka.org/resources/bribery-or-corruption-and-the-political-system-of> (accessed 10.08.2013)



also receive a car subsidiary<sup>19</sup>. More information on the expenses incurred by the MPs is available in the NIS-SL 2010 Assessment.

The indemnities, facilities and services available to MPs also include:

- A Diplomatic passport
- Basic salary of Rs. 265,000 per annum (see also Article 68 of the Constitution)
- Entertainment allowance of Rs. 1000 per month
- Fuel allowance of Rs. 7500 per month
- Cell phone allowance of Rs. 2000 per month
- Driver's allowance of Rs. 3500 per month
- Total exemption from tax for emoluments drawn as a Member of Parliament
- Group Insurance Scheme
- Other facilities:
  - a. Secretariat (see also Art. 65 of the Constitution)
  - b. Assistants
  - c. Stationery
  - d. Official housing
  - e. Security guards
  - f. Postal and telephone services
  - g. Travel and transport<sup>20</sup>

Moreover, as commented on by one reviewer and reiterated by Interviewee 19, the resources provided to the different select committees are allocated according to the annual budget of that particular year.<sup>21</sup>

19 Interview #22: Academic, name withheld on request (January 25<sup>th</sup> 2014).

20 <http://www.ipu.org/parline/reports/2295.htm>, op cit.

21 Interview # 19, op cit.

# National Integrity System Assessment

## Sri Lanka 2014

In 1987 the 13th Amendment to the Constitution established the Provincial Councils<sup>22</sup>. However currently their very existence is subject to intense debate and they lack the ability to control their resources<sup>23</sup>.

### **1.1.2. Resources (Practice) – To what extent does the legislature have adequate resources to carry out its duties in practice?**

While Article 48 of the Constitution grants the Legislature power over ‘public’ finance, in reality, the President determines the allocation of resources through the Annual Budget<sup>24</sup>. The NIS-SL 2010 Assessment examines the power granted by the Constitution to the Executive; from the ability to dissolve Parliament without giving a cause to the taking over of any Ministerial portfolio.

In terms of other resources, and as noted by an interviewee, the MPs have access not only to the Parliamentary Library as mentioned in the NIS-SL 2010 Assessment, but also to other specialized think tanks. However Interviewee No. 20 noted that the MPs do not fully utilize these resources<sup>25</sup>.

MPs also have a research team to conduct relevant research projects and have access to advisory committees.

### **1.1.3. Independence (Law) – to what extent is the legislature independent and free from subordination to external actors by law?**

There have not been any changes to the Constitution since 2010 and the comment that “the continuation of Parliament is dependent on Executive discretion”<sup>26</sup> in the

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22 Parliament of Sri Lanka (1987) *Provincial Councils Act, No. 42 of 1987*. Available at [http://www.ep.gov.lk/Documents/Amendment\\_42nd.pdf](http://www.ep.gov.lk/Documents/Amendment_42nd.pdf)

23 Interview #3: Senior Legal Officer attached to a Ministry. Name withheld on request. (July 29<sup>th</sup> 2013).

24 Interview with Official attached to the Treasury. Name withheld on request. (August 10<sup>th</sup> 2013).

25 Interview #20: Academic name withheld on request (January 19<sup>th</sup> 2014)

26 Transparency International Sri Lanka (2010) *National Integrity System Assessment Sri Lanka 2010*. Colombo: Transparency International Sri Lanka. [http://www.tisrilanka.org/pub/reports/NIS\\_SL\\_2010.pdf](http://www.tisrilanka.org/pub/reports/NIS_SL_2010.pdf). p. 56.

NIS-SL 2010 Assessment holds true in 2014 as well. The NIS-SL 2010 Assessment observed that the Parliament had become a mere rubber stamp instead of a check on the powers of the Executive and was no longer a place from which legislature originated. Instead the Executive controls the Parliament through Constitutional provisions, which summon or suspend Parliament, and through party politics. Party politics even dictates the election of the Speaker.

This means that the Legislature can be influenced by the President – who has extensive powers granted by the Constitution – and as members of specific political parties<sup>27</sup>. Indeed, under Article 43, the Cabinet directs and controls the Government and the President holds the Ministerial Portfolios of Defense and Urban Development, Finance and Planning, and Ports and Highways.

#### **1.1.4. Independence (Practice) – to what extent is the legislature independent and free from subordination to external actors in practice?**

An analysis of Sinhala, Tamil and English (Sunday) newspapers – both state and non-state<sup>28</sup>– verifies the statement made in the NIS-2010 Assessment that “The Parliament is ... playing only a marginal role in the public life of the country”.<sup>29</sup> The fact that that MPs themselves do not turn up for Parliament was a concern commented upon in an interview<sup>30</sup>. The Presidential powers are further increased through the machinery of party politics. Other than for a reshuffle of Cabinet Minister Portfolios, the practice within the legislature remains as of 2010. As noted by one interviewee, the Cabinet as an Executive body has a large number of MPs and exerts its authority on the legislature. Whilst crossing over from the opposition to the government releases the MP from their respective political party,

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27 Interview #20, op cit.

28 Based on Primary research conducted on Sinhala, Tamil and English state and non-state newspapers at the Archives of Sri Lanka (May `5<sup>th</sup> 2013 – August 15<sup>th</sup> 2013).

29 Transparency International, op. cit. p. 57.

30 Interview #3: Senior Legal Officer attached to a Ministry, name withheld on request. (July 29<sup>th</sup> 2013).

it still allows him/her to retain their Parliamentary position. This occurs as a result of the patronage of the Executive making the independence of the Cabinet and subsequently the Parliament a concern<sup>31</sup>.

### 1.2. GOVERNANCE

#### 1.2.1. Transparency (Law) – to what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the legislature?

The NIS-SL 2010 Assessment focused on the mechanisms which were already in place to ensure transparency when proposing legislature. It also looked at membership of the multi-representative Committee on Parliamentary Business which allocates time for parliamentary discussions. The 2010 Assessment also discussed the public nature of voting records and when necessary, the public nature of the Parliamentary Committees which permit the media to sit in. Furthermore it focused on the non-verification aspect of the Declaration of Assets requirement for all Parliamentarians.

This update notes that the Constitutional requirements remain intact. The idea of a Freedom of Information bill began as a proposal by both major parties in 2004<sup>32</sup>. The draft of the 'Freedom of Information' Bill, prepared by Karu Jayasuriya of the opposition United National Party (UNP) was analyzed by the Centre for Law and Democracy<sup>33</sup>. This bill was introduced and subsequently withdrawn when the government indicated their interest in introducing their own draft bill. Subsequently three bills have been presented to the Parliament- the last one in

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31 Interview # 18: Retired Civil Servant, name withheld on request (December 19<sup>th</sup> 2013) and # 22 Academic: name withheld on request (January 25<sup>th</sup> 2014).

32 Santhush Fernando (2010) "Sri Lanka's Freedom of Information Bill to be drafted after consulting media unions" <http://www.asiantribune.com/news/2010/09/24/sri-lanka%E2%80%99s-freedom-information-bill-be-drafted-after-consulting-media-unions> (accessed June 10<sup>th</sup> 2013).

33 Centre for Law and Democracy (2011) "Sri Lanka: comments on the draft Freedom of Information Act November 2011." <http://www.law-democracy.org/?p=1473> (accessed June 10<sup>th</sup> 2013).

2010 - but none have resulted in the adoption of an effective law that guarantees the right to information.

**1.2.2. Transparency (Practice) – to what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making processes of the legislature?**

The Parliament provides information on its activities through its website<sup>34</sup>, the Hansard<sup>35</sup> and the media. An in-depth explanation was given in the NIS-SL 2010 Assessment on the methods by which the public could access information on the work of the Parliament. The Budget speech is presented live via radio and television and the budget speech along with an analysis of the budget is published in the newspapers the following day.

All Gazette notifications from 2001 to 2012 have been archived and current Gazette notifications have been made available via the internet.<sup>36</sup> However information on proposed legislature is at times unattainable even one week prior to being introduced to the Parliament. The public does not have access to Select Committee minutes and urgent bills remain confidential and therefore not accessible to the public. However the Open Budget Index 2012 ranks Sri Lanka 46<sup>th</sup> out of 93 countries<sup>37</sup> and requests that it provides ‘some’ information to the public on finances.

“Despite the existence of draft bills and acts, implementation remains problematic, especially with regard to punishing senior government officials. The Asset

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34 See: <http://www.parliament.lk/en/committee-rooms/committee-room-1> (accessed August 1st 2013).

35 Note: The Hansard is available at the National Archives and, as of February 1<sup>st</sup> 2006, it is available at <http://www.parliament.lk/en/business-of-parliament/hansards?start=600> (accessed August 1st 2013).

36 [http://archives.dailynews.lk/2001/pix/gov\\_gazette.html](http://archives.dailynews.lk/2001/pix/gov_gazette.html) (accessed August 1st 2013).

37 “The Open Budget Index 2012” <http://internationalbudget.org/wp-content/uploads/OBI-2012-Rankings-English.png> (accessed August 1st 2013).

Declaration of MPs, elected officials and others such as the Chief Justice, as commented upon by the NIS-SL 2010, is confidential until that information is required by judiciary to press charges. However, a Senior Legal Officer commented that either the elected officials have not submitted their asset declaration or what has been submitted can be fraudulent since there is no mechanism to check whether the assets in question really exist until it becomes a legal matter. It is best to include all assets, notes the interviewee, since discrepancies in assets declared and not declared is the focus of investigation rather than where the original assets came from. This discrepancy became a crucial issue in the legal case against former Chief Justice Shirani Bandaranayake.

### **1.2.3. Accountability (Law) – to what extent are there provisions in place to ensure that the legislature has to report on and be answerable for its actions?**

As noted by one interviewee<sup>38</sup> and substantiated in the NIS-SL 2010 Assessment, the courts do not have any authority under the Constitution to question the legal basis of any Bill once it has been approved by Parliament<sup>39</sup>. While information on legislature is to be made available to the general public one week prior to discussion in Parliament, there is no requirement for consultation prior to, during or after the process. Since the NIS-2010 Assessment, no new changes to the Constitution have occurred.

### **1.2.4. Accountability (Practice) – to what extent is the legislature and its members report on and be answerable for its actions in practice?**

The Constitution and subsequent Standing Orders ensure that the MPs enjoy ‘freedom of speech and debate’. In this regard the Parliament appears unanswerable and unaccountable to the people for its actions. One criticism leveled against the

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38 Interview with Senior Legal Officer attached to a Ministry. Name withheld on request. (July 29<sup>th</sup> 2013).

39 NIS-SL 2010 op. cit.

government, according to an academic interviewee, is that it has exploited these privileges during 2012 when MPs ‘manufactured’ or spoke of unsubstantiated ‘facts’ when discussing the Judiciary.<sup>40</sup> There are several examples of acts of violence and intimidation perpetrated by or between politicians or by their children, in which the perpetrators appear above the law.<sup>41</sup>

The NIS-SL 2010 Assessment lists examples of MPs who were accused of violence but enjoyed impunity as they were not held accountable for their actions. This situation remains the same from 2010 – 2014 as reported by newspapers in all three languages. <sup>42</sup>. The 2010 Assessment further discussed the crossing over of MPs from the opposition to the government for apparent financial reasons. Nepotism, cronyism, and misuse of public resources continue.<sup>43</sup>

At the same time, in certain cases – such as when the budget is presented – the Executive invites proposals and scrutiny even though there are no provisions which require such action<sup>44</sup>.

### **1.2.5. Integrity (Law) – to what extent are there mechanisms in place to ensure the integrity of the members of the legislature?**

The need for a code of conduct (during election period at least) has once more been raised by the Department of Elections.<sup>45</sup> This was however not the first

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40 Interview with Senior University Academic. Name withheld on request. (August 15<sup>th</sup> 2013).

41 Note: The cases include the killing of Mr. B. L. Premachandra.

42 Based on Primary research conducted on Sinhala, Tamil and English state and non-state newspapers at the Archives of Sri Lanka (May `5<sup>th</sup> 2013 – August 15<sup>th</sup> 2013).

43 Chandani Kirinde (2012) “Rs. 200 m in public funds down the drain for C’wealth Games”The Sunday Times, 17th June 2012; “Elimination of corruption and the creating of conditions for transparency, integrity and accountability” <http://www.humanrights.asia/resources/journals-magazines/article2/0901/02elimination-of-corruption-and-the-creating-of-conditions-for-transparency-integrity-and-accountability> (accessed August 10th 2013); Eran Wickramasinghe (2012) “Waste and inefficiency cause more losses in Govt Institutions than corruption” <http://transcurrents.com/news-views/archives/7671> (accessed August 10th 2013).

44 Reviewer suggestion.

45 N.a. (2013) “Code of Conduct for Parties, Candidates during poll period” Available at <http://www.dailynews.lk/?q=political/code-conduct-parties-candidates-during-poll-period> (accessed 14th August 2013).

time a code of conduct was discussed. The People's Action Front for Free and Fair Elections (PAFFREL) in 1997 attempted to introduce a similar code.<sup>46</sup> A code regulating elections was introduced only in 2012. In the wake of allegations of misconduct by politicians, an opinion was sought by the Ministry of Culture and Arts from the Attorney General regarding a code for politicians in June 2013.<sup>47</sup> The issue here however is not merely the Constitutionality of the code but rather its implementation<sup>48</sup> and its content. However, the NIS-SL 2010 Assessment discussed the Parliament Standing Orders (PSOs) which regulate rules for debates and conduct within the Chamber<sup>49</sup>, and individual parties, which have their own disciplinary processes.

### 1.2.6. Integrity (Practice) – to what extent is the integrity of legislators ensured in practice?

The crossing over of opposition MPs to the government for personal gain has highlighted the lack the integrity of a number of parliamentarians. As discussed in NIS-SL 2010Assessmentthis phenomenon has led to voter dissatisfaction, mistrust in the legislature and the weakening of the opposition, leaving the public with no credible alternatives. Corruption plays an integral role in the Sri Lankan political system polluting the integrity of the legislature.

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46 Guy S. Goodwin-Gill (1998) *Codes of Conduct for Elections: a study prepared for the inter-Parliamentary Union*. Geneva: Inter-Parliamentary Union. p. 30

47 N.a. (2013) "Code of Ethics for Politicos in Sri Lanka." available at <http://www.lankanewspapers.com/news/2013/6/83580.html> (accessed July 10th 2013).

48 Gamini Weerakoon (2013) "Wanted a binding code of ethics for politicians" in *The Sunday Leader*, Friday August 16<sup>th</sup> 2013. available at <http://www.thesundayleader.lk/2013/06/09/wanted-a-binding-code-of-ethics-for-politicians/> (accessed 16<sup>th</sup> August 2013).

49 Parliamentary Secretariat (1993) *The Standing Orders of the Parliament of the Democratic Socialist Republic of Sri Lanka*. Kotte: Parliamentary Secretariat. [http://www.parliament.lk/files/pdf/standing\\_orders\\_english.pdf](http://www.parliament.lk/files/pdf/standing_orders_english.pdf)



### 1.3. ROLE

#### 1.3.1. Role (Law and Practice) – to what extent does the legislature provide effective oversight of the Executive?

In Sri Lanka the leader of the political party that is heading the ruling government is often the President. The only exception was when President Chandrika Bandaranaike Kumaratunga was President and Ranil Wickramasinghe, from the opposition UNP, became the Prime Minister. The presence of the Executive in the Legislative composition automatically creates a conflict of interest and a hierarchical structure which hinders scrutiny.

As noted in NIS-2010 Assessment, there are parliamentary oversight committees, such as the bipartisan Committee on Public Enterprises (COPE), which calls for some accountability on how public funds are managed.<sup>50</sup> The COPE provides annual reports on 247 state institutions and quarterly reports which provide recommendations.<sup>51</sup> The 2010/2011 COPE report included information regarding 18 agencies that were “disclaimed by the auditors ... while some others had not even submitted annual reports.”<sup>52</sup>

The Legislative has the ability to question Executive decisions during the first 45 minutes of every Parliamentary session.<sup>53</sup> However, as constantly commented on by radio journalists and academics, the MPs often do not turn up for this crucial session, some not even for questions they submitted to other Ministers.<sup>54</sup> MPs also have the power to request for any records from a particular Minister or a Ministry during sessions, initiate investigations and bring no confidence motions.

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50 NIS-2010 op. cit.

51 N.a. (2013) “COPE report on Sri Lanka’s state institutions to be tabled in parliament on the 23<sup>rd</sup>” available at [http://www.colombopage.com/archive\\_13B/Jul21\\_1374421453JR.php](http://www.colombopage.com/archive_13B/Jul21_1374421453JR.php) (accessed July 31st 2013).

52 N.a. (2013) “Many Sri Lankan state agency accounts disclaimed by auditors: COPE report”. Available at <http://www.lankabusinessonline.com/news/many-sri-lanka-state-agency-accounts-disclaimed-by-auditors:-cope-report/366876477> (accessed July 31st 2013).

53 See Standing Orders, op. cit.

54 Interview with Senior University Academic. Name withheld on request. (August 15<sup>h</sup> 2013).

**1.3.2. To what extent does the Legislature prioritize anti-corruption and governance as a concern in the country?**

There are a number of Acts in place which deal with the issues of corruption to some extent or the other. This includes the Sri Lanka Bribery Act of 1954, the Sri Lanka Declaration of Assets and Liabilities Act of 1975, the Sri Lanka Commission to Investigate Allegations of Bribery or Corruption of 1994, the Sri Lanka Companies Act (1982 and 2007), the Sri Lanka Extradition (Amendment) Act of 1999, the Sri Lanka Convention on the Suppression of Terrorist Financing Act of 2005, the Sri Lanka Electronic Transaction Act of 2006, the Sri Lanka Prevention of Money Laundering Act of 2006, and the Sri Lanka Directions Banking Act of 2007. Among these Acts, Act No. 19 of 1994 is of special significance as it established the Commission to Investigate Allegations of Bribery or Corruption. However, the Commission has failed to discharge its obligations effectively and has not lived up to the expectations that surrounded its creation as is elaborated in NIS SL 2010 Assessment. The Act itself had been criticized for its limitations as it does not cover incidents of bribery and corruption among corporate sector and civil society entities and the independence of the institution was compromised by the provisions of the 18th Amendment to the constitution. At present the JVP has brought allegations of corruption against the President of CIABOC.

**Recommendations**

1. To impart information to school students on the 'Fundamental Rights' inherent in the Constitution.
2. To devise a questionnaire to examine whether people understand their rights. Based on the findings, to conduct provincial workshops on the Fundamental rights within the Constitution.
3. To develop an awareness programme to inform people of the need for a Code of Ethics for MPs.

## THE EXECUTIVE

*"35. (1) While any person holds office as President, no proceedings shall be instituted or continued against him in any court or tribunal in respect of anything done or omitted to be done by him either in his official or private capacity."*<sup>1</sup>

### SUMMARY

The Executive consists of the Executive President and the Cabinet. The NIS-SL 2010 Assessment clearly informs of the challenges to national integrity and transparency with an executive Presidential system which has almost unfettered powers. This situation has not changed in the three years since the 2010 assessment. Indeed, the 18<sup>th</sup> Amendment – often criticized as a ‘draconian piece of legislation’<sup>2</sup> – was viewed with deep concern in the NIS-SL 2010 Assessment. Despite such concerns, Sri Lanka received a 0.52 in its overall score in the Rule of Law Index 2014 and was placed 48<sup>th</sup> out of 99 countries. Moreover, the island nation was placed first in South Asia. Indeed, the constraints on government and open government marks are slightly above the score given to other countries. Furthermore, this index placed Sri Lanka 54<sup>th</sup> out of 99 countries for ‘Constraints on Government Power’ and it was placed 3<sup>rd</sup> out of the South Asian countries.

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1 The Constitution, Article 35. Ibid.

2 SachinParathalingam (2013) “Sri Lanka has the strongest Executive Presidency – Jayampathy” available in <http://www.ceylontoday.lk/59-35287-news-detail-lanka-has-the-strongest-executive-presidency-jayampathy.html>

# National Integrity System Assessment

## Sri Lanka 2014

The 2010 report was critical of the decline in checks and balances resulting from the 18<sup>th</sup> Amendment to the Constitution, and showed concern over the existing powers granted to the President in the Constitution. This includes the power to dissolve parliament without justification and to appoint the Prime Minister, Ministers and Deputy Ministers. The powers invested in the President makes him/her the supreme authority in the administrative and military sections of the government<sup>3</sup>.

In sum, the Executive has an abundance of resources. For the President at least, independence is guaranteed by law and is used in practice but Cabinet decisions are made with the Cabinet well aware that they were appointed by the President. With the lacuna in codes of conduct, transparency, accountability and integrity have become key concerns. This fact is especially problematic because the Executive wields extensive power and essential checks and balances remain non-existent. The role of the Executive has resulted in narrow political aims that supersede the inherent objective of the Civil Service sector. Moreover, the Executive, especially the President, appears to ignore or not take action against allegations of corruption.

### STRUCTURE

As noted in the NIS-SL 2010 Assessment, the Executive consists of the President and the Cabinet. The Cabinet, as of November 2013, includes 65 Ministers, which is an increase of 4 members since 2010. There are a further 38 Deputy Ministers and 2 Project Ministers, each with a portfolio. Other than this, as noted below, the President holds 4 Ministerial portfolios. In the 125 member Parliament, the Cabinet itself holds 107 seats, not including the President. New portfolios were created to accommodate Ministers to the Cabinet<sup>4</sup>. Of those, only two Ministers are females<sup>5</sup>.

As described in the NIS-SL 2010 Assessment, the Executive consists of the President who is elected directly by the people for a fixed term of six years. Until the 18<sup>th</sup>

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3 See: [www.priu.gov.lk/execpres/Indexep.html](http://www.priu.gov.lk/execpres/Indexep.html)

4 R. K Radhakrishnan (2013) Sri Lankan Jumbo Cabinet expanded" The Hindu January 28<sup>th</sup> 2013. Available at <http://www.thehindu.com/news/international/sri-lankan-jumbo-cabinet-expanded/article4353822.ece>

5 [http://www.priu.gov.lk/Govt\\_Ministers/Indexministers.html](http://www.priu.gov.lk/Govt_Ministers/Indexministers.html)

Amendment to the Constitution, which stated that he could seek re-election “any time after the expiration of 4 years from the commencement of his current term”, the President could only serve a maximum of two terms.

The President has extensive powers despite not being a member of the Legislature. He/she has the immunities granted by the Constitution, but when attending Parliament, which he/she is to do so subsequent to the 18<sup>th</sup> Amendment, he/she is also entitled to the privileges, immunities and powers of the MPs. The Executive has the power to dissolve/prorogue Parliament anytime after one year of a General Election, without disclosing the reasons. The President appoints the Prime Minister but is not bound to consult the Prime Minister in appointing Ministers, Deputy Ministers or Non-Cabinet Ministers. The NIS-SL 2010 Assessment further highlights the fact that the President has the power to declare a ‘state of emergency’ under the Public Security Ordinance (PSO), which cannot be challenged in court.

## ASSESSMENT

### 2.1 CAPACITY

#### 2.1.1 Resources (practice) to what extent does the Executive have adequate resources to effectively carry out its duties?

The 2014 Appropriation Bill allocated “nearly half of the 2014 budget [i.e. Rs. 724 billion out of Rs. 1.53 trillion] expenditure to the ministries under the President and his brothers”<sup>6</sup>. This leads to the same conclusion expressed in the NIS-SL 2010 Assessment, that an inordinate amount of the budget allocation is given to the Executive branch of the government. Indeed the situation appears to even worse in 2014. There is a superfluous amount of resources available – from Rs. 8.56 billion set aside for President’s expenditure for 2014<sup>7</sup>.

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6 Colombo page news desk (2013) “Opposition says 47 percent of Sri Lanka’s 2014 budget to be allocated to the ministries under the three Rajapaksas” Available at [http://www.colombopage.com/archive\\_13B/Oct28\\_1382983084CH.php](http://www.colombopage.com/archive_13B/Oct28_1382983084CH.php)

7 Ibid.

Despite the Constitutional rights to control finances granted to the Parliament, the extensive powers vested in the President with regard to allocation of resources – including to all institutions, development projects, and the Presidential fund – is a concern highlighted in previous report and reiterated in this.

The human resources to the Cabinet itself include one Secretary, two additional Secretaries, and two Senior Assistant Secretaries, who are all graduates. However, according to the Liberal Party, “the cost of maintaining so many Ministers, as well as the large private offices of each Minister, is colossal.”<sup>8</sup>

### **2.1.2 Independence (law): to what extent is the Executive independent by law?**

As noted in the 2010 Assessment, the Executive has extensive powers. This power is given by the Constitution and creates an all-powerful Executive Presidency with very few checks and controls, largely independent of the other two branches of government. The President enjoys complete legal immunity from lawsuits although acts performed in his capacity as Minister (and by other Ministers) may be reviewed by the courts. The President may assume any Ministerial responsibility, including that of Finance, and appoint members of the Cabinet with no obligation to consult the Prime Minister or the legislature on these appointments. He/she has the power to dissolve a democratically elected legislature, without assigning reasons, after the legislature has completed one year in office. The President may also declare an emergency and govern by way of emergency regulations with little judicial oversight.<sup>9</sup>

The Executive Presidency has been granted many powers and functions by the Constitution and it is this authority which overrides the powers of the judiciary

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8 Rajiva Wijesinha (2013) “Limit the Cabinet to 20 Cabinet Ministers – online Petition by Liberal Party of Sri Lanka”. Colombo Telegraph May 3, 2013. Available at <https://www.colombotelegraph.com/index.php/limit-the-cabinet-to-20-cabinet-ministers-online-petition-by-liberal-party-of-sri-lanka/>

9 Comments made by a Reviewer.

and the legislature<sup>10</sup>. . Nevertheless, the President has to answer to Parliament and although he/she is granted immunity while in office, an Executive President can be impeached.

### **2.1.3 Independence (practice): to what extent is the Executive independent in practice?**

The NIS-SL 2010 Assessment voiced its concern about the lack of safeguards to the powers of the Executive President which allow him or her to act independent of the Legislature and the Judiciary if necessary. The President is invested with extensive powers which grant him the right to make financial, governance and policy decisions. Hence the reason there is constant fear that the powers of the Executive will be abused due to the discrepancy between the powers granted to the President and the powers granted to other branches of government by the Constitution. The NIS-SL 2010 Assessment has focused on numerous cases of such abuses of power. Since 2010, there are a number of cases which can be cited as examples of the questionable use of power, including the impeachment of the Chief Justice in 2012. The President's willingness and determination to push the impeachment through – "in the face of contrary court rulings, unprecedented opposition from civil society and serious international concern – confirms his commanding political position."<sup>11</sup>

The former Supreme Court Judge V.C. Wigneswaran has called attention to the danger inherent in the independence enjoyed by the Executive. He notes that The checks and balances were not designed by Law for cosmetic reasons. The

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10 H. Ranjith and A. G. T. S. Somarathna (2013) "Sri Lanka's Executive Presidency: a crucial analysis of its powers and functions under the Constitution of 1978 and subsequent constitutional amendments" *Social Sciences and Humanities Review Faculty of Humanities and Social Sciences, University of Ruhuna, Vo.l.1, No. 1, June 2013.*

11 International Crisis Group (2013) *Sri Lanka's Authoritarian Turn: the Need for International Action.* Crisis Group Asia Report No. 243, 20 February 2013. Brussels: International Crisis Group. Available at [http://www.crisisgroup.org/~media/Files/asia/south-asia/sri-lanka/243-sri-lankas-authoritarian-turn-the-need-for-international-action.pdf](http://www.crisisgroup.org/~/media/Files/asia/south-asia/sri-lanka/243-sri-lankas-authoritarian-turn-the-need-for-international-action.pdf)

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concentration of power in one arm disturbs the delicate balance of power among the three arms of Government. When there was already an imbalance of power, further concentration was a recipe for disaster<sup>12</sup>.

At the same time, the overwhelming discretionary powers vested in the President – as commented upon in the NIS-SL 2010 Assessment – does not always lead to abuse. A Civil Servant noted how unlike others in political power who attempt to force untrained and often uneducated individuals – who have either supported them or are from their own area – into positions within the Ministries, the “President never forced unwanted, untrained people to work as minor workers in the Ministries”<sup>13</sup>. While letters are written to the President informing him of their friendship ties and thereby request menial jobs, another interviewee noted that the President did not subsequently demand that the subordinates in Ministries employ the petitioners<sup>14</sup>.

Despite the 18<sup>th</sup> Amendment allowing the President the power to appoint Commissioners to key institutions, the individuals working in these institutions continue to conduct their functions effectively. Moreover, while the President did appoint the eight members of the Lessons Learnt and Reconciliation Commission (LLRC) in May 2010 and despite the criticisms against the LLRC and the report, the report submitted by them in 2012 voiced critical concerns and included strong recommendations<sup>15</sup>.

Since the NIS-SL 2010 Assessment, new laws have provided the President with further powers. The Prevention of Terrorism Regulations 2011 grants the President (both as the President and as Minister of Defense) powers which grant him the

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12 V. C. Wigneswaran (2012) “Hegemonic Executive President has been made a juggernaut” JDS. Available at <http://www.jdslanka.org/index.php/2012-01-30-09-31-17/politics-a-economy/245-hegemonic-executive-president-has-been-made-a-juggernaut-judge-vigneswaran>

13 Interview # 9 Senior Civil Servant, name withheld on request (3<sup>rd</sup> September 2013).

14 Interview #18 Retired Civil Servant name withheld on request (19<sup>th</sup> December 2013).

15 See LLRC report at <http://slembassyusa.org/downloads/LLRC-REPORT.pdf>. Its implementation has been assigned to the National Plan of Action for the Implementation of LLRC Recommendations (<http://www.llrcaction.gov.lk/>). There is also a demand by the international community to enforce the LLRC recommendations



authority to confiscate the property of persons who he believes may have custody of money, credits or securities which are being or used or intended for the use of an illegal organization. In the event that the President does carry out such action there is no alternative which allows the person to challenge this decision<sup>16</sup>. “It is important to reiterate the extensive powers invested in the President of Sri Lanka by the Constitution and the 18<sup>th</sup> Amendment. In reality, the 18<sup>th</sup> Amendment is considered “a ‘constitutional coup’ which removed presidential term limits and the independence of government oversight bodies”<sup>17</sup>. The Parliamentary Oversight Committee and the Annual Audit does however provide a form of accountability.

## 2.2 GOVERNANCE

### 2.2.1 Transparency (law): to what extent are there regulations in place to ensure transparency in relevant activities of the Executive?

The NIS-SL 2010 Assessment expressed its concern regarding ‘access to information’ and transparency of budget deliberations. It also highlighted the fact that Presidential nominees must – according to the Declaration of Assets and Liabilities Act of 1975 (amended 1988)<sup>18</sup> – provide information on his/her assets and of the spouse and children. The lack of transparency in both these processes and, in the latter, a lacuna in the laws to prosecute a President if such a declaration is not made, is presented as core concerns. The NIS-SL 2010 Assessment further compares Sri Lanka’s standing in international indexes to emphasize the lack of transparency in specific activities of the Executive as being problematic.

The nonexistence of a Freedom of Information law and the closed-door discussions on major decisions impacting the public – commented on in the NIS-SL 2010

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16 International Commission of Jurists (2012) *Authority without accountability: the crisis of impunity in Sri Lanka*. Geneva: International Commission of Jurists. Available at <http://www.refworld.org/pdfid/50ae365b2.pdf>

17 International Crisis Group, *Ibid.*

18 [http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Sri%20Lanka\\_Declaration%20of%20Assets%20and%20Liabilities%20Act\\_1975\\_amended%201988\\_en.pdf](http://publicofficialsfinancialdisclosure.worldbank.org/sites/fdl/files/assets/law-library-files/Sri%20Lanka_Declaration%20of%20Assets%20and%20Liabilities%20Act_1975_amended%201988_en.pdf)

Assessment – hinders gaining insights into the workings of the Executive. The media has highlighted the immunities granted to the President and the MPs to speak with impunity. The media is often complacent. However as the NIS-SL 2010 Assessment report notes, there are numerous ways to prevent the leakage or even access to information. For example, those under the overview of the Establishment Code cannot divulge any information that may embarrass the government unless they have Ministerial approval to do so. The Press Council Law hinders investigations into abuse of power or corruption. These, along with the Official Secrets Act and, from time to time, the Emergency Laws prevent transparency.

As to the second concern discussed in the NIS-SL 2010 Assessment, which was regarding the disclosure of the President’s assets, there continues to be very little insight as to whether the President or the Ministers provide the correct information. Even if that order is complied with, the public does not have access to the necessary information.

### **2.2.2 Transparency (practice): to what extent is there transparency in relevant activities of the Executive in practice?**

The impeachment of the Chief Justice has brought to light the fact that the disclosure of assets is not routinely conducted and, even when assets are declared, they are not verified. Indeed, as noted by Transparency International Sri Lanka, “Out of 2479 candidates contesting the [2013] elections ... only 616 have so far submitted their assets and liability declarations”<sup>19</sup>.

According to the International Budget Partnership’s Open Budget Survey, the score for Sri Lanka in 2010 was 67% and in 2012, it was 46%, which was considered the ‘third biggest fall in international survey’. This was because pre-budget statements were no longer being produced. They had been produced previously but now were

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19 Transparency International (2013) “Over 75% candidates yet to submit Assets and Liability Declarations”. Available at <http://www.tisrilanka.org/?p=11465>

published later on during in-year reports<sup>20</sup>. Thus the concern expressed in 2010 has come to fruition with budget information not being disclosed to the public until the budget speech is given.

Indeed, the “score indicates that the government provides the public with only some information ... [which] makes it challenging for citizens to hold the government accountable for its management of the public’s money”<sup>21</sup>. Moreover, since the Open Budget Survey also examined the strength of the legislature in ensuring oversight of the budget, this dip in the index for Sri Lanka is problematic. This is especially relevant since all the South Asian countries are weak in the area of public official engaging with the public.

### **2.2.3 Accountability (law): to what extent are there provisions in place to ensure that members of the executive have to report and be answerable for their actions?**

As noted in the NIS-SL 2010 Assessment, there are safeguards in place for the Executive to be accountable to the people. These are the courts and the Parliament. The parliamentary oversight committees and the annual audit also provide accountability. According to the Constitution, the Cabinet is charged with the “direction and control of the Government”<sup>22</sup>. The Cabinet, though answerable to the Parliament and subject to dissolution, is also appointed by the President and therefore accountable to him. This once again challenges the system of checks and balances invested in the Constitution. “In an extreme case, the President could effectively take the government outside the supervision of Parliament”<sup>23</sup>.

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20 N.a. (2013) “Budget Transparency: SL third biggest fall in international survey” *The Sunday Island*, March 18, 2013. [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=74998](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=74998)

21 The Open Budget Index (2012) “Sri Lanka” Available at <http://internationalbudget.org/wp-content/uploads/OBI2012-SriLankaCS-English.pdf>; Open Budget Index (2010) “Sri Lanka”. Available at <http://internationalbudget.org/wp-content/uploads/OBI2010-SriLankaCS-English.pdf>

22 *The Constitution*, Article 43, op cite.

23 Ruana Rajapaksa cited in Miwa op cite.

Furthermore, the President is the head of state as well as the head of the executive, the commander in chief and holds the Ministerial portfolios of Defense and Urban Development, Finance and Planning, Ports and Highways, and Law and Order<sup>24</sup>. Despite the Constitution restricting the President from introducing bills to Parliament, because of the Ministerial portfolios in the Cabinet, the President can utilize the power to introduce bills to Parliament<sup>25</sup>.

On the one hand, the courts have the authority to question the legality of a President's actions – but only if impeachment proceedings are implemented by the Parliament – as the President has 'sovereign immunity'. The President is accountable to the Parliament and the Cabinet, as noted above, is answerable to the Parliament. The actions of the Cabinet Ministers can be placed under review by the courts. There is, as noted in the 2010 Assessment, an issue with regard to this as the President also holds Ministerial portfolios and therefore should be accountable to the Parliament and to the courts, but as the President he/she is not.

#### **2.2.4 Accountability (practice): to what extent is there effective oversight of Executive activities in practice?**

The overwhelming power of the President under the 1978 Constitution was evident when the courts decreed that the President's appointment of the Chief Justice could not be legally questioned or challenged by anyone<sup>26</sup>. Furthermore, the 18<sup>th</sup> Amendment permitted the President to appoint the Attorney General and, from 2010 onwards, the "Department [of the Auditor General] was removed from the purview of the Ministry of Justice and brought directly under the authority of the President"<sup>27</sup>. Therefore, while the law dictates that the President's actions are

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24 See [http://www.priu.gov.lk/Govt\\_Ministers/Indexministers.html](http://www.priu.gov.lk/Govt_Ministers/Indexministers.html)

25 Miwa, op cite.

26 Palitha Fernando (2013) "No one can challenge President's decision on Chief Justice, Sri Lanka courts told" Colombo Page. Available at [http://www.colombopage.com/archive\\_13B/Oct31\\_1383243433CH.php](http://www.colombopage.com/archive_13B/Oct31_1383243433CH.php)

27 International Commission of Jurists, Ibid.

accountable to the oversight committees and to the Auditor General, in reality a powerful President can overcome such obstacles. This update reiterates the NIS-SL 2010 Assessment, which states that “The scrutiny and review that the Parliamentary oversight committees and the Auditor General provide are inadequate to ensure that the Executive does not abuse its powers.”

Despite the fact that this report highlights the Executive interest in the Auditor General, the NIS-SL 2010 Assessment makes note of the fact that the public demand for accountability was/is weak. Therefore, the integrity of the President and of the Cabinet is self-regulatory even though the annual audit and the oversight committees attempt to ensure accountability.

### **2.2.5 Integrity (law): to what extent are there mechanisms in place to ensure the integrity of members of the Executive?**

As noted in the NIS-SL 2010 Assessment , the President (and the Cabinet) takes an oath when entering office to be bound by the Constitution and the law. There is no law against post-Ministerial posts or a code of conduct for the members of the Cabinet. Only the Constitution ensures the integrity of the members of the Executive.

At the same time, this update notes that elections might be the only basis for real control, especially with regard to the President. Prior to the 18<sup>th</sup> Amendment a President who was in his/her second term did not see any future prospects with regard to his/her political career. The current system which allows for more than two terms for a Presidential candidate ensures that this individual has to face the public at elections and will have to maintain a good record in order to get electoral votes.

### **2.2.6 Integrity (practice): to what extent is the integrity of members of the Executive ensured in practice?**

This is a reiteration of the analysis of the NIS-SL 2010 Assessment that there is no real control over the President and the Cabinet. While the Parliament and the

annual audit control are forms of accountability, these do not effectively control abuse of power or ensure effective governance.

## 2.3 ROLE

### 2.3.1. Public Sector Management (law and practice): to what extent is the Executive committed to and engaged in developing a well-governed public sector?

The NIS-SL 2010 Assessment was extremely critical of the Executive, citing the lack of independence of the Public Service Commission, resulting in the narrow political aims that supersede the inherent objective of the Public (Civil Service) sector to be of service to the people. The Establishment Code ensures some adherence to the aims of the Public (Civil Service) sector. This update confirms the assessment of NIS-SL 2010 Assessment that political appointments of key Civil Service positions are another factor that has placed the Civil Service under tremendous pressure<sup>28</sup>.

### 2.3.2 Legal System (law and practice): to what extent does the Executive prioritize public accountability and the fight against corruption as a concern in the country? .

The NIS-SL 2010 Assessment notes how the President has hindered and/or ignored corruption in the past. There is a lacuna in the provision of information on key decisions or provision of assistance in the investigations into corruption of Ministers by the President.

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28 Interview 13: Civil Servant name withheld on request (3<sup>rd</sup> Sept 2013)

## Recommendations

1. The 18th Amendment to be repealed to ensure a more accountable and transparent Executive.
2. The Executive Presidency to be abolished leading to a more equitable balance of power among the three organs of state: the Executive, the Legislature and Judiciary.
3. The President should give up holding any Ministerial portfolios. The Cabinet of Ministers should consist entirely of Members of Parliament.
4. There must be a limit on the number of Cabinet Ministers.
5. Need for independent commissions to investigate on the three institutions in order to protect impartiality





## THE JUDICIARY

*“107(2) Every such Judge shall hold office during good behaviour, and shall not be removed except by an order of the President made after an address of Parliament supported by a majority of the total number of Members of Parliament (including those not present) has been presented to the President for such removal on the ground of proved misbehaviour or incapacity”<sup>1</sup>*

### SUMMARY

The NIS-SL 2010 Assessment focused on the significant role played by the judiciary in protecting human rights and in upholding democratic values. The report also commented on the two main challenges faced by the judiciary: protecting its independence and overcoming the delays in the legal system. The 2014 update is also concerned with the lacuna of a code of ethics to ensure that judicial ethics and integrity is a requirement since “the common law system places the judge on a pedestal with lawyers and jurists far behind”<sup>2</sup>.

The Lesson Learnt and Reconciliation Commission (LLRC), “emphasized the need for an independent judiciary, a transparent legal process, and strict adherence to the rule of law, stating that these were necessary for establishing and maintaining

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1 *The Constitution*, Article 107(2). Ibid.

2 C. G. Weeramantry (2010) “Universal principles for judicial ethics and integrity” *The Sunday Times*, July 25, 2010.

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peace and stability in the country.”<sup>3</sup> However, there are allegations which suggest that these recommendations have not been taken in their entirety, even two years after the report was submitted in November 2011. Moreover, there has been a number of legally questionable events during the period under examination. In 2011, government officers from the Child Protection Unit of the Attorney General’s Department, arrested and then released the Missionaries of Charity nun in charge of the ‘Prem Nivasa’ child orphanage based on unsubstantiated allegations of child trafficking<sup>4</sup>. The situation deteriorated further in 2012, when the Secretary of the Judicial Service Commission was assaulted and a Minister threatened a Magistrate. There have also been a number of extrajudicial killings and alleged disappearances<sup>5</sup>. The most prominent case during the period 2010 to 2014 is the impeachment of the former Chief Justice Shirani Bandaranayake in 2013<sup>6</sup>. The legal profession was divided by diverse views on whether the Chief Justice’s removal from office and the manner in which it was achieved, was in accordance with the Constitution. This is an ongoing debate, with Dr. Shirani Bandaranayake, the former Chief Justice, adding to the discourse. At the same time, the laws in place – for the impeachment of a high official or to investigate child abuse and corruption and to punish the guilty – are sound. Article 170 of the Constitution, for example, provides for the impeachment of a Chief Justice<sup>7</sup>.

Since the 1978 Constitution, the judiciary has strived to remain independent and ethically superior. That this has become a major challenge is clear with the removal

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3 International Commission of Jurists (2013) “Sri Lanka: new ICJ report documents ‘crisis of impunity’”. Available at <http://www.icj.org/sri-lanka-new-icj-report-documents-crisis-of-impunity/>

4 See Caritas.org (2011) “Arrest of Rev. Sr. Eliza MC, Head of PremNivasaChildren’s Home in Rawatawatte, Moratuwa, Sri Lanka” <http://www.caritaslk.org/index.php/news-stories/94-arrest-of-revsr-eliza-mc-head-of-prem-nivasa-childrens-home-in-rawatawatte-moratuwa-sri-lanka-.html>

5 See: <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-219-2013>; <http://www.srilankabrief.org/2013/09/oral-report-to-unhrc-pillay-sets.html>

6 Transparency International (2012) “Impeachment against Chief Justice Dr. ShiraniBandaranayake and the issues about the independence of the Judiciary in Sri Lanka” [http://www.tisrilanka.org/pub/pp/pdf/Rule\\_of\\_law\\_English.pdf](http://www.tisrilanka.org/pub/pp/pdf/Rule_of_law_English.pdf)

7 Interview # 19 Academic, name withheld on request. (December 19th 2013).

of the Chief Justice.<sup>8</sup> Among ordinary people, the judiciary is notorious for its delays and this, as noted in the NIS –SL 2010 Assessment, has tarnished the image of the judiciary. Presidential appointments to key roles have allegedly politicized the courts and further diminished the respect that was given to the judiciary. There have been a number of legislative enactments relating to the judiciary in the three year period under review. The ‘Divineguma’ Bill and Code of Criminal Procedure (special provisions), Resettlement Authority (Amendment) Act, Muslim Kandyan Marriage and Divorce (Amendment) Acts and the Convention on the Suppression of Terrorist Financing, to name a few<sup>9</sup>.

In sum, the judiciary pillar faced numerous challenges since the publication of the NIS-SL 2010 Assessment. Some of these challenges stemmed from the influence of Executive power while others were based on the interpretation of the Constitution. Resources in terms of the number of lawyers, judges and those assisting the public at Legal Aid continued to increase. What is relevant is to note that the laws of the country are extensive. A number of advancements have occurred in the judicial pillar, including the process of re-establishing and strengthening the courts in the North and the East of the country and the availability of all Acts, Ordinances, Legislative Enactments, and Case Law via the internet. The independence of the courts has become a critical concern with the Presidential appointment of judges. At the same time, the judges have had the independence to question the application of the *nolleprosequi* powers of the Attorney General. The most significant case that divided the legal profession was the removal from office and the subsequent impeachment of the then Chief Justice Shirani Bandaranayake.

## STRUCTURE

As noted in the 2010 Assessment, the judiciary of Sri Lanka consists of the Supreme Court, the Court of Appeal, the High Courts, the District Courts, the Magistrate

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8 Based on Primary research conducted between May 5<sup>th</sup> 2013 to August 15<sup>th</sup> 2013, on Sinhala, Tamil and English state and non-state Sunday newspapers from 2010 May to 2013 May at the Archives of Sri Lanka.

9 <http://www.lawlanka.com/lal/displayAct?yearValue=2013>

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Courts, and Primary Court. They provide the structure of the court system in Sri Lanka. The Supreme Court and Court of Appeal impact the whole country, while the High Courts, District Courts, Magistrate Courts are courts people go to initially to find relief, as noted in the 2010 Assessment. The Supreme Court is the final court of appeal. Criminal cases are under the jurisdiction of the Magistrate and High Courts. In cases of appeals, the process is first the Appeals Court and then the Supreme Court is the final court of appeal. Other than the formal legal institutions mentioned above, there are informal dispute resolution mechanisms<sup>10</sup>, including Legal Aid Commission<sup>11</sup>, and alternative dispute resolution mechanisms<sup>12</sup>. Other than these, non-governmental organizations such as Women in Need (WiN) assist domestic violence survivors with legal advice, legal representation in courts, and even legal clinics and Police counseling desks.<sup>13</sup>

The NIS-SL 2010 Assessment noted that the courts have not functioned in the conflict affected areas. This situation has drastically changed and the same district court system exists in the northern and eastern provinces in 2013. A United Nations Development Fund (UNDP) funded 'Equal Access to Justice Project' phase I and II assisted the Ministry of Justice to "re-establish and strengthen the justice system in the former war affected areas"<sup>14</sup>. The second phase has already re-furbished 36 courts in the North and East<sup>15</sup>.

The NIS-SL 2010 Assessment has provided a more exhaustive examination of the structure. It also informed of the two categories of lawyers: the official bar consisting of the Attorney General's department (representing the state) and the 'unofficial

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10 Asia Foundation and UNDP (2009) "The Legal Aid Sector in Sri Lanka Searching for Sustainable Solutions: a mapping of legal aid services in Sri Lanka". Available at <http://asiafoundation.org/resources/pdfs/PolicyBrief.pdf>

11 See: <http://www.dailynews.lk/police-legal/legal-aid-commission-3>

12 See: <http://www.adrisrilanka.org/structure.html>

13 <http://temp.winsl.net/>

14 UNDP (2013) "Equal Access to Justice Phase II" [http://www.undp.org/content/srilanka/en/home/operations/projects/democratic\\_governance/equal-access-to-justice-phase-ii/](http://www.undp.org/content/srilanka/en/home/operations/projects/democratic_governance/equal-access-to-justice-phase-ii/)

15 Ibid.

Bar', which includes all other lawyers. It is also possible to distinguish lawyers by their fields: criminal and civil. The Attorneys-at-Law are trained at the Law College while the more academically-minded teaching is conducted at different universities and colleges. Those who read for the law degree are academically qualified but the Law College students are professionally qualified. Whilst the Attorney General is covered under the Law Enforcement Pillar, it is important to mention here that the Attorney General is the "Chief Legal Advisor to the Government. There are also Labor tribunals, which have been established under the Industrial Dispute Act no. 43.<sup>16</sup> The Legal Aid Commission, which strives to help the people through providing free legal aid, is a statutory body created by the Legal Aid Act<sup>17</sup>.

## ASSESSMENT

### 3.1 CAPACITY

#### 3.1.1 Resources (law): to what extent are there laws seeking to ensure appropriate tenure policies, judicial salaries and working conditions?

The NIS-SL 2010 noted that "the salaries and retirement benefits of the higher judiciary (Supreme Court and Court of Appeal) cannot be reduced during their tenure"<sup>18</sup> according to the Constitution. Other than these permanent bodies, a number of Commissions have been appointed to examine specific events, such as the Commission of Inquiry into Involuntary Removal and Disappearances: the three zonal Commissions and the Presidential Truth Commission on Ethnic Violence (1981 – 1984) under President Chandrika Bandaranaike Kumaratunga. These Commissions were created through warrants in order to ensure justice<sup>19</sup>.

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16 <http://www.idpsrilanka.lk/html/IDPPProtection/LT.htm>

17 See <http://www.dailynews.lk/police-legal/legal-aid-commission-8>

18 NIS 2010 Report, op cit. p. 89

19 Kishali Pinto-Jayawardena, ed. (2010) *A Legacy to Remember: Sri Lanka's Commissions of Inquiry 1963 – 2002: a reference guide to commission reports with a tabulated list of recommendations*. Colombo: Law and Society Trust.

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The judges are trained at the Sri Lanka Judges' Institute, which is an institute established by "an Act of Parliament titled 'Sri Lanka Judges' Institute Act No. 46 of 1985"<sup>20</sup>.

### **3.1.2 Resources (practice): to what extent does the judiciary have adequate levels of financial resources, staff, and infrastructure to operate effectively in practice?**

In 2010 October, judges received an increase in salaries. The salaries and pensions as well as the 'stark lack of resources' was discussed in the NIS-SL 2010 Assessment. It moreover discussed the different perks granted from time to time to judges, their training and library facilities.

There are 12 Judges of the Court of Appeal. At the Judicial Service Commission Secretariat, the Secretary's division includes the training of judges while the Deputy Secretary's Division includes the investigation division, disciplinary inquiries, and the division for the recruitment of judges among others. After the ousting of Chief Justice Bandaranayake in January 2013, Mohan Peiris was appointed Chief Justice of Sri Lanka<sup>21</sup>. Other than the Chief Justice, there are 9 other judges at the Supreme Court. As noted above, the Attorney General's Department has over 100 legal officers. There are over 180 judges, from the Supreme Court, the High Court, the Magistrate's Court and Additional District judges. According to the 2012 budget, members of the Judicial Service Commission would get an allowance of Rs. 15,000/- as a 'driver's allowance'<sup>22</sup>. Despite the large number of judges, the number of cases pending before the Courts in 2010 alone was 650,000. The 2010 budget, presented in November, stated that the government would provide Rs. 150 million

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20 Sri Lanka Judges Institute (2012) *Annual Report of the Sri Lanka Judges' Institute for the Year 2011*, [http://www.parliament.lk/papers\\_presented/24012013/annual\\_report\\_srilanka\\_judges\\_institute\\_2011.pdf](http://www.parliament.lk/papers_presented/24012013/annual_report_srilanka_judges_institute_2011.pdf)

21 Aljazeera (2013) "Sri Lanka: a tale of two chief justices: politicians face off with judges as critics accuse the government of foul play over chief justice impeachment" <http://www.aljazeera.com/indepth/features/2013/01/2013117122157590337.html>

22 Mahinda Rajapaksa (2012) "2012 Budget Speech". Available at <http://med.gov.lk/english/?p=8881>

for the judiciary, with 60 new Courts being set up as part of this effort to make the Courts more expedient.<sup>23</sup> There is also a Judges' Institute to enhance the capacity of judges and to mitigate delays.

There are over 120 lawyers working fulltime at the Legal Aid Commission. A further 1500 panel lawyers from regional bar associations are also part of the Legal Aid Commission. Whilst their salaries are less than those of government lawyers<sup>24</sup> the Legal Aid Commission has 77 centers, and is the only statutory body providing free legal aid. WIN also provides legal assistance.

The NIS-SL 2010 Assessment noted that the courts have not functioned in the conflict affected areas. This situation has drastically changed and the same district court system exists in the northern and eastern provinces in 2013. A United Nations Development Fund (UNDP) funded 'Equal Access to Justice Project' phase I and II, assisted the Ministry of Justice to "re-establish and strengthen the justice system in the former war affected areas"<sup>25</sup>. The second phase has already re-furnished 36 courts in the North and East<sup>26</sup>.

### **3.1.3 Independence (law): to what extent is the judiciary independent by law?**

The 1978 Constitution recognized that the judiciary should remain independent, especially as the Courts must protect and, where necessary investigate violations of Fundamental Rights granted in the Constitution. At the same time, the power of the judiciary has been curtailed with the 1978 Constitution and the subsequent 18<sup>th</sup> Amendment along with other different rulings. This confirms the findings of the 2010 Assessment, which focused on the different reasons for the removal of judges in the Supreme Court and the Court of Appeal. While the judges can be impeached

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23 MahindaRajapaksa (2010) "Budget Speech 2010". Available at <http://www.justiceministry.gov.lk/>

24 See <http://www.dailynews.lk/police-legal/legal-aid-commission-8>

25 UNDP (2013) "Equal Access to Justice Phase II" [http://www.undp.org/content/srilanka/en/home/operations/projects/democratic\\_governance/equal-access-to-justice-phase-ii-/](http://www.undp.org/content/srilanka/en/home/operations/projects/democratic_governance/equal-access-to-justice-phase-ii-/)

26 Ibid.

by the Parliament, the President is above the law. The report also examined the passage of the 18<sup>th</sup> Amendment and the unrestricted power it has granted the President in appointing the Chief Justice and the Supreme Court judges.

The NIS-SL2010 Assessment focused on the powers granted by the Constitution and emphasized the changes that came about from the 17<sup>th</sup> to the 18<sup>th</sup> Amendment. It also examined how certain procedures – such as enacting a bill in Parliament – are circumvented by the Legislative and a powerful Executive.

The judiciary has strived to remain independent in the face of overwhelming politicization. One such example is the Attorney General’s Department. The 18<sup>th</sup> Amendment eroded the independence of the Attorney General. The Department was removed from the purview of the Ministry of Justice and brought directly under the authority of the President.”<sup>27</sup>

### **3.1.4 Independence (practice): to what extent in the judiciary independent by law in practice?**

The 2010 Assessment discussed the powers utilized by the former Chief Justice, Sarath N. Silva. It discussed significant negative events prior to 2010, including the assassination of two judges. Moreover, as noted by Pinto-Jayawardena, “Sri Lanka’s investigative and prosecutorial system is seriously flawed. Lack of independent investigations and a hostile prosecutorial and overarching legal system has led to victims being penalized at all stages of the process ... reinforcing the cycle of impunity that prevails.”<sup>28</sup> A number of retired judges and senior lawyers have alleged that this has resulted in the withdrawal of a large number of cases against politicians through practicing the *nolleprosequi* (unwilling to pursue) powers granted to the Attorney General.<sup>29</sup> Similarly the International Bar Association is

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27 International Commission of Jurists (2012) “Authority without accountability: the crisis of impunity in Sri Lanka”. Geneva: International Commission of Jurists. p. 77.<http://www.refworld.org/pdfid/50ae365b2.pdf>

28 Kishali Pinto-Jayawardena (2010) “Post-war justice in Sri Lanka: rule of law, the criminal justice system and commissions of inquiry”. Geneva: International Commission of Jurists. p. 13

29 Ibid.



also critical of the powers granted to the President to appoint judges without an independent process.

By 2013, the situation had deteriorated according to some in the legal profession<sup>30</sup>, with the impeachment of Shirani Bandaranayake.<sup>31</sup> The 43<sup>rd</sup> and the first female Chief Justice at the time was accused of 14 charges, ranging from disregarding the articles of the Constitution, failure to disclose assets, and abuse of power. A Committee was appointed and “the Parliament was converted into a court to try the Chief Justice”<sup>32</sup>. The legal community remains divided as to the legality of the impeachment<sup>33</sup> as “only the judiciary can hear cases and not the Parliament.”<sup>34</sup> This despite the fact that ‘interference with the judiciary’ was an offense. The legal justification for Parliament’s action was based on Article 170 of the Constitution, which allows for a select committee to decide on the impeachment of a Chief Justice<sup>35</sup>.

This has been reiterated by the Commonwealth Lawyers Association (CLA), the Commonwealth Legal Education Association (CLEA), and the Commonwealth Magistrates’ and Judges’ Association (CMJA) when they passed a ‘Resolution on the ‘Rule of Law and Judicial Independence in Sri Lanka’<sup>36</sup>. These three associations

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30 Note: Lawyers for the 12<sup>th</sup> Respondent filed a submission in defense of the former Chief Justice. See <http://www.humanrights.asia/news/ahrc-news/AHRC-STM-151-2013>

31 Colombo Telegraph (2013) “FR case to reflect how much of Sri Lanka’s judicial independence has survived – motion for full bench filed by CPA: January 30<sup>th</sup> 2013. Available at <https://www.colombotelegraph.com/index.php/fr-case-to-reflect-how-much-of-sri-lankas-judicial-independence-has-survived-motion-for-full-bench-filed-by-cpa/>

32 J. C. Waliamuna (2012) “Impeachment of Sri Lanka’s Chief Justice: an unconstitutional witch-hunt”. Available at <http://groundviews.org/2012/11/03/impeachment-of-sri-lankas-chief-justice-an-unconstitutional-witch-hunt/>

33 Interview 3: Senior Legal Officer working in a Ministry, name withheld on request (July 19<sup>th</sup> 2013 and October 30<sup>th</sup> 2013).

34 Waliamuna, op cite.

35 Transparency International Sri Lanka (2013) “Impeachment against Chief Justice Dr. Shirani Bandaranayake and the issue about independence of the Judiciary in Sri Lanka” [http://www.tisirilanka.org/pub/pp/pdf/Rule\\_of\\_law\\_English.pdf](http://www.tisirilanka.org/pub/pp/pdf/Rule_of_law_English.pdf)

36 Bar Association of Sri Lanka (2012) “Resolution on the rule of law and judicial independence in Sri Lanka” [http://www.basl.lk/news\\_one.php?id=25](http://www.basl.lk/news_one.php?id=25)

voiced their “grave concern about the flawed impeachment process by which Chief Justice Bandaranayake was removed from the office of Chief Justice in defiance of the judgments of the highest courts in Sri Lanka”<sup>37</sup> They were critical to the extent that the resolution called “upon the Members of the Commonwealth, through the Commonwealth Ministerial Action Group to place Sri Lanka on the agenda of its next meeting on 26 April 2013 and suspend it from the Councils of the Commonwealth for serious and persistent violations of the Commonwealth fundamental values”<sup>38</sup>. An academic however noted that the debate amongst those in the legal and academic professions is based on the mistake in defining/interpreting the term ‘written law’ that exists within the Constitution<sup>39</sup>.

While the independence of the Attorney General after 18<sup>th</sup> Amendment has, as noted above, been questioned, certain judges have refused to accept the use of the *nolleprosequi* powers, especially when a State Council informs on behalf of the Attorney General without a written request<sup>40</sup>.

## 3.2 GOVERNANCE

### 3.2.1 Transparency (law): to what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the judiciary?

This report reiterates the comments made in the 2010 Assessment that, with regard to the proceedings of the Judicial Services Commission (JSC) in relation to the appointment, transfer and disciplinary action, [and] removal of judges are confidential and ... there are no laws that can compel court registrars ... to release statistics to the public. At the same time, the law requires that court proceedings be conducted in public. This includes the judgments but not determinations

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37 See <http://www.commonwealthlawyers.com/conferences.aspx>

38 Ibid.

39 Interview # 19 Academic, op cite.

40 Interview # 22, Academic, name withheld on request (January 25<sup>th</sup> 2014).

made on Bills<sup>41</sup>. The lawnet.lk website provides information on all case laws, trade agreements, statutes, as well as a list of all conventions signed by Sri Lanka, from the 1940s to the present<sup>42</sup>.

### **3.2.2 Transparency (practice): to what extent does the public have access to judicial information and activities in practice?**

Publication of any information on law reports – other than the name of the case – requires permission from Law Lanka. This is consistent with the findings of the NIS-SL2010 Assessment, which provided information on the difficulties faced by researchers gathering data. Even the International Bar Association was refused statistical information on fundamental rights cases. The report further commented on the fact that court proceedings are public and certain judgments can be accessed informally and some online even prior to the publication of the judgments. The NIS-SL 2010 Assessment noted that “In previous years it was possible for academics or lawyers to obtain statistics on judicial decisions. However, recently this information has become increasingly hard to access.”<sup>43</sup>

Unlike during the period of 2010, it is once again possible to get detailed information on court cases<sup>44</sup> and this information can be accessed<sup>45</sup> by anyone. It is, for example, possible to get a complete digest of case law; all statutes, including acts passed until 2010; all regional and international trade agreements; and conventions signed by the country are easily available online<sup>45</sup>. The Court of Appeal has decisions listed alphabetically or by year from 1809 onwards up to 2012<sup>46</sup>. High Court decisions are also available from 1874 to 2012 and Supreme Court decisions from 1878 to 2012<sup>47</sup>. The online Law Lanka webpage provides information on all case laws,

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41 See NIS-SL 2010 Report.

42 See [http://www.lawnet.lk/list\\_page\\_full.php?cat=a&id=15&year=0](http://www.lawnet.lk/list_page_full.php?cat=a&id=15&year=0)

43 Ibid.

44 See: [http://www.lawnet.lk/docs/case\\_law/slr/HTML/2000SLR1V78.htm](http://www.lawnet.lk/docs/case_law/slr/HTML/2000SLR1V78.htm)

45 See <http://www.lawnet.lk/index.php>

46 See: <http://www.commonlii.org/resources/264.html>

47 Ibid.

with case indexes, categorized alphabetically under subject categories ranging from 'abandonment' to 'zoo'<sup>48</sup>. The Judicial Services Commission also provides information on judgments<sup>49</sup>.

### **3.2.3 Accountability (law): to what extent are there provisions in place to ensure that the judiciary has to report and be answerable for its actions?**

The Constitution is clear on the criteria for removing a judge and therefore, the judges of the Supreme Court and the Appeals Court are accountable for their actions. As noted in the NIS-SL 2010 Assessment, the Judicial Services Commission is at hand to ensure appointments, transfers, removals and disciplinary actions. At the same time, the Parliament is not granted supervisory powers over judges. Interference in judicial matters has been made illegal under the 1978 Constitution. Other than their final judgment, provisions have been made in the Parliament for issuing of Standing Orders to question charges of corruption and other malpractices of judges.

### **3.2.4 Accountability (practice): to what extent do members of the judiciary have to report and be answerable for their actions in practice?**

The NIS-SL2010 Assessment indicated the difficulty in impeaching a sitting judge. The report commented on the fact that there is 'improper judicial supervision'. Indeed, the IBAHRI report informs of its concern over the lack of supervision over judicial conduct<sup>50</sup>. The NIS-SL 2010 Assessment analysis provided evidence of the excessive use of 'contempt of court' by judges against lawyers. It also spoke of the deafening silence of the media and the ad hoc manner by academics to

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48 See: Law Lanka <http://www.lawlanka.com/lal/viewcaseSubjecPage?alphabetValue=A&selectedPage=3>

49 See: <http://www.jsasl.org/judgements.html>

50 IBAHRI (2013) "IBAHRI seriously concerned by decision of Sri Lanka government to bloc entry of high level delegates" Available at <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=785d2595-46be-4221-810c-4571b6ab02cf>

criticize judicial decisions. The impeachment of a sitting judge, however, did occur in 2013. Uwais was critical of the fact that the removal of Shirani Bandaranayake was achieved through the *“contravention of the rule of law. The removal was rushed, ignoring the fact that there was a case before the Court of Appeal and the Supreme Court of Sri Lanka, challenging the right to initiate the proceedings to remove the Justice from office.”*<sup>51</sup>

Interviewee no. 3 noted the delays in hearing of court cases are due to ‘unacceptable delays’ on the part of the lawyers and the judges<sup>52</sup>. The Supreme Court is bound by law to inquire into allegations of fundamental rights violations. The judgments must be pronounced within 2 months<sup>53</sup>. The delay in the judiciary was mentioned in the LLRC report as well<sup>54</sup>. However, the prosecution of those suspected of terrorism and the court hearing with regard to rehabilitation of child soldiers was started quickly<sup>55</sup> and, as noted by a number of interviewees, this has already resulted in the prosecution of “a small number. A lot sent back to their homes. Trained them to live. Now they can go anywhere and don’t need to report to Police.”<sup>56</sup>

### **3.2.5 Integrity Mechanisms (law): to what extent are there mechanisms in place to ensure the integrity of members of the judiciary?**

The NIS-SL 2010Assessment states that the minor and major judges were accountable to the Judicial Services Commission. The Supreme Court judges are accountable to the Parliament. The report further noted the two failed attempts to impeach a judge. The report provides evidence of the extreme use of laws – such

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51 IBAHRI (2013) “Panel discussion – a crisis of legitimacy: rule of law in Sri Lanka”. Available at <http://www.ibanet.org/Article/Detail.aspx?ArticleUid=304d25ac-d20e-4ae7-b7ca-80751d935cb0>

52 Interview 3: Senior Legal Officer working in a Ministry, name withheld on request (July 19th 2013 and October 30th 2013)

53 The Constitution, Article 126(5), op cite.

54 LLRC op cit.

55 Interview # 14, Legal Expert, name withheld on request (October 1st 2013)

56 Interview #18 Senior Civil Servant (Retired), name withheld on request (December 19th 2013).

as 'contempt of court' – but notes how academic criticism of the judiciary remains ad hoc.

While the Constitution presents a set of criteria requiring judges to be of integrity, there is no Code of Conduct. This was noted in the NIS-SL 2010 Assessment as a grave concern. The lack of a code of conduct – the likes of which are found in the Bangalore Principles of Judicial Conduct and the Latimer House Guidelines – remains a paramount concern. Justice Weeramantry, however, commented on the difficulty of creating a universal Code of Conduct as there are different legal systems in place<sup>57</sup>.

The integrity of the judiciary is necessary because the judiciary is the bulwark which stands between the state and the citizen, to protect them from abuse or misuse of power by the Executive; or "the transgression of constitutional or legal limitation by the executive as well as the legislature ... [and] must be totally free from executive pressure or influence"<sup>58</sup>. Judges have to ensure compliance of the 'Asset Declaration and Liabilities Law' and any deviations would result in prosecution.

### **3.2.6 Integrity Mechanisms (practice): to what extent is the integrity of members of the judiciary ensured in practice?**

According to the NIS-SL 2010 assessment "In the absence of a code of conduct, there is no mechanism to enforce integrity mechanisms. Further, in the absence of a code of conduct it is a grey area as to what constitutes judicial misconduct in Sri Lanka."<sup>59</sup>

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57 C. G. Weeramantry (2010) "Universal principles for judicial ethics and integrity" *the Sunday Times*, Sunday, July 25, 2010.

58 Upul Jayasuriya (2013) "The judiciary must be totally free from executive pressure or influence and must be fiercely independent: BASL President" Sri Lanka Brief, Sunday, June 16 2013. <http://www.srilankabrief.org/2013/06/judiciary-hit-by-crisis-of-confidence.html>

59 Ibid

### 3.3 ROLE

#### 3.3.1 Executive Oversight (law and practice): to what extent does the judiciary provide effective oversight over the executive?

The judiciary has the power to examine bills on the Constitutionality of the law to be enacted but it has no power to question legislature. The NIS-SL 2010 Assessment informs of a number of cases where Executive oversight worked, but noted that these instances were isolated. The 2010 Assessment provided a number of examples of when judicial oversight worked and when it did not. The lack of consistency and coherence in such matters was commented upon.

This report reiterates the findings of the NIS-SL 2010 Assessment on the ineffectiveness of Executive oversight. Transparency International Sri Lanka has over the years stressed their concern over the limited capacity of the judiciary to oversee the Executive. The Parliamentary select committee that found the former Chief Justice guilty on 3 counts of misconduct in January 2013, has been “widely criticized for its rejection of basic tenets of due process.”<sup>60</sup> This reiterates the weakening of the role of the judiciary.

#### 3.3.2 Corruption prosecution (practice): to what extent is the judiciary committed to fighting corruption through prosecution and other activities?

The NIS-SL 2010 Assessment highlights the fact that prosecution for bribery is rare. For some, the prosecution of Shirani Bandaranayake is an example of the judiciary's commitment to fighting corruption. For others, this is the best example of bowing down to corruption<sup>61</sup>. The Judiciary has been identified either as ‘complacent’ or ‘corrupt’. The NIS-SL 2010 Assessment discusses low rates of bribery and corruption cases in the Judiciary for a country which is perceived to be highly corrupt.

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60 International Crisis group (2013) op cite.

61 Interview 3: Senior Legal Officer working in a Ministry, name withheld on request (July 19th 2013 and October 30th 2013)

## Recommendations

1. A code of conduct designed specifically for the legal system and institutions adopted and implemented.
2. Appointment of Judges to be handed over to an independent commission in order to preserve impartiality and conflict of interest and to prevent interference from the Executive.
3. Judges should direct and promote Alternative Dispute Resolution mechanisms in order to prevent unnecessary delays in litigation and limit the risk of corruption in the judicial process.
4. A track system should be introduced to prevent delays and manage the process of litigation.
5. The due process governing the removal of judges should be strengthened. Judges of the Court of Appeal and Supreme Court should be removed only after an inquiry before a panel of three judges, or after inquiry before an independent panel of the Judicial Services Commission set up specifically for that purpose.



## PUBLIC SECTOR

*1.5 In case where an officer is unable to report for duty on a very urgent situation, the respective Head of the institution shall be informed by Tele-mail / telephone message / short message service (SMS) / e-mail and further it shall get the approval for leave on submission of a formal application immediately after reporting for duty.<sup>1</sup>*

### SUMMARY

The Public Sector includes “the civil service, the police, the armed forces, and public corporations.”<sup>2</sup> The politicization of the civil service began with the 1972 Constitution and the “legitimization of political interference” occurred after the 1978 Constitution, which granted the Cabinet the power to appoint Heads of Departments and Secretaries to Ministries<sup>3</sup>. The politicization of the civil service was the focus of discussion in the NIS-SL 2010 Assessment. The NIS-SL2010 Assessment discusses in detail the impact that the 18th Amendment had on the Civil Service by reversing attempts that had been made to depoliticize it; the lack

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- 1 Sri Lanka Ministry of Public Administration and Home Affairs (2013) *Revision to the Establishment Code*. See [http://www.pubad.gov.lk/web/eservices/circulars/2013/E/24\\_2013\\_%28e%29.pdf](http://www.pubad.gov.lk/web/eservices/circulars/2013/E/24_2013_%28e%29.pdf)
  - 2 CIA World Factbook (1988) “Sri Lanka Civil Service”. Available at [http://www.photius.com/countries/sri\\_lanka/government/sri\\_lanka\\_government\\_civil\\_service.html](http://www.photius.com/countries/sri_lanka/government/sri_lanka_government_civil_service.html)
  - 3 M. C. M. Iqbal (2002) “The Public Service of Sri Lanka” *The Annual Report in the State of Human Rights in Sri Lanka*. Available at <http://www.ruleoflawsrilanka.org/resources/writings-of-m-c-m-iqbal/the-public-service-of-sri-lanka>

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of multiple language skills, the lack of accountability and transparency as well as corruption and the caliber of those recruited were also under scrutiny. Citing the professionalism of those in the Sri Lanka Administrative Service (SLAS), the Sri Lanka Education Administration (SLEAS), the Accountant Service, the Sri Lanka Audit Service, the Management Assistant Service, and the Sri Lanka Planning Service, the 2010 Assessment highlighted the influence of political interference from the top, especially after the 18<sup>th</sup> Amendment.

Public Sector employment in Sri Lanka continues to be in high demand, even to the extent of youth leaving “higher-paying jobs in the private sector to the public sector if such opportunities arise, [thus] the demand for public sector employment continues to be high.”<sup>4</sup> This is particularly due to the job benefits.

Other than the implementation of new procurement guidelines and the introduction of the ‘open data initiative’ by the government, the NIS-SL 2010 Assessment and the current update remains relatively unchanged. The resources available for the public sector in terms of human resources were extensive but there were a number of strikes demanding that the salaries be increased to meet the increase in the cost-of-living. The Establishment Code was presented as a mechanism to save Civil Servants from political interference.

### STRUCTURE

The extremely hierarchical system within the Civil Service in Sri Lanka is indicative of the nation’s British Colonial inheritance. The Public Sector includes those working in the Government Institutions and Semi-Government Institutions which is divided into Senior Level, Tertiary Level, Secondary Level, and Primary Level.

The NIS-SL 2010 Assessment provided details not only on the structure of the public service in the national and provincial level but also commented on the existence of

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4 Harini Amarasuriya (2010) “Discrimination and Social Exclusion of Youth in Sri Lanka” IN Ramanigunatilaka, Markus Mayer and Milan Vodopivec, eds *The Challenge of Youth Employment in Sri Lanka*. Washington D.C.: International Bank for Reconstruction and Development/The World Bank

professionalism of those at the national level. Public sector employees work at the National Level to local level, from those heading secretariats to the 'grama niladhari' working at local/community level<sup>5</sup>.

The 'semi-governmental sector' comprises corporations, boards, authorities, and public and private companies. The Ministry of Education, for example, employs over 13,000 individuals who work in 18 universities, 14 institutes connected to universities, and the University Grants Commission among others<sup>6</sup>.

## ASSESSMENT

### 4.1 CAPACITY

#### 4.1.1 Resources (practice): to what extent does the public sector have adequate resources to effectively carry out its duties?

The NIS-SL 2010 Assessment focused extensively on the inability to attract and retain skilled individuals to the civil service mainly because of brain drain, salaries, and performance-based pay and promotion system. It further noted how the public sector itself and the civil service in particular is a drain on government expenditure. Dias states that the Public Sector of Sri Lanka has "1.3 million people and salaries amounting to Rs. 355 billion and pensions at Rs. 108 billion for this year [2012] revenue"<sup>7</sup>. According to the Central Bank of Sri Lanka report in 2013, there was an increase of almost 200,000 employees from 2010 to 2012. Government Institutions employed almost a million people while those in the Semi-Government Institutions, such as Universities, amounted to 251,278 in 2012.<sup>8</sup> As of 2014, there were 27 new schemes of recruitment under the Public Service Commission.

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5 Claus Kruse (2007) "State Structure in Sri Lanka" Colombo: Centre for International Migration and Development (CIM). Available at <http://www.logcluster.org/ops/lk08a/CIM-Overview-State-Structure>

6 See: <http://www.statistics.gov.lk/CPSGSE06/SemiGov/Table1.3.pdf>

7 Sunimalee Dias (2013) "Govt. to introduce public sector reforms plans next month" *Business Times*, August 11, 2012.

8 Central Bank of Sri Lanka (2013) *Economic and Social Statistics of Sri Lanka 2013*. Colombo: Central Bank of Sri Lanka.

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The work of the Public Sector is supported by the Public Service Commission, whose mission is “To Establish and Promote an Efficient, Disciplined and Contented Public Service to Serve the Public with Fairness, Transparency and Consistency”<sup>9</sup> In addition, the Public Service Training Institute provides training on office management, human resource management, communication, maintenance of documents and documentation, as well as basic and advance computer skills among others<sup>10</sup>. State employees also receive a pension. Despite this, as noted in the NIS-SL 2010 Assessment, those employed by the government continued to face hardships due to the increase in the cost of living. The 4000 strong semi-governmental University Academics, through the Federation of University Teachers’ Association (FUTA), staged a three months-long strike – from August to October – in order to demand an increase to their salaries in 2012<sup>11</sup>. While the 2010 Assessment highlighted the fact that government and semi-government employees were exempted from paying taxes, the tax reforms introduced in 2011 resulted in all public servants being taxed<sup>12</sup>. The World Bank’s Country Policy and Institutional Assessment (CIPA) rated Sri Lanka at 4.5 on a scale of 1(low) to 6 (high) in 2011, in terms of transparency, accountability and corruption in the public sector.<sup>13</sup> This rating changed to 4.0 in 2013<sup>14</sup>.

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9 <http://www.psc.gov.lk/web/index.php?lang=en>

10 Public Service Training Institute [http://www.psti.gov.lk/index.php?option=com\\_content&view=category&id=35&Itemid=48&lang=en](http://www.psti.gov.lk/index.php?option=com_content&view=category&id=35&Itemid=48&lang=en)

11 Ibid.

12 Nisha Arunatilake, Priyanka Jayawardena, and Anushka Wijesinha (2012) “Tax reforms in Sri Lanka: will a tax on public servants improved progressivity?” *Partnership for Economic Policy Working Paper*.

13 <http://www.tradingeconomics.com/sri-lanka/cpia-building-human-resources-rating-1-low-to-6-high-wb-data.html>

14 <http://www.tradingeconomics.com/sri-lanka/cpia-transparency-accountability-and-corruption-in-the-public-sector-rating-1-low-to-6-high-wb-data.html>

#### 4.1.2 Independence (law): to what extent is the independence of the public sector safeguarded by law?

The NIS-SL 2010 Assessment discussed the existence of the Establishment code, the Public Administrative circulars<sup>15</sup>, the numerous Gazettes<sup>16</sup> and the Public Service Commission as legal safeguards to ensure independence of the public sector. Chapter IX of the 1978 Constitution grants the Public Service Commission the power to appoint, promote, transfer, discipline, and dismiss public officers<sup>17</sup>. However, some noted that these safeguards were thwarted by other laws, such as the Constitution, which made the Cabinet responsible for the appointment of Heads of Departments and Secretaries to Ministries, and the 18<sup>th</sup> Amendment, which placed the appointment of the Commissioners to the Public Service Commission directly with the President<sup>18</sup>. The terms and conditions of employment – predominantly of public servants – are quite extensive. This includes labor laws and wage-board ordinances which provide limitations on the number of hours of work, termination and employee provident fund (EPF)<sup>19</sup>.

Civil Servant appointments are specified in the Gazette Extraordinary no. 221/16 of 1982. This states that appointments to different classes in the hierarchy of the civil service would be determined by different criteria. Appointments to Class II and Grade II, for example, would be based on open competitive examination, the results

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- 15 See: Ministry of Public Administration and Home Affairs (2013) "Circulars" [http://www.pubad.gov.lk/web/index.php?option=com\\_circular&Itemid=109](http://www.pubad.gov.lk/web/index.php?option=com_circular&Itemid=109)
  - 16 See: The Gazette of the Democratic Socialist Republic of Sri Lanka No. 1830, Friday, September 2013 <http://documents.gov.lk/gazette/2013/PDF/Sep/27Sep2013/I-IIA%28E%292013.09.27.pdf>
  - 17 Sri Lanka Public Service Commission [http://www.psc.gov.lk/web/index.php?option=com\\_content&view=article&id=140&Itemid=80&lang=en](http://www.psc.gov.lk/web/index.php?option=com_content&view=article&id=140&Itemid=80&lang=en)
  - 18 Interview 15 Labor Law Legal Expert
  - 19 <http://www.hrsrilanka.com/resources/articles/81-terms-and-conditions-of-employment-in-sri-lanka>

of a limited competitive examination and by promotion on merit<sup>20</sup>. Moreover, laws ensuring trade union action within the public sector date back to the colonial era<sup>21</sup>.

#### **4.1.3 Independence (practice): to what extent is the public sector free from external interference in its activities?**

The NIS-SL 2010 Assessment notes that regardless of the existence of numerous laws, in practice there is a severe lack of independence among civil servants. Not only are Heads of Departments and Secretaries of Ministries appointed by the President but, their job security is threatened when there is a change in government as the new government most often removes these individuals and places their own supporters in their place. The report highlighted the fact that recruitment is Gazetted and for some jobs, a competitive examination is held. Yet, at the same time, the report commented on the fact that employment prospects at the highest level in the Civil Service were limited to political appointees.

Despite the negative image, the 2012 Bertelsmann Transformation Index notes that "Sri Lanka has an effective administrative structure that provides basic health and education facilities to all areas. Central and provincial agencies provide power, water, housing and other basic facilities"<sup>22</sup> The Public Service Commission (PSC) has an appeal division as well as a disciplinary division.<sup>23</sup> New Circulars and the Second Schedule in Chapter XLVIII, Volume II of the Establishment Code came into effect in 2011 on how the PSC should delegate authority on the "appointment, promotion, transfer, disciplinary control and dismissal in relation to all Sector Level officers and Supra Grade/Special Grade officers in Tertiary Level"<sup>24</sup>.

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20 The Gazette of the Democratic Socialist Republic of Sri Lanka (1982) "Gazette Extraordinary no. 221/16 of 1982". Colombo: Ministry of Public Administration.

21 See: <http://www.unions.lk/site/>, [http://www.gsu-ssg.ca/e/about\\_gsu.cfm](http://www.gsu-ssg.ca/e/about_gsu.cfm)

22 Bertelsmann foundation (2013) "BIT 2012 Sri Lanka Country Report" available at <http://www.bti-project.org/laendergutachten/aso/lka/2012/#chap1>

23 Sri Lanka Public Service Commission [http://www.psc.gov.lk/web/index.php?option=com\\_content&view=article&id=150&Itemid=91&lang=en](http://www.psc.gov.lk/web/index.php?option=com_content&view=article&id=150&Itemid=91&lang=en)

24 Ibid. [http://www.psc.gov.lk/web/index.php?option=com\\_content&view=article&id=140&Itemid=80&lang=en](http://www.psc.gov.lk/web/index.php?option=com_content&view=article&id=140&Itemid=80&lang=en)

## 4.2 GOVERNANCE

### 4.2.1 Transparency (law): to what extent are there provisions in place to ensure transparency in financial, human resource and information management of the public sector?

The NIS-SL 2010 Assessment focused both on the positive laws in place to ensure transparency such as the Establishment Code, the Gazettes, and the Assets and Liabilities law of 1975 (amended 1988) as well as the prohibitive laws such as those in the Establishment Code preventing public officials from divulging information to the media and the Official Secrets Act. It further noted how the Auditor General did not monitor state-owned enterprises and statutory boards.

The transparency of procurement is guaranteed under law through the Procurement Guidelines. Since the 2010 Assessment, there have been eight supplements to the Procurement Guidelines (Supplements 20 – 27). These are freely available online at the Treasury website<sup>25</sup> and will be discussed in the section on Role below. However, it is pertinent to note that if these regulations are carried out correctly, then the supplements signify an attempt to enhance transparency.

*A Bidders Guide to Success in Public Procurement* is also available at the website<sup>26</sup> along with books on *Guidelines on Government Tender Procedure*, *Guidelines for Procurement of Pharmaceuticals and Medicines*, *Guidelines of Private Sector Infrastructure Projects*, among others.<sup>27</sup> The only issue is that a majority of these publications were printed around 2006 – 2008. The Establishment Code is available online in Sinhala and in Tamil.

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25 See: <http://www.treasury.gov.lk/public-finance-guidance-pfd/procurement-management/procurement-guidelines-manual.html>

26 National Procurement Agency (2008?) *Bidders' Guide to Success in Public Procurement: a handbook*. Colombo: National Procurement Agency. Available at [http://www.treasury.gov.lk/depts/pfd/publications/Bidders\\_Guide.pdf](http://www.treasury.gov.lk/depts/pfd/publications/Bidders_Guide.pdf)

27 See: <http://www.treasury.gov.lk/public-finance-guidance-pfd/procurement-management/procurement-guidelines-manual.html>

#### 4.2.2 Transparency (practice): to what extent are the provisions on transparency in financial, human resource and information management in the public sector effectively implemented?

The non-existence of a Right to Information Act is a concern highlighted in the NIS-SL 2010 Assessment. However, since 2013, the e-government portal has strived to provide information to the public. The 'open data initiative' by the government provides information to the public on revenue licenses and the average daily wages of the informal sector. It further provides webpage links to forms, gazettes and circulars, as well as e-services on finding a 'Grama Niladhari', a MP directory, and submitting grievances to the Ministry of Public Administration. Moreover, information on how to get SMS services on the water levels of the Mahaweli Reservoirs, tea prices and daily fish prices are also available at this site. . The 'Digital Intermediary Service' provides anyone with mobile access information on 65 Ministries, government departments, authorities, bureaus, institutes, boards, and the Police. This is within the context of a country where mobile telephones have surpassed the 100% saturation level and even the poorest now have mobile telephones.<sup>28</sup>

While the availability of the above information is laudable, what the NIS-SL 2010 Assessment focused on was the lack of insight into decision-making processes rather than information on the procedure. The report moreover reiterated the fact that while laws such as the declarations of assets are supposedly available for public scrutiny, the fact is that these are not widely implemented although, "Section 9 (A) of the Declaration of Assets and Liabilities Act No 1 of 1975"<sup>29</sup> was used in the prosecution of the former Chief Justice, Shirani Bandaranayake.

The rampant privatization of state-owned enterprises discussed in NIS-SL 2010 Assessment was turned around in the mid-2010 when petroleum companies were

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28 See: [http://www.gov.lk/web/index.php?option=com\\_content&view=article&id=287&Itemid=335&lang=en](http://www.gov.lk/web/index.php?option=com_content&view=article&id=287&Itemid=335&lang=en)

29 The Daily News (2013) "Failure to Disclose infor on Accounts: notice issued on ex-CJ" The Daily News, Tuesday, July 30, 2013. Available at <http://www.dailynews.lk/local/notice-issued-ex-cj#sthash.soYWxlaj.dpu>



re-nationalized<sup>30</sup>. Under the Sri Lanka Expropriation Act of 2011, the government strived to take over under-performing assets of 37 companies<sup>31</sup>.

“However, since 2013, the e-government portal has strived to provide information to the public. The ‘open data initiative’ by the government provides information to the public on revenue licenses and the average daily wages of the informal sector. It further provides webpage links to forms, gazettes and circulars, as well as e-services on finding a ‘Grama Niladhari’, a MP directory, and submitting grievances to the Ministry of Public Administration. Moreover, information on how to get SMS services on the water levels of the Mahaweli Reservoirs, tea prices and daily fish prices are also available at this site. . The ‘Digital Intermediary Service’ provides anyone with mobile access information on 65 Ministries, government departments, authorities, bureaus, institutes, boards, and the Police.”

#### **4.2.3 Accountability (law): to what extent are there provisions in place to ensure that public sector employees have to report and be answerable for their actions?**

The NIS-SL 2010 Assessment highlighted the existence of numerous bodies that theoretically at least would ensure accountability. The complaint mechanisms in place in the Ministry of Public Administration, the avenues available at the ‘Bribery Commission’, the Public Service Commission, the Human Rights Commission, the Ombudsman, and the courts are but a few of those mentioned along with the judicial review process. The non-availability of any laws to ensure whistle-blower protection was a concern highlighted by the report. Indeed, a 2013 report by Transparency International reiterates this concern<sup>32</sup>.

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30 Dan Biller and Ijaz Nabi (2013) *Investing in Infrastructure: harnessing its potential for growth in Sri Lanka*. Washington D.C.: The World Bank.

31 The Island (2011) “Lanka risks losing image, investment Expropriation Act” *The Island*, November 1, 2011.

32 Transparency International (2013) “Transparency International calls for greater whistleblower protection and oversight of government surveillance: Whistleblowing plays key role in fight against corruption, movement resolution states”. Available at [http://www.transparency.org/news/pressrelease/transparency\\_international\\_calls\\_for\\_greater\\_whistleblower\\_protection\\_and\\_o](http://www.transparency.org/news/pressrelease/transparency_international_calls_for_greater_whistleblower_protection_and_o)

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The NIS-SL 2010 Assessment also noted that financial accountability is under the purview of the Auditor General. According to the Constitution, “Parliament has full control of public finance and therefore public enterprises are subject to Parliamentary control”<sup>33</sup> The officials in the boards of public enterprises are accountable to the parliament, cabinet ministers, ministers of finance/general treasury, the relevant ministry, the Auditor General, and the National Review Committee. The Secretary to the Treasury, in consultation with the Auditor General, appoints private auditors to audit public enterprises, the reports of which are subsequently tabled in the Parliament and is filed with the ‘Registrar of Companies’ under the purview of the Companies Act.<sup>34</sup>

The Public Enterprises boards are, according to the Treasury, “directly accountable to the Government ... and its officials are therefore entrusted with the supervision, governance, and management of public enterprises and have a duty to ensure that the enterprises are governed and operated in the best interest of the enterprises and its stakeholders”<sup>35</sup> Furthermore, in 2011 alone, the appeals division of the Public Service Commission (PSC) had 865 appeals awaiting reports while in 2012, appeals not received on time increased to 1317.<sup>36</sup>

#### **4.2.4 Accountability (practice): to what extent do public employees have to report and answerable for their actions in practice?**

The NIS-SL 2010 Assessment points to the fact that whilst the Establishment Code, the ‘Bribery Commission’, the Public Service Commission, the Human Rights Commission, the Ombudsman, and the courts – where complaints are lodged and appeals are made – all exist, these mechanisms fail to ensure accountability. The report moreover notes that promotion schemes in the Civil Service are based on

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33 <http://www.treasury.gov.lk/depts/ped/publications/guidelines.pdf>, op cite. p. 11

34 Ibid, p. 14

35 Sri Lanka Treasury through the Department of Public Enterprises, General Treasury (n.d.) “Accountability and Transparency”. Available at <http://www.treasury.gov.lk/depts/ped/publications/guidelines.pdf>

36 Sri Lanka Public Service Commission [http://www.psc.gov.lk/web/index.php?option=com\\_content&view=article&id=150&Itemid=91&lang=en](http://www.psc.gov.lk/web/index.php?option=com_content&view=article&id=150&Itemid=91&lang=en)

service and not performance. Conflict-of-interest and political patronage further hinders accountability.

At the same time, even though there is no ‘whistleblower’ protection, public interest litigation does exist. More recently, the accountant, lawyer, and member of the Global Anti-Corruption Taskforce, Nihal Sri Ameresekere has demanded the government be accountable for their actions<sup>37</sup>. These include two litigations challenging the Appropriation Bill, including one on “Purported Oil Hedging Deals: Nihal Sri Questions Attorney General”<sup>38</sup> The World Bank’s Country Policy and Institutional Assessment rated Sri Lanka at 3 on a scale of 1 (low) to 6 (high) in 2011 in terms of transparency; accountability; and corruption in the public sector<sup>39</sup>.

#### **4.2.5 Integrity Mechanisms (law): to what extent are there provisions in place to ensure the integrity of public sector employees?**

The NIS-SL 2010 Assessment noted the importance of the ‘Bribery Commission’ and the Establishment Code in providing a legal framework to prevent corruption. The 2007 Global Integrity survey on Sri Lanka’s integrity indicators examined the strength of civil service regulations. The existence of “national regulations for the civil service encompassing, at least, the managerial and professional staff” received a maximum score of 100.

#### **4.2.6 Integrity Mechanism (practice): to what extent is the integrity of civil servants ensured in practice?**

According to the NIS-SL 2010 Assessment, a major problem facing those working in the public sector is ‘conflict of interest’ and the unequal implementation of punishments for crimes committed. The politicization of the civil service and

37 See: <http://www.consultants21.com/>

38 Colombo Telegraph (2012) “Purported Oil Hedging Deals: Nihal Sri Questions Attorney General” Colombo Telegraph, November 5, 2012. Available at <https://www.colombotelegraph.com/index.php/purported-oil-hedging-deals-nihal-sri-questions-attorney-general/>

39 See: <http://www.tradingeconomics.com/sri-lanka/cpia-transparency-accountability-and-corruption-in-the-public-sector-rating-1-low-to-6-high-wb-data.html>

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the pressure to adhere to the demands of the political party in power were also concerns highlighted by the 2010 Assessment. The Global Integrity survey on Sri Lanka examined the effectiveness of these laws but this received only 42 out of 100 and whether regulations addressed issues related to conflict of interest received only 46 out of 100. More alarmingly, citizen access to asset disclosure received a score of 0 out of 100<sup>40</sup>.

Despite the existence of numerous laws, the integrity of public servants continues to be questioned. According to the People's Movement against Increasing Electricity Tariffs the CEB's [Ceylon Electricity Board] losses, corruption and wastage were the reasons for the recent exponential tariff increase.<sup>41</sup> Moreover, as noted by the Business Anti-Corruption Portal, "the level of corruption is alarmingly high in public procurement sector."<sup>42</sup> The swindling of Rs. 3,000 million during the construction of roads by government officials - reported by the Road Development Authority (RDA) officials themselves to the 'Bribery Commission'<sup>43</sup> - is a further example. Police statistics on misappropriation of funds also highlight the level of corruption in the public sector<sup>44</sup>. The diagram provides information on different crimes reported to the provinces and the different divisions of the police. The highest complaints regarding misappropriation of funds in 2012 in terms of districts was Kandy, while the most complaints (over 140) had come to the Fraud Bureau.

Transparency International's Global Corruption Barometer indicates that in 2013, 33 percent of respondents felt that public officials and civil servants were corrupt or extremely corrupt<sup>45</sup>. According to the 2010/2011 data, 32 percent of respondents felt that corruption levels in Sri Lanka for the previous 3 years has decreased. During

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40 Global Integrity (2007) "Sri Lanka: Integrity Indicators Scorecard Report Civil Service Regulations Indicators". Available at <http://report.globalintegrity.org/Sri%20Lanka/2007/scorecard/55>

41 EaswarenRutnam (2013) "Sri Lanka is a corrupt nation" The Sunday Leader, July 7, 2013.

42 Business Anti-Corruption Portal (n.d.) "Snapshot of the Sri Lanka country profile" available at <http://www.business-anti-corruption.com/country-profiles/south-asia/sri-lanka/snapshot.aspx>

43 See <http://www.tisirilanka.org/?p=10990>

44 <http://srilankapolicestatistics.files.wordpress.com/2012/07/funds.png>

45 [http://www.transparency.org/gcb2013/country/?country=sri\\_lanka](http://www.transparency.org/gcb2013/country/?country=sri_lanka)

the same year, respondents perceived Public Officials to be somewhat corrupt with a score of 3.3 on a scale of 0-5<sup>46</sup>.

### **4.3 ROLE**

#### **4.3.1 Public Education (practice): to what extent does the public sector inform and educate the public on its role in fighting corruption?**

The NIS-SL 2010 Assessment provided examples of the public sector fighting corruption, such as the 'Clean Hands Campaign'. However, the report also commented on the ineffectiveness of such efforts and the sense of public apathy about corruption in the prosecution process. The existence of corruption at the highest levels of office, according to a Transparency International report, disheartens those in the public sector<sup>47</sup>. The Sri Lankan Coalition against Corruption was created by an alliance of the academia, media and trade unions in order to combat the rising levels of corruption.

#### **4.3.2 Cooperate with public institutions, CSOs and private agencies in preventing/addressing corruption (practice): to what extent does the public sector work with public watchdog agencies, business and civil society on anti-corruption initiatives?**

The NIS-SL 2010 Assessment revealed that there were only a few instances where cooperation between the public sector and civil society occurred. Transparency International, for example, has conducted numerous awareness programs and presented reports to the public sector.

However, the politicization of the civil service, the prohibition on disclosure in the Establishment Code and societal perceptions has reduced work between the public sector, civil society and private agencies<sup>48</sup>.

46 <http://www.transparency.org/gcb201011/results>

47 The Daily Mirror (2011) "Clean Hands and Transparency" Available at <http://www.tisirilanka.org/?p=8669>

48 Kishali Pinto-Jayawardena (2010) "Bribery & CORRUPTION IN Sri Lanka's public revenue system: an unholy nexus? <http://www.humanrights.asia/resources/journals-magazines/article2/0903/>

**4.3.3 Reduce corruption risks by safeguarding integrity in public procurement: to what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?**

The NIS-SL 2010 Assessment presented an in-depth insight into the procurement process through analysis of the guidelines. It highlighted the secrecy in the procurement process, especially in major infrastructural development programmes. The lack of parliamentary oversight and bureaucratic delays has increased perceptions of corruption. As discussed previously and below, the procurement guidelines provide another mechanism to reduce corruption. Eight new supplements were introduced. Supplement 20 provides a guideline for determining the awarding of open competitive bidding procedures. In this, Cabinet approval is required for any government funded project over Rs. 150 million and foreign funded projects of over Rs. 500 million. It further stipulates the deviation limits in the procurement process and the competent authority given the power to make the decision. The Head of a Department can make adjustments of Rs. 250,000 for work, goods, and services while a Cabinet Minister is granted authority to make adjustments to procurement procedures over Rs. 10 million<sup>49</sup>. Supplement 21 - which is surprisingly only in the English and Sinhala medium online<sup>50</sup> - is on the Shopping Guidelines, while Supplement 22 focuses on providing guidelines on Direct Contracting to Community Based Organizations. This latter supplement is of great importance as it was created with regard to the sustainability of the project and to achieve certain specific social objectives. One such objective was to create employment opportunities in the area. There is even a guideline for procurement

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bribery-corruption-in-sri-lankas-public-revenue-system-an-unholy-nexus

49 Department of Public Finance Democratic Socialist Republic of Sri Lanka (2011) *Democratic Socialist Republic of Sri Lanka Supplement 20 to the Procurement Manual*. Colombo: Department of Public Finance

50 <http://www.treasury.gov.lk/public-finance-guidance-pfd/procurement-management/procurement-guidelines-manual.html>

appeal procedure in supplement 24<sup>51</sup>. The procurement process indicated in these supplements highlight the development process and the challenges previous supplements imposed on it.

## Recommendations

1. The appointments, dismissal, transfers and disciplinary procedures of the Public Sector to be revised to ensure the independence of the Public Sector.
2. While the independence of the PSC has been compromised with the 18th Amendment to the Constitution, it still has an oversight function in regard to public sector integrity. Presidential appointments to the PSC should, therefore, be based on merit only. Similarly, appointments of Heads of Departments (by Cabinet) and Secretaries to the Ministries (by the President) should be based on merit. In addition, the PSC should be given adequate resources and training to enable it to effectively fulfill its functions.
3. The Bribery Commission, Public Service Commission, Human Rights Commission, Ombudsman, and the courts should act impartially without politicization in preventing corruption and wastage.
4. The procurement process must be transparent and open to competitive bidding. Existing laws and statutes, including the procurement guidelines, should be strictly implemented.
5. Whistleblower and witness protection to be enacted.
6. The Chief Accounting Officer should be held responsible for recovering lost assets within each institution.

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51 <http://www.treasury.gov.lk/public-finance-guidance-pfd/procurement-management/procurement-guidelines-manual.html>





## LAW ENFORCEMENT AGENCIES

*56. Every police officer shall for all purposes in this Ordinance contained be considered to be always on duty, and shall have the powers of a police officer in every part of Sri Lanka, It shall be his duty*

- 1. to use his best endeavours and ability to prevent all crimes, offences, and public nuisances ;*
- 2. to preserve the peace ;*
- 3. to apprehend disorderly and suspicious characters ;*
- 4. to detect and bring offenders to justice ;*
- 5. to collect and communicate intelligence affecting the public peace ; and*
- 6. promptly to obey and execute all orders and warrants lawfully issued and directed to him by any competent authority<sup>1</sup>*

### SUMMARY

As noted in the NIS-SL 2010 Assessment, the law enforcement pillar entails the Attorney General's Department and the Police force of the country. It is also important to include the defense forces into this section. In 2012 64 percent of those who responded to Transparency International 2013 Global Corruption Barometer

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<sup>1</sup> See: *An ordinance to provide for the establishment and regulation of a Police Force in Sri Lanka.*  
Available at

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saw the Police as the most/extremely corrupt<sup>2</sup> and 43 percent of them paid a bribe to Police and therefore had evidence that Police was corrupt. This reiterates the statement made in the NIS-SL 2010 Assessment, which is that “public confidence in the rule of law is low, and law enforcement agencies are not generally seen to be impartial in implementing the law.”<sup>3</sup>

The integrity and independence of the Attorney General’s Department after the 18<sup>th</sup> Amendment and the integrity of the Police, which has been dogged by accusations of abuse and corruption, are the basic concerns for law enforcement.

The most significant change in the law enforcement agencies pillar is the recruitment of former LTTE carders and Tamil females to the military. The second most significant change is the use of defense forces for urban development, which, according to one interviewee, “our kings used to do after they win a war. [They] must not have [wanted] any soldiers without anything to do so they would build dagabas [temples]”<sup>4</sup>. Some people continue to view the Police as corrupt despite the steps taken by the Police to be efficient and to educate their policemen/women. There is also an assumption that the Attorney General’s Department is ineffective in countering political influences; again despite the successful rehabilitation of former child soldiers.

### STRUCTURE

Law enforcement in Sri Lanka involved the Police who apprehends the perpetrators and the Attorney General’s Department, which prosecutes them. These two entities enforce a very complex and mixed set of laws that make up the legal framework. In Sri Lanka, there are five systems of laws: the Roman–Dutch Law or the general law of the land along with the English common law which constitutes the law that governs all Sri Lankans. Other indigenous and religious laws, such as Thesawelamai,

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2 See: [http://www.transparency.org/gcb2013/country/?country=sri\\_lanka](http://www.transparency.org/gcb2013/country/?country=sri_lanka)[http://www.vertic.org/media/National%20Legislation/Sri%20Lanka/LK\\_Police\\_Ordinance.pdf](http://www.vertic.org/media/National%20Legislation/Sri%20Lanka/LK_Police_Ordinance.pdf)

3 Transparency International (2010) *NIS-SL 2010*, op cite.

4 Interview # 20, op cit.

Kandyan law and Muslim law, hold sway in matters related to family, property and obligations.<sup>5</sup> The individuals who consciously interpret the laws and use them to prosecute the perpetrators belong to the office of the Attorney General. This office dates back to 1884 and both then and now, the Attorney General's Department remained an integral part of law enforcement. The Attorney General is the Chief Legal Advisor to the Government. From 1884 onwards, there have been 27 Attorney Generals and 44 Solicitor Generals. The current Attorney General is Hon. Sarath Palitha Fernando and Y. J. W. Wijayatilake is the Solicitor General.

There are two special units attached to this office: the Public Petitions Unit and the Child Protection Unit. While the former has a Deputy Solicitor General and two Senior State Counsel, the latter includes 19 Attorneys-at-Law who work with the Police, the Ministry of Justice, and the Ministry of Health – with the able assistance of UNICEF – to prosecute child abusers. The Attorney General in his capacity advises the Government, Government Departments, Statutory Boards and Public Corporations in respect of all legal matters. He conducts prosecutions in criminal cases ... any Court or Tribunal”<sup>6</sup> Other than the Attorney General, there is also a Solicitor General, 5 Additional Solicitor Generals, 28 Deputy Solicitor Generals, 33 Senior State Councils, and 61 State Councils among others. The Attorney General's Department has two Special Units, the first to deal with public petitions/complaints “with regard to injustices caused to them by any officer of a Ministry, Government Department, Statutory Board, Public Corporation, the Police or the Armed Forces in the performance/neglect to perform official duties”<sup>7</sup>. The other is the Child Protection Unit. In litigation the State Attorney and his/her assistants handle the necessary work from the point of documentation to the argumentative stage, while the State Counsel conducts the advocacy work<sup>8</sup>.

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5 Vernon V. Palmer, ed. (2012) *Mixed Jurisdictions worldwide: the third legal family*. 2<sup>nd</sup> edition. Cambridge: Cambridge University Press.

6 Attorney General's Department Sri Lanka (2013) “Rose and Responsibilities”. Available at <http://www.attorneygeneral.gov.lk/index.php/about-us>

7 Ibid.

8 Interview 15, Legal Expert

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As noted in the NIS-SL 2010 Assessment, the Attorney General's Department, which once reported to the Minister of Justice, now reports directly to the President since the introduction of the 18<sup>th</sup> Amendment in 2010. The 2010 Assessment provided detailed information on the 'major functions' of the Attorney General's Department. The Police, on the other hand, functions under the Ministry of Defense and Urban Development and – since the President is the Minister for Defense – under the purview of the Executive.

The most senior is the Inspector General of Police (IGP). The Sri Lankan Police enrolled women for the first time in 1952. Since then, women have been recruited as Sub-Inspectors. The Police have an Intelligence division, Ombudsman, Information Technology, Examination, Marine, Human Rights, Judicial Security, and Sport, Public Relations, the Colombo Crime division and a Disappearance Investigation Unit.<sup>9</sup> Each Province has a Deputy Inspector General (DIG)<sup>10</sup>.

The Police are often linked to corruption but, at the same time, the Special Task Force (STF) – the counter-terrorism/insurgency police unit that came into being in 1983 – has been listed as the 6<sup>th</sup> best Police Force in the world<sup>11</sup>. Since the termination of the war, the Police have been assisted by the Military in the domestic enforcement of law. This dual role of the military has historical precedence since the Dutch used the military to police the city of Colombo<sup>12</sup>. The military has also participated in UN authorized peace operations where they played the role of the peacekeeper<sup>13</sup>. The military falls under the purview of the Ministry of Defense and Urban Development. There is also the 'Home Guard Service'. This came into being in 1984. As of 2002, there were 20,260 members.<sup>14</sup>

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9 See: <http://www.police.lk/index.php/police-history>

10 See: [http://www.police.lk/structure/organizational\\_structure.html](http://www.police.lk/structure/organizational_structure.html)

11 N.a. (2013) "10 most highly trained Police units in the world". Available at <http://kizaz.com/2013/07/04/10-most-highly-trained-police-units/>

12 See: <http://www.police.lk/index.php/police-history>

13 Dale Stephens (2010) "Military involvement in law enforcement" *International Review of the Red Cross*. Volume 92, No. 878, June 2010.

14 See: [http://www.defence.lk/main\\_abt.asp?fname=homeguard](http://www.defence.lk/main_abt.asp?fname=homeguard)

The defense forces continue to maintain a regular, reserve and volunteer forces. The President is the Commander-in-Chief of the armed forces.

## ASSESSMENT

### 5.1 RESOURCES

#### 5.1.1. Resources (practice): to what extent do law enforcement agencies have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

The NIS-SL 2010 Assessment provided detailed information on the Attorney General's Department, its cadres, the number of units and those staffing it, as well as the salary scale. While some of this information is provided in this 2014 report in the section on the judiciary, it is important to note that Ministry of Justice was allocated Rs. 8,333,000 for the 2012 budget. The Ministry received Rs. 30,000,000 in recurrent expenditure and Rs. 7,000,000 in capital expenditure for purchase of vehicles, legal aid to low income families and construction of an arbitration centre<sup>15</sup>. The Attorney General's Department received Rs. 72,700,000 as recurrent expenditure and Rs. 2,200,000 as capital expenditure for personal emoluments, travel expenses, services and supplies, purchase of furniture and equipment and renovation of building.<sup>16</sup>

The Police staff includes the IGP and each province has an S/DIG. In the Western Province, there are different DIGs allocated for Colombo City, Greater Colombo, Kalutara District, Gampaha District, and for Western Province Traffic. Under each DIG is a Senior Superintendent of Police (SSP) and then an Assistant Superintendent of Police (ASP) and constables. This means that there is adequate staffing for the Police. However, according to a Daily Mirror article of 2011, there were 83,423 police officers but there was a shortfall of around 10,000 and "Out of those [83,423]

15 Sri Lanka Treasury (2012) "04. Appropriation Act and the Government Budget 2012" <http://www.treasury.gov.lk/reports/annualreport/2012/4-AppropriationAct-GovernmentBudget2012.pdf>

16 Ibid.

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in service, 81,328 are Sinhala police officers, 1,093 Tamil police officers, 952 Muslim officers, nine Dutch [Burgher] officers and 25 Malay officers . There are only 430 police stations in the country.”<sup>17</sup>

A new development is the video surveillance or CCTV Division.<sup>18</sup> For the Commonwealth Heads of Government Meeting (CHOGM), 20,000 Policemen and women were deployed with 5000 of them handling the Traffic.<sup>19</sup> There is a Narcotic bureau, a Child and Women Bureau, and Tourist Police that focus on special areas. The Mounted Police and the Police Kennel assist the main police. The NIS-SL 2010 Assessment noted the emergence of the Special Task Force (STF) as the paramilitary arm of the police. The Police was allocated Rs. 724,000,000 as recurrent expenditure and Rs. 70,000,000 as capital for personal emoluments, diets and uniform, fuel, supplies, rehabilitation and improvement of buildings among others<sup>20</sup>.

The discrepancy between military expenditure and that of law enforcement (Attorney General’s Department and the Police) was a concern raised in the NIS-SL 2010 Assessment. The military training is carried out at the Sri Lanka Military Academy. Military personal have the option of gaining further education from the General Sir John Kotelawala Defense University (KDU). The Defense Services Schools provide a more focused education for the defense personal. The Police on the other hand have the National Police Academy, which was established in 2008. In their training, the academy has links with the Department of Languages, Bandaranaike Institute of Diplomatic Training Institute (BIDTI), as well as 5 universities and the KDU<sup>21</sup>. A new Police recruit has to gain knowledge of “basic law, which is a 6 month training ... Departmental order, the Penal Code, Criminal Procedure, Evidence Ordinances, Statutory Laws, Excise and Drug and Opium among other things.”<sup>22</sup>

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17 Kelum Bandara and Yohan Perera (2011) “Police Service Short of Around 10,000 cadres” *The Daily Mirror*, November 28, 2011.

18 See: <http://www.police.lk/index.php/cctv-division>

19 Nadia Fazlulhaq (2013) “On our toes, ready and all set for CHOGM 2013”: Available at <http://www.sundaytimes.lk/131110/news/on-our-toes-ready-and-all-set-for-chogm-2013-68773.html>

20 Sri Lanka Treasury op cite.

21 See: <http://www.police.lk/index.php/police-academy>

22 Interview # 8: Former DIG currently working in a Government Department, name withheld on request (3<sup>rd</sup> Sept 2013)

The Police assists the 'Bribery Commission' to conduct investigations into allegations of corruption but, as discussed in the NIS-SL 2010 Assessment, the capacity to enforce laws varies. According to one interviewee, this is due to external interference<sup>23</sup>.

The defense forces also include the army, navy and the air force. The combining of the Ministry of Defense with Urban Development has resulted in the soldiers being utilized for urban development projects. Sri Lanka has sent military personnel to participate in peacekeeping operations<sup>24</sup>. Since 2011, Tamil males and females were recruited to the military<sup>25</sup>. Sri Lanka Army Women's Corps was formed in 1979<sup>26</sup> while a Women's Wing existed in the Sri Lanka Air Force since 1983<sup>27</sup> and there is even a Girls Assessment Camp at the Naval and Maritime Academy<sup>28</sup>. Women were recruited to the civil security force in 1988.

### **5.1.2 Independence (law): to what extent are law enforcement agencies independent by law?**

The NIS-SL 2010 Assessment draws attention to the unique position of the Attorney General in discharging his duties. He is appointed by the President under the 18<sup>th</sup> Amendment to the Constitution and he must be part of any fundamental rights case. Although the President is granted immunity from prosecution, in his capacity as the minister of different Ministries, cases can be filed against him and this will undoubtedly cause a conflict of interest for the Attorney General.

The attempt to ensure the independence of the Police from external interference was made with the creation of the National Police Commission under the

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23 Interview # 11, Investigator at the Human Rights Commission, name withheld on request (September 20<sup>th</sup> 2013 and January 10<sup>th</sup> 2014).

24 <http://www.ocds.lk/unmission.php>

25 Based on Primary research conducted between May 5<sup>th</sup> 2013 to August 15<sup>th</sup> 2013, on Sinhala, Tamil and English state and non-state Sunday newspapers from 2010 May to 2013 May at the Archives of Sri Lanka.

26 <http://www.army.lk/slawc/>

27 [http://www.airforce.lk/pages.php?pages=womens\\_wing](http://www.airforce.lk/pages.php?pages=womens_wing)

28 <http://nma.navy.lk/index.php?id=591>

17<sup>th</sup> Amendment. The Commission became defunct between 2009 and 2012, when, under the 18<sup>th</sup> Amendment, the President appointed the Chairman. Its independence was challenged with the 18<sup>th</sup> Amendment but it continues to function despite allegations that it faces interference from external forces. The Commission has opened 11 provincial and district offices to receive complaints. The Commission was set up to supervise and addresses transfers and matters of discipline. The NIS-SL 2010 Assessment questioned the independence of the Police Commission and addressed the growing power of the police and the military.

### **5.1.3 Independence (practice): to what extent were law enforcement agencies independent in practice?**

There is growing accusations of impunity within the island. Some have argued that the country is becoming a ‘haven for criminals’. The fact that a Deputy Inspector General of Police (DIG) could be implicated in the contract killing of a businessman highlights the disciplinary issues that face law enforcement. Furthermore, there is “no functioning independent system to deal with complaints of torture or cruel, inhuman or degrading treatment or punishment [CIDTP] committed by law enforcement officials”.<sup>29</sup> The Attorney General’s Department conflicting role and the fact that it is under Presidential control and not under the Ministry of Justice is another factor discussed in the NIS-SL 2010 Assessment.

## **GOVERNANCE**

### **5.2.1 Transparency (law): to what extent are there provisions in place to ensure that the public can access the relevant information on law enforcement agency activities?**

The NIS-SL 2010 Assessment noted a lacuna in the laws that allow public access to information. The report noted the existence of numerous web pages that provide information on the structure and other details of the Attorney General’s Department, the Police, the Army, the Navy and the Air Force. Despite the existence

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29 See: <http://www.lawandsocietytrust.org/PDF/rct%20study%2009.pdf>



of such websites, certain types of information are limited. As noted by a former DIG, sometimes the Police might not explain the reason for an arrest despite basic legal guarantees within the penal laws and the Constitution<sup>30</sup>. The 2010 Assessment also illuminated the lack of oversight with regard to finances. Due to lack of transparency in providing information, the allegations of corruption and even crimes against humanity are leveled against the law enforcement officers.

### **5.2.1 Transparency (practice): to what extent is there transparency in the activities and decision-making processes of law enforcement agencies in practice?**

Police stands for P-Politeness, O-Obedience, L-Loyalty, I-Intelligence, C-Courtesy, and E-Efficiency. Regardless of the fact that a number of police appear incorruptible<sup>31</sup>, the Transparency International survey reaffirms the public's belief that the law enforcement officials are corrupt. While case records can be accessed, it is difficult to get information from the police regarding an on-going case. The current 2014 update reiterates the point that in the Attorney General's Department and the Police, the disclosure of decision making processes is customary. As noted above, there are instances when non-disclosure can hurt the credibility of law enforcement officials.

### **5.2.3 Accountability (law): to what extent are there provisions in place to ensure that law enforcement agencies have to report and be answerable for their actions?**

It is an interesting fact that neither the Sri Lankan penal code nor any other legal system provides a requirement for the disclosure of decisions to the public. The NIS-SL 2010 Assessment's investigation revealed the existence of numerous avenues

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30 Kishali Pinto-Jayawardena (2009?) *The Rule of Law in Decline: study on the prevalence, determinants and causes of torture and other forms of cruel, inhuman or degrading treatment or punishment in Sri Lanka*. <http://transcurrents.com/news-views/archives/6867>

31 Kishali Pinto-Jayawardena (2009?) *The Rule of Law in Decline: study on the prevalence, determinants and causes of torture and other forms of cruel, inhuman or degrading treatment or punishment in Sri Lanka*. <http://transcurrents.com/news-views/archives/6867>

by which the law enforcement officials are held accountable. The law enforcement officials' actions are under the purview of the Special Investigation Unit within the Police Department and the Human Rights Commission. As further noted in the NIS-SL 2010 Assessment, the Police is not bound by law to inform victims of crimes of the progress (or lack thereof) of an investigation. As noted above, the National Police Commission has opened 11 provincial and district offices to hear complaints.

The Attorney General's Department provides annual audits and is answerable to the President. The National Human Rights Action Plan "marks prevention of torture as an area of priority"<sup>32</sup> This means that officials of the Human Rights Commission have been granted powers to examine Police Stations for allegations of torture.

#### **5.2.4 Accountability (practice): to what extent do law enforcement agencies have to report and be answerable for their actions in practice?**

As noted by Interviewee no. 8, "Right to ask for information, yes. But the right to information is not applied. Of course, Police Officers have multiple tasks, not just enforcement. They have special duties, protection detail. So, police action is delayed. If asked about a complaint, if it is not given priority, they get neglected"<sup>33</sup> There have also been allegations that only those in the lower ranks are held accountable. The arrest of DIG Vaas for the murder of a businessman is hopefully an indication of ensuring accountability at the top as well even though it can be argued that it was politically motivated.

The Police Service website provides only a small amount of details on the procedures taken in disciplining law enforcement officials. Just as in 2010, the 2014 report highlights a string of incidents that highlight the militarization of law enforcement agencies. In August 2013, at Weliveriya in the Gampaha district, 3 unarmed civilians were shot and killed during a protest. The CPA notes that "in the

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32 United Kingdom Foreign & Commonwealth Office (2012) *Human Rights and Democracy: the 2011 foreign and Commonwealth Office Report*. London: Crown. P. 332

33 Interview 8, Ibid.

export processing zone at Katunayaka in 2011 and in Chilaw in 2012, respectively, 1 innocent citizen was killed. Likewise, media personnel covering the event were manhandled and their equipment confiscated, damaged or destroyed.”<sup>34</sup> The Tamil National Alliance MP, M. A. Sumanthiran indicated other instances when the actions of the STF resulted in deaths or injury to the public.<sup>35</sup>

The Human Rights Commission does provide some supervision and protection for those arrested by the police. Indeed, as noted by Interviewee 8, “Human Rights Officials [HRC] come without announcing. They even check the billets, where police stay. That is not part of the police station but maybe ... sometimes police hide prisoners there for questioning. But HRC must come with proper letters.”<sup>36</sup>

### **5.2.5 Integrity (law): to what extent is the integrity of law enforcement agencies ensured by law?**

The report by UK Foreign Secretary William Hague in 2012 notes how the government has been accused of aggressive police usage against peaceful protests. The fact that major infringements of the law including extrajudicial killings, torture, disappearances, and intimidation, remained unsolved – including attacks against human rights activists and journalists – or inconclusive is a concern discussed in the report.<sup>37</sup>

As highlighted in the NIS-SL 2010 Assessment, there is no code of conduct for police officers or the Attorney General’s department. The military is bound by international laws. Moreover, the Bribery’s Act has prohibited the acceptance of gifts and hospitality. According to Interviewee 8, there used to be a ‘Constables Manual’ in the 1950s; a pocketbook that was given to all new recruits at inception.

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34 CPA (2013) “CPA statement on the violence in Weliveriya”. Available at <http://www.sacw.net/article5192.html>

35 M. A. Sumanthiran (2013) “United in Grief” The Island, Thursday November 14<sup>th</sup> 2013. [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=85447](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=85447)

36 Interview 8, op cite.

37 United Kingdom Foreign & Commonwealth Office. Op cite.

This provided basic information for a Police Officer. The current book, notes the former DIG, is like a book<sup>38</sup>.

### **5.2.6 Integrity (practice): to what extent is the integrity of members of law enforcement agencies ensured in practice?**

The fact that the police have to deal with “drunken politicians and their sons”<sup>39</sup> harms the integrity of the police force. A former DIG notes that even when the police submit a case for the prosecution, a conflict of interest can arise or the Bribery Commission is slow to act. This individual further states that “the Bribery Commission won’t provide information on cases regarding the progress of Police”<sup>40</sup>

## **5.3 ROLE**

### **5.3.1 Corruption prosecution (law and practice): to what extent do law enforcement agencies detect and investigate cases in the country?**

The impunity of the political leadership, the dysfunctional nature of the legal system, and the lack of transparency – discussed in the NIS-SL 2010 Assessment– has tarnished all the agencies which function under law enforcement. The fact that the Police itself are considered corrupt by the public is a case in point. As the former DIG noted, “Generally quite a number of policemen are corrupt. Not because he needs money or [is] paid less.... Corruption is highest in Traffic cops.”<sup>41</sup>

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38 Interview 8, op cite.

39 Ibid.

40 Ibid.

41 Ibid.

## Recommendations

1. The appointment of the Attorney General should be removed from the Executive in order to ensure the independence of the office and avoid conflict of interest.
2. Strict code(s) of conduct to be introduced and implemented for the personnel of all law enforcement agencies.
3. The operation of the National Police Commission to be independent sans external interferences.
4. A transparent and effective system of public complaints needs to be set up and implemented.
5. Disclosure of information regarding decisions made and the process of decision making in order to uphold accountability and transparency
6. The Attorney Generals' office should always act in the interest of the public. Where there is a conflict between the public interest and the interests of the ruling regime the AG should represent the public interest. The AG must not be forced to defend the state's human rights record in international forums.
7. A victim and whistleblower protection programme should be developed.



## THE ELECTION COMMISSION

*“There shall be an Election Commission ... consisting of five members appointed by the President on the recommendation of the Constitutional Council ... The President shall on the recommendation of the Constitutional Council, appoint one member as its Chairman.”<sup>1</sup>*

*“There shall be an Election Commission ... consisting of three members ... The President shall appoint one member as its Chairman.”<sup>2</sup>*

### SUMMARY

The NIS-SL 2010 Assessment focused on the work of the Commissioner of Elections during the 17<sup>th</sup> and 18<sup>th</sup> Amendment periods. There have been numerous attempts to ensure a fair and free electoral system through the 1978 Constitution, the Amendments, Special Provisions, and Acts. These attempts made the electoral process more democratic and bound by the Rule of Law, at least on the surface. Despite the existence of laws, in practice, the implementation of the election laws remains questionable. Under the 18th Amendment the President regained power

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1 Government of Sri Lanka (2001) “Chapter XIVA – Election Commission” *Seventeenth Amendment to the Constitution of the Democratic Socialist Republic of Sri Lanka*. <http://www.priu.gov.lk/Cons/1978Constitution/SeventeenthAmendment.html> (accessed August 12th 2013)

2 *The Constitution*, Ibid. “Chapter XIVA – Election Commission” <http://www.priu.gov.lk/Cons/1978Constitution/SeventeenthAmendment.html> (accessed August 12th 2013)

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to appoint the Chairman in the Constitutional Council<sup>3</sup> and this added to the issue of impartiality in the electoral system. Some consider these election laws, a 'dead letter' where both the ruling and opposition parties disregard election laws<sup>4</sup>. The Commissioner of Elections, therefore, has the arduous task of ensuring elections despite "notorious intrusions [that affect] electoral integrity"<sup>5</sup>. A major issue faced in the elections subsequent to the termination of the war was related to internally displaced people (IDPs)<sup>6</sup> as they did not often have relevant identification. A criticism once leveled against the Commissioner of Elections regarding the non-recognition of alternative identification for elections by IDPs has been rectified for the 2013 provincial council elections.

In sum, although the 18<sup>th</sup> Amendment gave rise to a loss of independence for the Elections Commission, the Election Commissioner continues his work relatively effectively. The Northern Provincial Council election is one example of how the Election Commissioner is able to work independently of the Government. The Election Commission often lacks resources but has the power to request and get further resources. The Commissioner's activities are predominantly transparent and he is accountable to the Parliament, to which he also submits the budget. In terms of campaign regulations and election administration, the Commissioner has consistently demanded compliance – but is often unable to enforce and therefore ensure compliance – from candidates but does not often resort to the courts if compliance is an issue. In terms of integrity, the Election Commissioner is held responsible to the courts for decisions taken. International and non-state observers also ensure that the integrity of the post is maintained.

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3 Ibid.

4 N.a. (2013) "Ruling and opposition parties in Sri Lanka disregard election laws" *The Tamil Guardian*. 21 July 2012. Available at <http://www.tamilguardian.com/article.asp?articleid=5325> (accessed 10 July 2013).

5 J. C. Weliamuna (2012) "Sri Lanka: understanding Sri Lankan version of elections". Available at <http://www.scoop.co.nz/stories/WO1207/S00539/sri-lanka-understanding-sri-lankan-version-of-elections.htm>. (accessed July 12th 2013).

6 <http://www.idpsrilanka.lk/>



## Structure

The Department of Elections “was created on October 1<sup>st</sup>1955, amalgamating the then existing two Departments of Parliamentary Elections and Local Body Elections.”<sup>7</sup> At the outset, this Department (henceforth referred to as the Commission), was only answerable to the Parliament (i.e. the Legislature) but due to subsequent amendments, the electoral system has come under the purview of the President.

As noted in the NIS-SL 2010 Assessment, in 2001 the 17<sup>th</sup> Amendment to the Constitution required that the President appoint an Elections Commission recommended by the Constitutional Council. The Elections Commission was not appointed “*and the incumbent Commissioner of Elections continued to function in the post until September 2010 when the Eighteenth Amendment to the Constitution was passed.*”<sup>8</sup> In 2009, the 18<sup>th</sup> Amendment reaffirmed the supremacy of the President to appoint the Additional/Deputy Commissioner of Elections<sup>9</sup>. It was only after this that a new Elections Commissioner was appointed in 2011. The Commissioner of Elections can exercise the powers granted to the Elections Commission.

Voters in Sri Lanka take part in five elections in Sri Lanka: the Presidential, Parliamentary General Election, Provincial Council Elections, Local Authority Elections, and Referendum. Only Sri Lankan citizens, over 18 years of age, without a criminal record during “the immediate proceeding seven years”<sup>10</sup> can cast their vote. According to newspaper articles, as of August 3<sup>rd</sup> 2011, any voter may check their name in the online electoral register but the actual webpage remained unattainable<sup>11</sup>. A criticism leveled against this website was that anyone with

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7 <http://www.slelections.gov.lk/> (accessed July 12 2013).

8 Ibid.

9 Ibid.

10 Ibid.

11 Note: the online electoral register had existed and complaints by ordinary citizens that those knowing an individual’s identity card number and birth date would have access to all personal information proves this. However, as noted in <http://www.newsfirst.lk/english/node/22043>, access to the online version was removed in 2013.

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information on an individual – their date of birth and national identification number – can gain access to another individual’s personal details. The website has since been removed.

There are two or three election offices in each of the nine provinces. In an election, after the voting ends, the counting of ballots – by public officials trained specially for the task - commences in the presence of ‘counting agents’ who consists of no more than two to “attend the counting of votes.”<sup>12</sup>The voting in the 2013 elections, according to the Elections Commissioner, was ‘by and large, free and fair’<sup>13</sup>.

### 6.1 CAPACITY

#### 6.1.1 Resources (practice): To what extent does the electoral management body (EMB) have adequate resources to achieve its goals in practice?

The NIS-SL 2010 Assessment spoke about the budget allowance for the Commissioner of Elections, of which, the amount spent is not contained in the annual report to the Parliament. According to the 2010 Assessment, the resource allocation is somewhat adequate. However, in the 2014 update, it is evident that the monetary resources are inadequate. For the North Western, Central and Northern provincial elections, the Elections Department received Rs. 1.5 billion but still required Rs. 20 million in excess to perform its duties<sup>14</sup>. The “staggered elections conducted during the past ten years [2005 – 2013] have cost as much as Rs. 7 billion of public funds”<sup>15</sup>

Human resources continue to be recruited from among the Sri Lanka Administrative Service (SLAS) officers, who are graduates, selected through an open competitive

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12 Government of Sri Lanka (2010) “Ceylon (Parliamentary Elections) Order in Council”

13 [www.adaderana.lk](http://www.adaderana.lk) (accessed 21<sup>st</sup> Sept 2013).

14 N.a. (2013) “Sri Lanka’s Elections Department seeks additional funds to hold provincial council polls” Available at

15 Transparency International (2013) “Staggered elections cost Rs. 7 billion” <http://www.tisrilanka.org/?p=10855>

examination<sup>16</sup>. Circulars on payments, provision of government vehicles, use of buses for polling duties etcetera, present information on the types of resources available for the Elections Department during the election period<sup>17</sup>. While these circulars give the Elections Department some resources, these circulars are inadequate as they do not penalize those determined to have misused state funds.

### **6.1.2 Independence (law): To what extent is the election management body independent by law?**

The checks and balances envisaged with the implementation of the Constitutional Council in the 17<sup>th</sup> Amendment were removed by the 18<sup>th</sup> Amendment. The Constitution<sup>18</sup> and Acts<sup>19</sup> seem to grant wide-ranging powers to the Elections Commissioner – including getting transportation for election staff, presenting codes of conduct for political parties, candidates, and observers – but these appear inadequate according to election observers<sup>20</sup>. The existence of laws has been mentioned in numerous reports<sup>21</sup> but issues arise in practice. This is because as one interviewee stated “We are not aware of such [a] body. If they exist they could operate impartially. There should be expanding of laws to facilitate the Independent Election Commission”<sup>22</sup>. The ‘we’ mentioned here by the interviewee, alludes to the Police.

The NIS-SL 2010 Assessment focused on the procedures, the powers and the obligations and duties of the Elections Commission and on the lack of independence

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16 [http://www.tisirilanka.org/pub/reports/PPPR\\_BOOK.pdf](http://www.tisirilanka.org/pub/reports/PPPR_BOOK.pdf)

17 <http://www.slelections.gov.lk/circulars.html>

18 *The Constitution* op cite. Artciles 103 and 104.

19 such as the Competent Authority (Powers and Functions ) Act No. 3 of 2007 provides

20 N.a. (2013) “Election observers call for overarching powers to Elections Commissioner” <http://www.eyesrilanka.com/2013/09/24/election-observers-call-for-overarching-powers-to-elections-commissioner/>

21 Note: Numerous books available at [http://www.tisirilanka.org/?page\\_id=6278](http://www.tisirilanka.org/?page_id=6278) and at The Global Integrity Report (2011) “Sri Lanka: integrity indicators scored”. Available at <http://report.globalintegrity.org/Sri%20Lanka/2007/scorecard/23/print>

22 Interview # 1 Retired Deputy Inspector General of Police, name withheld on request (June 2<sup>nd</sup> 2013).

of the elections as state resources were used to create an unfair environment during election campaigns. The assessment also highlighted the recruitment procedures and the role of the Constitutional Council.

### **6.1.3 Independence (practice): To what extent is the election management body independent in practice?**

The existence of laws has been mentioned in numerous reports and these along with the NIS-SL 2010 Assessment, comment on the fact that practice it is more difficult to implement.<sup>23</sup> It has been said that the Election Commission may have a bark with regard to the law but it does not really have a bite<sup>24</sup> because the Commission is unable to implement the established laws. Having worked with the Election Commissioner and observers, a former Deputy Inspector of Police noted that "It is not an independent body. This is a defective apparatus."<sup>25</sup> At the same time, he noted that to his knowledge, interference by the government has not occurred.<sup>26</sup>

The NIS-SL 2010 Assessment commented on the fact that at times Election Commissioner did not have the full cooperation of state institutions and those running for office. The period 2010 – 2014 saw an apparent increase in the disregard for the rule of (election) law. There have been abundant allegations of electoral violence<sup>27</sup> by numerous organizations<sup>28</sup> but the September 21<sup>st</sup> 2013 nation-wide

23 The Global Integrity Report (2011) "Sri Lanka: integrity indicators scored". Available at <http://report.globalintegrity.org/Sri%20Lanka/2007/scorecard/23/print>

24 Interview 3: Provincial Council Politician ((July 19<sup>th</sup> 2013)

25 Interview 1, Op Cite

26 Ibid.

27 See reports by PAFFREL available at <http://www.paffrel.com/post-ers/1309051109182013.09.04%20eve.pdf>, <http://www.paffrel.com/post-ers/1309061509232013.09.06%20eve.pdf>, and <http://www.paffrel.com/post-ers/1309071509342013.09.07.pdf> on Violations of Election Laws in the 2013 Provincial Council Elections.

28 Note: The very existence of some organizations targets the protection of election laws. These include the Campaign for Free and Fair Elections <http://www.caffesrilanka.org/>, Peoples' Action for Free and Fair Elections [http://www.paffrel.com/local\\_authorities\\_elections-2-8--LO.html](http://www.paffrel.com/local_authorities_elections-2-8--LO.html), Centre for Monitoring Election Violence <http://cmev.wordpress.com/>, Others, such as Transparency International Sri Lanka <http://www.tisrilanka.org/?cat=53>, Centre for Policy Alternatives <http://www.cpalanka.org/category/election-monitoring/>

provincial council election process was considered ‘impressive’<sup>29</sup> due to voter turnout. A few months prior to these elections, the first Northern provincial council elections elected Tamil National Alliance (TNA) member and former Chief Justice of the Supreme Court of Sri Lanka, C. V. Wigneswaran as Chief Minister for the Northern Province with an overwhelming majority<sup>30</sup>.

## 6.2 GOVERNANCE

### 6.2.1 Transparency (Law): To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the EMB?

Election results are made public as soon as they are made available through diverse media outlets. The NIS-SL 2010 Assessment focused on providing information on the disclosure of party financing and party Constitution, which can be accessed for a nominal fee. The assessment further notes that the Commissioner is required to publish, in the Government Gazette, the number of members for each electoral district soon after the election registration is finalized. The 2010 Assessment also highlighted the gap in the laws regarding control of electoral spending of candidates.

From 2011, information on voter registration was available through the Department of Elections website. This information was removed from the official website<sup>31</sup>. Information on the criteria to become an elected official and the number of members within the electoral district<sup>32</sup>, among others has been made available. The Constitution restricts access to information under specific criteria<sup>33</sup> and the Official Secrets Act and Prevention of Terrorism Act are some of the laws which

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29 CaFFFE (2013) “Provincial Council Elections Northern, Central and Northwestern Provinces September 21<sup>st</sup>, 2013: Final Report”. <http://www.caffesrilanka.org/more-4a-8610-2.html>

30 H. L. D. Mahindapala (2013) “Is Vignaswaran fit to be Chief Minister of Tamils?” *The Daily News*, Friday July 19, 2013.

31 See: <http://www.slelections.gov.lk/>

32 Government Gazette [http://archives.dailynews.lk/2001/pix/gov\\_gazette.html](http://archives.dailynews.lk/2001/pix/gov_gazette.html)

33 the Constitution, Article 15(2), 15(7), and 15(8), op. cite.

further control the right to information by the public. Yet, where disclosure is required for ethical and monitoring purposes, Sri Lanka does not have laws that allow public access to information. This in spite of the fact that “only Sri Lanka in South Asia has public funding [for] political parties”<sup>34</sup>. By not having a law for Freedom of Information the monitoring of election misconduct is also hindered. Moreover, the lack of legislature requiring disclosure on election spending by each party is a major concern because some candidates are spending exorbitant sums of money of their propaganda work. Likewise only four out of approximately 7,500 candidates have complied with election law and actually declared their assets and liabilities<sup>35</sup>. Moreover, W.P Sumanasiri, the Additional Commissioner for Elections, stressed the fact that the Elections Act does not cover election campaign costs<sup>36</sup>.

### 6.2.2 Transparency (Practice): To what extent are reports and decisions of the Election Commission made public?

The extent to which transparency has become a concern can be understood through these statements. A former DIG is of the opinion that “after any election” the Election Commission “should be evaluated” although this is not a legal requirement<sup>37</sup>. The Commissioner of Elections is often critical of the election process and in a statement reiterated that “In terms of the law ... I am empowered to issue directions from time to time to the media, to ensure balance reporting.”<sup>38</sup> The PAFFREL document *One-stop Election Guide Sri Lanka* focuses on a number of such corrupt practices<sup>39</sup>. In fact, notorious intrusions, including the fact that elected and unelected officials, partisan supporters, the media, the “Grama Sevaka

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34 Peter Ferdinand (2003) “Party Funding and Political Corruption in East Asia: the cases of Japan, South Korea and Taiwan” in Reginald Austin and MajaTjernstrom, eds. *Funding of Political Parties and Election Campaigns Handbook Series*. Stockholm: Information Unit International IDEA. p. 55

35 Nadia Fazlulhaq (2010) “Big spending makes mockery of campaign trail” in The Sunday Times Sunday March 14, 2010. Available at [http://www.sundaytimes.lk/100314/News/nws\\_10.html](http://www.sundaytimes.lk/100314/News/nws_10.html).

36 Ibid.

37 Interview # 1, Op Cite

38 Nihal Sri Ameresekere (2013) *Politics, Justice & the Rule of Law*. Bloomington, IN: Author House.

39 PAFFREL (2008) *One-stop Election Guide Sri Lanka*. Colombo: PAFFREL

Niladharies and Samurdhi officials can easily be used to change the electoral registration process ... [and] entire state assets can be released for the use of one political party through “undisclosed” directives.<sup>40</sup> Transparency International reiterated that there is “grave misuse of public property by candidates.”<sup>41</sup>

The NIS-SL 2010 Assessment provided insights into the mechanisms used to publicize information, thereby ensuring transparency: from electoral laws and processes to updates in a website, from providing a draft register of eligible actors to dates of elections are a few examples of just some of the information in connection with elections which is provided to the public. At all election counting centers, the candidate’s representative/agent is present.

### **6.2.3 Accountability (Law): To what extent are there provisions in place to ensure that the Election Commission has to report and be answerable for its actions?**

As described in the NIS-SL 2010 Assessment, the Commissioner of Elections is accountable to the Parliament, with Standing Orders which provide the rules of procedure<sup>42</sup>. Every single decision made by the Commissioner of Elections and any irregularities regarding any election can be challenged in court. The 17<sup>th</sup> Amendment stopped the appointment of the Commissioner of Elections by the President. The 18<sup>th</sup> Amendment, however, removed some of the key features of the 17<sup>th</sup> Amendment and “*provided for the President to appoint a person holding office as an Additional Commissioner of Elections or Deputy Commissioner of Elections to discharge the functions conferred on the Election Commission.*”<sup>43</sup> However, what is important to state is that the Election Commissioner appears to conduct his duties in accordance with the law.

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40 J. C. Weliamuna (2012) “Sri Lanka: understanding Sri Lankan version of elections – a new dimension.” Asian Human Rights Commission. Available at <http://www.humanrights.asia/news/forwarded-news/AHRC-FAT-024-2012> (accessed July 12th 2013).

41 Transparency International, Sri Lanka (2013) :Misuse of public property at Provincial Council elections 2013” <http://www.tisirilanka.org/?author=21&paged=2>

42 Government of Sri Lanka (1993) *Standing Orders of the Parliament of the Democratic Socialist Republic of Sri Lanka*. Available at [http://www.parliament.lk/files/pdf/standing\\_orders\\_english.pdf](http://www.parliament.lk/files/pdf/standing_orders_english.pdf)

43 <http://www.slelections.gov.lk/> op cite.

The Commissioner of Elections and the Department of Elections must, by law, examine all petitions or comments.<sup>44</sup> As noted by a former DIG, any such case should be made public, with reports and information on actions taken.<sup>45</sup> According to the findings of the NIS-SL 2010 Assessment, the Commissioner's accounts are audited every year in order to examine access to financial matters.

### **6.2.4 Accountability (Practice): To what extent does the Election Commission have to report and be answerable for its actions in practice?**

The Election Commissioner made clear in 2010 the difficulties faced in applying the election laws<sup>46</sup>. This aspect of the elections is described in detail in the NIS-SL 2010 Assessment. There have been 398 major incidents of election violence in 2010<sup>47</sup> yet a perusal of the internet and the newspapers between 2010 and 2013 April<sup>48</sup>, for example, does not provide any information on the progress in the investigation of these cases. As noted by another former DIG who was involved with election monitoring work, "people have the right to ask for information but the right to information is not applied."<sup>49</sup> This means that while there does not exist any laws relating to freedom of information, people do have a right to information. The claim that there is bias in the election process, with the governing party/parties abusing public property and privileges was presented in stark detail by Transparency International<sup>50</sup>.

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44 See: [http://www.slelections.gov.lk/commi\\_contact.html](http://www.slelections.gov.lk/commi_contact.html)

45 Interview # 1, Op Cite

46 Ameresekere, op. cite. p. 190 – 191.

47 <http://www.cpalanka.org/category/election-monitoring/>

48 Based on Primary research conducted between May 5th 2013 to August 15th 2013, on Sinhala, Tamil and English state and non-state Sunday newspapers from 2010 May to 2013 May at the Archives of Sri Lanka.

49 Interview 8: Former DIG currently working in a Government Department, name withheld on request (3<sup>rd</sup> Sept 2013).

50 Transparency International (2013) "Misuse of public property at Provincial Council elections 2013" <http://www.tisrilanka.org/?p=11401> (accessed August 22nd 2013).



### **6.2.5 Integrity (Law): To what extent are there mechanisms in place to ensure the integrity of the Elections Commission?**

While there is no code of ethics for election officials, the disciplinary procedure in the Establishment Code, Volume II is highly effective in Sri Lanka. This is a reiteration of what was discussed in the NIS-SL 2010 Assessment. According to one Senior Civil Servant, the Sri Lanka Administrative Service (SLAS) 'mafia' handles those officials who are proven to be corrupt<sup>51</sup>. However, Mr. Bradman Weerakoon, a retired Civil Servant, stated that "all our institutions have been corrupted by not being hard. Now people go with the flow."<sup>52</sup> The NIS-SL 2010 Assessment focused on the absence of an independent election commission. This is a requirement under the Constitution, but as the 2010 Assessment illustrates, the lack of an independent election commission, has stretched the resources of the Commissioner of Elections, especially in controlling the systemic abuse and widespread politicization.

## **6.3 ROLE**

### **6.3.1 Integrity (Practice) - To what extent is the integrity of the Election Commission ensured in practice?**

The 2010 assessment noted that in the absence of an independent Election Commission as required under the constitution, the Commissioner of Elections is stretched considerably to ensure that elections are conducted freely and fairly. He is ineffective in controlling the systematic and widespread abuse of the panoply of state resources in campaigning and influencing voters. As observed above, many of his directions to the media, or on the use of state resources, are not complied with. He has failed to seek the assistance of the courts to enforce his directives.

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51 Interview 9: Senior Civil Servant, currently working within a Ministry. Name withheld on request (3<sup>rd</sup> Sept 2013).

52 Interview 1<sup>^</sup>: Mr. Bradman Weerakoon, op cit.

**6.3.2. Election Administration (law and practice): Does the Election Commission effectively oversee and administer free and fair elections and ensure the integrity of the electoral process?**

The Commonwealth Observers in Sri Lanka for the 2013 Provincial Council elections – especially in the North – “commended the government for largely peaceful well administered election but expressed concern over the heavy military presence and involvement in the elections.”<sup>53</sup> At the same time, the misuse of state resources remains a key issue in which the Election Commission appears impotent to act<sup>54</sup>. The Commissioner of Elections was however able “to mix ballot boxes from different administrative divisions at the counting stage, to minimize the risk of tracing voting patterns at particular locations”<sup>55</sup> thereby indicating the freedom granted to the Commissioner by law to prevent corruption.

Meanwhile the 2010 Assessment focused on the positive side to the elections of which one factor to take into consideration was the fact that the Election Commissioner’s record was good. At the same time there were negative factors associated with the elections, such as the misuse of funds and the non-implementation of election regulations with regard to public posters and cut-outs, etc. The report also focused on electoral violations, including allegations, and commented on the IDP situation which left some unable to cast their vote. In the 2013 Provincial Council elections, the Campaign for Free and Fair Elections (CaFEE) were the election monitors and they commented favourably on the high voter turnout.

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53 The Colombo Page (2013) “Commonwealth observers impressed with Sri Lanka’s election process, concerned over military involvement”. Available at [http://www.colombopage.com/archive\\_13B/Sep23\\_1379945100CH.php](http://www.colombopage.com/archive_13B/Sep23_1379945100CH.php) (accessed 23rd Sept 2013).

54 Transparency International (2013) “Misuse of public property at Provincial Council elections 2013, op cite.

55 The Colombo Page (2013) “Commonwealth observers impressed with Sri Lanka’s election process, concerned over military involvement” op cite.

## Recommendations

1. The wide powers granted to the Commission during elections as contained in the 17th Amendment and removed in the 18th Amendment should be restored
2. Political parties should disclose their sources of funding. The audited statements of accounts that parties must submit to the Election Commission should disclose their sources of funding and the amounts spent on campaign financing.
3. President should not have the sole discretion in appointing the chairman of the Election Commission.
4. Elections should be conducted under a neutral caretaker government that will ensure that state resources are not misused and the state media are not partial to any particular party or candidate.
5. There must be a ceiling on campaign finance and this must be monitored by the Election Commission



## COMPLAINT MECHANISMS

*“156. (1) Parliament shall by law provide for the establishment of the office of the Parliamentary Commissioner for Administration (Ombudsman) charged with the duty of investigating and reporting upon complaints or allegations of the infringement of fundamental rights and other injustices by public officers and officers of public corporations, local authorities and other like institutions, in accordance with and subject to the provisions of such law.”<sup>1</sup>*

*“10. The functions of the Commission shall be – ... to inquire into, and investigate, complaints regarding procedures ...[and] infringement ... of fundamental rights ... to advise and assist the government ... to make recommendations ... [and] to promote awareness of, and provide education in relation to, human rights.”<sup>2</sup>*

### SUMMARY

The public has access to two complaint mechanisms in Sri Lanka: the Ombudsman (the statutory Ombudsman is named in the Constitution as the ‘Parliamentary Commissioner for Administration’) and the Human Rights Commission (HRC). These two comprise the ‘national human rights institutions’ and, as the above quotations

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1 *The Constitution*, article 156. Op cit.

2 Parliament of the Democratic Socialist Republic of Sri Lanka (1996) *Human Rights Commission of Sri Lanka Act*, No. 21 of 1996. Sri Jayawardaneputa: Parliament

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emphasize, both the Ombudsman and the HRC examine infringements of human rights. The Ombudsman has also been granted the power to examine corruption. Indeed, “the Ombudsman is a mechanism which enhances transparency in government and democratic accountability, with the result that it assists in building good governance in a state.”<sup>3</sup> Reif sums up the significance of the Ombudsman by emphasizing that it is there “to supervise the administrative activities of the executive branch. The Ombudsman receives and investigates complaints impartially from the public, concerning the conduct of the government administration.”<sup>4</sup> In Sri Lanka the Ombudsman can be divided into the public appointed Ombudsman and the privately appointed Ombudsman .

The Human Rights Commission or the HRC was established by Act 21 of 1996, to protect human rights. Indeed, as a member of the United Nations and as a signatory of numerous human rights conventions, the HRC in Sri Lanka was to “perform the duties and obligations imposed on Sri Lanka by various international treaties ... and to maintain the standards set under the Paris Principles in 1996”<sup>5</sup>. The HRC in Sri Lanka was given a Grade A Level because the Act was sound and its Commission members were independent. However, its downgrading from Status A to Status B<sup>6</sup> means that from 2007 onwards, Sri Lanka had not fully complied with the Paris Principles and therefore lacked a “consistent relationship with civil society”<sup>7</sup>. It has been accused of not being independent. These concerns were reiterated by Navi Pillay, the High Commissioner for Human Rights, who said “the 18<sup>th</sup> amendment to the Constitution has been a watershed ... as it abolished the Constitutional Council which once recommended appointments to the independent ... Human

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3 Linda C. Reif (2004) *The Ombudsman, Good Governance and International Human Rights System*. Leiden: MartinusNijhoff Publishers. p. 2

4 Ibid.

5 [http://hrcls.lk/english/?page\\_id=615](http://hrcls.lk/english/?page_id=615) accessed 30<sup>th</sup> August 2013).

6 TIC Statement (2007) “Sri Lanka National Human Rights Commission Downgraded for Failure in Human Rights Responsibilities” available at <http://www.humanrights.asia/news/forward-ed-news/FS-049-2007>

7 N.a. (2013) “APF provides support to Sri Lanka HRC” at <http://www.asiapacificforum.net/news/apf-takes-steps-to-support-sri-lanka-hrc.html> (accessed at 13<sup>th</sup> Sept 2013).

Rights Commission, and has weakened these important checks and balances on the power of the Executive”<sup>8</sup>.

However, it is important to emphasize that the HRC was created in 1996 to establish a permanent body. Previous committees included the Special Task Force on Human Rights (HRTF) and the Commission for Eliminating Discrimination & Monitoring of Human Rights (CEDMHR). Other ad hoc commissions included the Presidential Commission of Inquiry into Involuntary Removal of Persons and into the incidents alleged to have occurred on the Palampiddi-Iranai-Iluppai-kulum-Vavuniya Road, and the Kokkadicholai Commission.

The NIS-SL 2010 Assessment commented on the fact that these two institutions remain ineffective and without the ability to exercise their functions due to lack of resources and limited credibility.

In sum, the HRC and the Ombudsman as well as the numerous ad hoc commissions that are in place as complaint mechanisms provide avenues for citizens to complain on sensitive or taxing matters. The independence of these complaint mechanisms is consistently questioned and the accountability – other than to the Parliament which apparently accepts the annual reports but does not debate them – are concerns that must be highlighted. The transparency of the HRC and Ombudsman are different as the Ombudsman’s reports are confidential while the HRC reports do not present detailed case information. However, the lack of independence, the limited resources, the transparency and accountability concerns have resulted in questioning by the people of the integrity of these complaint mechanisms<sup>9</sup>. In spite of such concerns, people still lodge complaints and the staff continues to investigate them.

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8 Navi Pillay (2013) “Oral Update of the High Commissioner for Human Rights: Sri Lanka to face an international inquiry” available at <http://www.theindependent.lk/news2/1466-oral-update-of-the-high-commissioner-for-human-rights-sri-lanka-to-face-an-international-inquiry> (accessed 26th Sept 2013).

9 Interview # 3 Journalist in a Sinhala medium newspaper, name withheld on request (August 14<sup>th</sup> 2013) and Based on Primary research conducted between May 5th 2013 to August 15th 2013, on Sinhala, Tamil and English state and non-state Sunday newspapers from 2010 May to 2013 May at the Archives of Sri Lanka.

## THE STRUCTURE

The HRC is divided into four divisions: Inquiry and Investigations division, Monitoring and Review division, Education and Special Programmes division, and Administrative and Finance division<sup>10</sup>. With ten regional offices, it has since 2010 conducted one major inquiry into the clash between the Free Trade Zone employees and the Police, in which one individual died, one analysis of long-term detainees, and numerous reports on torture and other human rights violations. As of January 2012, the permanent staff of the Commission became eligible for a pension scheme. The four member Commission and the Chairman were appointed in February 2011 and the commission itself continues to function effectively in 2014, which is a major change from 2010, when the Commission was not functioning<sup>11</sup>.

Created by the Constitution, the Ombudsman is an “agent or representative of the people or group of people”<sup>12</sup> with the power to investigate, criticize, and recommend and thus act to “provide an informal mode of granting relief to persons affected by such violations.”<sup>13</sup> There is an Ombudsman scheme with the Parliamentary Ombudsman at the zenith. This Ombudsman came into being with Article 156 of the 1978 Constitution and subsequent Parliamentary Commissioner for Administration Act no. 17 of 1981 and the Amendment Act no. 26 of 1994. The Gazette notification 1659/25 of June 24<sup>th</sup> 2010 saw the appointment of a new Ombudsman. As noted by Weerasooria, the Ombudsman’s powers are limited as the Ombudsman cannot investigate the armed forces or police, public officers’ work-related issues and the activities of both the “Auditor General and the Commissioner of Elections”<sup>14</sup>. The Financial, the Insurance, and the Tax Ombudsman came into

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10 Sri Lanka Human Rights Commission (2012) *Annual Report of the Human Rights Commission 2012*. Colombo: Human Rights Commission of Sri Lanka.

11 See Annual Report 2010, [http://hrcls.lk/PFF/annual\\_report\\_2010/english.pdf](http://hrcls.lk/PFF/annual_report_2010/english.pdf)

12 Victor O Ayeni (2000) *The Ombudsman Around the World: essential elements, evolution and contemporary issues*, cited in Maria Canineu (200?) “The Role of Ombuds Agencies in Police Accountability in the Commonwealth” available at [http://www.humanrightsinitiative.org/programs/aj/police/res\\_mat/ombuds\\_agencies\\_in\\_cw.pdf](http://www.humanrightsinitiative.org/programs/aj/police/res_mat/ombuds_agencies_in_cw.pdf)

13 M. C. M. Iqbal ()

14 WickramaWeerasooria (2009) “Sri Lanka’s Ombudsman Schemes” *SLQS Journal* September 2009. Available at <http://www.slqs-uae.org/SLQS-Journal/Pg%2073-77.pdf>



existence in 2003, 2005, and 2005 respectively. Moreover, Weerasooria adds that the Press Complaints Commission of Sri Lanka that was established in October 2003 “is another Ombudsman Scheme.”<sup>15</sup> According to newspaper reports, there were 1,384 petitions received by the Ombudsman in 2011 but that “Ombudsman has no power to directly compel public officials to follow his/her [i.e. the Ombudsman’s] recommendations”<sup>16</sup>

## 7.1 CAPACITY

### 7.1.1 Resources (practice): to what extent do the complaints mechanisms (i.e. Ombudsman and the HRC) have adequate resources to achieve their goals in practice?

The NIS-SL 2010 Assessment argued that there is a lack of human, financial, and infrastructural resources, especially in the regional offices. Indeed, it is apparent even in 2014 that the HRC lacks resources both in terms of monetary and human resources. According to an interview conducted with a senior Human Rights Investigator, while “other HRC’s need to have qualifications in a legal background and human rights”, the HRC in Sri Lanka does not have a proper employment scheme and the commission has hired untrained individuals, who then have to learn on the job.<sup>17</sup> Hence the reason the capacity of those employed was at times questionable. He added that the money from the treasury is never enough hand that “in the past, there had been donors”, but since the HRC had been downgraded from Grade A to Grade B after the implementation of the 18<sup>th</sup> Amendment<sup>18</sup>, the donors have also reduced.

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15 WickramaWeerasooria (2011) “Self Regulation in the Media, some thoughts from experience” *The Sunday Island*, September 29<sup>th</sup> 2011. Available at [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=34332](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=34332). (accessed 20<sup>th</sup> August 2013).

16 B. Skanthakumar (2012) “Embedded in the State: the Human Rights Commission of Sri Lanka” p. 28. Available at <http://www.lawandsocietytrust.org/PDF/2012%20ANNI%20Report%20on%20Sri%20Lanka%20Embedded%20in%20the%20State%2023%20July%202012.pdf>

17 Interview # 11 Senior Investigator attached to the Human Rights Commission. Name withheld on request. (September 20 2013 and January 10, 2014).

18 Ibid.

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According to this informant, in 2013, the HRC worked only with one or two donor agencies<sup>19</sup>. Due to the lack of funds, the allocation of funds to the ten branches is less, making things more problematic. The HRC cannot increase its presence outside of the ten existing branches, although there is a great demand for it. There are, however, a number of mobile offices and a 24 hour hotline.

Although the Ombudsman falls under the purview of the President, "Paucity of funds is a real challenge to the Ombudsman's independence. In Sri Lanka ... lack of resources has been a big constraint over independence of Ombudsman."<sup>20</sup> The Ombudsman lacks trained human resources to make his/her presence felt. A number of lawyers had commented that people were not aware of the work of the Ombudsman and the legal profession is critical of its inaction<sup>21</sup>. Furthermore, according to the NIS-SL 2010 Assessment, in Sri Lanka, the lack of funding has resulted in continued vacancies, including that of the Deputy Ombudsman.<sup>22</sup>

### **7.1.2 Independence (law): to what extent are the complaints mechanisms (i.e. Ombudsman and HRC) independent by law?**

As presented in the NIS-SL 2010 Assessment, the HRC is a statutory institution created by an Act of Parliament (1996), with the power to hire its own staff after issuing an open advertisement and competitive interview. The HRC also gets recruits seconded from different government and semi-government institutions. The NIS-SL 2010 Assessment further notes how the salaries are not tied to any department. The Ombudsman, was created through the Constitution of 1978. These aspects have not changed in the subsequent three years. The only proposed change is the call for proposals from civil society to change/strengthen the mandate of the HRC.

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19 Ibid.

20 Mohammad Waseem (2010) "Independence of Ombudsman ". p. 22. Available at [http://asianOmbudsman.com/ORC/RETAstudies/Copy%20of%20Prof.%20Waseem%20Final%20draft\\_For%20Printing\\_.pdf](http://asianOmbudsman.com/ORC/RETAstudies/Copy%20of%20Prof.%20Waseem%20Final%20draft_For%20Printing_.pdf)

21 The lawyers included Interview 3, 10, and 11.

22 Transparency International (2010) *National Integrity System Assessment Sri Lanka 2010*. Available at [http://www.tisrilanka.org/pub/reports/NIS\\_SL\\_2010.pdf](http://www.tisrilanka.org/pub/reports/NIS_SL_2010.pdf)

Based on this the HRC in December 2013, submitted proposals to the President to amend the Human Rights Commission Act, No 21 of 1996<sup>23</sup>. This matter has not yet been taken up.

The 18<sup>th</sup> Amendment, according to the International Bar Association's Human Rights Institute (IBAHRI), removed safeguards that ensured the independence of schedules 1 and 2 of Article 41A of the Constitution, which required the President to appoint officers to the Commissions on the advice of the Parliamentary council consisting of the Prime Minister, the Speaker, the Leader of the Opposition and two Minister of Parliament, who were nominees of the Prime Minister and of the opposition.<sup>24</sup> Thus, there were legal restrictions on the independence of the complaint mechanisms. However, as noted by the External Reviewer of this Pillar, it is important to recall that the staff and salaries of the HRC are protected by law. The Ombudsman's role has not changed significantly since 2010 other than becoming a member of the International Ombudsman Institute.

### **7.1.3 Independence (practice): to what extent are the complaints mechanisms (i.e. Ombudsman and HRC) independent in practice?**

According to the HRC Investigator, the HRC is not an independent institution<sup>25</sup> and this view was also presented in the NIS-SL 2010 Assessment. This is clearly evident when one examines the reaction to an alleged dispute between the Chairman and the Commissioner. It was reported that President Mahinda Rajapaksa had issued "a warning to HRC Chairman Perera, through Punchihewa, that the Commission should not do anything that would embarrass the Government or the Rajapaksa administration."<sup>26</sup> This is why, noted the NIS-SL 2010 Assessment, the country's HRC was downgraded from Grade A to B by the International Coordinating Committee

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23 See <http://hrcls.lk/english/?p=2234>

24 The Constitution, p. 31. Op cit.

25 Ibid.

26 Colombo Telegraph (2013) Ibid. Note that A more critical and, in some sense, scathing analysis of the independence of the HRC was conducted by Skanthajunar, titled "Embedded in the Sri Lanka: the Human Rights Commission of Sri Lanka" in 2012.

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(ICC) in 2007. The financial dependency and the commission's unwillingness to use the gamut of its power to confront the state on sensitive issues were also cited as a cause in the NIS-SL 2010 Assessment.

The 2010 Assessment discussed the ability to lodge complaints to the Ombudsman without fear, mainly due to the less-controversial nature of the complaints. As of 2013, Mr. L. A. T. Ekanayake was the incumbent Ombudsman. The Ombudsman institute took part in the 10<sup>th</sup> World Conference of the International Ombudsman Institute (IOI) as a voting member, the first time since rejoining the IOI in 2011. The IOI specifically states that it strives to protect the Ombudsman role and core values of "independence, objectivity and fairness"<sup>27</sup>. At the same time, the NIS-SL 2010 Assessment highlights the fact that the Ombudsman is not considered independent, neither by law nor in practice.

It should be noted that the general public is not aware of the purpose of the Ombudsman<sup>28</sup>.

## 7.2 GOVERNANCE

### 7.2.1 Transparency (Law): to what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the complain mechanisms (HRC and the Ombudsman)?

The Ombudsman's decision-making processes remain shrouded in secrecy and this aspect underscored the discussion on the complaint mechanisms in the NIS-SL 2010 Assessment. While the Ombudsman's Annual Reports continue to be submitted to the Parliament, its contents are not accessible to the general public.

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27 IOI (2012) "By-Laws" Available at <http://www.theioi.org/the-i-o-i> (accessed on 12th August 2013).

28 Interview # 3: Senior Legal Officer op cit.

In the case of the Human Rights Commission, periodical reports are submitted to the United Nations Human Rights Council (OHCHR)<sup>29</sup> and the Annual Report can be viewed online.<sup>30</sup> The first periodic review on Sri Lanka occurred in 2008 and the second periodic review was concluded in 2012 and thereafter the report was submitted. The independence and transparency of the HRC was such that the United Nations General Assembly requested Sri Lanka to “Take all steps to strengthen and ensure the independence of the National Human Rights Commission (Germany) ... Adopt necessary legal measures to ensure that the National Human Rights Commission of Sri Lanka is in line with Paris Principles (Mexico)”<sup>31</sup>

## 7.2.2 Transparency (practice): to what extent is there transparency in the activities and decision-making processes of the complaint mechanisms (HRC and the Ombudsman)?

Sri Lankans with knowledge of any of the three languages and access to the internet can gain insights into annual reports, information on projects, newsflashes, and even application forms<sup>32</sup>. The current link with civil society includes the ‘Registration of Civil Society’ whereby the HRC attempts to develop a rapport with the people<sup>33</sup>. The website also provides information on all domestic instruments and institutions under numerous categories<sup>34</sup>. Some of the information can be obtained for research purposes through the section on education<sup>35</sup>, however information on the Ombudsman is lacking. Existing reports – especially after the Weliweriya

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29 <http://www.ohchr.org/EN/HRBodies/UPR/Pages/LKSession14.aspx> (accessed 19th August 2013).

30 The Human Rights Commission (2011) *The Human Rights Commission of Sri Lanka: Annual Report 2011*. Colombo: Human Rights Commission. Available at [http://hrcls.lk/PFF/annual\\_report\\_2011/english.pdf](http://hrcls.lk/PFF/annual_report_2011/english.pdf)

31 Human Rights Council (2012) “Report of the Working Group on the Universal Periodic Review: Sri Lanka” General Assembly A1/HRC/22/16, p. 16. <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/188/71/PDF/G1218871.pdf?OpenElement>

32 See [http://hrcls.lk/english/?page\\_id=769](http://hrcls.lk/english/?page_id=769)

33 See [http://hrcls.lk/english/?page\\_id=488](http://hrcls.lk/english/?page_id=488)

34 See [http://hrcls.lk/english/?page\\_id=241](http://hrcls.lk/english/?page_id=241)

35 Interview # 11, Op cit.

incident – highlights the fact that “there were no ombudsmen to handle prisoner complaints.”<sup>36</sup>

At the same time, the concern of the NIS-SL 2010 Assessment was the lack of exact details rather than ‘exaggerated’ ones which did not illuminate the real problems surrounding human rights in Sri Lanka. The resultant strained relations between the HRC and the civil society is another aspect of concern commented in the 2010 Assessment.

The period circuit hearings undertaken by the Ombudsman was the focus of the 2010 Assessment.

**7.2.3. Accountability (law): to what extent are there provisions in place to ensure that the complaint mechanisms (HRC and the Ombudsman) have to report and be answerable for its actions?**

The reporting method and the drawbacks discussed in the NIS-SL 2010 Assessment remain unchanged<sup>37</sup>. Both these complaint mechanisms are answerable to the Parliament. But as noted in the 2010 Assessment, there is no legal obligation for Parliament to debate these reports. An interview with a senior HR investigator highlighted the frustration felt by the people; “The people [have] lost faith. They hardly come to courts. The commissioner [was requested]... to design a mechanism to enforce the recommendations by changing the act.”<sup>38</sup>

It is important to emphasize that the original laws that enacted the HRC and the Ombudsman were sound. It is only after the 18<sup>th</sup> Amendment and in practice that accountability issues have emerged.

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36 US Department of State (2013) “Country Report on Human Rights Practices 2012 – Sri Lanka” available at [http://www.ecoi.net/local\\_link/245047/354971\\_en.html](http://www.ecoi.net/local_link/245047/354971_en.html) (accessed 7th October 2013).

37 National Integrity System Report Op cit.

38 Interview # 11, Op cit.

#### **7.2.4 Accountability (practice): to what extent do the complaint mechanisms (HRC and the Ombudsman) have to report and be answerable for its actions in practice?**

The Sri Lankan government submitted the 2012 periodic review report which comments on the progress made during the year under review.<sup>39</sup> According to Interviewer 11, "Recommendations have not been implemented [because there is] no mechanism to implement [them]. None of the 4000 cases sent to the Parliament Committee for discussion have been sent back for implementation"<sup>40</sup>. The NIS-SL 2010 Assessment focused on the lack of interest in the reports submitted to the Parliament. There is also a clear lack of debate which is confirmed through a perusal of the Hansard reports<sup>41</sup>.

Information on the activities of the Ombudsman is not accessible to the public. Under law, the Ombudsman is accountable only to the Parliament.

#### **7.2.5 Integrity mechanisms (law): to what extent are there provisions in place to ensure the integrity of the complain mechanisms (HRC and the Ombudsman)?**

The lack of a Code of Conduct was an issue commented on by Interviewer 11.<sup>42</sup> The HRC Act of 1996 does provide requirements for all Commission members, from the Chairman to the officers<sup>43</sup>. Administrative staff members of both complaint mechanisms discussed here are bound by the Establishment Code, which can be accessed in all three languages online<sup>44</sup>. But the Establishment Code does not amount to a HRC and Ombudsman code of conduct. This lack of a code was the

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39 United Nations General Assembly (2012) "National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: Sri Lanka" A/HRC/WG.6/14/LKA/1. Available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/158/92/PDF/G1215892.pdf?OpenElement>

40 Ibid.

41 Based on Primary research on the Hansard conducted between May 5th 2013 to August 15th 2013, from 2010 May to 2013 May at the Archives of Sri Lanka.

42 Interview 11, Op cit

43 *Human Rights Commission of Sri Lanka Act*, op cit.

44 [http://www.pubad.gov.lk/web/index.php?option=com\\_content&view=article&id=184&Itemid=279&lang=en](http://www.pubad.gov.lk/web/index.php?option=com_content&view=article&id=184&Itemid=279&lang=en)

main focus of the NIS-SL 2010 Assessment. It moreover discussed the fact that the Ombudsman was bound by secrecy but confidentiality in the HRC is not a guarantee. The non-existence of whistleblower protection is another concern.

### **7.2.6. Integrity mechanisms (practice): to what extent is the integrity of the complain mechanisms (HRC and the Ombudsman) ensured in practice?**

As noted by the senior investigator, the people have lost faith in these commissions and institutions<sup>45</sup>. This is reiterated by the fact the only 8.1% of youth interviewed for the youth survey Sri Lanka had trust in the bureaucracy<sup>46</sup>. To overcome the challenges faced by the HRC staff members, the Commonwealth and other organizations have conducted a number of training programs. This is vital as the NIS-SL 2010 Assessment noted a lack of moral commitment to human rights by the HRC officers and staff. This is not, according to the 2010 Assessment, an allegation leveled against the Ombudsman.

## **7.3 ROLE**

### **7.3.1 Investigation (law and practice): to what extent are the complaint mechanisms (HRC and the Ombudsman) active and effective in dealing with complaints from the public?**

The 1996 HRC Act does stipulate that the members and officers of the Commission are “deemed to be public servants within the meaning of the Penal Code and every inquiry or investigation conducted under this Act, shall be deemed to be a judicial proceeding within the meaning of that Code.”<sup>47</sup> The overall powers that are available to the HRC and its inability/unwillingness to use these powers was presented as a weakness by the NIS-SL 2010 Assessment.

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45 Ibid.

46 Laksiri Fernando, cited in Anton Piyarathane (2011) “Human and Minority Rights in Sri Lanka” Rainer Hofmann and Ugo Caruso, eds. *Minority Rights in South Asia*. Frankfurt: Peter Lang GmbH.

47 Parliament of the Democratic Socialist Republic of Sri Lanka (1996) *Human Rights Commission of Sri Lanka Act, No. 21 of 1996*. Also available at <http://hrcls.lk/english/ACT/english.pdf>



The HRC had received 9901 complaints for 2010<sup>48</sup> and 1295 complaints in the first four months of 2011<sup>49</sup>. The HRC held a conference on child protection and carried out discussions with police authorities on human rights issues in 2011. In 2012, the HRC assisted students in the 'Z-Score controversy'<sup>50</sup>. In August 2013, the HRC introduced a hotline for the benefit of the public. In October of 2013 the HRC introduced a modality for collecting information on institutionalized children<sup>51</sup>. Each HRC case is handled by an investigator and progress is constantly reported to the complainant<sup>52</sup>. The Annual Report provides more statistical insights into the progress<sup>53</sup>. The researcher observed that the investigative officers have inquiries and are dedicated to their tasks but media speculation on high profile cases has brought the good offices to disrepute.

The Ombudsman remained low-key in its dealings, mainly because its reporting was not made public.

It is vital to discuss here the ad hoc complaint mechanisms in place since the 2009 termination of war. The help desks and women's desks set up at IDP camps<sup>54</sup> as well as the LLRC and the Commission to Probe Disappearances are a few such examples.

**7.3.2. Promoting good practice (law and practice): to what extent are the complaint mechanisms (HRC and the Ombudsman) active and effective in raising awareness within the government and the public about standards of ethical behavior?**

The HRC conducts numerous awareness programs and its website provides information on the different reporting formats. A hotline was established as of August 2013 to "inform of any urgent complaints to the Human Rights Commission

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48 See <http://hrcls.lk/english/?p=1543>

49 See <http://hrcls.lk/english/?p=1643>

50 See <http://hrcls.lk/english/?p=2021>

51 See <http://hrcls.lk/english/?p=2185>

52 Interview II, op cit.

53 The Annual Report op cit [http://hrcls.lk/PFF/annual\\_report\\_2011/english.pdf](http://hrcls.lk/PFF/annual_report_2011/english.pdf)

54 Interview # 13, op cit.

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of Sri Lanka<sup>55</sup>. At the 'DayataKriula' national development exhibition, the HRC had a stall to raise awareness about human rights<sup>56</sup> and conducted a training program for journalists<sup>57</sup>. It had also issued directives on the implementation of the language policy<sup>58</sup>. Mobile offices exist in Kilinochchi and Nuwara Eliya and there is a plan to open "other mobile offices in Mullativu, Kurunegala, Hambantota, Monaragala, and Rathnapura Districts. These Mobile Officers operate with support from UNDP&UNHCR under the UN Programme for Human Rights."<sup>59</sup> The HRC also held awareness programs on International Human Rights Day and International Day for the Elimination of Violence against Women, among others.

The importance of the circuit in provinces in promoting the Ombudsman and the multifaceted programs organized by the HRC were the topics of discussion in the NIS-SL 2010 Assessment. At the same time in 2014, the "lack of publicity, reluctance to publicize reports and absence of public debate on human rights and administrative abuse of power"<sup>60</sup> hamper the promotion of the work undertaken by the Ombudsman and HRC.

### Recommendations

1. Adequate Human, infrastructural and financial resources should be supplied to the bodies that handle public complaints for it to function effectively.
2. Appointments to be HRC and Ombudsman office should be made based on merit and integrity.
3. Should adopt necessary legal measures to ensure that the National Human Rights Commission is in line with Paris principles.

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55 See <http://hrcls.lk/english/?p=2165>

56 See <http://hrcls.lk/english/?p=1926>

57 See <http://hrcls.lk/english/?p=2052>

58 See <http://hrcls.lk/english/?p=2231>

59 See <http://hrcls.lk/english/?p=2195>

60 National Integrity System Assessment Transparency International (2010) Op cit.

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4. Information on the actions of the ombudsman should be accessible to the public.
5. The HRC must use its powers to its full potential, and not turn a blind eye on human rights abuses if state institutions are involved.



## THE AUDITOR GENERAL

*158 There shall be an Auditor General who shall be appointed by the President with the recommendation of the Constitutional Council and who shall hold office during good behavior. He can be removed from office by the President only on the grounds of ill health or infirmity or upon an address of Parliament<sup>1</sup>.*

*41A. (1) ... the persons to be appointed to the offices referred to in Part I and Part II of Schedule II ... shall be appointed ... by the President. In making such appointments, the President shall seek the observations of a Parliamentary Council.”<sup>2</sup>*

### SUMMARY

The Auditor General is a constitutional office with the mandate to audit the accounts of all public institutions including local authorities<sup>3</sup>. The NIS-SL 2010 Assessment on this Pillar provided a comparison on the ideal situation and its practical application. While the ideal situation would be to assist the Parliament to scrutinize the performance of all public enterprises, the reality is that the office functions with the Executive in control of many aspects of the operation. Thus, the Auditor General’s

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1 *The Constitution, op cit.*

2 *The 18<sup>th</sup> Amendment op cit.*

3 *The Constitution, op cit.*

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role, though “anchored in the Constitution”<sup>4</sup> is hampered in gaining required resources, its independence, transparency and accountability dependent upon the power of the Executive. Despite lacking a code of conduct, the existence of the Establishment Code and mandatory Efficiency Bar examination is mentioned as positive aspects of the integrity of the Auditor General’s department. However, the 2010 Assessment notes that there is little impact by the Auditor General as he does not use his powers to its full potential.

The Auditor General “decides on the scope of the audit”<sup>5</sup> and subsequent to the audit, the Auditor General can impose surcharges only on Local Authorities and Universities but not on “Ministries, Departments, Public Enterprises or any other public institution”<sup>6</sup>. The reports submitted to the Parliament, which are “considered [by] the Committee on Public Accounts and the Committee on Public Enterprises”<sup>7</sup>, do not however result in action and this, according to Ameresekera, defies “all norms of democratic governance”<sup>8</sup>

In sum, the Auditor General is an integral part of a country and in Sri Lanka, the Auditor General continues to be hampered in discharging his/her duties due to a lack of independence in practice. In the three year period since the NIS-SL 2010 Assessment, the Auditor General’s department was granted funds to develop resources and its staff has undergone training and their abilities are in accordance with international standards. The Auditor General is accountable to the Parliament and his report, which is submitted to the Parliament, is subsequently made available – though in limited numbers – to the public.

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4 *National Integrity System Assessment 2010*, op cit.

5 See “Scope of Audit” available at [http://www.auditorgeneral.gov.lk/web/index.php?option=com\\_content&view=article&id=106&Itemid=87&lang=en](http://www.auditorgeneral.gov.lk/web/index.php?option=com_content&view=article&id=106&Itemid=87&lang=en)

6 Ibid.

7 Ashwin Hemmathagama (2013) “Salary of Auditor General under fire in the House” available at <http://www.ft.lk/2013/07/12/salary-of-auditor-general-under-fire-in-the-house/> (accessed September 22<sup>nd</sup> 2013).

8 Ameresekera 2012 op cit. p.489

## STRUCTURE

The Auditor General's Department commenced in 1799 and therefore has a 213 year tradition<sup>9</sup>. The website of the Auditor General's department provides detailed information and a clear graph of its structure. There are four levels in the hierarchical structure of the Department. At the top is the Auditor General, who is the main decision-maker. The second tier in the hierarchy involves the other decision-makers: the 7 Deputy Generals and 14 Assistant Auditors. The third tier involves the Audit Managers, consisting of 218 Superintendents of Audit. The lowest level, Audit Execution employs 1200 Audit Examiners<sup>10</sup>. The Auditor General "is on par with a Secretary to a Ministry"<sup>11</sup> and, along with the 21 main divisions headed by either a Deputy or an Assistant Auditor Generals, represent the decision-makers within the department. The Superintendents of Audit constitute the Audit Management while the Audit Examiners go out to the field to conduct audits of accounts. Of the 21 main divisions, "nine of them are functioning at Regional levels, namely in the Western, Southern, Uva, Sabaragamuwa, Northern, Eastern, North Central, North Western and Central Regional Offices."<sup>12</sup> In 2007 the staff total was 1,156 according to the NIS-SL 2010 Assessment.

## ASSESSMENT

### 8.1 CAPACITY

#### 8.1.1 Resources (practice): to what extent does the Auditor General have adequate resources to achieve its goals in practice?

The NIS-SL 2010 Assessment noted the lack of funds and focused on the shortcomings of staff within the department, including the inability to train them.

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9 Auditor General's Department (2013) *2012 The Annual Report of the Auditor General*. <http://www.auditorgeneral.gov.lk/web/upload/Annual%20Report%20-%202011%20part%201%20final%20English.pdf>

10 See "Administration of the Auditor General's Department Organizational Structure" available at [http://www.auditorgeneral.gov.lk/web/index.php?option=com\\_content&view=article&id=110&Itemid=76&lang=en](http://www.auditorgeneral.gov.lk/web/index.php?option=com_content&view=article&id=110&Itemid=76&lang=en) (accessed September 22<sup>nd</sup> 2013).

11 Ibid.

12 Ibid.

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A number of positive changes had occurred in the three years since the report, although certain issues, such as the allocation of funds, remain a critical concern.

The Auditor General has to work with the President's office, the Public Service Commission and the Salaries and Cadre Commission for the administration of the department. According to news reports, Sri Lanka has the "lowest paid Auditor General in the world"<sup>13</sup> Despite the apparent lack of monetary resources for salaries; the department was granted resources to train staff to create "an awareness of the International Financial Reporting Standards"<sup>14</sup> and a revision on reporting patterns was implemented<sup>15</sup>. The auditors investigated 229 institutions in 2011<sup>16</sup>.

The Auditor General's Department was granted US\$ 12.05 Million in 2010 for capacity building<sup>17</sup>. The problem of staff promotions was resolved in 2011 with the introduction of a new Special Grade<sup>18</sup>. As noted in a World Bank report, Sri Lanka's "government accountants are required to hold a university degree in accounting or its equivalent. Further training is also provided"<sup>19</sup> The Constitution also grants the Auditor General with the power to employ auditors outside of the department<sup>20</sup>.

The department itself was relocated from its Independence Square headquarters to a new five-story building at Battaramulla in 2012. The physical resources of the department increased through the construction of three offices in the Mannar,

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13 Zacki Jabbar (2013) "Sri Lanka has the world's lowest paid Auditor Generals – Eran" *The Island*, Tuesday October 8<sup>th</sup> 2013, Online.

14 Auditor General's Department (2012) *Annual Report of the Auditor General 2011*. Available at <http://www.auditorgeneral.gov.lk/web/upload/Annual%20Report%20-%202011%20part%201%20final%20English.pdf>

15 Ibid.

16 Ibid.

17 Parliament of Sri Lanka (2011) *Annual Report of the Auditor General*. Kotte: Auditor General's Department. <http://www.auditorgeneral.gov.lk/web/upload/Annual%20Report%20-%202011%20part%201%20final%20English.pdf>

18 *2012 The Annual Report of the Auditor General, op cit.*

19 World Bank (2007) *Sri Lanka: public sector accounting and auditing: a comparison to international standards*. Colombo: The World Bank South Asia Region Financial Management Unit and the Government of Sri Lanka.

20 *2011 The Annual Report of the Auditor General, op cit.*



Mullaitivu and Kilinochchi districts<sup>21</sup>. The 2012 Annual Report outlined a corporate plan for the years 2012 to 2015 and the intention of devising a corporate plan for the years 2013 to 2016<sup>22</sup>.

### **8.1.2 Independence (law): to what extent is there formal operational independence of the audit institution?**

When discussing the independence of the Auditor General, the NIS-SL 2010 Assessment noted the lack of an Audit Act but focused on the Constitutionality of the office. While the legal background remains the same in 2014, a number of facts must be highlighted.

The Auditor General's independence is guaranteed through Article 153 of the Constitution and further emphasized in the Finance Act of 1971. A more crucial fact is that the Auditor General may recommend but has no authority to ensure implementation of these recommendations.

The Auditor General also maintains the right to employ qualified auditors<sup>23</sup> and has "the right of access to any ...type of information ... [and] right to summon any person"<sup>24</sup>. Under Article 153 of the Constitution, the Auditor General cannot be removed from office without due process.

The power derived from the Constitution authorizes the staff of the Auditor General to conduct extensive investigations into audit matters by requesting confidential documents from relevant authorities. This highlights the independence and authority granted to the Auditor General. Moreover, in the absence of specific provisions regarding the immunity of the staff of the Auditor General's office, when discharging their official functions, they do have protection. As noted by a legal

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21 Ibid.

22 *2012 The Annual Report of the Auditor General, op cit.*

23 See [http://www.casrilanka.com/casl/images/stories/content/publications/publications/sri\\_lanka\\_auditing\\_standards/currently\\_applicable\\_sri\\_lanka\\_auditing\\_standards/slaus\\_20620.pdf](http://www.casrilanka.com/casl/images/stories/content/publications/publications/sri_lanka_auditing_standards/currently_applicable_sri_lanka_auditing_standards/slaus_20620.pdf)

24 *The Constitution, op cit.*

expert, all public officers are exempted from being prosecuted for discharging their official responsibilities/duties.<sup>25</sup>

Some argue that the impact of the 18<sup>th</sup> Amendment, whereby the President appoints the Auditor General, can curtail the independence of the post and in turn the department itself. However, a counter-argument is that even with the changes introduced by the 18<sup>th</sup> Amendment, the Parliamentary Council still includes members of the opposition and their observations can still influence the choice of the post.

### **8.1.3 Independence (practice): to what extent is the audit institution free from external interference in the performance of its work in practice?**

The NIS-SL 2010 Assessment commented on the fact that while the law provides for the independence of the Auditor General, the Legislature and the Executive branches hinder true autonomy. The Auditor General's inability to recruit personnel and to control the department's finances are a few of the examples provided in the 2010 Assessment.

While noting the continued existence of the above issues in 2010, a number of positive and negative steps must be highlighted. To reiterate, although the Auditor General's office is not the "best resourced, best-staffed and equipped"<sup>26</sup>, this department was able to audit misuse and misappropriation of state funds in 229 institutions in 2011 alone<sup>27</sup>. In June 2013, the Auditor General questioned the Ranaviru Seva Authority of the Defense and Urban Development Authority for not submitting its financial reports on time and for a number of other shortcomings<sup>28</sup>.

25 Interview 14: Legal Expert; Name withheld on request. (10<sup>th</sup> January 2014).

26 KaruJayasuriya (2013) "Pay higher to attract better talent at Auditor General's Dept" Available at <http://www.ft.lk/2013/07/12/pay-higher-to-attract-better-talent-at-auditor-generals-dept-says-karu-j/>

27 *Annual Report of the Auditor General 2011*. Op cit.

28 Lanka News Web (2013) "Auditor General questions Ranaviru Seva Authority" available at <http://oneislandtwonationsblogspotcom.typepad.com/blog/2013/06/nsb-gets-million-dollar-loans-from-foreign-banks.html> (accessed August 22nd 2013).

According to a Committee on Public Enterprises (COPE) report, “accounts of 18 state enterprises and agencies had been disclaimed by auditors, while another 04 had adverse opinions, some for two years running, while some others had not even submitted annual reports”<sup>29</sup>. This indicates the ability of the Auditor General to, at times, act independently in practice. On the other hand, as noted by a Freedom House report, “The auditor general does not have the authority to take action against any person except for members of local government.”<sup>30</sup>

## 8.2 GOVERNANCE

### 8.2.1 Transparency (law): to what extent are there provisions in place to ensure that the public can obtain relevant information on the relevant activities and decisions by the Auditor General?

The NIS-SL 2010 Assessment focused on the Auditor General’s relationship with the Parliament. While the right to information does not exist as a law in Sri Lanka, the reports of the Auditor General, which are annually submitted to Parliament, is accessible to the public. While the summary of the Annual Report of the Auditor General is available online at the website [www.auditorgeneral.gov.lk](http://www.auditorgeneral.gov.lk), the contents are not made available online. As noted in the NIS-SL 2010 Assessment there is no legal requirement for this report to be published for the public to access. However, once the report is tabled at Parliament, the Parliament itself orders the report to become a public document.

Other than the legal requirements derived from the Constitution, it is prudent to emphasize other legal requirements that ensure the transparency of the Auditor General’s activities. The Auditor General is guided by the Sri Lanka Accounting and Auditing Standards Act No. 15 (1995) and the conventions and best practices relating to audit as adopted by the Institute of Chartered Accountants of Sri Lanka (ICASL),

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29 See “Many Sri Lanka state agency accounts disclaimed by auditors: COPE report” in <http://www.lankabusinessonline.com/news/many-sri-lanka-state-agency-accounts-disclaimed-by-auditors:-cope-report/366876477> (accessed October 9th 2013).

30 Robert Oberst (2012) “Countries at the Crossroads 2012: Sri Lanka. Pp. 12 – 13. Available at <http://www.freedomhouse.org/sites/default/files/Sri%20Lanka%20-%20FINAL.pdf>

the International Organization of Supreme Audit Institutions (INTOSAI), the Asian Organization of Supreme Audit Institutions (ASOSAI), and the guidance provided by the Committee on Public Accounts (COPA) and the Committee on Public Enterprises (COPE) of Parliament.<sup>31</sup>

The auditing standards “are based on the International Standards on Auditing (ISA) ... with slight modification to meet local conditions and needs”<sup>32</sup>.

### **8.2.2 Transparency (practice): to what extent is there transparency in the activities and decisions of the Auditor General in practice?**

The NIS-SL 2010 Assessment commented on the criticism leveled against the Auditor General’s department which included the lack of a National Audit Act and the inability of the public to gain access to the published Annual Audit Report.

While there is apparent transparency in the rules and regulations of auditing, there is little follow-through on the progress of audit queries and the “Standing Orders relating to COPA and COPE are not in line with international practices and need reform”<sup>33</sup> The ground situation presented in the NIS-SL 2010 Assessment with regard to the difficulty in getting information on audit reports remains the same. Indeed, according to the Freedom House Index, “despite the annual reporting of the auditor general ... on government income, spending, and financial discipline, expenditure accounting has become less transparent and efficient recently due to executive interference.”<sup>34</sup>

This highlights how the lack of internal auditors in state agencies hinders the transparency process of the Auditor General. The deadline for submission is

31 See: “Scope of Audit” [http://www.auditorgeneral.gov.lk/web/index.php?option=com\\_content&view=article&id=106&Itemid=87&lang=en](http://www.auditorgeneral.gov.lk/web/index.php?option=com_content&view=article&id=106&Itemid=87&lang=en)

32 The Institute of Chartered Accountants of Sri Lanka (2014) “Auditing Standards” available at [http://www.casrilanka.com/casl/index.php?option=com\\_content&view=article&id=236&Itemid=211](http://www.casrilanka.com/casl/index.php?option=com_content&view=article&id=236&Itemid=211)

33 RavindraWaidyalankara (2013) “Financial Management Reforms to Enhance Public Accountability – Sri Lanka” Available at <http://www.worldscientists.ru/economics-and-management/41-financial-management-reforms-to-enhance-pubic-accountability-sri-lanka.html> (accessed 22nd September 2013).

34 Oberst, op cit.

often delayed due to delay in the submission of replies to audit queries by the relevant parties<sup>35</sup>. All state agencies are required to submit reports within 150 days. Furthermore, “The government contracting process remains secretive; this makes it very difficult for interested citizens and groups to track the size, bidders, and recipients of government contracts. Foreign assistance disbursements are not usually published.”<sup>36</sup>

### **8.2.3 Accountability (law): to what extent are there provisions in place to ensure that the Auditor General has to report and be answerable for his actions?**

The Constitution of 1978 authorizes the Auditor General to report the annual findings to Parliament. During the conduct of audits, the Auditor General would normally make his/her audit observations after having been given the maximum possible opportunity to the audited institution to make needed clarifications. The audited institution is also allowed to review draft audit reports making it possible to incorporate substantial objectivity into the reports.<sup>37</sup>

Nevertheless what is lacking is a mechanism to investigate the Auditor General’s department. This fact was a concern highlighted in the NIS-SL 2010 Assessment. There is a mechanism in place for ‘in-house’ auditing of the department but this is not an independent, unbiased audit.

### **8.2.4 Accountability (practice): to what extent does the Auditor General have to report and be answerable for his actions in practice?**

The Auditor General follows international standards in conducting the auditing. However, as noted in the NIS-SL 2010 Assessment, the limited scope and the delays in submission prevents the impact of the audits from being felt by the general

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35 N.a. (2013) “Many Sri Lanka State Agency Accounts Disclaimed by Auditors: COPE report” <http://www.lankabusinessonline.com/news/many-sri-lanka-state-agency-accounts-disclaimed-by-auditors:-cope-report/366876477>

36 Oberst, op cit

37 See [http://www.auditorgeneral.gov.lk/web/index.php?option=com\\_content&view=article&id=106&Itemid=87&lang=en](http://www.auditorgeneral.gov.lk/web/index.php?option=com_content&view=article&id=106&Itemid=87&lang=en)

public. At the same time, the Auditor General submits the report to the Parliament. While these reports are not the focus of public attention, it is possible for the public to get a copy of the report from the Kotte Office of the Auditor General.

### **8.2.5 Integrity mechanisms (law): to what extent are there mechanisms in place to ensure the integrity of the Auditor General?**

The integrity of the office of Auditor General is ensured by the Constitution, which states that the Auditor General “shall hold office during good behaviour”<sup>38</sup>. The staff is recruited by the Public Service Commission and come under the Establishment Code. This was discussed in the NIS-SL 2010 Assessment as well.

With the exception of the lacuna of a specific code or ethics, there are no laws that allow for impartial auditing of the Auditor General’s department for allegations of corruption.

### **8.2.6 Integrity mechanisms (practice): to what extent is the integrity of the auditor institution ensured in practice?**

As noted in the NIS-SL 2010 Assessment, “staff members are required to sit the Efficiency Bar examination”<sup>39</sup>. Other than that, according to the 2011 Annual Report of the Auditor General, the staff was made aware of the International Financial Reporting Standards in order for them “to comply with the global changes in auditing and reporting already being implemented.”<sup>40</sup> While British Council assistance provides a means of improving English language for all staff, a selected few gained “training in construction sector audit”<sup>41</sup> in China in 2011.

To reiterate, what is lacking is a mechanism to investigate the Auditor General’s department<sup>42</sup>. At the same time, the Chartered Institute of Public Finance and Accountancy (CIPFA) partnered with the Association of Public Finance Accountants

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38 *The Constitution*, Article 153(1), op cit.

39 National Integrity System Assessment 2010, op cit.

40 *Annual Report of the Auditor General 2011*.p. 5. Op cit

41 Ibid.

42 Interview 15: Chief Executive Officer, Name withheld on request (10<sup>th</sup> January 2014).

of Sri Lanka (APFASL) to develop joint qualification and train those working in the public sector to be in keeping with international standards<sup>43</sup>. Moreover, public criticism of the Auditor General has not occurred since 2006, mainly because the Auditor General himself works with integrity.<sup>44</sup>

### **8.3 ROLE**

#### **8.3.1 Effective Financial Audits: To what extent does the audit institution provide effective audits of public expenditure?**

The NIS-SL 2010 Assessment was critical of the fact that the Auditor General's role was underutilized and therefore ineffective. Whilst reports indicate a trained staff with up-to-date knowledge of auditing techniques, the limitation of the scope for conducting audits that prevent the conduct of 'sophisticated auditing' and the self-restraint that prevents the Auditor General from using all the powers granted by the Constitution and other Acts hamper the effectiveness of the Auditor General's role<sup>45</sup>.

It can be argued that this 'sleeping giant' remains in slumber still because the Auditor General works at 10% of its potential. At the same time, the Auditor General continues to execute the duties assigned to him by the Constitution despite the 18<sup>th</sup> Amendment and the delay in submission of agency audit reports.

#### **8.3.2 Detecting and Sanctioning Misbehaviour: Does the Auditor General detect and investigate misbehavior of public officeholders?**

The Auditor General has to report to Parliament. According to NIS-SL 2010 Assessment, there is no close tie between the Auditor General and the Bribery Commission and therefore no follow-up on investigations and this also impacts the sanctioning of said misbehavior. Moreover, as discussed in the 'National Integrity

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43 CIPFA (2013) "Where is the world is CIPFA working" <http://www.cipfa.org/about-cipfa/international-activities/where-in-the-world-is-cipfa-working>

44 Interview 14, op cit.

45 National Integrity System Assessment 2010, op cit.

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Systems Transparency International Country Report: Sri Lanka 2003', "many government departments and public institutions have a record of rendering their yearly accounts to the Auditor General many years later"<sup>46</sup>which perhaps hinders the detection process.

### **8.3.3. Improving Financial Management: to what extent is the Auditor General effective in improving the financial management of government?**

The COPA and COPE review the Auditor General's recommendations, but – when it does not follow-up on the recommendations of the Auditor General – these two committees do not provide reasons for the decisions taken. While the Penal Code 392 and 392A, amongst others provide means of punishing public officials, bankers, merchants, etc., who have committed a criminal breach of trust<sup>47</sup>, there have still not been any major cases.

The Auditor General has been accused of being rigid and inflexible and sticking to the literal meaning of the rules and regulations without taking into account the situation on the ground<sup>48</sup>. According to one interviewee, when retaining lawyers from the unofficial bar, for example, the auditors expect the audited institution to follow the procedure when purchasing goods – i.e. three quotations and ideally, taking the lowest – rather than the reality of getting the expertise in the field to deal with the case in hand<sup>49</sup>. This in some sense exemplifies the NIS-SL 2010 Assessment's finding that the audit planning is not tailored to meet the needs of the audit client as most of the audits focus merely on identifying regulatory breaches.

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46 Centre for Policy Alternatives (2004) *National Integrity Systems Transparency International Country Report: Sri Lanka 2003*. Berlin: Transparency International. Available at [http://www.cpalanka.org/wp-content/uploads/2007/8/TI\\_Country\\_Study\\_Report.pdf](http://www.cpalanka.org/wp-content/uploads/2007/8/TI_Country_Study_Report.pdf)

47 Penal Code Ordinance of Sri Lanka available at <http://srilankalaw.lk/revised-statutes/volume-vi/904.html>

48 Interview 14

49 Ibid and Interview 15



## Recommendations

1. Executive interference with audit operations should be reduced
2. More funds should be allocated for auditing
3. Audit planning should be tailored to meet the needs of the audit client and not to focus merely on identifying regulatory breaches.
4. A mechanism to investigate the Auditor General's department should be introduced
5. Auditor General and the Bribery Commission should work in collaboration on investigations which makes an impact on the sanctioning of the said misbehavior.



## ANTI-CORRUPTION COMMISSION

*41(A) The Chairman and members of the Commission [to Investigate Allegations of Bribery or Corruption] ... shall be appointed ... by the President. In making such appointments, the President shall seek observations of a Parliamentary Council.*

### SUMMARY

The CIABOC's role is to probe, prosecute and prevent "incidents of bribery and corruption".<sup>1</sup> However an investigation can only be instigate on the receipt of a complaint. The CIABOC itself cannot initiate investigations. This lacuna in the law resulted in different interpretations by different commissioners<sup>2</sup>. Whilst the initial interpretation was to allow for anonymous communications, as noted by this reviewer, "In the 1994 Commission, two members had different views – that all communications relating to bribery and corruption should be by name. Complainants of complaints that are not genuine can be prosecuted with a fine of Rs. 200,000."<sup>3</sup>

It must be stressed that the Bribery Act is a sound law and the gap analysis between the Sri Lanka Bribery Law and the UNCAC would provide a means of reducing

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1 See [http://www.CIABOC.gov.lk/web/index.php?option=com\\_content&view=article&id=51&Itemid=27&lang=en](http://www.CIABOC.gov.lk/web/index.php?option=com_content&view=article&id=51&Itemid=27&lang=en)

2 Reviewer of the Pillar

3 External Reviewer. January 10<sup>th</sup> 2014.

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the deficiencies further. The resources in terms of budget remain inadequate although there has been training of human resources. The independence of the Commissioners has been guaranteed through numerous laws and they cannot be removed on the whim of the powerful. There have been a number of investigations on bribery and corruption and some of this information is available through the website. The nature of the cases are sensitive which often prevents extensive disclosures and is the reason why the Commission members are bound by confidentiality on on-going cases.

### STRUCTURE

The Bribery Commissioner's Department came into existence in 1958 under the Ministry of Justice but the Commission to Investigate Allegations of Bribery or Corruption (CIABOC) became a reality only in 1994 through Act 19.

"The Commission consist of three members, two of whom shall be retired Judges of the Supreme Court or of the Court of Appeal and one of whom shall be a person with wide experience relating to the investigation of crime and law enforcement. Every member of the Commission holds office for a period of five years and shall not be eligible for re-appointment."<sup>4</sup>

The current commission is the fourth commission since the creation of the CIABOC. At the top of the CIABOC are the three Commissioners – in office for a non-renewable 5 year period – one of whom is the Chairperson. These three commission members are answerable to Parliament. Thereafter in descending order are the Director General and then the five divisions: The Secretarial division, Investigative division, Legal division, Administrative division and Finance division with their own respective teams. While the entire commission conducts investigations into criminal bribery a superficial understanding of the position of Director General makes him/her "responsible for criminal bribery prosecution."<sup>5</sup> To be more specific,

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4 See [http://www.CIABOC.gov.lk/web/index.php?option=com\\_content&view=article&id=51&Itemid=27&lang=en](http://www.CIABOC.gov.lk/web/index.php?option=com_content&view=article&id=51&Itemid=27&lang=en) (accessed October 6<sup>th</sup> 2013).

5 ADB/OECD (2011) *The Criminalisation of Bribery in Asia and the Pacific: framework and practices in 28 jurisdictions*. Paris: ADB/OECD. p. 479

the Director General has been granted powers to investigate and file indictments on the directive of the commission<sup>6</sup>.

## ASSESSMENT

### 9.1 CAPACITY

#### 9.1.1 Resources (law): to what extent are there provisions in place that provide the CIABOC with adequate resources to effectively carry out its duties?

Pinto-Jayawardena notes that “Sri Lanka currently has the benefit of one of the most comprehensive legislative frameworks to combat bribery and corruption whilst being signatory to numerous international conventions.”<sup>7</sup> The CIABOC website states that “Bribery was an offence punishable under the Penal Code as far back as 1883. It was during British rule that bribery was introduced as a criminal offence into the Statute Book. In 1954 the Bribery Act was enacted to contain bribery in the Public Service.”<sup>8</sup> The ‘Declaration of Assets and Liabilities’ Act of 1975 is also crucial for the CIABOC. Indeed, “the whole purpose of bringing this law was to ensure unauthorized appropriation of assets which are not commensurate within lawful earnings. On the other hand, given the difficulty in proving bribery, this law presumes that unexplainable assets have been accumulated as a result of bribery or corruption.”<sup>9</sup>

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6 Parliament of the Democratic Socialist Republic of Sri Lanka (1994) *Commission to Investigate Allegations of Bribery or Corruption Act, No. 19 of 1994*. Colombo: Government Publications Bureau. Article 13(2). Also available at [http://www.tisirilanka.org/pub/li/pdf/Commission\\_Act\\_english.pdf](http://www.tisirilanka.org/pub/li/pdf/Commission_Act_english.pdf)

7 Kishali Pinto – Jayawardena and NavinKarunatilaka (2010) “Bribery & Corruption in Sri Lanka’s public revenue system: an unholy nexus?” *Asian Human Rights Commission*. Available at <http://www.humanrights.asia/resources/journals-magazines/article2/0903/bribery-corruption-in-sri-lankas-public-revenue-system-an-unholy-nexus>

8 See <http://www.CIABOC.gov.lk/web/>

9 J. C. Weliamuna (2002) “Fighting Corruption: Lankan setback and global approach” *Sunday Times* <http://www.sundaytimes.lk/021124/columns/jc.html>

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These laws grant the CIABOC numerous tools to investigate the crimes of bribery and corruption, including “the power to obtain documents and information from financial institutions”<sup>10</sup> through a process of summons. They can also conduct undercover operations, gain information through secret surveillance and request international assistance since “bribery is an extradition offence under the Extradition Act, while all crimes qualify for mutual legal assistance (MLA) under the Mutual Assistance in Criminal Matters Act.”<sup>11</sup> However, it is noteworthy that “it is not a crime in Sri Lanka to bribe officials of foreign governments or public international organizations in the conduct of international business.”<sup>12</sup>

Since coming into existence, some argue that the CIABOC has been strengthened by local laws such as the Prevention of Money Laundering Act (2006) and the Financial Transactions Reporting Act (2006) although one reviewer of the Pillar noted that the CIABOC does not have a role to play in these two acts. While in a broader sense, the CIABOC does have a role since this is corruption in reality, the main active agency is the Financial Intelligence Unit as such activities often deal with foreign nations. This is especially relevant because “Sri Lanka only has territorial jurisdiction to prosecute bribery”<sup>13</sup>. Despite this limitation, Sri Lanka is party to international laws including the United Nations Convention against Transnational Organized Crime (2000) and the United Nations Convention against Corruption (2003). Sri Lanka is even a founding member of Asia/Pacific Group on Money Laundering (APG)<sup>14</sup>.

A legal and institutional gap analysis between the UN Convention against Corruption and existing laws was carried out and a checklist was submitted to the Consultative Committee<sup>15</sup>. At the same time, steps were taken by Sri Lanka to

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10 ADB/OECD, op cite. p. 482

11 Ibid, p. 479

12 Ibid. p. 475

13 ADB/OECD, op cite. p. 482

14 See <http://www.apgml.org>

15 [http://www.ciaboc.gov.lk/web/index.php?option=com\\_content&view=article&id=91:legal-a-institutional-gap-analysis&catid=3:news-a-events&Itemid=50&lang=en](http://www.ciaboc.gov.lk/web/index.php?option=com_content&view=article&id=91:legal-a-institutional-gap-analysis&catid=3:news-a-events&Itemid=50&lang=en)

implement reforms with regard to ADB/OECD Anti-Corruption Initiative for Asia and the Pacific (2012).<sup>16</sup>

The foreign delegates had talks with the “Ministry of Justice, Police Dept., Interpol, Public Service Commission, the Institute of Chartered Accountants, representatives of civil societies, representatives from the United Nations Development Programme and Asian Development Bank.”<sup>17</sup>

The 2010 NIS provided an overview of the financial and human resources and commented on the limitations of the mandate granted to the Commission<sup>18</sup>. It was critical that the CIABOC “does not have a mandate to recruit its own staff [nor] ... disciplinary control over its staff, including investigating officers”<sup>19</sup> and that it cannot begin investigations.

### **9.1.2 Resources (practice): to what extent does the CIABOC have adequate resources to achieve its goals in practice?**

From March 2010 to May 2011 – for a period of 14 months – the CIABOC was defunct due to failure to appoint new Commission members. This highlights the difficulty in achieving the CIABOC goals in practice. The NIS-SL 2010 Assessment provided a detailed account of how resources were practically utilized to achieve the CIABOC goals.<sup>20</sup> Transparency International Sri Lanka has been critical of the difficulties in implementing the laws<sup>21</sup>. For example, there were over 3000 complaints in 2009

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16 ADB/OECD (2012) “Recent steps taken to implement the ADB/OECD Anti-Corruption Action Plan and United Nations Convention against Corruption (UNCAC)” *ADB/OECD Anti-Corruption Initiative for Asia and the Pacific*. New Delhi: Public Management, Governance, and Participation Division.

17 Ibid.

18 The National Integrity System Assessment, op cite.

19 Transparency International (2010) *National Integrity Systems Assessment Sri Lanka 2010*. Colombo: Transparency International. P. 196

20 The National Integrity System Assessment, op cite

21 Transparency International Sri Lanka (2012) “Empowering Commissions” <http://www.tisrilanka.org/?p=9905>

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and 2500 in 2012<sup>22</sup>, but “if you divide the 3224 complaints received in 2009 into the available 80 investigators, each has to handle 40 cases per annum”<sup>23</sup>. Clearly this is an impossibly feat to accomplish. Of the 2500 cases submitted to the Commission, only 1,383 were investigated<sup>24</sup>.

The staff of the Commission was given training on capacity development in 2010 and in 2011, on second-language proficiency in 2012, and on the United Nations Convention against Corruption in 2012<sup>25</sup>. The CIABOC staff held 8 meetings, funded by the Asia Development Bank (ADB), to identify the amendments to the Bribery Act<sup>26</sup>. In addition, the staff was given training in a variety of areas such as the demonstration of newly introduced investigation equipment; on conducting prosecutions relating to the non-disclosure of asset;<sup>27</sup> and training program organized in collaboration with the Hong Kong Anti Corruption Commission (for Investigative officers)<sup>28</sup>. The operational capacity of the CIABOC was also strengthened by having awareness-raising programs during 2011 and 2012: on Applets Court procedure, administration of income tax, and investigative skills<sup>29</sup>. Moreover, the commissioners and the director took part in a number of conferences and seminars

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22 N.a. (2012) “Sri Lanka Bribery Commission to call 10 politicians for questioning” available at <http://myoor.com/sri-lanka-bribery-commission-to-call-10-politicians-for-questioning/> (accessed 2<sup>nd</sup> October 2013).

23 Rodrigo, op cite.

24 AshwinHemmathagama (2013) “Bribery and corruption probes on the rise” The Daily FT, July 11, 2013. Available at <http://www.ft.lk/2013/07/11/bribery-and-corruption-probes-on-the-rise/> (accessed October 10<sup>th</sup> 2013).

25 See [http://www.CIABOC.gov.lk/web/index.php?option=com\\_content&view=category&id=3&Itemid=50&lang=en](http://www.CIABOC.gov.lk/web/index.php?option=com_content&view=category&id=3&Itemid=50&lang=en)

26 Ibid.

27 See [http://www.ciaboc.gov.lk/web/index.php?option=com\\_content&view=article&id=239%3Aa-workshop-was-conducted-at-the-ciaboc-premises-for-the-legal-officers-by-addisolicitor-general-mr-jayantha-jayasooriya&catid=3%3Anews-a-events&Itemid=50&lang=en](http://www.ciaboc.gov.lk/web/index.php?option=com_content&view=article&id=239%3Aa-workshop-was-conducted-at-the-ciaboc-premises-for-the-legal-officers-by-addisolicitor-general-mr-jayantha-jayasooriya&catid=3%3Anews-a-events&Itemid=50&lang=en)

28 See [http://www.ciaboc.gov.lk/web/index.php?option=com\\_content&view=article&id=85%3Aactivity--capacity-deverlopment-of-staff-of-bribery-commission&catid=3%3Anews-a-events&Itemid=50&lang=en](http://www.ciaboc.gov.lk/web/index.php?option=com_content&view=article&id=85%3Aactivity--capacity-deverlopment-of-staff-of-bribery-commission&catid=3%3Anews-a-events&Itemid=50&lang=en)

29 See [http://www.ciaboc.gov.lk/web/index.php?option=com\\_content&view=article&id=92%3Aoperational-capacity-of-ciaboc-strengthened&catid=3%3Anews-a-events&Itemid=50&lang=en](http://www.ciaboc.gov.lk/web/index.php?option=com_content&view=article&id=92%3Aoperational-capacity-of-ciaboc-strengthened&catid=3%3Anews-a-events&Itemid=50&lang=en)



In terms of human resources, the CIABOC has “only around 80 investigation Officers to cover a population of 20 million ... and 11 vehicles ... for Investigating Officers and Legal Officers to carry out their task.”<sup>30</sup> Furthermore, the “investigators come under the Police Department and are paid by the police while the Legal Officers come under the Public Service Commission.”<sup>31</sup> However, as of September 2012, the CIABOC decided to recruit professionals such as administrative officers, assessors and engineers in order to secure the commission’s independence and ensure that raids carried out by the commission were more efficient. The Director General added that officers of the CIABOC would be capable of carrying out raids at locations which were difficult for police officers to reach<sup>32</sup>. At the same time, it is noteworthy that it is the investigative officers, often with police backgrounds who have the burden of investigating allegations of corruption.

### **9.1.3 Independence (law): to what extent is the CIABOC independent by law?**

As noted in the 2010 NIS-SL Assessment, the independence of the commission members of the CIABOC has been compromised through the 18<sup>th</sup> Amendment<sup>33</sup>. If not for the method of appointing the Commissioner, which is done on the discretion of the Executive, the position of the Commissioner had relative independence through numerous laws. The three Commissioners in the fourth commission are Justice D. J. de S. Balapatabendi, Justice L. K. Wimalachandra and Dr. Jayantha Wickramaratne. They cannot easily be removed from office and the non-renewable five year term of office grants a certain amount of freedom of action to the three Commissioners. Moreover, as stated in the Commission Act 19 (3),

No proceedings, civil or criminal, shall be instituted in any court against any member of the Commission in respect of any report made by the

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30 Prasanna C. Rodrigo (2010) “Sri Lanka’s Bribery Commission needs more fire-power” *The Sunday Mirror*, Sunday February 28, 2010.

31 Ibid.

32 <http://www.newsfirst.lk> cited in <http://www.tisirilanka.org/?p=9926> (accessed October 1<sup>st</sup> 2013).

33 National Integrity System Assessment 2010, op cite.

Commission under this Act or against any other person in respect of the publication by such person of a substantially true account of such report<sup>34</sup>.

This condition thereby allows the staff to conduct investigations without fear.

The numerous acts in place and the Constitution itself provide the CIABOC with extensive powers to investigate corruption allegation in the powerful and the powerless. The Bribery Act allows the Commission independent action because it grants power to conduct inquiries through summons and even issue warrants of arrest. Moreover, according to Article 34(3), the Commission must ensure that the strictest secrecy is kept with the information that is collected<sup>35</sup> and the Commission cannot instigate action but instead plays a reactive role<sup>36</sup>. Nevertheless the CIABOC lacks the necessary financial independence to carry out its functions.

Two additional problems are evident in the practice of the Commission. The first is that complaints – or as noted by one of the reviewers of the Pillar, ‘a communication’ – must be submitted to the Commission. Without that, they cannot proceed with investigations. Secondly, the court cases do not always result in imprisonment. The VAT scandal of 2004 saw a number of arrests but “several accused have managed to escape to countries ... [and] it has been more than six years since the VAT scam was uncovered and the country is yet to see investigations carried out and the perpetrators brought to justice.”<sup>37</sup> Moreover, the VAT investigation, as noted by one reviewer of the Pillar, was investigated by the Central Intelligence Department (CID) and not the CIABOC. Furthermore the lack of international extradition agreements with certain countries also obstructs anti-corruption ventures.

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34 Parliament of the Democratic Socialist Republic of Sri Lanka (1994) *Commission to Investigate Allegations of Bribery or Corruption Act, No. 19 of 1994*. Colombo: Department of Government Printing. p. 13

35 Parliament of Ceylon (1954) *Chapter 26 Legislative Enactments: Bribery* Colombo: Department of Government Printing.p. 16.

36 National Integrity System Assessment 2010, op cite.

37 Pnto-Jayawardena and Karunatilaka op cite.

#### 9.1.4 Independence (practice): to what extent is the CIABOC independent in practice?

As noted by Pinto-Jayawardena and Gunaratne, "From its inception, the Sri Lankan commission has manifested a most singular dysfunction between the grandiloquent objectives with which it was established and its actual practical achievements."<sup>38</sup> Indeed, what is informative is how a majority of the detection cases listed in the CIABOC website are against mid-level officials rather than high ranking public figures. Cases against the Grama Niladari, a Chairman or members of the Pradeshiya Sabha, the Deputy Mayor, Divisional Secretary, Police Constable, Sub Inspector or Inspector of Police, Technical Assistant, Regional Managers in Corporations, officers attached to the Department of Forest Conservation and Road Development Authority, Public Health Inspector, Registrar of Births, Deaths and Marriages and the Excise Guard are common examples of the type of cases found on the CIABOC website.

Executive interference is another concern raised in the 2010 Assessment. The Colombo Telegraph alleges that the investigations into the 2009 Deyata Kirula exhibition have not been tackled despite evidence that exemplifies the use of undue influence.<sup>39</sup> According to the Daily Mirror, the former Chief Justice, Shirani Bandaranayake had objected to the CIABOC hearing as it was, according to her, politically motivated and "two of the three sitting Commissioners of the Bribery Commission were biased."<sup>40</sup> A Senior Legal Officer attached to a Ministry noted that as long as assets have been declared, one need not worry and "that it's better to declare all than wait for an investigation [because] you declare less. No one checks

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38 Kishali Pinto-Jayawardena and Jayantha de Almeida Guneratne (2010?) "Bribery and corruption control in Sri Lanka" Asian Human Rights Commission. Available at <http://www.humanrights.asia/resources/journals-magazines/article2/0901/03bribery-and-corruption-control-in-sri-lanka> (accessed September 22 2013).

39 The Colombo Telegraph (2013) "Exclusive Expose: Serious Corruption Allegations Against Bribery Commissioner Jayantha Wickramaratne Hidden At Bribery Commission By Influence" Colombo Telegraph, May 30, 2013.

40 HafeelFarisz (2013) "CJ 43 to boycott Bribery Commission hearings" *The Daily Mirror*. September 4, 2013.

and it's not in the open so [it is] better to declare. What Shirani did was wrong if she did it. She knows the law."<sup>41</sup> At the same time, the CIABOC Chairman gave classified information to the press in contravention of the confidentiality clause found in the Bribery Act which forbids him from divulging any information connected to an ongoing investigation<sup>42</sup>.

Another concern voiced by a reviewer of the Pillar was that the President of Sri Lanka can grant pardon to convicted individuals and crimes related to bribery and corruption were not exempt from this list. Even when the former Mayor of Kandy was found guilty of bribery and corruption by the highest courts in the country, the President still granted him a pardon.

## 9.2 GOVERNANCE

### 9.2.1 Transparency (law): to what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the CIABOC?

The CIABOC website provides information on the laws governing its actions, including a PDF version of the Bribery Act and the Commission Act.<sup>43</sup> These provide information on the laws that are in place to ensure transparency. There is provision to check on the list of Detection & Raids as well as Convictions even though the list of Conviction has not been updated since 2008.<sup>44</sup> Section 26 of the Commission Act states that

(26) The Commission shall prepare reports of its activities as often as it may consider necessary, so however, that it shall prepare at least one report in each calendar year. The Commission shall cause every report so prepared

41 Interview 3: Senior Legal Officer working in a Ministry, name withheld on request (July 19th 2013)

42 See Bribery Act, op cit. article 34 (3), p. 16

43 See [http://www.CIABOC.gov.lk/web/index.php?option=com\\_content&view=category&layout=blog&id=36&Itemid=53&lang=en](http://www.CIABOC.gov.lk/web/index.php?option=com_content&view=category&layout=blog&id=36&Itemid=53&lang=en)

44 [http://www.ciaboc.gov.lk/web/index.php?option=com\\_content&view=category&layout=blog&id=35&Itemid=37&lang=en](http://www.ciaboc.gov.lk/web/index.php?option=com_content&view=category&layout=blog&id=35&Itemid=37&lang=en)

to be sent to the President who shall cause the same to be placed before Parliament.<sup>45</sup>

As such the Commission is obligated by law to submit at least one report annually on its activities to the President. However it is not obligated by law to disclose information about its activities or decision making processes to the public.

### **9.2.2 Transparency (practice): to what extent is there transparency in the activities and decision-making processes of the CIABOC in practice?**

An analysis of a number of Sinhalese, Tamil and English Sunday newspapers – government and private – from 2010 to April 2013 affirmed the fact that there are a few updates on corruption cases in the newspapers<sup>46</sup>. A few sensationalized or significant cases are mentioned but the activities of CIABOC remain veiled in secrecy. The culture of secrecy mentioned in the NIS-SL 2010 Assessment continues to hinder transparency. This is especially significant since the Act itself guarantees this and it is often what prevents the disclosure of detailed information. The CIABOC website does have a list of five names from 2008 where the convictions had been acquittal or prosecution<sup>47</sup> but it does not have copies of the reports submitted to the President.

### **9.2.3. Accountability (law): to what extent are there provisions in place to ensure that the CIABOC has to report and be answerable for its actions?**

As noted above, the CIABOC is accountable to the Parliament<sup>48</sup> but there is neither citizen oversight nor a judicial review mechanism. The Annual Reports and other

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45 *Commission to Investigate Allegations of Bribery or Corruption Act, No. 19 of 1994*. Op cit. p. 16

46 Based on Primary research conducted between May 5th 2013 to August 15th 2013, on Sinhala, Tamil and English state and non-state Sunday newspapers from 2010 May to 2013 May at the Archives of Sri Lanka.

47 See [http://www.CIABOC.gov.lk/web/index.php?option=com\\_content&view=category&layout=blog&id=35&Itemid=37&lang=en](http://www.CIABOC.gov.lk/web/index.php?option=com_content&view=category&layout=blog&id=35&Itemid=37&lang=en)

48 *Commission to Investigate Allegations of Bribery or Corruption Act, No. 19 of 1994*. Op cit. Part I, article 2. p. 2

documents are made available to the President and the Parliament, and the Annual Reports are made available in all three languages to the general public. Due to the fact that there is no Right to Information Act, there is difficulty in gaining insights, especially into reports submitted to the Parliament aside from the Annual Report. Furthermore, due to the issue of secrecy it is also difficult to gauge the relationship between the CIABOC, the Human Rights Commission, the Ombudsman, the Inland Revenue Department, and other entities focusing on corruption and/or violations of human rights. This lack of information further hinders understanding of whether the CIABOC is answerable for their actions.

#### **9.2.4. Accountability (practice): to what extent does the CIABOC have to report and be answerable for its actions in practice?**

The Annual Reports give the number of complaints and the figure from those that the CIABOC investigated. According to the CIABOC website it takes a protracted amount of time to get a conviction – the five convictions that occurred in 2010 were filed in 2008<sup>49</sup>. This means that despite having detailed Annual Reports full of statistics, it is difficult to gauge the success rate due to delays in the investigation and judiciary. More alarmingly was the accusation made by the former Chief Justice, who said “I am surprised Justice Balapatabendi violated the law of Confidentiality by giving various statements to the Press regarding the matter. Justice Balapatabendi could not have been unaware of Section 17”<sup>50</sup>. Section 17 prevents the Commissioner from divulging information to the media and was not held accountable for this breach in regulations.

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49 See [http://www.CIABOC.gov.lk/web/index.php?option=com\\_content&view=category&layout=blog&id=35&Itemid=37&lang=en](http://www.CIABOC.gov.lk/web/index.php?option=com_content&view=category&layout=blog&id=35&Itemid=37&lang=en)

50 ShiraneeBandaranayake, cited in Colombo Telegraph (2013) “Full Text: Letter by Chief Justice ShiraniBandaranayake to DG Bribery Commission” Colombo Telegraph, May 11 2013. Available at <https://www.colombotelegraph.com/index.php/full-text-letter-by-chief-justice-shirani-bandaranayake-to-dg-bribery-commission/> (accessed 22<sup>nd</sup> September 2013).

**9.2.5. Integrity Mechanisms (law): to what extent are there mechanisms in place to ensure the integrity of members of the CIABOC?**

The implantation of the provisions of the Commission act, the Bribery act, and the Establishment code strives to overcome the lack of a code of conduct. The NIS-SL 2010 Assessment discusses the importance of Section 17 of the Commission Act, highlights the lack of statutory requirements prior to the appointment of staff and identifies the restriction of reemployment avenues for the Commissioners.

**9.2.6. Integrity Mechanisms (practice): to what extent is the integrity of members of the CIABOC ensured in practice?**

One of the main accusations against the 4<sup>th</sup> Commission is from the former Chief Justice, Shirani Bandaranayake regarding the violation of section 17 of the Commission Act. The secrecy of the cases prevent intrusive analysis of the CIABOC, the Commissioners and the Director General. This also prevents the questioning of the integrity of individual members or even of the commission itself. The integrity of the Commission came to further disrepute in the early part of 2014 when one of the opposition parties brought forward a petition against the Chairman of CIABOC. Principles of integrity dictate and expect the Chairman to step down from his post temporarily until an impartial inquiry is carried out into the matter. However this was not so. Releasing a statement on the matter Executive Director of TISL stated that “continuing to keep a person whose integrity has been challenged, as the chairman of the commission that investigate allegations of bribery or corruption is a threat to the good governance”.<sup>51</sup>

**9.3 ROLE**

**9.3.1. Prevention (law and practice): to what extent does the CIABOC engage in preventive activities regarding fighting corruption?**

According to the CIABOC website, the commission investigates, prosecutes and ‘prevents’. This despite the fact that this is a ‘reactive’ rather than a ‘preventive’

51 <http://www.tisrilanka.org/?p=11743>

commission. The laws specifically state that unless a communication is made, the commission is powerless to act. The CIABOC has numerous events to publicize what corruption is and how to fight it<sup>52</sup>. Its link with the Asian Development Bank has resulted in a number of publications but, as noted in the 2010 Assessment, the CIABOC itself does not conduct research into corruption and how to mitigate it. Indeed, as stated by one of the reviewers of the Pillar,

CIABOC has no direct mandate to prevent bribery and corruption. It has the power to investigate allegations thereon. The only place the word 'prevention' [is] found in the Commission Act is Section 16(1) in which the designation of DG is 'Director General for the Prevention of Bribery or Corruption'<sup>53</sup>

### **9.3.2. Education (law and practice): to what extent does the CIABOC engage in educational activities regarding fighting corruption?**

The CIABOC conducted seminars and training programs to publicize the dangers of corruption and the laws in place to combat them. They work with civil society and politicians. The 2010 Assessment provides further information on the target audiences of these awareness programs. One concern is that the effectiveness of these awareness programs is not tabulated.

### **9.3.3 Investigation (law and practice): to what extent does the CIABOC engage in investigation regarding alleged corruption?**

The NIS-SL2010 Assessment provides detailed information on the number of convictions, and also quotes extensively from the act to highlight the power granted to the Commission to conduct investigations. These include wide-ranging powers – to search bank accounts and examine documents, to arrest and detain suspects – after getting a court order. The act also provides immunity for those appearing before the CIABOC including exemption from prosecution.

52 See <http://www.CIABOC.gov.lk/web/index.php?lang=en>

53 Reviewer 1 of the Pillar on Commission to Investigate Allegations of Bribery or Corruption, January 10<sup>th</sup> 2014.



As discussed above, the CIABOC has extensive powers to conduct investigations but only after a communication is lodged. The whistle-blower protection, which is active only for a certain period, is limited as part of the secrecy clause of the Commission Act that allows the CIABOC to protect those who complain. Of the five cases filed in 2008, three were acquitted and two saw convictions. Therefore, despite the existence of numerous laws and extensive powers, the conviction rate is poor. The 2010 Assessment was critical of the CIABOC for its failure to prosecute large-scale corruption. There have however been a number of large scale corruption cases which have been submitted to the courts.

### Recommendations

1. The Bribery Act of 1994 to be revised to include private sector and civil society sector bribery and corruption and to better conform to the provisions of the UNCAC.
2. The CIABOC to be equipped with adequate financial and human resources to function effectively.
3. 18th amendment should be abolished in order to preserve the independence of commission members of CIABOC
4. A mechanism should be introduced for citizen over-sight and judicial review to make CIABOC accountable.
5. CIABOC should inaugurate research on corruption and find ways to take proactive measures towards reducing corruption.
6. The whistle blower protection should not be limited to secrecy clauses of the commission act.



## POLITICAL PARTIES

*“1. Refrain from any activity which could aggravate differences, mutual hatred and tension between different religions observed by Sri Lankan communities and their spoken languages and races, etc.”<sup>1</sup>*

### SUMMARY

It is important to emphasize that “Democracies cannot function without political parties. Parties are expected to reflect the concerns of citizens”<sup>2</sup>. The country’s oldest party is the Lanka Sama Samaja Party (LSSP or the Socialist Party). Even though Sri Lanka has a long history of party politics, the country ranked 107th out of 150 countries in 2012 according to the World Audit’s “Democracy Audit”<sup>3</sup> and had a low score in political rights ranking five out of seven<sup>4</sup>. There have been a number of elections since 2010: the 2010 Presidential and Parliamentary elections, 2011 Local Government elections, 2012 Provincial Council Elections (for 3 of the 9

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1 The Parliament of Sri Lanka (1981) A Code of Conduct for contesting Political Parties and Candidates during periods of Election. Colombo: Government Printers. Available at <http://www.slelections.gov.lk/pdf/pce2013/doc/Reissue%20August%202013%20Eng.pdf>

2 Reginald Austin and MajaTjernström (2003) *Funding of Political Parties and Election Campaigns*. Handbook series. Stockholm: International Institute for Democracy and Election Assistance.

3 World Audit (2012) “Democracy Audit 2012”. Available at <http://www.worldaudit.org/democracy.htm>

4 World Audit (2012) “Sri lanka: world democracy profile”. Available at <http://www.worldaudit.org/countries/sri-lanka.htm>

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provincial councils), and 2013 Provincial Council elections (for 3 of the 9 provincial councils including the Northern Province)<sup>5</sup>.

The political party system, though over 70 years old, still continue to face challenges from within and from without. From the challenges that rise from within, noteworthy is the fact that those from a lower strata struggle to participate in the hierarchical structure of Sri Lanka's political parties. Representation of women is low in the highest levels of political parties. Likewise the public is not provided with information on the resources made available for party members. Political parties in Sri Lanka are relatively independent. However, what is of concern both for the 2010 Assessment and the current 2014 report are the issues on transparency and accountability.

### STRUCTURE

Even though Sri Lanka has a large number of parties, the country is ultimately made up of a two-party democracy with the coalition system holding sway. At the moment, the ruling party has absorbed and overtaken the opposition parties and the opposition appears to be in tatters. Some see the existence of coalition politics as being "marked by an increasingly fractured party system that is driven by symbolic cultural issues and the tensions inherent in the mixed executive system that has emerged over the past three decades"<sup>6</sup>. The NIS-SL 2010 Assessment noted that the political parties become power sharing alliances rather than representatives of social diversity. The oldest party in Sri Lanka is the LSSP. The liberal United National Party (UNP) turned 67 years in 2013<sup>7</sup>. The Sri Lanka Freedom Party (SLFP), which is 62 years, emerged as a contender to the UNP in the 1950s under the leadership of S. W. R. D. Bandaranaike<sup>8</sup>. The political party system comprises 64 parties in its

5 Note: The decision to hold elections on a number of provinces instead of all 9 is a power granted to the President.

6 NimalSanderatne (2013) "Review of the *Changing Face of Electoral Politics in Sri Lanka (1994 – 2010)* by LaksiriJayasuriya" Social Scientists Association <https://www.colombotelegraph.com/index.php/changing-facets-of-electoral-politics-in-sri-lanka/>

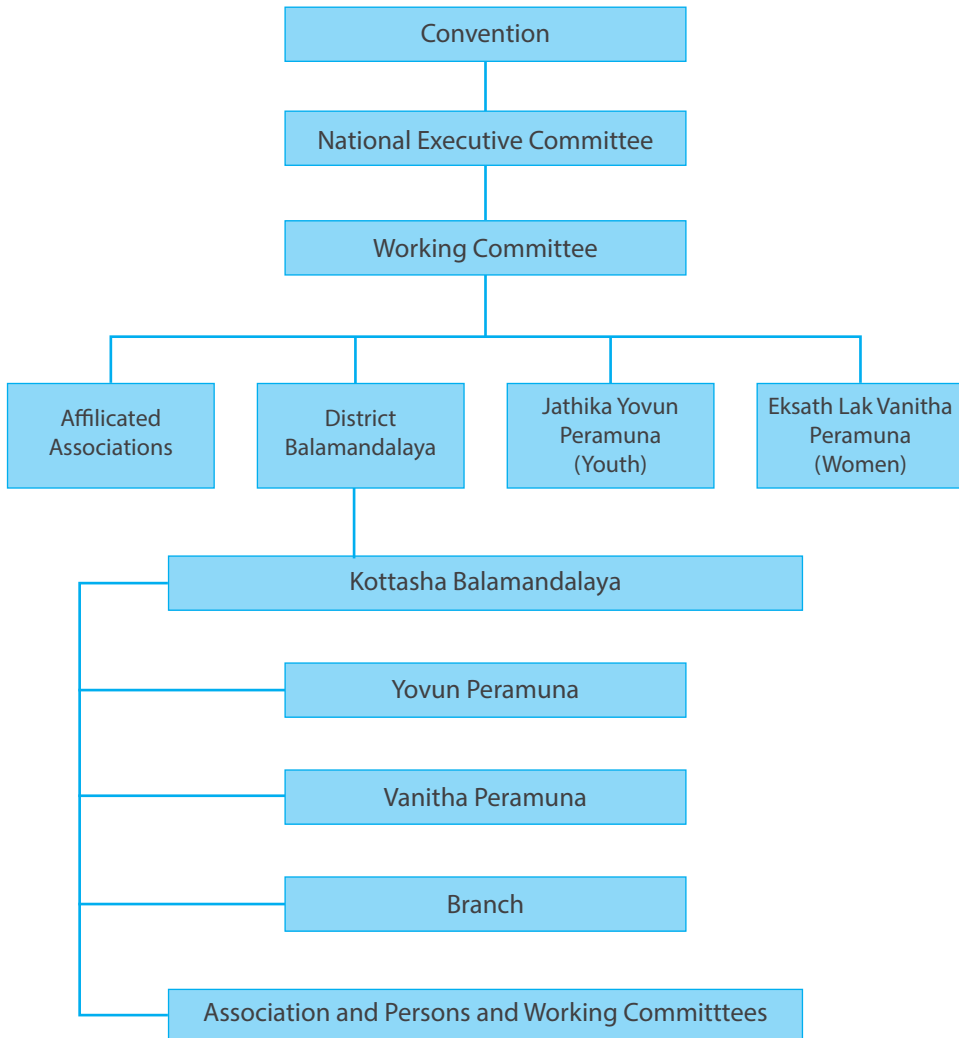
7 See: <http://www.unp.lk/>

8 See: <http://www.slfp.lk/>

current manifestation, each with their party constitution and approved symbol for participating in elections.

The structure of the two main parties is discussed below.

Figure 2: Structure of the UNP<sup>9</sup>



9 Friedrich Ebert Stiftung (2008) Preliminary Research Report on Inner Party Democracy. Colombo: FES Publication.

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The United National Party (UNP) was a combination of the Ceylon National Congress, the Sinhala Maha Sabha, the All Ceylon Muslim League, and the Moors Association. The current UNP Constitution centralizes power at the top. The party leader cannot be replaced or his/her power challenged until their term is over and he/she appoints the Working Committee<sup>10</sup>. The UNP has faced internal challenges to its leadership and a demand for constitutional changes<sup>11</sup>.

S. W. R. D. Bandaranaike founded the Sri Lanka Freedom Party (SLFP) in 1951 and the party Constitution highlights the concentration of power at the top. The supreme body is the Central Committee.<sup>12</sup>

## ASSESSMENT

### 10.1 CAPACITY

#### 10.1.1. Resources (law): to what extent does the legal framework provide a conducive environment for the formation and operation of political parties?

Sri Lanka has a history of being a stable democracy, with multi-party elections from before independence. There were political parties since 1931, well before the birth of the nation. One of the Fundamental rights granted by the Constitution is “Freedom of Speech, Assembly, Association, and Movement”<sup>13</sup>, and this allows for the creation of political parties as a core right of the people. As noted in the NIS-SL 2010 Assessment, party politics are partially governed by a number of acts, including the Parliamentary Elections Act, no. 1 of 1981 and the Parliamentary Elections (Amendment) Act, no. 58 of 2009. There are rules on party participation in elections – from the Presidential to the local government. The analysis of the Parliamentary Elections act indicates a limitation of the concept of “liability to false

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10 <http://www.unp.lk/>

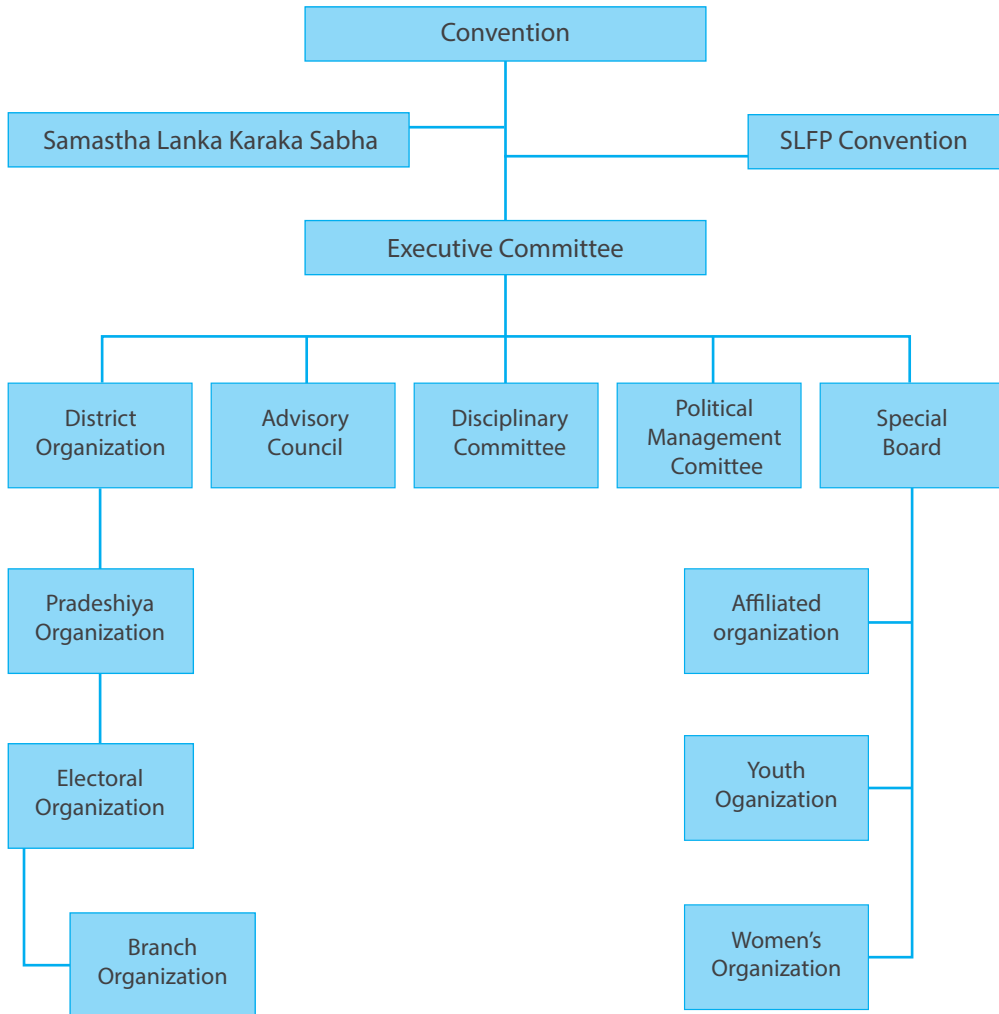
11 <http://www.unp.lk/index.php/proposedconstitution/english>

12 <http://www.slfp.lk/>

13 *The Constitution*, Article 14, Chapter III. Op cite.

statements of fact only.”<sup>14</sup> Under the Parliament Elections Act of 1981, all political parties are provided with a grant from the State.

Figure 3: Structure of the SLFP<sup>15</sup>



14 Law & Society Trust (20 ) *Representations to the select committee of parliament on reforms to parliamentary, provincial council and local authority elections*. Colombo: Law & Society Trust. p. 14

15 Friedrich Ebert Stiftung (2008)

The NIS-SL 2010 Assessment stresses that the legal framework was conducive to the formation of political parties. The deficiency in the law is in clarifying political party obligations in its function or a code of conduct for parties to adhere to. Specific party constitutions provide for codes of conduct but these party structures is based on centralized rule and limited membership inputs. The Department of Elections introduced a 'Code of Conduct for Contesting Political Parties and Candidates during period of elections' in 2012. These strive to regulate party activities during the election period. However, what is lacking are codes of conduct for all political parties at all times.<sup>16</sup>

### **10.1.2 Resources (practice): to what extent do the financial resources available to political parties allow for effective political competition?**

Party resources are at times aided by the misuse of public resources especially when the relevant party is a member of the government in power. This misuse of state funds promotes an uneven playing field for other parties contesting against the ruling side/s.

Financing of candidacy for an election is a major aspect of political parties and the NIS-SL 2010 Assessment noted that political parties are not bound by law to publish their accounts. According to Transparency International Sri Lanka, the costs incurred by each party must be extensive but since their audited accounts – which they have to provide to the Election Commission and, if these accounts are not provided, they will be penalized by cancellation of their registration – these are not made public. The Elections Commissioner noted that “some 15 political parties including several parties that are represented in Parliament have not submitted their reports for 2011 even by mid December 2012”<sup>17</sup>. This highlights the fact that

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16 The Department of Elections (2012) “A Code of Conduct for contesting Political Parties and Candidates during periods of elections”. Available at <http://www.slelections.gov.lk/pdf/pce2013/doc/Reissue%20August%202013%20Eng.pdf>

17 Mahinda Deshapriya (2012) “No Audit report, no Party” *Ceylon Today*.31.12.2012. available at <http://www.ceylontoday.lk/51-20756-news-detail-no-audit-report-no-party.html>



although certain requirements exist, in practice, these can be disregarded for a time by political parties.

Allegations of foreign funding for local political candidates cannot be diffused due to the secrecy surrounding the financial resources of political parties. Additionally, “there is no monitoring of foreign funds received by political parties ... except [for] the accounts submitted to the Election Department”<sup>18</sup> because there is no ban on donations from foreign interests and corporations to either candidate or party<sup>19</sup>. Membership numbers are also not revealed.

### **10.1.3 Independence (law): to what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?**

This 2014 report reiterates the NIS-SL 2010 Assessment that the lacuna in the laws “reinforces the perception that the political party in power is identical with the state.”<sup>20</sup> This is due to the fact that party responsibilities remain undefined and there is no oversight of political party finances. Under the Parliamentary Elections (Amendment) Act, no. 58 of 2009, the Election Commissioner is empowered to cease registration of political parties if annual audits are not provided.

Unwarranted external interference occurs amongst political parties during elections. There are specific laws that attempt to punish those accused of false statements and the Elections Commission and Bribery Commission have the authority to intervene in political party matters if there are allegations of impropriety.

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18 ColomboPage (2012) “Foreign funds received by Sri Lanka political parties not monitored by the government”. Available at [http://www.colombopage.com/archive\\_12A/Ju-118\\_1342579242CH.php](http://www.colombopage.com/archive_12A/Ju-118_1342579242CH.php)

19 International IDEA (2011?) “Political Finance data for Sri Lanka” Political Finance Database. <http://www.idea.int/political-finance/country.cfm?id=131> <http://www.idea.int/political-finance/country.cfm?id=131>

20 Transparency International (2010) *National Integrity System Assessment Sri Lanka 2010*. Colombo: Transparency International Sri Lanka. P. 214.

#### **10.1.4 Independence (practice): to what extent are political parties free from unwarranted external interference in their activities in practice?**

The banning of political parties – including the JVP in the mid-1980s<sup>21</sup> – and election interference by different parties against each other hinder the independence of political parties. The political race can become extremely intense with “a total of 7,620 candidates from 36 parties and 301 independent candidates ..ying for seats in the 2010 polls”<sup>22</sup>. The inability of the Election Commissioner to stop party interference during election periods – often resulting in violence and deaths – is a major concern expressed in the NIS-SL 2010 Assessment.

There have been a number of accusations that external forces – including foreign governments<sup>23</sup> – interfere in Sri Lankan politics through political parties<sup>24</sup>. Such allegations remain unconfirmed. A more pressing concern is the fact that the President is also the leader of his/her political party. The executive interference in the inner working of the President’s political party and the impact of that political party on the parliament (especially the Cabinet) is a concern<sup>25</sup>.

### **10.2 GOVERNANCE**

#### **10.2.1 Transparency (law): to what extent are there regulations in place that require parties to make their financial information publicly available?**

The NIS-SL 2010 Assessment noted the lack of finance regulation as a major concern. According to a report on Sri Lanka, while the public does not have access to political

21 Immigration and Refugee Board of Canada (2014) :JVP activities between 1980 and 1988” [http://www.ecoi.net/local\\_link/186132/289067\\_en.html](http://www.ecoi.net/local_link/186132/289067_en.html)

22 <http://www.ipu.org/parline/reports/2295.htm>, op cit.

23 Raj Gonsalkorale (2013) “Tamil Nadu interference in Sri Lankan politics will lead to the revival of secessionism in Tamil Nadu, and regional instability” *Asian Tribune* vol. 12, No. 689.

24 Shenali D. Waduge (2013) “History of US Embassy ‘interference’ in the internal affairs of countries” Lankaweb. Available at <http://www.lankaweb.com/news/items/2013/09/27/history-of-us-embassy-interference-in-the-internal-affairs-of-countries/>

25 Damien Kingsbury (2012) *Sri Lanka and the Responsibility to Protect: politics, ethnicity and genocide*.Oxon: Routledge.

party accounts members are entitled to examine them<sup>26</sup>. A detailed questionnaire by International IDEA provided in-depth insights into the transparency of political parties. There are no laws limiting the amount spent on elections campaigns. The deficiency in laws pertaining to financial transparency in political parties or candidates is worrying because they are therefore not bound by law to reveal the identities of their donors. Vote buying is an offence under law but there are no laws on the amount a donor can contribute to a political party or a candidate<sup>27</sup>.

### **10.2.2 Transparency (practice): to what extent do political parties make their financial and other information publically available?**

The previous NIS-SL 2010 Assessment indicated a concern for lack of information on finances and constitution and other data. There is a dearth of information on party finances despite annual auditing and providing financial data at the Annual Party Convention. The Constitutions of some political parties are available online<sup>28</sup>. Membership data remains undisclosed.

### **10.2.3 Accountability (law): to what extent are there provisions governing financial oversight of political parties?**

The amendment to the Parliamentary Elections Act of 1981 in 2009 provided provisions for parties to disclose their funding. The Auditor General provides an oversight for finances<sup>29</sup> However, due to the 18<sup>th</sup> Amendment, the independence of the Department has been called into question.

As noted in the NIS-SL 2010 Assessment however, there is a lack of accountability in a party's public disclosure of funds. The 2014 update, however, examined the misuse

26 International IDEA and Centre for Policy Alternatives (2005) "Sri Lanka Country Report based on Research and Dialogue with Political Parties". Sweden: International IDEA. Available at <http://www.idea.int/parties/upload/SriLankaCountryReport.pdf>

27 International IDEA (011) op cite.

28 See: UNP <http://www.unp.lk/>; the Liberal Party <http://www.liberalparty-srilanka.org/what-we-stand-for/constitution.html>

29 Niall Johnston (2013) "Financial Oversight: a handbook for parliamentarians" Ottawa: Global Organization of Parliamentarians Against Corruption (GOPAC) Available at [http://gopacnet-work.org/Docs/Oversight\\_handbook\\_EN.pdf](http://gopacnet-work.org/Docs/Oversight_handbook_EN.pdf)

of donations for personal enrichment or for questionable ventures. As noted by former Deputy Governor of the Central Bank of Sri Lanka W. A. Wijewardena, “When someone handles someone else’s money, the fiduciary obligations require him to manage that money with the same care, diligence, prudence and precaution as if he is handling his own money. If he fails, he is causing a fiduciary risk”<sup>30</sup>

The 9<sup>th</sup> Amendment to the Constitution clearly informs of the ‘disqualification’ criteria for candidates for office, especially “If during the preceding seven he/she has been adjudged ... to have accepted a bribe or gratification”<sup>31</sup> Parties often – but not always – exclude controversial candidates in their nomination list.

#### **10.2.4 Accountability (practice): to what extent is there effective financial oversight of political parties in practice?**

Accountability in party politics entails accountability of the party leadership to their members and in the handling of party resources. The NIS-SL 2010 Assessment emphasized the top down centralized nature of parties and how finances are controlled by the leadership.

Certain politicians who have violated the public trust through abuse of power or by being proven to have taken bribes have been removed from the elections list by their own party. These include the sacking of two Provincial councilors by the UNP for damage of UNP property.<sup>32</sup> The inability of the Department of Elections in reprimanding those who have violated election circulars is also a concern for accountability in practice.

Nepotism within the party system appears rampant. Indeed, election monitors have continued to express their concern over allegations that children of Ministers abuse state resources for their own election campaigns. This lack of financial accountability due to familial ties is a concern discussed in the NIS-SL 2010 Assessment as well.

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30 W. A. Wijewardena (2013) “Sri Lanka has to do a lot to improve its fiduciary risk management”

31 *The Constitution*, Ninth Amendment. Op cite.

32 See: [http://www.colombopage.com/archive\\_13B/Aug06\\_1375796776KA.php](http://www.colombopage.com/archive_13B/Aug06_1375796776KA.php)

The UNP Working Committee adopted the ‘Rules for the Conduct of an Election for Office Bearers’ in 2011<sup>33</sup>

### **10.2.5 Integrity (law): to what extent are there organizational regulations regarding the internal democratic governance of the main political parties?**

As noted in the NIS-SL 2010 Assessment, all parties have a centralized power structure. Whilst the ‘central committee’ (SLFP) or the ‘working committee’ (UNP) or the politburo (SLMC) provide a semblance of ‘democracy’, the unbridled powers of the leader is a characteristic of the political party system in Sri Lanka. It is the party leader, for example, who becomes the candidate for the Presidential elections. At the same time, disciplinary actions against those who ‘cross-over’ or ‘challenge’ party decisions is difficult to implement under the alliance system currently in place

### **10.2.6 Integrity (practice): to what extent is there effective internal democratic governance of political parties in practice?**

The “political party system is not conducive to the participation of women as the party, which acts as the gate-keeper to the nomination list, does not nominate women because they are not perceived as winnable candidates.”<sup>34</sup> The Campaign for Free & Fair Elections (CaFFE) reiterates the non-democratic style of power sharing within political parties by noting that this is a major concern. Such a “lack of internal democracy can destroy the structure of a party”<sup>35</sup> The problems faced within the UNP is cited as a good example of a leadership crisis stemming from centralized party politics.

33 CaFFE (2011) “The Battle for inner party democracy – United National Party (UNP) leadership crisis

34 Kishali Pinto-Jayawardena and Chulani Kodikara (2003) Women and Governance in Sri Lanka. Kandy: International Centre for Ethnic Studies. Cited in Ambika Satkunathan () “Working of Democracy in Sri Lanka”. Delhi: Lokniti (Programme of Comparative Democracy) Centre for the Study of Developing Societies. Available at <http://www.democracy-asia.org/qa/srilanka/Ambika%20Satkunathan.pdf>

35 See: <http://caffesrilanka.org/News-4a-2885-2.html>

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In practice, it is difficult to punish those who leave the political party to contest as an independent or as a member of another party because the individual/s in general do not accept the punishment from the party they left. An unusual situation arose where the cross-over Ministers of Parliament continued to call themselves UNP despite crossing over. In certain events, such as when Provincial Councilor Ananda Sarath Kumara forced his daughter's school teacher to her knees for disciplining his child, he was not only forced to resign from the North-Western Provincial Council but was even banished from the party for a short period.

The NIS-SL 2010 Assessment provided in-depth insights into the patronage system in place within the main parties. Just like nepotism and patronage, the existence of political violence as a tool for intimidation is a continued concern. Indeed, "Electoral violence and malpractice was a catalyst for the Seventeenth Amendment"<sup>36</sup> Since 2010, there have been incidents of violence. Violence occurred in every Provincial Council elections since 2010, as well as during the Northern Provincial Elections of September 2013. The most prominent example occurred in October 2011, when Presidential Advisor Bharatha Lakshman Premachandra was shot and killed in a clash between his supporters and those of Colombo district Member of Parliament Duminda Silva. The family of the slain advisor has continuously requested that justice be served. Meanwhile, one of the witnesses – especially those who alleged that MP Duminda Silva instigated the incident – has retracted their statement. An inquiry to the incident is underway in 2013, but Duminda Silva – who was injured and spent time abroad recuperating – returned to Sri Lanka in 2013 and was released on bail.

The ineffectiveness of party disciplinary mechanisms; the 'cross-over' politics; the centralized leadership within parties; the culture of nepotism and patronage; the rampant electoral violence; and the belief in impunity challenge the integrity of the political system.

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36 Centre for Monitoring Election Violence, CMEV (2013) "Final Report on Election Related Violence". Colombo: Centre for Policy Alternatives. Available at [http://f.cl.ly/items/0I1s-0l2N0S3W0P461s32/Final%20Report\\_CMEV\\_2013.pdf](http://f.cl.ly/items/0I1s-0l2N0S3W0P461s32/Final%20Report_CMEV_2013.pdf)

### **10.3 ROLE**

#### **10.3.1. Interest aggregation and representation (practice): to what extent do political parties aggregate and represent relevant social interests in the political sphere?**

As noted at the outset, the main parties lack a coherent ideology and are based on patronage and nepotism. This feature of the party system has continued to dominate politics rather than social interests. It appears as though the elections have brought out a number of rallying points that are then forgotten until the next elections.

The NIS-SL 2010 Assessment clearly provided insightful comments into the lack of disciplined cohorts as illuminated by the numerous crossovers during critical moments in Parliament. These erode the trust given by the public to the elected officials.

#### **10.3.2. Anti-Corruption Commitment: to what extent do political parties give due attendance to public accountability and the fight against corruption?**

The NIS-SL 2010 Assessment discusses the anti-corruption pelages of both parties amounting to mere rhetoric after elections. Corruption in terms of bribery, misuse of public resources, nepotism and patronage, turning a blind eye, and abuse of power – remain rampant in Sri Lanka. However, once a member of a party becomes a Parliamentarian, he/she is given training on parliamentary practices and procedures. This training is provided by both the Parliament and political parties<sup>37</sup>.

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37 <http://www.ipu.org/parline/reports/2295.htm>, op cit.

## Recommendations

1. Legislation should be introduced to define the scope and authority of political parties and to control campaign spending. For example, parties should be required to submit financial accounts for official and public scrutiny, and limits on campaign expenditure and contribution limits may be imposed. A mechanism should also be introduced to monitor foreign funds received by political parties.
2. Representation of women in political parties, as provided for the parliamentary elections (amendment) act 2009, section 2(d), should be strengthened.
3. Cross-overs should require resignation from the political party concerned, and hence re-election since the public vote (under the pr system) for political parties primarily and not for individuals per se.
4. A strict code of conduct to be introduced to every political party.



## THE MEDIA

*“14. (1) Every citizen is entitled to - (a) the freedom of speech and expression including publication”<sup>1</sup>*

### SUMMARY

Chapter III of the 1978 Constitution introduced<sup>2</sup> fundamental rights with remedies<sup>3</sup>, one of which is freedom of speech and expression<sup>4</sup>. However this update reiterates the NIS-SL 2010 Assessment assertion that there are numerous instances of press censorship by different governments<sup>5</sup>. There have been instances of heightened control of media during the period under study while intimidation, assaults, destruction of property, political pressure through registration of web-based media services<sup>6</sup>, and murder appear to have increased. Likewise the World Press Freedom

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1 The Constitution, Chapter III, op cite.

2 Interview #3 op cit. commented on the fact that “the 1972 Constitution included fundamental rights in one section, 18, but it did not include them as a separate chapter.”

3 See: ““Every Person shall be entitled to apply to the Supreme Court, as provided by Article 126, in respect of the infringement, by executive or administrative action, of a fundamental rights to which such person is entitled under the provisions of this chapter.”The Constitution, op cit.

4 P. S. R. de Silva (2012) “Constitutionalism, Rule of Law and Fundamental Rights in Sri Lanka” Quest BCIS: A discussion forum for International Relations, June 18, 2012. <http://questbcis.wordpress.com/2012/06/18/constitutionalism-rule-of-law-and-fundamental-rights-in-sri-lanka/>

5 Interview # 3, op cit. commented that “fundamental rights and freedoms has restrictions and can be derogated from time to time.”

6 Interview # 22, op cit.

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Index in 2013 ranked Sri Lanka at 162/179 countries, which is considerably below that of Maldives (103/179), Nepal (118/179), Afghanistan (128/179), India (140/179), Bangladesh (144/179) and Pakistan (159/179)<sup>7</sup>. The NIS-SL 2010 Assessment discussed Sri Lanka's changing position – from 51/139 countries in 2002 to 162/175 countries in 2009.

A major concern for the media is that intimidations and deaths of journalists do not seem to be investigated<sup>8</sup>. The Committee to Protect Journalists (CPJ) noted that, “journalist murders have slowed in ... Sri Lanka ... Impunity Index countries with long records of deadly, anti-press violence. Despite the decline in murders, however, deep problems remain.”<sup>9</sup> In fact, Sri Lanka was regrettably included in the selected 12 countries on the Impunity Index since 2008.<sup>10</sup> The Freedom House analysis of ‘Freedom of the Press 2012’ informs that despite the introduction of a National Action Plan in 2012, “little progress was made on any of these recommendations by the year’s end.”<sup>11</sup> While some journalists continue to address corruption, most journalists are often pressured to adhere to the official version of events instead of challenging them. According to Human Rights Watch, the present culture of ‘self censorship’ among the majority of journalists as well as the proposed media code of ethics tends to make this more formal.-

## STRUCTURE

Media can be divided into three broad categories: print, broadcast, and new media. The first two are often coupled together as Traditional Media, which includes print media – such as newspapers, magazines, newsletters – as well as broadcast media

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7 Press Freedom Index (2013) “Asia-Pacific: Burmese spring an exception to decline in freedom of information in Asia”. Available at <http://en.rsf.org/press-freedom-index-2013,1054.html> (accessed 10<sup>th</sup> Sept 2013).

8 M. G. Rathnay

9 CPJ (2013) “Getting Away with Murder: CPJ’s 2013 Impunity Index spotlights countries where journalists are slain and killers go free”. Available at <http://www.cpj.org/reports/2013/05/impunity-index-getting-away-with-murder.php> (accessed 2nd Sept 2013).

10 Ibid.

11 <http://www.freedomhouse.org/report/freedom-press/2013/sri-lanka> (accessed 12th Sept 2013).

such as television and radio. The term 'new media' entails electronic or digital/online media and the subset of Social Media, "including internet forums, blogs, wikis, podcasts, and picture, music and video-sharing. Examples of social media applications are Google Groups, Wikipedia, MySpace, Facebook, YouTube, Second Life, Flickr and Twitter."<sup>12</sup> The term 'media' also includes 'creative expression' in the form of cinema and theatre; both of which are subject to censorship, control and even the harassment of employees.

In Sri Lanka the media operates in three languages Sinhalese, Tamil and English. The history of print media in Sri Lanka dates back to 1832. The first Sinhalese newspaper – *Dinamina* – was published in 1909 and the most recent publications of 2011 are *Ceylon Today*, *Mawbima*, *Randiwa*, and *Ada*. There are nine Sinhala, five Tamil, and nine English (general) newspapers of which, nine are weekly publications. The readership for the Sunday newspapers is over 900,000 while the daily newspaper sales exceed over a million. There are also a number of special interest newspapers and magazines. Radio broadcasting, which began in 1923, currently entails over 50 radio channels in any one of three languages while the country also has 23 television channels.

Sri Lankans are relatively new to computer literacy. The Western Province had the highest computer literacy rate of 15.3% in 2004<sup>13</sup> and this percentage was increased to 28%<sup>14</sup> in 2009. According to estimates, this has since increased to 35% in 2013<sup>15</sup>. New media is heavily used in Sri Lanka, with cell phones (i.e. mobile phones) amounting to "105 telephone connections for 100 people"<sup>16</sup>. The fact

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12 [https://www.eff.org/files/filenode/social\\_network/media\\_def\\_resp.pdf](https://www.eff.org/files/filenode/social_network/media_def_resp.pdf)

13 Amara Satharasinghe (2013) *Computer Literacy of Sri Lanka – 2004*. Department of Census and Statistics – Sri Lanka. Available at <http://www.statistics.gov.lk/CLS/> (accessed 13<sup>th</sup> Sept 2013).

14 Department of Census and Statistics (2009) "Computer Literacy in Sri Lanka – 2009". Available at <http://www.statistics.gov.lk/Newsletters/Publication1%28Computer%20litalary%29.pdf>

15 Mohammed Naalir (2013) "IT Literacy will reach 75 percent by 2015 – Minister Siyambalapatiya" *The Sunday Observer*. Sunday 7 April 2013. Available at <http://www.sundayobserver.lk/2013/04/07/pol05.asp> (accessed 10<sup>th</sup> August 2013).

16 [migration@dc.com](mailto:migration@dc.com) (2012) "Sri Lanka has more mobile phones per person" in *LankaNewspapers.com*. (accessed 20<sup>th</sup> Sept 2013).

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that propaganda can be spread effectively using new media can harm Sri Lankan security,<sup>17</sup> noted Gotabaya Rajapakse. In addition to dividing media into language, traditional and new media, it is also possible to categorize it into state-owned and privately-owned media. The state-owned media – such as the television station Sri Lanka Rupavahini Corporation, the radio station Sri Lanka Broadcasting Corporation (SLBC), and numerous newspapers including the Ceylon Daily News – consistently promote state actions. The managerial tiers of these institutions, as noted in the NIS-SL 2010 Assessment, are based on political affiliation. The NIS-SL 2010 Assessment further commented that some of the privately-owned media are owned by commercial interests and this is at times reflected in the content of their propaganda.

Advertising revenue is highest in state-owned media because governmental and semi-governmental entities advertise in them. While state actors place notices and advertise in the state-owned daily and/or Sunday newspaper, the privately-owned Sunday Times has garnered a vast following of individual citizens interested in advertising in the HitAds – both the printed and online versions<sup>18</sup>. The concern expressed in the NIS-SL 2010 Assessment that privately-owned media outlets may face commercial viability issues vis-à-vis the state-owned media is somewhat overcome.

### ASSESSMENT

#### 11.1. CAPACITY

##### 11.1.1 Resources (Law): To what extent does the legal framework provide an environment conducive to a diverse independent media?

The NIS-SL 2010 Assessment stated that the overall legal framework is conducive for a broad range of media organizations to function. Despite the fact that the 1972

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17 Gotabaya Rajapaksa (2013) "The Final Threat to Sri Lanka's National Security is New Media" *Colombo Telegraph*, June 14 2013. Available at <https://www.colombotelegraph.com/index.php/sri-lankas-national-security-concerns-social-media-is-a-threat/> (accessed 20 Sept 2013).

18 <http://www.hitad.lk/>

and 1978 Constitutions allow for freedom of speech and expression, the numerous laws that have come into effect – including the Emergency Laws, the Prevention of Terrorism Act, the Official Secrets Act and the Press Council Act – limits this. The Emergency Laws were withdrawn only in 2011. Reform of the “anarchic media laws has been attempted [since] 2011 onwards”<sup>19</sup>. The 1973 Press Council Act, parts of which were repealed in 2002, was again the focus of attention in 2013, where Section 30 of the Act – regarding making rules to set up a code of ethics for journalists and to respect the administration of the Press Council – was passed in Parliament on June 5<sup>th</sup> 2013<sup>20</sup>.

In 2011, the government, using the Press Council Act (1973) introduced a website registration program<sup>21</sup> whereby the government has the power to reject the registration of news and other websites deemed unsavory or derogatory towards Sri Lankans<sup>22</sup>. Websites that did not register were blocked by the government<sup>23</sup>. Despite the existence of the 2012 National Action Plan on National Reconciliation that spoke of introducing a “freedom of information legislation ... little progress was made on any of these recommendations”<sup>24</sup>.

The NIS-SL 2010 Assessment highlighted the fact that there are no regulations to ensure or even facilitate diversity of opinions and no impediments to this either.

### **11.1.2 Resources (practice): To what extent is there a diverse independent media providing a variety of perspectives?**

In practice, the media has not been able to express their views freely. The research into Sinhalese, Tamil and English Sunday newspaper articles from January 2010 to

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19 Interview #12, Journalist, name withheld on request (October 14<sup>th</sup> 2013).

20 <http://www.newsfirst.lk/english/node/24851>

21 [http://www.media.gov.lk/english/images/stories/pdf/web\\_registration\\_form.pdf](http://www.media.gov.lk/english/images/stories/pdf/web_registration_form.pdf)

22 See <http://www.news360.lk/politics/sri-lanka-starts-website-registration-program-application-is-issued-online>

23 See <https://www.colombotelegraph.com/index.php/sri-lanka-supreme-court-slams-door-on-websites/>

24 Freedomhouse, op cite.

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April 2013 was conducted by three researchers for this report. A perusal of 360 Sinhalese, 360 English and 40 Tamil Sunday newspapers highlighted the difficulty of providing 'new' news - an incident would be reported in exactly the same manner in many different newspapers<sup>25</sup>. Only a few papers criticize the government<sup>26</sup>. Moreover, the introduction of a website registration system can be considered an attempt at regulating that form of media as well.

Not only have those in the print media faced intimidation, but those in the entertainment media as well have been on the receiving end. The premier of the Sinhala film "Seetha Man Awa" ('I came Seetha') was interrupted by members of the 'Ravana Balaya' who demanded that the traditional names of Rama, Seetha and Ravana (i.e. from the Ramayana story) be removed from the film<sup>27</sup>. In a landmark decision, the Panadura High Court judge sentenced ten former Presidential Division members to prison for harassing and intimidating a duo of singers in 2013, twelve years after the incident.<sup>28</sup>

The NIS-SL 2010 Assessment involved analyzing the extensive impact of state-owned media. Diverse perspectives are presented by privately-owned media but the 2010 Assessment notes the increase in self-censorship due to extra-legal repercussions for presenting criticisms of the powerful. The NIS-SL 2010 Assessment was also critical of the caliber of journalists who lack training and knowledge of the international world. The current Assessment notes the existence of the Journalism Unit of the University of Colombo, which has been in existence since 1991. The Diploma in Journalism requires only GCE O/Levels and three years experience

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25 Note: these are copy-paste of international news, mostly from Reuters.

26 Based on Primary research conducted between May 5th 2013 to August 15th 2013, on Sinhala, Tamil and English state and non-state Sunday newspapers from 2010 May to 2013 May at the Archives of Sri Lanka.

27 See <http://www.srilankamirror.lk/news/10518-ravana-irritated-when-seetha-arrived> (accessed 16 Sept 2013).

28 Chandani Kirinde (2013) "Rookantha: those in political, security and cinema fields gave the orders". Available at <http://www.sundaytimes.lk/130818/news/rookantha-those-in-political-security-and-cinema-fields-gave-the-orders-58510.html> (accessed 30th August 2013).

and therefore training is available for vast numbers.<sup>29</sup> There is also a Kadirgarmar Journalism Scholarship to gain training abroad<sup>30</sup>.

### 11.1.3 Independence (Law): To what extent are there legal safeguards to prevent unwarranted external interference in the activism of the media?

The legality of restricting fundamental laws for the interest of national security and racial harmony was reaffirmed in a speech given by Minister of National Languages, Vasudeva Nanayakkara. He requested that “the government should incorporate in the Penal Code a provision in the Prevention of Terrorism Act that deals with offences relating to religious and racial disharmony.”<sup>31</sup> The Sri Lanka Bar Association<sup>32</sup> and case laws on freedom of expression and freedom of media<sup>33</sup> provide adequate proof of the validity of the restrictions.

There is a growing concern about members of the media being held in contempt of court mainly for reproducing statements of others, for discussing court cases and for not disclosing their sources<sup>34</sup>. An example is that of the Lanka-e-News editor, Shantha Wijesuriya who was remanded for contempt of court “on charges of publishing a false news item regarding a case being heard at the court”<sup>35</sup> in 2011. Sri Lanka does not have any legislation to enact a Freedom of Information Act The Establishment Code – which governs civil servants – used at present prohibits public officials from disclosing information to media.

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29 <http://www.cmb.ac.lk/academic/arts/journalism/diplomainjournalism.html>

30 N.a. (2014) “Self-imposed press watchdog marks a decade with international presence” *The Sunday Times* January 12 2014.

31 [http://www.colombopage.com/archive\\_13A/Jun11\\_1370960411JR.php](http://www.colombopage.com/archive_13A/Jun11_1370960411JR.php) (accessed 12 August 2013).

32 [http://basl.lk/news\\_one.php?id=66](http://basl.lk/news_one.php?id=66)

33 N.a. (n.d.) “Excerpts from relevant Sri Lankan case law on freedom of expression and freedom of the media” <http://mediareformlanka.com/files/Cases.pdf>

34 [http://srilankahr.net/legal\\_reform/mainfile.php/0104/40/?print=yes](http://srilankahr.net/legal_reform/mainfile.php/0104/40/?print=yes) (accessed 20<sup>th</sup> August 2013).

35 <http://nfrsrilanka.wordpress.com/2011/04/27/sri-lanka-journalist-arrested-on-contempt-of-court-charges/> (accessed 20<sup>th</sup> August 2013).

The current request to introduce a Freedom of Information Act involves the assistance of civil society, media, and the opposition in Parliament. Freedom House informs that “an attempt by the opposition to introduce a right to information bill in Parliament in 2011 was defeated by the governing majority, in violation of its previous campaign promises, and an additional attempt in May 2012 was also stymied by the speaker of Parliament.”<sup>36</sup> The R. K. W. Goonesekera Committee Report of 1996 included both these as areas that required reform<sup>37</sup>.

The NIS-SL 2010 Assessment focused on the legality of restricting fundamental rights and the lacuna in laws on ‘access to information’.

### **11.1.4 Independence (practice): To what extent is the media free from unwarranted external interference in its work in practice?**

The state intrusion in media matters reached its peak during the period under examination with the state’s determination to introduce a Code of Media Ethics. This Code,

introduced by the Ministry of Mass Media and Information, uses broad and vaguely worded language to prohibit “criticisms affecting foreign relations” and content that “promote[s] anti-national attitudes.” It also prohibits “material against the integrity of the Executive, Judiciary and Legislature” and warns against the publication of content that “offends against expectations of the public, morality of the country or tend to lower the standards of public taste and morality.”<sup>38</sup>

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36 Freedomhouseop cite.

37 David Page, William Crawley and Kishali Pinto-Jayawardena (2012) “Media reform Lanka – an introduction to the research and articles” in Media Reform Lanka. London: Institute of Commonwealth Studies. Available at <http://www.mediareformlanka.com/media-reform-lanka-introduction-research>

38 Committee to Protect Journalists (2013) “Media ethics code could restrict free press in Sri Lanka”. Available at <http://www.cpj.org/2013/06/media-ethics-code-could-restrict-free-press-in-sri.php> (accessed 20th Sept 2013).



The reactivated Sri Lanka Press Council initially introduced the code as a Gazette Extraordinary No 162/5A of October 14<sup>th</sup> 1981<sup>39</sup>.

The Ministry of Media and Information demanded that all news organizations “must obtain prior official approval before issuing any text or SMS news alerts that carried information about the military or police”<sup>40</sup>. Moreover, reenactment of certain components of the 1973 Press Council Act resulted in a request by the Ministry to register websites. Reporting of statements has also resulted in many journalists, including Frederica Jansz, leaving the country. As noted by CPJ, during the period 2007 – 2012, “more than 20 journalists have gone into exile.”<sup>41</sup> In 2013 journalists met the UN Human Rights Chief, Navi Pillay to discuss this untenable situation.<sup>42</sup>

Critical editorials are often written but always in non-state newspapers. However, the Press Freedom Index highlights the fact that Sri Lankan journalists who expose corruption are often subjected to arrest and threats and some leave the country subsequently<sup>43</sup>.

Interference is also now evident with regard to the medium of cinema. One incident relates to the protests made by Ravana Balaya regarding the showing of the film “Seetha Man Awa”. Another is the same group demanding that the cinema regulatory Public Performance Board (PPB) ban Tamil movies from South India. The regulation of films that are under the ‘Adults Only’ category is done by the cancelling of certificates.

The NIS-SL 2010 Assessment discussed how media is compromised by external sources and through state-control over major print, radio and television

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39 See [http://www.mediareformlanka.com/sites/default/files/archival\\_files/Sri%20Lanka%20Press%20Council%20Code%20of%20Ethics%20for%20Journalists.pdf](http://www.mediareformlanka.com/sites/default/files/archival_files/Sri%20Lanka%20Press%20Council%20Code%20of%20Ethics%20for%20Journalists.pdf)

40 CPJ op cite.

41 Ibid.

42 N.a. (2013) “Journalists in Sri Lanka meet with UN Human Rights Chief” in *Ceylon Today*. 2<sup>nd</sup> Sept 2013.

43 See <http://www.globalpeacesupport.com/2013/09/sri-lanka-sunday-leaders-mandana-is-mail-abeywickrema-flees/> (accessed 20<sup>th</sup> Sept 2013).

establishments. It stressed the fact that media institutions are invariably political in that they support either the government or the opposition and rarely toe an impartial line. It noted however that there is no legal support regarding the disclosure of journalist sources and no journalist has been jailed for refusing to divulge sources. The report subsequently provided information on the numerous killings and threats against journalists.

The 2012 situation report by the International Federation of Journalists suggested that “media freedom is a neglected dimension in Sri Lanka’s post-war politics.”<sup>44</sup>

## **11.2 GOVERNANCE**

### **11.2.1 Transparency (Law): to what extent are there provisions to ensure transparency in the activities of the media?**

The private media companies must disclose shareholder information and annual auditing according to the Companies Act of 2007. The NIS-SL 2010 Assessment informs that most media institutions do not have disclosure policies while state-owned media institutions are also not mandated to provide information.

### **11.2.2. Transparency (practice): to what extent is there transparency in the media in practice?**

While the Companies Act of 2007 requires the disclosure of shareholders, the information on who actually owns and perhaps controls the political slant of printed and/or broadcast media is sometimes hidden. As the NIS-SL 2010 Assessment notes, some media establishments do provide information on ownership but others, perhaps due to being reclusive, tend not to provide this information.

The monopoly of news by three groups – Lake House (also called Associated Newspapers of Ceylon Limited), Upali Newspapers Limited, and Wijeya Newspapers Limited – has resulted in news retaining a particular slant because these groups

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44 International Federation of Journalists (2012) “Situation Report: Sri Lanka media freedom a neglected dimension of post-war politics.” <http://asiapacific.ifj.org/assets/docs/080/019/c8ddf50-b0e8d13.pdf>

tend to align themselves to one or another political party. This prevents unbiased news from reaching the majority of the people. Moreover, since 2010, there have been attempts to control privately owned media<sup>45</sup> through takeovers and through purchase of majority shares<sup>46</sup>.

The LLRC report dedicated two pages to recommendations on how to protect media-related rights, which included deterrence mechanisms to punish offences and a request for the legislative enactment of the right to information.<sup>47</sup>

### **11.2.3 Accountability (Law): to what extent are there legal provisions to ensure that media outlets are answerable for their activities?**

The reactivated Sri Lanka Press Council, the new code of media ethics, and the requirement of registering web-based media are some of the new legal provisions introduced by the state to ensure media outlets are answerable for their actions.

The NIS-SL 2010 Assessment informs of the significance of the Press Complaints Commission of Sri Lanka (PCCSL), which is administered by the Editor's Guild of Sri Lanka. The commission consists of representatives of non-state (i.e. privately-owned) newspapers. Its impact however remains limited to those newspapers that subscribe to the mandate of the PCCSL. While the NIS-SL 2010 Assessment reported that the major newspapers were not members of the PCCSL, this changed drastically by 2013. State-owned newspapers and a majority of the privately-owned newspapers now appear to be included in the PCCSL. The PCCSL website provides information on complaints. The complaint chart for 2012 shows 176 complaints of which 87 were to Sinhala newspapers, 42 to Tamil newspapers and 29 to English newspapers. Of these 39 were out of mandate while 72 were resolved<sup>48</sup>.

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45 Ravaya Solidarity (2013) "Sri Lanka: an appeal to support Ravaya publication" <http://www.humanrights.asia/news/forwarded-news/AHRC-FST-041-2013> (accessed 12th Sept 2013).

46 Charles Haviland (2012) "Sri Lanka Sunday Leader editor Frederica Jansz sacked" <http://www.bbc.co.uk/news/world-asia-19680426> (accessed 20th August 2013).

47 LLRC, op cit.

48 <http://www.pccsl.lk/sites/default/files/Complaints%20Chart-2012.pdf>

#### **11.2.4 Accountability (practice): to what extent can media outlets be held accountable in practice?**

The NIS-SL 2010 Assessment focused on the 'right to reply' and newspapers carrying apologies and corrections where relevant. The demand of an apology in writing is another means by which certain media outlets ensure restitution for untruthful reporting. Threatening to hold editors and journalists in contempt of court for slander or defamation of character, the blocking of internet/websites that are deemed 'traitorous' are but a few mechanisms used to hold certain media outlets accountable. At the same time, the PCCSL has become a self-regulatory mechanism for media in Sri Lanka.

#### **11.2.5 Integrity (law): to what extent are there provisions in place to ensure the integrity of media employees?**

The Code of Ethics introduced in 1981 is still in existence. The Code of Professional Practice (Code of Ethics) of the Editor's Guild of Sri Lanka "both protects the rights of the individual and upholds the public's right to know"<sup>49</sup>. When asked about this code, a print media journalist stated that the code that is being tabled is a major concern as it does not impose the integrity of the media but restricts them<sup>50</sup>.

#### **11.2.6 Integrity (practice): to what extent is the integrity of media employees ensured in practice?**

The interviewed journalist noted how the personal political leanings of media owners puts pressure on even private newspaper employees. This individual added that intimidation and bribery continue to be used as a means of controlling the news<sup>51</sup>. The self-regulatory editor's guild strived to implement the Code of Ethics.

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49 PCCSL (20??) "Code of Professional Practice (Code of Ethics) of the Editors Guild of Sri Lanka adopted by the Press Complaint Commission of Sri Lanka". <http://www.pccsl.lk/sites/default/files/Code%20in%20English.pdf>

50 Interview 9: Journalist in a Sinhala medium newspaper Name withheld on request. (August 14<sup>th</sup> 2013).

51 Ibid.

There is also Journalism Awards for Excellence program conducted by the Editors' Guild of Sri Lanka and the Press Institute of Sri Lanka<sup>52</sup>.

### 11.3 ROLE

#### 11.3.1 Practice: to what extent is the media active and successful in investigating and exposing cases of corruption?

Self-censorship among a majority of journalists has become the norm in the prevailing situation in Sri Lanka. At the same time, according to Transparency International, there are individuals who fearlessly exposed corruption<sup>53</sup>. The Sri Lankan investigative journalist Mr. Jayantha was awarded the Integrity Award in 2010<sup>54</sup>. He left Sri Lanka after being abducted and assaulted in 2009. The danger of exposing high level corruption was discussed in the NIS-SL 2010 Assessment as well.

The culture of fear and intimidation appears to be coupled with intolerance. It is alleged that this has resulted in self-regulation by the media.

### Recommendations

1. Right to Information legislation needs to be introduced as an urgent priority to ensure that the media can report more openly, and the public can take informed and unfettered decisions.
2. State media institutions (radio, television and print) should be freed from state control.
3. The killing, disappearance and abduction of journalists must be investigated and the perpetrators brought to justice.

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52 "Self-imposed press watchdog marks a decade with international presence" op cit.

53 IFJ, op cit.

54 See [http://www.transparency.org/getinvolved/awardwinner/attotage\\_prema\\_jayantha](http://www.transparency.org/getinvolved/awardwinner/attotage_prema_jayantha) (accessed 20<sup>th</sup> Sept 2013).

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4. Journalists should be equipped with proper training and knowledge to ensure responsible and credible reporting.
5. Media should abide with the companies act 2007 by disclosing share hold information and auditing in order preserve transparency
6. A strict code of ethics to be introduced and implemented for all media personnel.

## CIVIL SOCIETY

*17. Every person shall be entitled to apply to the Supreme Court, as provided by Article 126, in respect of the infringement or imminent infringement, by executive or administrative action, of a fundamental right to which I such person is entitled under the provisions of this Chapter.<sup>1</sup>*

### SUMMARY

There is an increasing concern since the termination of the war in 2009, about the “Growing Irrelevance of Sri Lanka’s ‘Civil Society’”<sup>2</sup>, where civic engagement which “refers to that process whereby citizens or their representatives are able to engage and influence public processes, in order to achieve civic objectives and goal”<sup>3</sup>, has been declining.

Increased government control as well as suspicions about the integrity and accountability of the Non-Governmental Organizations (NGOs) – which represent civil society in the mindset of Sri Lankans, irrespective of the fact that civil society consists of a far broader grouping – discussed in the NIS-SL 2010 Assessment has apparently increased in the space of three years. This is a marked difference from the stance taken soon after the tsunami where the tradition of civil society was

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1 The Constitution, Chapter III, article 15(8), op cite.

2 SamanmaleeUnanthena (2011) “Growing Irrelevance of Sri Lanka’s ‘Civil Society’” *The Sunday Leader*, January 2<sup>nd</sup> 2011.

3 UNDP (2013) “Civic Engagement” [http://www.undp.org/content/undp/en/home/ourwork/democraticgovernance/focus\\_areas/topics\\_civic\\_engagement/](http://www.undp.org/content/undp/en/home/ourwork/democraticgovernance/focus_areas/topics_civic_engagement/)

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viewed as being “vibrant and intricately woven” into the “fabric of the nation”<sup>4</sup>. This was perhaps the apex of the state-civil society relationship because subsequently there has been deterioration in the degree of recognition, independence, and space granted to civil society by the government. At the International Civil Society Week in November 2013, the participants voiced their concern over state-civil society relations.

The tension discussed in the NIS-SL 2010 Assessment between the state and International Non-Governmental Organizations (INGOs) have continued in the ensuing years. There is a tightening of restrictions for those NGOs and INGOs working in the north since the termination of the war in 2009. The transfer of the NGO Secretariat from the Ministry of Social Services to the Ministry of Defence in 2010 heralded this transformation<sup>5</sup>. This tension between the state and the INGOs and NGOs is highlighted in the facts presented by the Army Board on the Lessons Learnt and Reconciliation Commission (LLRC) which reiterates the government position that some INGOs and NGOs had supported the LTTE<sup>6</sup>. The subsequent demand made by INGOs and NGOs that the government examine state actions during the last months of the war further exacerbated the relationship. Yet, as noted by Mahindapala, the tension lies not just between a government striving to strengthen its position in defiance of the criticism levelled at it, but between the external intrusions of non-state actors to a sovereign nation<sup>7</sup>. This criticism of the INGO and NGO field is reiterated by Krauses, who noted how “It is no surprise that political actions ... were shaped by opinions and activities coming from the UN and Non Governmental Organizations (NGOs) ... which have taken aim at Sri

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4 UNDP (2007) *Civil Society and UNDP in Sri Lanka: partnerships in crisis situations*. Colombo: UNDP

5 N.a. (2010) “Analysis: NGOs question tighter access to Sri Lanka’s north” Humanitarian News and Analysis: a service of the UN Office for the Coordination of Humanitarian Affairs. Available at <http://www.irinnews.org/report/90133/analysis-ngos-question-tighter-access-to-sri-lanka-s-north>

6 See: [http://www.army.lk/docimages/image/LLRC\\_2013.pdf](http://www.army.lk/docimages/image/LLRC_2013.pdf)

7 H. L. D. Hanindapala (2013) “Time to Probe the INGOs and NGOs”. Available at <http://www.lankaweb.com/news/items/2013/02/17/time-to-probe-the-ingos-and-ngos/>



Lanka and conclusions drawn by said NGOs are totally out of proportion, but many European governments are listening”<sup>8</sup>.

Despite the negativity, it is vital to emphasize how different civil society groups/ NGOs interact with the central and provincial governments to enhance governance. According to the Dictionary of Registered NGOs Sri Lanka has listed 1398 registered NGOs in Sri Lanka<sup>9</sup>. There is also a list of the number of ‘de-registered NGOs and when the de-registering occurred<sup>10</sup>. The holding of the Commonwealth People’s Forum was the highlight of civil society engagement with the state and the international community.

The Centre for Policy Analysis listed three threats to the work of Civil Society Organizations (CSO): (1) Harassment and intimidation which has resulted in verbal attacks, abductions, threats, detentions, and killings.<sup>11</sup>; (2) Interference in CSO activities where the “CSOs are being subjected to increasing surveillance and official control especially in the Northern Province as part of the Government’s policy of achieving total domination over dissenting voices [and] constraints are being placed on their programmatic activities and thematic scope of work.”<sup>12</sup>; (3) Constraints on CSO’s ability to work with international partners due to deep-seated mistrust of foreign aid and the drying-up of aid to middle-level income countries.<sup>13</sup>

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8 Joachim Krause (2013) “A prosperous and Stable Sri Lanka in the Region: Challenges and Opportunities” presented at the Defence Seminar – 2013, held on 5.6.2013. available at [http://www.defence.lk/new.asp?fname=This\\_Success\\_Would\\_not\\_Have\\_Been\\_Possible\\_without\\_Army\\_Prof\\_Krause\\_Criticizes\\_NGOs\\_Influencing\\_Western\\_Govts\\_20130906\\_05](http://www.defence.lk/new.asp?fname=This_Success_Would_not_Have_Been_Possible_without_Army_Prof_Krause_Criticizes_NGOs_Influencing_Western_Govts_20130906_05)

9 See: [http://www.ngosecretariat.gov.lk/web/index.php?option=com\\_statistics&Itemid=67&lang=en](http://www.ngosecretariat.gov.lk/web/index.php?option=com_statistics&Itemid=67&lang=en)

10 NGO Secretariat Sri Lanka (2013) “De Registered NGOs” [http://www.ngosecretariat.gov.lk/web/images/downloads/de\\_registered\\_ngos.pdf](http://www.ngosecretariat.gov.lk/web/images/downloads/de_registered_ngos.pdf)

11 Centre for Policy Alternatives (2013) *Sri Lanka’s Harassed Civil Society* Colombo: World Alliance for Citizen Participation Centre for Policy Alternatives (CIVICUS). Appendix 1 and 2, pp. 9 – 11

12 Ibid. p. 5

13 Ibid.

## STRUCTURE

Civil society is a broad concept. As noted by Anheier, “civil society is the sum of institutions, organizations, and individuals located among the family, the state and the market, in which people associate voluntarily to advance common interests.”<sup>14</sup> It is the “social sphere separate from both the state and the market”<sup>15</sup>. These include charities, of which there are 1101 according to the Department of Inland Revenue, each created through Gazette notification.<sup>16</sup> Furthermore, Trade Unions and CSOs fall under the Civil Society group but “few unions have partaken of this potential synergy, as there is not much joint action and collaboration between the unions on the one hand and other CSO groups on the other.”<sup>17</sup>

Civil Society Organizations or CSOs are often defined as ‘Non-Governmental Organizations’ or NGOs, which in itself is a broad concept, having a variety in terms of how they operate (nationally or internationally), their size (small community-based to vast international organizations), and scope (to fulfil a goal, sometimes to motivate or mobilize a population at community-base level while others ensure state ‘transparency’ and ‘accountability’)<sup>18</sup>. Laws regulating NGOs have provided only a primitive definition and “In 1980, when this Act was promulgated, there were no peace barons, election barons, transparency barons or accountability barons. NGO activity was at a much lower level.”<sup>19</sup>

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14 Helmut K. Anheier (n.d.) “How to measure civil society” available at <http://fathom.lse.ac.uk/features/122552/>

15 WHO (2013) “Trace, foreign policy, diplomacy and health: civil society” <http://www.who.int/trade/glossary/story006/en/>

16 See: <http://www.qcontra.com/charitylist.html>

17 International Labour Organization (2004) *Trade Unions and poverty reduction strategies*. Geneva: ILO p. 53

18 Ibid.

19 C. A. Chandraprema (2011) “The legal basis of NGO impunity: NGO finances” *The Island*, April 7, 2011. [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=22642](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=22642)

Therefore, a broad understanding of Civil Society includes “NGOs, trade unions, religious groups and the media”<sup>20</sup>. However, as in the NIS-SL 2010 Assessment, this pillar deals only with Non-Governmental Organization (NGOs) which are often considered Civil Society Organizations. According to 2011 data collected by Dharmasiri and Kodeeswaran, there are over 1000 civil society organizations in Sri Lanka<sup>21</sup>. Despite this, the number of registered NGOs in 2011<sup>22</sup> was 1347 while this increased to 1398 by 2013<sup>23</sup>. These are often categorized under the broad spectrum of international and local NGOs. International NGOs or INGOs can be interpreted as a ‘global civil society’ which “enjoy support, or operate, in many countries, e.g. global campaigns against landmines or for debt relief. This term also refers to a key phenomenon of the globalization process: citizens in one country acting in support of citizens in another.”<sup>24</sup>. The local NGOs are further tabulated according to whether they are funded from external sources. The Ministry of Defence has tabulated a list of 93 International Non-Governmental Organizations (INGOs)<sup>25</sup>. Community-based Organizations (CBOs) however are perceived as those who provide invaluable services, especially in war-affected areas<sup>26</sup>.

There is a concern that the restrictions imposed by laws and the nature of governance since the termination of the war in 2009 have made civil society ‘irrelevant’ in Sri

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- 20 Oliver Walton and Paikiasothy Saravanamuttu (2011) “In the balance?: civil society and the peace process 2002 – 2008” in Jonathan Goodhand, Jonathan Spencer, and Benedikt Korf, eds. *Conflict and Peacebuilding in Sri Lanka: caught in the peace trap?* Oxon: Routledge. p. 184
  - 21 Ajantha S. Dharmasiri and Suthesha Kodeeswaran (2011) “A Study of Knowledge Sharing Practices of Civil Society Organizations in Sri Lanka” *Sri Lanka Journal of Management*, volume 16, No. 1&2 January – June 2011.
  - 22 Freedomhouse (2013) “Sri Lanka 2012” <http://www.freedomhouse.org/report/countries-cross-roads/2012/sri-lanka>
  - 23 See: [http://www.ngosecretariat.gov.lk/web/index.php?option=com\\_statistics&Itemid=67&lang=en](http://www.ngosecretariat.gov.lk/web/index.php?option=com_statistics&Itemid=67&lang=en)
  - 24 WHO, op cite.
  - 25 See: [http://www.defence.lk/new.asp?fname=20061103\\_11\\_list](http://www.defence.lk/new.asp?fname=20061103_11_list)
  - 26 USAID (2013) “Promoting Social Cohesion in War-torn Areas of Sri Lanka” <http://www.usaid.gov/results-data/success-stories/promoting-social-cohesion-war-torn-areas-sri-lanka>

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Lanka<sup>27</sup>. In addition there is a tendency to vilify some of those working in INGOs and NGOs<sup>28</sup>, to the extent that there was a global call to protect civil society in Sri Lanka<sup>29</sup>.

## ASSESSMENT

### 12.1 CAPACITY

#### 12.1.1 Resources (law): to what extent does the legal framework provide an environment conducive to civil society?

As noted in the NIS-SL 2010 Assessment, there were five laws or mechanisms by which NGOs – whether international or local – get legal incorporation. These are the

1. Registration under the Societies Ordinance of 1891;
2. Registration under the Companies Act 2007;
3. Registration under the Cooperative Societies Act of 1992;
4. Registration under the Voluntary Social Service Organizations [VSSO] Act of 1980; or
5. Legal incorporation by an Act of Parliament sponsored by a Member of Parliament through the mechanism of a Private Members Bill.<sup>30</sup>

The NIS-SL 2010 Assessment highlighted the convoluted requirements of each of these acts which at times compromise the independence of the INGOs and NGOs

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27 Samanmalee Unanthena (2011) "The Growing Irrelevance of Sri Lanka's Civil Society" *The Sunday Leader*, 2.01. 2011. <http://www.thesundayleader.lk/2011/01/02/the-growing-irrelevance-of-sri-lanka%E2%80%99s-%E2%80%98civil-society%E2%80%99/>

28 See: <http://www.internationalpeaceandconflict.org/profiles/blogs/civil-society-as-a-space-for-dissent-in-sri-lanka#.UqDSS-K3Vj6>

29 Ramanathan Ahilan (2013) "Global call for the protection of civil society in Sri Lanka" <http://www.rightsnow.net/?p=4060>

30 Rohan Edirisinha (2010) "Sri Lanka" *The International Journal of Not-for-Profit Law*, Vol. 12, Issue 2, May 2010. [http://www.icnl.org/research/journal/vol12iss3/special\\_5.htm](http://www.icnl.org/research/journal/vol12iss3/special_5.htm)

working under international funding. Additionally there are rules regarding the issuing of visa and work permits for changing staff from time to time. For example the Ministry of Internal Administration Circular no. 1 of 2008, provided guidelines for expatriates working in voluntary social service organizations or NGOs<sup>31</sup>.

Other than these, the 'non-profit organizations' (NPOs) have their own legal requirements for registering. Such NPOs register under the Voluntary Social Service Organization Act of 1980 and its amendment of 1998 as a voluntary organization, as a limited liability company under the Companies Act of 1982, "as Trusts under the Trust Ordinance No. 17 of 1917, as Charities under the Inland Revenue Act No. 38 of 2000, as Approved Charities under the Inland Revenue Act No. 4 of 1963 or the Inland Revenue Act No. 28 of 1979 or under the Mutual Provident Societies Act No. 55 of 1949 [and] an Act of Parliament."<sup>32</sup>

A watershed in state-civil society relations (especially INGO) was in 2010 when legislature was brought in to restrict the independence and movement of these organizations, especially in the northern areas of the country. The year 2010 saw the introduction of new laws requiring international and local NGOs working in the country to register with the Ministry of Defense<sup>33</sup>. Since then, there have been a number of abortive attempts to further regulate auditing of NGO financing. This was based on reports of legal/audit impunity of (I)NGOs<sup>34</sup>. Since then, laws introduced after 2010, which curtail the activities of CSOs, also include the restriction of internet freedom whereby "the Telecommunication Regulatory Commission of Sri Lanka (TRCSL) is the sole lawful body in the country to control internet usage."<sup>35</sup> There is

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31 See: [http://www.ngosecretariat.gov.lk/web/images/downloads/ngo\\_circularnew.pdf](http://www.ngosecretariat.gov.lk/web/images/downloads/ngo_circularnew.pdf)

32 Chartered Accountants of Sri Lanka (20??) "Sri Lanka Statement of Recommended Practices for not-for-profit organizations (including non-governmental organizations)". Available at [http://www.casrilanka.com/casl/images/stories/content/publications/publications/accounting\\_standards/sri\\_lanka\\_statement\\_of\\_recommended\\_practice\\_for\\_not\\_for\\_profit\\_organizations/sl\\_sorp-npos\\_%5Bincluding%20ngos%5D.pdf](http://www.casrilanka.com/casl/images/stories/content/publications/publications/accounting_standards/sri_lanka_statement_of_recommended_practice_for_not_for_profit_organizations/sl_sorp-npos_%5Bincluding%20ngos%5D.pdf)

33 Freedomhouse (2013) Ibid.

34 C. A. Chandraprepa (2011) "The legal basis of NGO impunity: NGO Finances" The Island, April 7, 2011. [http://www.island.lk/index.php?page\\_cat=article-details&page=article-details&code\\_title=22642](http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=22642)

35 Sri Lanka Telecommunications Act of 1991, Section 10, cited in Centre for Policy Alternatives, op cite.

also an attempt to expand the definition of NGOs – which is anyhow imprecise and dated – of the VSSO Act to include those engaged in research and advocacy.

### **12.1.2 Resources (practice): to what extent do CSOs have adequate financial and human resources to function and operate effectively?**

There are a vast number of CSOs working in Sri Lanka. The NIS-SL 2010 Assessment noted the decline in funding and the difficulty of attracting and retaining staff. It further highlighted the different funding avenues for CSOs, ranging from foreign governments, the United Nations, INGOs, private donors and government. The regulation, transparency and accountability in funding of INGOs and NGOs have become a great concern for the government in terms of national security<sup>36</sup>.

The Sarvodaya Shramadana Movement is often credited as the largest people's organization in Sri Lanka and it receives funding from international and local donors. Despite the resultant decrease in funding noted in the NIS-SL 2010 Assessment there are a number of NGOs, INGOs and other CSOs working in Sri Lanka. The Trincomalee district, for example, has 13 United Nations organizations, ranging from World Food Programme (WFP) to United Nations Industrial Development Organization (UNIDO). This area also has a plethora of 95 civil service organizations, focusing on women, youth, refugees, social development, language, and family planning.<sup>37</sup> One NGO worker said, "We have 15-year development plans for communities, but without private funding sources we would have to leave next year."<sup>38</sup> Enhancing the capabilities of CBOs is the focus of projects and training.<sup>39</sup>

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36 See: [http://www.defence.lk/new.asp?fname=Sri\\_Lanka\\_emphasizes\\_need\\_for\\_regulation\\_NGO\\_NPO\\_20130603\\_08](http://www.defence.lk/new.asp?fname=Sri_Lanka_emphasizes_need_for_regulation_NGO_NPO_20130603_08)

37 See: [http://www.trinconet.info/i\\_web/mypage.php?PageNo=7&organiz=2](http://www.trinconet.info/i_web/mypage.php?PageNo=7&organiz=2)

38 Inter Action (2013) "Sri Lanka: transitioning from a humanitarian crisis to a human rights crisis" Inter Action: a united voice for global change Briefing Paper, January 2013. <http://reliefweb.int/sites/reliefweb.int/files/resources/InterAction%20Transition%20Case%20Study%20-%20Sri%20Lanka%20-%20January%202013.pdf>. p. 9

39 See: <http://www.usaid.gov/results-data/success-stories/promoting-social-cohesion-war-torn-areas-sri-lanka>; <http://www.undp.org/content/srilanka/en/home/presscenter/articles/2011/11/08/improving-skills-of-community-based-organizations/>

There is a sustained slander attack on the staff of INGOs through the media. The Observatory for the Protection of Human Rights Defenders noted how government-controlled media has defamed CSOs and their staff as “traitors to the nation”<sup>40</sup>. The labeling of the German NGO Friedrich Neumann Foundation as conspirators engaged in toppling the government is an illustration of this fact.<sup>41</sup>

The government’s stance with regard to trade unions must also be mentioned here. The academic trade union FUTA staged a strike for three months in 2012 but while this was relatively peaceful, other trade unions have voiced their concerns regarding intimidation and the arrest of trade unionists<sup>42</sup>.

### **12.1.3 Independence (law): to what extent are there legal safeguards to prevent unwarranted external interference in the activities of CSOs?**

According to the NIS-SL 2010 Assessment, the laws under which the CSOs register allow for varying degrees of interference by the government. This control of CSOs – especially the INGOs and NGOs – by the government might appear excessive.

Research, which was conducted in 2011, remarked on how many INGOs comprehend that the government’s suspicions of the INGO sector are because of alleged ties with the LTTE. Nevertheless the research which has been conducted drew attention to the fact that tension might also be a result of a disagreement on “the extent of INGO rights to participate in the development of a country, and ... how much responsibility the government of a country should have.”<sup>43</sup>

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- 40 Observatory for the Protection of Human Rights Defenders (2012) “NGO report – 2<sup>nd</sup> Universal Periodic Review of Sri Lanka (November 2012): the situation of human rights defenders in Sri Lanka.” [http://lib.ohchr.org/HRBodies/UPR/Documents/Session14/LK/JS12\\_UPR\\_LKA\\_S14\\_2012\\_JointSubmission12\\_E.pdf](http://lib.ohchr.org/HRBodies/UPR/Documents/Session14/LK/JS12_UPR_LKA_S14_2012_JointSubmission12_E.pdf)
  - 41 See: ITN (2013) “More Tiger links of Friedrich Naumann and UNP surface” <http://www.itnnews.lk/?p=17602>
  - 42 ColomboPage (2013) “Sri Lanka trade unions complain to IGP over arrest of trade unionists” Colombopage, October 6, 2013. [http://www.colombopage.com/archive\\_13B/Oct06\\_1381030244CH.php](http://www.colombopage.com/archive_13B/Oct06_1381030244CH.php)
  - 43 Sabina Christrup (2011) “International Non-Governmental Organizations (INGOs) in Sri Lanka: a study about social capital and trust between the two ethnic groups, Tamil and Sinhala in Sri Lanka.” Unpublished Master’s Thesis dissertation. <http://lup.lub.lu.se/luur/download?func=downloadFile&recordId=2150442&fileId=2150443>

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According to a report published in lieu of the Commonwealth Heads of Government Meeting 2013 (CHOGM) by the Centre for Policy Alternatives, there is a disabling legal environment for civil society in Sri Lanka<sup>44</sup>. The fact that the NGO Secretariat works under the Ministry of Defense “has led to increased – and unwarranted – scrutiny of NGO activities by intelligence and security agencies as an intimidation tactic”<sup>45</sup>

### **12.1.4 Independence (practice): to what extent can civil society exist and function without undue external interference?**

The derogative perception of INGOs/NGOs and the political motivations in the restrictive stance of the government concerning INGOs/NGOs were commented on in the NIS-SL 2010 Assessment. It noted how the CSO role of challenging/contesting the actions and policies of the state has reduced since 2005. The changed relationship, according to the 2010 Assessment, was reflected in the restrictive work visas handed to foreigners working in INGOs. While the independence of CSOs who question the government or who were perceived with suspicion was thus challenged, the 2010 Assessment noted that those who toed the governmental line were not subjected to intimidation.

A Gallup study showed that Sri Lankans had a high civic engagement. Sri Lankans donated money (53%), volunteered time (46%) and helped strangers (55%) for the country to be placed in the top ten of the Civic Engagement Index<sup>46</sup>. At the same time, activists/advocates on peacebuilding, reconciliation, and anti-corruption faced challenges. Unanthenna commented on the ‘growing irrelevance of civil society’ in Sri Lanka<sup>47</sup>. The Centre for Policy Alternative report highlighted a number of verbal attacks, threats and even killings that occurred during 2010-2013 period. Yet, there

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44 Centre for Policy Alternatives, op cite.

45 Ibid.

46 Cynthia English (2011) “Civic Engagement highest in developed countries” Gallup World <http://www.gallup.com/poll/145589/civic-engagement-highest-developed-countries.aspx> “people with high civic engagement are positive about the communities where they live and actively give back to them.”

47 Unanthenna, op cite.



exist CSOs – such as the “NGO-facilitated Child Rights Advocacy Network, which links civil society organizations at the national, district and village level to a secretariat to monitor the Sri Lankan government’s implementation of the Convention on the Rights of the Child – which holds the government accountable”<sup>48</sup>. There are also NGOs that focus on assisting the local government bodies such as Asia Foundation, Federation of Sri Lankan Local Authorities, International Centre for Ethnic Studies (ICES), Centre for Policy Alternatives (CPA), Marga Institute, and FLICT (Facilitating Local Initiatives for Conflict Transformation), which are not viewed with disdain<sup>49</sup>. Gotabaya Rajapaksa noted that it is the emergent technological-driven new media that requires monitoring.<sup>50</sup>

## 12.2 GOVERNANCE

### 12.2.1 Transparency (practice): to what extent is there transparency in CSOs?

The NIS-SL 2010 Assessment viewed the lack of financial accountability as a grave concern. Whilst there were methods to gather information on activities and expenditure – through annual reports, tax compliance, and the requirement guidelines provided in the NGO Secretariat – these in practice remain inadequate and this situation remained a concern in 2014 as well. Indeed, public perception of CSOs – and especially NGOs and INGOs – is highly negative. Furthermore, the Establishment Code, the Official Secrets’ Act, and the lack of a Right to Information Act hamper the transparency of government activities, which in turn hinder the transparency of CSO activities.

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48 Inter Action, op cite. p. 16

49 G. R. Tressie Leitan (2010) *Context Study and Actor Mapping in the South Asian Region 2010: overview of decentralization and local governance in Sri Lanka*. Colombo: Swiss Agency for Development Cooperation (SDC).

50 Gotabaya Rajapaksa (2013) “The Final Threat to Sri Lanka’s National Security is New Media” Colombo Telegraph June 14 2013. <https://www.colombotelegraph.com/index.php/sri-lankas-national-security-concerns-social-media-is-a-threat/>

### **12.2.2 Accountability (practice): to what extent are CSOs answerable to their constituencies?**

The NIS-SL 2010 Assessment examined different types of accountability: those that referred to institutional oversight, the responsibility of CSOs to larger society, and to work within the parameters of the national policy framework. The hierarchical and restrictive nature of information and the male-dominated reality of CSOs were also discussed in detail. The fact that CSOs have limited accountability and only those who register under the Company's Act had a modicum of accountability was further commented on in the 2010 Assessment. The CBOs provide the least information. The issues on accountability are reiterated in the 2014 report.

### **12.2.3 Integrity (law): to what extent are there mechanisms in place to ensure the integrity of CSOs?**

The NIS-SL 2010 Assessment provided a list of attempts by INGO/NGOs themselves to ensure integrity within the CSO sector by introducing codes of conduct. These included attempts by Transparency International in 2008 and the Consortium of Humanitarian Agencies.

The National Cooperative Council (NCC) as the "sole apex organization of cooperative societies in the country ... is guided by a Code of Conduct"<sup>51</sup>. The other organizations which have a code of conduct are the UNDP and Oxfam-funded programs. Accordingly, there has been one 'Stakeholder Engagement Panels for Programme Governance by Oxfam GB Sri Lanka'<sup>52</sup>. What is lacking is a broad code or codes of ethics or conduct for CSOs in terms of accountability, transparency and integrity.

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51 Weeffect.org (2012) "Strengthening of cooperative and other civil society organizations in Sri Lanka: summary of programme document for Sri Lanka 2010 – 2013" <http://www.weeffect.org/files/2012/12/Programme-Sri-Lanka-web1.pdf>. p. 9

52 [http://foundationforfuture.org/en/Portals/0/Conferences/Accountability/Presentations/Session%201/Pres-3-One\\_World\\_Trust\\_English.pdf](http://foundationforfuture.org/en/Portals/0/Conferences/Accountability/Presentations/Session%201/Pres-3-One_World_Trust_English.pdf)

According to the International Defense and Security Programme, “Sri Lanka is placed in Band E [as] Political corruption vulnerability is high”<sup>53</sup>. “Some NGOs have become as large as medium-sized corporations (Commonwealth Business Council, *ibid*).Some (like those in Bangladesh and Sri Lanka) employ more staff than governments.”<sup>54</sup>. Yet an overarching code of conduct or ethics remains unattained.

#### 12.2.4 Integrity (practice): to what extent is the integrity of CSOs ensured in practice?

This 2014 report reiterates the position taken in the NIS-SL 2010 Assessment that the integrity of CSOs is often defined by the state on whether they get funding from external sources and/or whether the CSOs challenge the state actions and policies. This is largely due to the mistrust caused after the tsunami aid disaster<sup>55</sup>. However, for example NGOs focusing on poverty alleviation can work with the government<sup>56</sup>. The 2010 Assessment noted that the lack of coordination as well as professional rivalries between CSOs has resulted in the questioning of their legitimacy. As noted by Peter Eigen, civil society can be equally corrupt.<sup>57</sup>At the same time, it is important to emphasize the important role played by CSOs in Sri Lanka. These include the dissemination of knowledge on areas such as environmental degradation,<sup>58</sup> in the health sector with the WHO and in poverty reduction.

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- 53 Transparency International UK (2013) “Sri Lanka” International Defence & Security Programme, Transparency International. <http://government.defenceindex.org/sites/default/files/documents/GI-assessment-Sri-Lanka.pdf>. p. 1.
- 54 Danilo A. Songco () “The evolution of NGO accountability practices and their implications on Philippine NGOs: a literature review and options paper for the Philippine Council for NGO certification?” p. 3
- 55 InterAction.org op cite.
- 56 [http://www.unescap.org/rural/doc/gov\\_ngo\\_1998/Sri\\_lanka.PDF](http://www.unescap.org/rural/doc/gov_ngo_1998/Sri_lanka.PDF)
- 57 Financial Times (2008) “Civil Society can be equally corrupt” The Sunday Times December 14, 2008. <http://www.sundaytimes.lk/081214/FinancialTimes/ft326.html><http://www.ejustice.lk/PDF/Sri%20CSO%20Rio+20%20statement.pdf>
- 58 Sri Lanka Civil Society Statement (2012) “Sri Lanka Civil Society Statement Rio+20”

## 12.3 ROLE

### 12.3.1 Hold government accountable – to what extent is Civil Society active and successful in holding government accountable for its actions?

The NIS-SL 2010 Assessment commented on the difficulty of measuring ‘successes’ due to the strained relations in existence at the time. The fact that CPA and other organizations were able to voice their concerns prior to the CHOGM 2013 might be construed as success. According to the Global Integrity report, whether citizens can organize themselves into trade unions received only 75/100<sup>59</sup> despite the fact that ‘Freedom of Association’ is enshrined in the Constitution<sup>60</sup>. Furthermore, whilst Transparency International noted the need for trade unions to work together to initiate the Right to Information (RTI) Act, their individual successes have a somewhat chequered past. In 2011, 2012, and 2013, there have been a number of strikes in the health, academic, and transportation sectors<sup>61</sup>. Trade unions have objected to the courts involvement in the active implementation of fundamental rights<sup>62</sup>.

### 12.3.2 Policy reform: to what extent is civil society actively engaged in policy reform initiatives on anti-corruption?

The NIS-SL 2010 Assessment has noted a number of instances, including the drafting of the Audit Act, where CSOs were actively involved in policy reform. What is notable is the shortage of such successes in the subsequent three years. The CSOs as NGOs and INGOs have attempted to ensure reforms in the health sector, on the enforcement of human rights and on demining. The Halo Trust is one organization that has successfully worked with the state<sup>63</sup>. However, attempts at challenging the

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59 <http://report.globalintegrity.org/Sri%20Lanka/2007/scorecard/2>

60 Constitution, Article 14, op cite.

61 See [www.salary.lk/home/labour-law/trade-union](http://www.salary.lk/home/labour-law/trade-union) regarding the nexus between right to strike and the law.

62 Sri Lanka Brief (2013) “Trade Unions object to court involvement in TU action”

63 <http://www.halotrust.org/where-we-work/sri-lanka>

Government in the area of governance has led to difficulties for NGOs such as the Fredrick Neumann Foundation<sup>64</sup>.

### Recommendations

1. Civil society organizations should be more open and pro-active, and should work cooperatively together. CSOs should improve their internal and external transparency and accountability through the setting up of guidelines for self-regulation.
2. Right to Information legislation needs to be introduced as an urgent priority to ensure that the media can report openly and the public can take informed and unfettered decisions.
3. Right of Association should be recognized and protected throughout the country.

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64 See: <http://www.itnnews.lk/?p=27389>



## BUSINESS

*“a bill to provide for vesting in the State in the national interest, identified Underperforming Enterprises or Underutilized Assets; to appoint in respect of each one or more of such ... a Competent Authority; to Provide for their effective management, administration or Revival through Alternative utilization and the payment of compensation in respect thereof; and to provide for matters connected therewith ...”<sup>1</sup>*

### SUMMARY

The NIS–SL 2010 Assessment presented the potential possibilities available for the private/business sector in Sri Lanka soon after the end of the war. Other than a few comments on the Mahinda Chinthana policy of ‘new-nationalization’, the report focused on the issues of corruption, politicization, and the implementation of laws. Three years after the publication of the 2010 NIS-SL Assessment has seen the introduction of new laws and challenges. The Revival of Underperforming Enterprises and Underutilized Assets Act, No. 43 of 2011, for example, is voiced by some as a grave concern to the private sector because land utilized by some in the business sector is government-owned and as a result they fear that the Bill will be used as a tool to control the private sector.

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1 The Parliament of Sri Lanka (2011) *Revival of Underperforming enterprises and underutilized assets Act, No. 43 of 2011*. Colombo: Department of Government Printing. Also available at <http://documents.gov.lk/Acts/2011/Revival%20of%20Underperforming%20Enterprises%20or%20Underutilized%20Assets%20-%20Act%20No.%2043/Act%20No.%2043%28E%29.pdf>

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The business environment since 2010 is reflected in Sri Lanka's rankings in different indices. Sri Lanka ranked 102 out of 183 in the 'Doing Business Index' in 2011 but dropped down to 85 out of 189 in 2013<sup>2</sup>; 52 out of 142 in the World Economic Forum's 'Global Competitiveness Report' 2011-2012 and 65 out of 148 in both 2012-2013 and 2013-2014<sup>3</sup>; with a significantly low 2.29 in the 'Logistic Performance Index'<sup>4</sup>.

The basis of the Doing Business Index looks at categories such as 'starting a business', 'dealing with construction permits', 'protecting investors', 'registering property', 'resolving insolvency' and 'getting credit'.<sup>5</sup> The 'World Economic Forum's Global Competitive Report', "assesses the competitiveness landscape of 148 economies, providing insight into the drivers of their productivity and prosperity. The Report series remains the most comprehensive assessment of national competitiveness worldwide"<sup>6</sup>. It is important to mention the positive factors discussed in the 2013-2014 report: the basic institutions placed Sri Lanka at 54 out of 148 and basic health and primary education was good, being placed at 52 out of 148. The negative features for global competitiveness with regard to Sri Lanka was that its infrastructure was placed at 73 out of 148 while macroeconomic environment placed it at 120 out of 148 and its Labor market efficiency placed it at 135 out of 148<sup>7</sup>. Finally, the Logistic Performance Index examines the

Perceptions of a country's logistics based on efficiency of customs clearance process, quality of trade- and transport-related infrastructure, ease of arranging competitively priced shipments, quality of logistics

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2 <http://www.doingbusiness.org/rankings>

3 [http://www3.weforum.org/docs/GCR2013-14/GCR\\_Rankings\\_2013-14.pdf](http://www3.weforum.org/docs/GCR2013-14/GCR_Rankings_2013-14.pdf)

4 <http://www.tradingeconomics.com/sri-lanka/logistics-performance-index-overall-1-low-to-5-high-wb-data.html> (accessed 22nd September 2013).

5 <http://www.doingbusiness.org/data/exploreconomies/sri-lanka>

6 The World Economic Forum (2013) "The Global Competitiveness Report 2013 – 2014" <http://www.weforum.org/reports/global-competitiveness-report-2013-2014>

7 Ibid. <http://reports.weforum.org/the-global-competitiveness-report-2013-2014/>



services, ability to track and trace consignments, and frequency with which shipments reach the consignee within the scheduled time.<sup>8</sup>

Despite this, Sri Lanka had the fastest growing economy in South Asia<sup>9</sup>. The problems of un-enforceability of existing laws, the weakness of monitoring mechanisms, and the increased politicization despite a code of governance, illuminates the issues that can harm the business sector. Moreover, the introduction of the ‘so-called Draconian law’ – the Revival of Underperforming and Under Utilized Assets’ Act – adds to the concern felt by some in the business sector.

### STRUCTURE

There were 8,866,395 ‘economically active’ people, of whom, 7,146,422 worked in the rural sector while the rest worked in either the urban or the estate sector. Of the overall economically active population, 65 percent were men, which is “almost twice as that of female”<sup>10</sup>. According to the Central Bank Annual Report, Sri Lanka’s “economically-active population ... declined ... by 1.1 percent to 8,465 million due to migration of economically active persons during 2012”<sup>11</sup>. Of those, over 30 percent are employed in the Agriculture industry while over 40 percent are in the service industry<sup>12</sup>. According to the Central Bank of Sri Lanka, 41.3 percent of those employed in 2012 were from the private sector<sup>13</sup>. These include the banking, construction, tourism, garment and telecommunication sectors among others. As

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8 <http://www.tradingeconomics.com/sri-lanka/logistics-performance-index-overall-1-low-to-5-high-wb-data.html>

9 World Bank (2012) “Sri Lanka Overview” <http://www.worldbank.org/en/country/srilanka/overview>

10 Department of Census and Statistics (2013) *Sri Lanka Labour Force Statistics Quarterly Bulletin: Sri Lanka Labour Force Survey 2013 2<sup>nd</sup> Quarter*. Colombo: Department of Census and Statistics. (also available at [http://www.statistics.gov.lk/samplesurvey/LFS\\_Q2\\_Bulletin\\_2ndQuarter.pdf](http://www.statistics.gov.lk/samplesurvey/LFS_Q2_Bulletin_2ndQuarter.pdf)).

11 N.a. (2013) “Lankan labour force and employment plunge in 2012” in *The Daily Mirror*, 8<sup>th</sup> May 2013. Available at <http://www.dailymirror.lk/business/economy/29148-lankan-labour-force-and-employment-plunge-in-2012-.html> (accessed 26<sup>th</sup> October 2013).

12 Department of Census and Statistics (2013) *Ibid*.

13 Central Bank of Sri Lanka (2013) *Economic and Social Statistics of Sri Lanka 2013*. Colombo: Central Bank of Sri Lanka Statistics Department. p. 18. Also available at [http://www.cbsl.gov.lk/pics\\_n\\_docs/10\\_pub/\\_docs/statistics/other/econ\\_&\\_ss\\_2013\\_e.pdf](http://www.cbsl.gov.lk/pics_n_docs/10_pub/_docs/statistics/other/econ_&_ss_2013_e.pdf)

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of 2012, there are 55,238 registered companies in Sri Lanka, and “Of this over 4,800 have been registered in 2012.”<sup>14</sup> Due to the ‘Mahinda Chinthana’, which was the focus of the NIS-SL 2010 Assessment, the ‘new or re-nationalization’ process has resulted in an increase in State-owned Business Enterprises. Furthermore, according to the Sri Lanka Treasury, “revenue received from State Owned Business Enterprises by way of Dividends and Levies increased by 12.1 percent to Rs. 27.5 billion.”<sup>15</sup> In 2011 alone the number of new limited liability companies increased by 9,405<sup>16</sup>. However, as noted in the Enterprise Survey, “only one-fifth of firms operating without paid workers are registered with any government agency. Even among firms employing paid workers, the majority are unregistered with one or more pertinent agencies.”<sup>17</sup> The state utilized the ‘Underperforming Enterprises and Underutilized Assets Bill’ to convert -partially government (i.e. majority share-holder) owned companies to the government sector to ensure their profitability. This prevented the loss of the enterprise and the employees job security from being threatened, which would have been the result had these companies gone into insolvency.

The business sector also includes self-employed ventures. These are often excluded in the definition of ‘private sector’ businesses. But, “hundreds of thousands of farmers, fishermen, craftsmen, traders and other small producers”<sup>18</sup> work in “informal, small and unorganized economic enterprises”<sup>19</sup>. Indeed, the Central Bank of Sri Lanka statistics for 2012 indicate that 31.9 percent of those employed are “Own Account Workers” and 8.9 percent are “Unpaid Family Workers” with only 15.1 percent working as a “Public Employee”<sup>20</sup>

14 Businesssrilanka.com (2013?) “Building Business between Sri Lanka and the world: 55,238 Registered Companies in Sri Lanka” <http://www.businesssrilanka.com/>

15 Ministry of Finance and Planning (2012) “Performance of State Owned Business Enterprises” available at <http://www.treasury.gov.lk/reports/annualreport/2012/11%20PerformanceState-OwnedBusinessEnterprises.pdf>

16 <http://www.doingbusiness.org/data/exploreeconomies/sri-lanka/#starting-a-business>

17 David McKenzie, Suresh de Mel and Christopher Woodruff (2011) “Sri Lanka – Formalization Experiment Date 2008 – 2011” available at <http://microdata.worldbank.org/index.php/catalog/1063/study-description>.

18 Dhayalan S. R. Tharmaratnam (1986) “Entrepreneurship in Sri Lanka: some constraints to and measures for overcoming them” *Sri Lanka Journal of Social Science* 1986 (1&2).

19 Ibid.

20 Central Bank of Sri Lanka (2013), op cit.

## ASSESSMENT

### 13 CAPACITY

#### 13.1 Resources (law): to what extent does the legal framework offer an enabling environment for the formation and operation of individual businesses?

The 2010 NIS-SL Assessment provided information on the diverse laws that regulate and protect business. The report highlighted issues regarding intellectual property rights and contracts – which are protected by law – and in starting, continuing and closing a business and the dismissal of workers in a restrictive labor regulatory country. The report used international indexes, such as the Doing Business Index to compare Sri Lanka’s position to that of the world. It concluded that “Laws and regulations governing the formation, operation and winding-up of business are on par in comparison to other countries”.<sup>21</sup>

It is important to add here that Sri Lanka has robust labour laws that specify working hours and salaries in certain sectors. Indeed, the legal framework that enables a positive environment includes numerous industrial dispute acts, trade union ordinances, termination of employment of workmen and employee councils. Others include wage board ordinances, budgetary relief allowance, and employment of females. Legislature specially targeting the private sector includes maternity benefits ordinance, factories ordinance, employment of trainees (private sector), Employment Provident Fund, Employment Trust Fund, and Service Contracts<sup>22</sup>. The most important law for starting and operating a business has to be the ‘Companies Act’. Other than these laws, the banking and credit laws such as The Monetary Law Act and the Banking Act of 1988, and its amendment in 2006, are also of significance.

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21 National Integrity System Sri Lanka 2010, p. 264.

22 Other than the legislative documents, the soft copies of these laws can be accessed at [http://www.labourdept.gov.lk/web/index.php?option=com\\_content&view=article&id=65&Itemid=59&lang=en&limitstart=1](http://www.labourdept.gov.lk/web/index.php?option=com_content&view=article&id=65&Itemid=59&lang=en&limitstart=1)

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Therefore the enabling environment, is quite positive in terms of the laws which can be categorized under banking and credit laws, bankruptcy and collateral laws, civil procedure codes, commercial and company laws, labour laws, land and building laws, security laws, tax laws, and trade laws<sup>23</sup>

A number of new laws have been established, some to overcome corruption and others to regulate it. The 'Revival of Underperforming and Under Utilized Assets' Act and the 'Finance Business Act' of 2011<sup>24</sup> are some of these laws. The most amount of opposition came in for the Private Sector Pension Bill (PSBS), which the Ministry of Labor attempted to introduce in 2011<sup>25</sup>.

The "Revival of Under Performing and Under Utilized Assets" Act, often referred to as the Expropriation Act – or the 'Draconian Law' by a number of businessmen<sup>26</sup> – is the most controversial. Sarath N. Silva, the former Chief Justice was extremely critical of the act, noting that it "had not gone through the process of publication and notification"<sup>27</sup> but had instead been rushed through under Article 122 of the Constitution, as a bill that was 'urgent in the national interest'<sup>28</sup>.

In November 2011, both Moody and Fitch issued warnings regarding losses for Sri Lanka in terms of foreign investment as "there is a risk that it will set a precedent for further expropriation and will be applied to a broader range of businesses and asset"<sup>29</sup>. Moody – which upgraded Sri Lanka's sovereign rating in July 2011 to 'positive' – downgraded it in 2013 to 'stable', commenting that "A shift away from

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23 <http://www.doingbusiness.org/law-library/sri-lanka#Tab2>

24 See [http://www.cbsl.gov.lk/pics\\_n\\_docs/09\\_lr/\\_docs/acts/finance\\_business\\_act\\_2011\\_42E.pdf](http://www.cbsl.gov.lk/pics_n_docs/09_lr/_docs/acts/finance_business_act_2011_42E.pdf)

25 See: <http://www.tisirilanka.org/?p=7341> and <http://www.socialequality.lk/content/sri-lankan-government-reintroduce-amended-pension-bill>

26 Interviewees 5, 6, and 7, Executives in leading companies, name withheld on request. (3<sup>rd</sup> Sept 2013).

27 Sarath N. Silva (2011) "Revival of the 'Underperforming Enterprises Bill" <http://www.infolanka.com/news/IL/dm138.htm>

28 Ibid.

29 Liu (2011) "Fitch, Moody issue warnings over Sri Lanka's plan to nationalize 37 companies" in [http://news.xinhuanet.com/english2010/business/2011-11/16/c\\_131250525.htm](http://news.xinhuanet.com/english2010/business/2011-11/16/c_131250525.htm) (accessed 20th September 2013).

debt financing to foreign direct invest would help the rating.”<sup>30</sup>. This is perhaps best reflected in the ‘Doing Business’ Index as the ranking declined from 2012 to 2013 in the ‘Protecting Investors’ ranking from 46<sup>th</sup> to 49<sup>th</sup>; ‘Trading Across Borders’ from 54<sup>th</sup> to 56<sup>th</sup>; and ‘Enforcing Contracts’ with a marginal increase from 134<sup>th</sup> to 133<sup>th</sup> rank in 2013. Moreover, as Silva comments, this act is not only harmful to private businesses but it also violates the fundamental rights guaranteed by Article 12 (1) of the Constitution .... ‘Any persons are equal before the law and are entitled to the equal protection of the law’. The Bill [at the time of writing it was a bill] further denied to specified persons their right to engage in a lawful enterprise in violation of the fundamental right guaranteed by Article 14 (1) (g) of the Constitution. Above all the Bill denies to specific persons their Human rights guaranteed by Article 17 of the Universal Declaration of Human rights which read as follows; “(1) everyone has the right to own property alone as well as in association with others. (2) No one shall be arbitrarily deprived of his property”. Any decision made without affording a hearing to the affected party is arbitrary.<sup>31</sup>

On a more positive side, Sri Lanka’s labor, company, and environmental laws are extremely good<sup>32</sup>. The Finance Business Act, no. 42 of 2011 for example, regulates financial business.

### **13.1.2. Resources (practice): to what extent are individual businesses able in practice to form and operate effectively?**

The NIS-SL 2010 Assessment provided detailed information on the Companies Act and the Board of Investment (BOI) and the ease and/or difficulty in registering and subsequently operating a business. The 2010 Assessment reported a contradiction in a sense whereby indexes assessed Sri Lanka positively but those interviewed provided a negative picture with regard to working with the Registrar of Companies.

30 Lanka Business Online (2013) “Sri Lanka outlook on ‘B1’ rating cut to stable by Moody’s” <http://www.lankabusinessonline.com/news/sri-lanka-outlook-on-b1-rating-cut-to-stable-by-moodys/1881565586> (accessed 20th October 2013).

31 Sarath N. Silva (2011). Op cit.

32 PESTEL (2012?)PESTEL analysis of Sri Lanka.<http://www.scribd.com/doc/92328838/PESTEL-Analysis-of-Sri-Lanka>

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It is possible to present the NIS-SL 2014 update on a more positive note: the 'Strength of Investor Protection Index' gives Sri Lanka a 6.0 out of 10, while South Asia in general got a rating of 05 and OECD a rating of 06.1<sup>33</sup>. Furthermore, 'Doing Business Index' has given Sri Lanka an overall rank of 81, while Maldives is 95, Pakistan is 107, Nepal is 108, Bangladesh is 129, and India is 132 in 2013. More significantly, it has given a rank of 33 for 'starting a business' in 2013. This is an increase of 38 ranks from 2012 (i.e. from rank 71)<sup>34</sup>. The NIS-SL 2010 Assessment noted that "Registering property took on average 83 days"<sup>35</sup>. The 'Registering Property' jumped 21 ranks from 164 in 2012 to 143 in 2013, mainly because it takes 60 days for the process. A small-business owner, who had started his store in 2010, stated that it was easy to begin the business venture<sup>36</sup>. This is reiterated in the 'Doing Business' Index where it notes that it takes only two days for the approval of a name of a company and, overall, seven working days for a company to start a business<sup>37</sup>. The BOI is presented as a far easier process<sup>38</sup>, and this remains accurate even in 2014<sup>39</sup>. The Central Bank of Sri Lanka<sup>40</sup> and the Registrar of Companies also provide information on the process in detail and in the case of both BOI and the Registrar of Companies<sup>41</sup>, with applications online.

A Chief Executive of a large business noted that the "government is not understaffed. They [The Civil Service] are the 'crème de la crème. If only by expanding the rest of its resources – technology and resources" can investments increase<sup>42</sup>. Despite the

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33 <http://www.doingbusiness.org/data/exploreeconomies/sri-lanka/#protecting-investors>

34 <http://www.doingbusiness.org/data/exploreeconomies/sri-lanka/>

35 *National Integrity Systems Assessment 2010* op cite.

36 Interview 12: Small Business owner Name withheld on request (20<sup>th</sup> September 2013).

37 <http://www.doingbusiness.org/data/exploreeconomies/sri-lanka/#starting-a-business>

38 <http://www.investsrilanka.com/>

39 See [http://www.investsrilanka.com/setting\\_up\\_in\\_srilanka/investment\\_with\\_tax\\_incentives\\_16.html](http://www.investsrilanka.com/setting_up_in_srilanka/investment_with_tax_incentives_16.html)

40 Central Bank of Sri Lanka (2012) *A Step by Step Guide to Doing Business in Sri Lanka* (revised edition). Colombo: Central Bank of Sri Lanka. Available online [http://www.cbsl.gov.lk/pics\\_n\\_docs/10\\_pub/\\_docs/pa/other/dbsl.pdf](http://www.cbsl.gov.lk/pics_n_docs/10_pub/_docs/pa/other/dbsl.pdf)

41 <http://www.drc.gov.lk/App/ComReg.nsf?Open>

42 Interview 7 Executive in leading companies, name withheld on request (September 3<sup>rd</sup> 2013).

Company's laws and the numerous other laws on registration of businesses, land, etc., two business Executives noted that 'red tape' and the complicated systems requires the assistance of lawyers and, without 'connections' any new project can face delays<sup>43</sup>. One noted that the bureaucratic issue is the main one, but added that they "hardly have venture capital banks"<sup>44</sup>. An Executive, while addressing the same issue regarding using of government land for business ventures, stated that "Legal safeguards are inactive or ineffective"<sup>45</sup> and that "Rather than Draconian laws in the 'Expropriation bill', [the] Companies Act can be enacted so safeguards are in place"<sup>46</sup>.

### **13.1.3 Independence (law): to what extent are there legal safeguards to prevent unwarranted external interference in activities of private business?**

The NIS-SL 2010 Assessment reiterated the existence of a clear process in registering a company. It noted that the different avenues available for a company which felt itself unfairly treated – including courts, fundamental rights application, and mediation board – were introduced but with a note stating that the North and the East have not yet established 'legal safeguards'.

Sri Lanka (71.9) is above the average (i.e. above 63.6) in the Index of Economic Freedom, which indicates the island nation having an above average free business environment<sup>47</sup>. However, Sri Lanka with 30 out of 95, is well below average (i.e. average being 50) for investment freedom. The 'expropriation bill', which has been called the tool of the new (or re-)nationalization policy of the government, hinders investment. This was tabled as an 'urgent bill' and the Supreme Court was

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43 Interviewee 5 and 6 Executives in leading companies, name withheld on request (September 3<sup>rd</sup> 2013).

44 Interview 6, op cite.

45 Interview 7, op cite.

46 Ibid.

47 <http://index-of-economic-freedom.findthedata.org/l/515/Sri-Lanka>

granted only 48 to “check the constitutionality of the Revival of Underperforming Enterprises and Underutilized Assets act”<sup>48</sup>.

The existence of the financial ombudsman further assists in safeguarding the rights of the business sector. As noted by a Chief Executive, “If there are laws violating rights which are Draconian, we can lobby through the Chamber of Commerce”<sup>49</sup>. It is also possible to seek relief through an arbitration process, which, however, is costly<sup>50</sup> as noted by a legal expert on labour law.

### **13.1.4 Independence (practice): to what extent is the business sector free from unwarranted external interference in its work in practice?**

The ‘nationalization’ of businesses which were identified as not making a profit – despite the fact that some of these companies were actually making a profit – highlights the problem of independence<sup>51</sup>. As noted by a Chief Executive, the government can use this act to take over companies without much opposition. This reiterates the NIS-SL 2010 Assessment that went into detail on how the government control of the economy resulted in a situation where “there is no level playing field for business in Sri Lanka”<sup>52</sup>. The report further examined the issues in the North and the East and how “private business tends to operate in ways that do not offend the ruling regime”. Rather, as noted by a Chief Executive interviewed for this report, when one is in government land on lease, we need to take the good and the bad and not complain too much<sup>53</sup>.

External interference is one concern remarked on by all three Executives interviewed for this 2014 update. The Chief Executive cited the ‘Rathupaswala’ incident where a claim of polluted water due to a glove factory in the area caused

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48 Thilangac (2012) “Expropriation bill Sri Lanka” available at <http://www.scribd.com/doc/83285505/expropriation-bill-sri-lanka>

49 Interview 7, op cite.

50 Interview 15, Ibid.

51 Ibid.

52 *National Integrity Systems Assessment 2010*, Ibid.

53 Interview 7, Ibid.



great alarm, protests and deaths. The political interference and the influence of monks, according to this individual, have exacerbated the situation because there was no water pollution<sup>54</sup>. Nevertheless it is worthwhile to note that

Recording significant score gains for the third consecutive year, and with the third largest score improvement in the 2013 Index, Sri Lanka has regained the rank of “moderately free” that it last held in 2005. Notable reforms have eased foreign exchange controls and reduced both individual and corporate marginal income tax rates to below 30 percent<sup>55</sup>.

The NIS-SL 2010 Assessment affirms the fact that external interference has not seeped into litigation, although it is evident in the operation of businesses. Bribery of officials, though never attempted by interviewees 6, 7, and 8 due to their business ethics, was discussed as a fact of life by interviewee 12.

## 13.2 GOVERNANCE

### 13.2.1 Transparency (law): to what extent are there provisions to ensure transparency in the activities of the business sector?

The NIS-SL 2010 Assessment informed how the annual audits and the implementation of the disclosure clause of directors interest in the shares<sup>56</sup> required under the Companies Act as well as the code of ethics strive to ensure the ‘transparency’ of the business sector. Indeed, the “Sri Lanka Companies Act No. 17 of 1982 requires a public company to have a minimum of seven shareholders”<sup>57</sup> and it is mandatory to provide annual reports<sup>58</sup>. While the mandatory disclosure is enshrined in the laws of Sri Lanka, these pertain only to companies registered in the Stock Exchange.

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54 Interview 7, Ibid.

55 Index of Economic Freedom (2013) “Sri Lanka” <http://www.heritage.org/index/country/srilanka>

56 Ibpus.com (2008) *Sri Lanka compamy laws and regulation handbook volume 1, strategic information and regulation*. Michigan: International Business Publications, p. 198

57 Lalith Samarakoon (1999) “The Ownership Structure of Sri Lankan Companies” *Sri Lanka Journal of Management*, Vol. 4, No. 3&4 July – December 1999.

58 Ibid.

The legal division of the Securities and Exchange Commission “is responsible for reviewing and proposing amendments to the SEC Act and other related laws and rules to ensure securities laws are in line with IOSCO standards and international best practices”<sup>59</sup>. There have been a number of directives and circulars introduced by the Securities and Exchange Commission relating to the disclosure and the adoption of a code of best practices amongst others<sup>60</sup>.

### 13.2.1 Transparency (practice): to what extent is there transparency in the activities of the business sector in practice?

This report reiterates the findings of the NIS-SL 2010 Assessment with regard to the business sector commitment to transparency. The existence of annual reports and annual audits which are made available to the shareholders provide some transparency, but as the earlier report informed, companies that are not in the Stock Exchange are less transparent. An alarming accusation was leveled by a Transparency International expose which states that the

Stock holders trading in the Colombo Stock Exchange (CSE) have encountered hurdles to trading, coming from both major private investors and errant government elements. These hurdles refer to various methods of market manipulation, such as insider trading and ‘pump-and-dump’ tactics that artificially jostle share prices towards the benefit of a handful of individuals. The distortion of the structure of the market through these market manipulations seem to go unpunished as investigations are halted or fade away from public interest rapidly, ensuring that the perpetrators of these white-collar crimes go unpunished.<sup>61</sup>

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59 [http://www.sec.gov.lk/?page\\_id=332&lang=en](http://www.sec.gov.lk/?page_id=332&lang=en)

60 [http://www.sec.gov.lk/?page\\_id=5350&lang=en](http://www.sec.gov.lk/?page_id=5350&lang=en)

61 Transparency International (2012) “Manipulation in the Sri Lankan Stock Market” quoted in the Daily Mirror 2<sup>nd</sup> August 2012. Available at <http://www.dailymirror.lk/business/features/20787-manipulation-in-the-sri-lankan-stock-market.html>

These allegations of misconduct are not presented in annual reports or audits. The use of public money to manipulate the stock market is not uncommon and is highlighted in the National Savings Bank purchase of The Finance Company, the use of Employment Trust Fund (ETF) and the Employment Provident Fund (EPF) to purchase shares<sup>62</sup>.

There have indeed been numerous examples of fraud, nepotism and other types of corruption. Even with scandals such as the Golden Key issue - where an unregistered company wasted away people's savings - 69 percent of Sri Lankans have accounts in a financial institution<sup>63</sup>. The Sri Lanka Accounting and Auditing Standards Monitoring Board informs of irregularities in listed and public companies in its website<sup>64</sup>

At the same time, corporate governance, corporate responsibility and the code of ethics are words used to enhance transparency. An integrated reporting style that takes into account the shareholders, the corporate environment and the people in general was a topic of discussion by interviewees 5, 6 and 7. The 48<sup>th</sup> Annual Report Awards 2012, under the patronage of the Institute of Chartered Accountants of Sri Lanka (ICASL) gave awards under the categories of 'overall annual report', 'management commentary award', 'corporate governance disclosure award', and 'corporate social responsibility reporting award'<sup>65</sup>.

### **13.2.3 Accountability (law): to what extent are there rules and laws governing oversight of the business sector and governing corporate governance of individual companies?**

The existence of regulatory bodies and how their shortcomings hinder the effective implementation of laws to protect the investor is discussed at length in the NIS-SL

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62 The Sunday Times (2013) "Time Stands Still for Lankan Laws" *The Sunday Times*, June 30, 2013.

63 <http://datatopics.worldbank.org/financialinclusion/country/sri-lanka>

64 See <http://www.slaasmb.org/Observations%20made%20by%20SLAASMB-2011.html>

65 See [http://www.icasrilanka.com/casl/index.php?option=com\\_content&view=article&id=667%3Aatop-corporates-excel-at-ca-sri-lankas-48th-annual-report-awards&-catid=1%3Ageneral-latest&Itemid=1](http://www.icasrilanka.com/casl/index.php?option=com_content&view=article&id=667%3Aatop-corporates-excel-at-ca-sri-lankas-48th-annual-report-awards&-catid=1%3Ageneral-latest&Itemid=1)

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2010 Assessment. At the same time, it noted that there is a market-driven demand for a high standard of corporate governance, which is reiterated in the interviews conducted for the 2014 report.

The issues that plagued the business sector in 2010 continue with regard to accountability in 2014 as well. The 17<sup>th</sup> Amendment's attempt at de-politicization of commissions floundered and was replaced by the 18<sup>th</sup> Amendment. The NIS-SL 2010 Assessment made note of the Mandatory Code of Good Governance introduced by the Central Bank. In 2013, the Institute of Chartered Accountants of Sri Lanka and the Securities and Exchange Commission launched a Code of Best Practices on Corporate Governance<sup>66</sup>.

The Central Bank of Sri Lanka<sup>67</sup>, the Stock Exchange of Sri Lanka<sup>68</sup>, and the Sri Lanka Accounting and Auditing Standard Monitoring Board (SLAASMB)<sup>69</sup> are three core entities that oversee the accountability of the business sector.

### **13.2.4 Accountability (practice): to what extent is there effective corporate governance in companies in practice?**

The NIS-SL 2010 Assessment critically examined the codes of conduct and how weaknesses in the implementation of the codes of conduct result in the failure to protect investors. The report highlights a number of fraud cases. Accordingly, an assessment of challenges to corporate governance highlighted the following.

- Concentration of ownership and presence of a controlling shareholder
- Directors are related parties to the controlling party to primarily protect the nominator

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66 Cheranka Mendis (2013) "Code of Best Practices on Corporate Governance 2013 launched" *The Daily FT*. September 26 2013.

67 [http://www.cbsl.gov.lk/htm/english/09\\_lr/lr.html](http://www.cbsl.gov.lk/htm/english/09_lr/lr.html)

68 [http://www.sec.gov.lk/?page\\_id=332&lang=en](http://www.sec.gov.lk/?page_id=332&lang=en)

69 <http://www.slaasmb.org/rightframe2.html>

- Directors not functioning in the best interest of the entity due to the above factors
- Inadequate capital market regulation and/or monitoring mechanism. [and]
- No consequence for non compliance.<sup>70</sup>

The existence of further fraud cases – including the ‘Touchwood’ and Central Investments and Finance Plc, - are merely the tip of the iceberg according to an interviewee<sup>71</sup>. He noted how 17 companies were accused by the Securities and Exchange Commission of abusing the share market<sup>72</sup>.

According to some, the 18<sup>th</sup> Amendment resulted in difficulties in the implementation of the COPE regulations in practice. The COPE Chairman, for example, cannot remain impartial because there is a conflict of interest<sup>73</sup>. This has resulted in implementation issues. One example was how a blacklisted company was re-listed despite cabinet directive not to do so<sup>74</sup>. This has led to the speculation of whether the blacklisting of companies makes a difference or not<sup>75</sup>. At the same time, in the three years since the NIS-SL2010 Assessment, there have not been many allegations on the integrity of the COPE. They have revealed their performance evaluation of state institutions and have highlighted incompetence of four companies<sup>76</sup>.

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70 N.a. (2011) “Corporate Governance Assessment on the Business Today Top Twenty Five” in Business Today. Available at <http://www.businesstoday.lk/article.php?article=7570>

71 Interview 6, op cite.

72 Saman Gunadasa (2012) “Share market scandal erupts in Sri Lanka” in the Daily FT, September 15, 2012. Available at <http://www.ft.lk/2012/09/15/share-market-scandal-erupts-in-sri-lanka/>

73 See <http://www.business-anti-corruption.com/country-profiles/south-asia/sri-lanka/initiatives/public-anti-corruption-initiatives.aspx>

74 Daily Mirror (2012) “Blacklisted fuel company mystery behind the re-listing” in *Sri Lanka Brief*, August 3 2012. Available at <http://www.srilankabrief.org/2012/08/blacklisted-fuel-company-mystery-behind.html>

75 Daily FT (2013) “Pointless Blacklisting?” The Daily FT, 17<sup>th</sup> September 2013. Available at <http://www.ft.lk/2013/09/17/pointless-blacklisting/>

76 [http://www.colombopage.com/archive\\_13B/Jul23\\_1374591796KA.php](http://www.colombopage.com/archive_13B/Jul23_1374591796KA.php)

### **13.2.5 Integrity mechanisms (law): to what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?**

According to de Zilva Moonesinghe, “The twin peaks of banking and finance are confidence and integrity. One complements the other and the two cannot exist without each other”<sup>77</sup>. The Companies Act makes provisions for ensuring integrity. However, as noted in the NIS-SL 2010 Assessment, the weak enforcement of the different codes of conduct as well as the lacuna of laws on whistleblower protection, harm the acceptance of the integrity of those in the business sector.

Legislature exists to regulate the insurance industry, from insurance companies to brokers to agents. Furthermore, “The Regulation of Insurance Industry (Amendment) Act, No.03 of 2011 requires an existing insurer to have itself listed on the stock exchange within a period of five years from the date of the coming into operation of the Amendment Act”<sup>78</sup> thereby ensuring mechanisms in the guise of the Sri Lanka Stock Exchange to examine the integrity of the insurance sector.

There are other laws, such as the Sri Lanka Commission to Instigate Allegations of Bribery or Corruption Act, no 19 of 1994, the Sri Lanka Companies Act 2007, the Sri Lanka Banking Laws (1988, 1954), Sri Lanka Electronic Transaction Act 2006, and Sri Lanka Convention on the Suppression of Terrorist Financing Act, no. 25 2005, which provide legal mechanisms<sup>79</sup> to fight corruption and ensure the integrity of those in the business sector.

### **13.2.6 Integrity mechanisms (practice): to what extent is the integrity of those working in the business sector ensured in practice?**

The NIS-SL 2010 Assessment highlighted the fact that while different postgraduate university courses teach integrity and corporate ethics, they do not specifically

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77 Joan de Zilva Moonesinghe (2013) “Corporate Governance and the Board Room”. Available at [http://www.apbsrilanka.org/articales/17an/artical-17a-joan\\_de\\_zilva\\_moonesinghe.html](http://www.apbsrilanka.org/articales/17an/artical-17a-joan_de_zilva_moonesinghe.html)

78 <http://ibsl.gov.lk/index.php/insurance-sector/overview-of-insurance-industry>

79 <http://www.track.unodc.org/LegalLibrary/pages/LegalResources.aspx?country=Sri%20Lanka>

address issues regarding conflict of interest or bribery. The 2010 Assessment quoted the Attorney General on the inability of mechanisms to tackle corruption.

The low-level compliance resulting in bribery and corruption remains the same, albeit more corrupt according to one Executive interviewed for this report<sup>80</sup>. While the interviewed executives insisted that they work according to their own company's code of ethics, all three discussed the difficulty of not paying bribes and how that harms their businesses. There are numerous rating organizations that rate the performance of different areas of the private sector. The RAM ratings analyze the private healthcare sector in Sri Lanka<sup>81</sup>.

### **13.3 ROLE**

#### **13.3.1 Anti-corruption policy engagement (law and practice): to what extent is the business sector active in engaging the government on anti-corruption?**

The NIS-SL 2010 Assessment discussed the inactivity or inability to enforce the fight against corruption. The politicization of big-business was emphasized. At the same time, the fact that a number of companies are signatories of the United Nations Global Compact and the significant anti-corruption role of the Chamber of Commerce and the Organization of Professional Associations (OPA) were presented as positive avenues for reducing corruption.

Since 2010, Sri Lanka has hosted the UN Global Compact regional meeting in December of 2012. The quarterly knowledge hub workshop sessions began in 2011. Corporate responsibility is included in the compact and the importance of sustainability also saw Sri Lanka's organic farming join the compact too<sup>82</sup>.

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80 Interview 6, Ibid.

81 Prashani Illangasekera and Nilusha Fonseka (2013) "RAM Ratings: Standpoint Commentary on the Private Healthcare Sector of Sri Lanka". Available at [http://www.ram.com.lk/reports/0313\\_healthcare\\_final.pdf](http://www.ram.com.lk/reports/0313_healthcare_final.pdf)

82 See <http://www.hortidaily.com/article/3630/Sri-Lanka-Bio-Grow-added-to-UN-Global-Compact-list>

**13.3.2 Support for/engagement with civil society (law and practice):  
to what extent does the business sector engage with/provide  
support to civil society on its talk of combating corruption?**

The NIS-SL 2010 Assessment reiterated the fear of political marginalization – i.e. the increasing politicization of business – that prevents a firm stance against corruption. The inability or unwillingness of the business sector to curb centralization of power was evident when the so-called expropriation bill was introduced. The private sector remained relatively silent, leaving the task of protesting to politicians.

**Recommendations**

1. Strengthen whistleblower and witness protection in the business sector.
2. Process of registering companies should be clear and convenient in order to minimize risks of corruption.
3. Safeguards to be established in the Northern and Eastern province to enable business practices without corruption.
4. Introduce or enforce existing code of conduct for business personnel and advocate for the adoption and implementation of strong compliance mechanisms.



## CONCLUSION

The 2014 update of the National Integrity Systems Analysis attempts to provide an impartial assessment of Sri Lanka's integrity system, processes and practices, taking into account the country's socio cultural, political and economic context. The report was compiled as a vehicle for open dialogue and debate among a wide range of stakeholders, including policy makers, law makers and civil society and to design a national level strategy to strengthen the governance structures of Sri Lanka with a view to minimizing or eliminating all avenues for corruption. Every attempt has been made through the process of compiling this update to engage diverse points of view, amidst challenging circumstances, and to provide the opportunity to respond to the content.

A summary of the performance of the overall national integrity system is as follows:

Please See Table 7

As indicated in NIS-SL 2010 the "role" played in combating corruption once again emerges as the weakest dimension in the National Integrity System with minimal provisions and processes in place. The "governance" dimension too is particularly disconcerting as it appears to be weak in all of the above categories with the exception of Oversight Bodies. Meanwhile Prosecution & Enforcement as well as Non State Actors emerge as the weakest pillars of the entire system. These are two categories that have vital roles to play in a post war context as is indicative of the

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law and order issues and the absence of collective action that is prevalent in the country. The performance of the pillars reiterates the “systematic mismatch among the [four] normative categories” stated in NIS-SL 2010.

**Table 8: 2014 Pillar Performance**

	Pillars	2014		
		CAPACITY	GOVERNANCE	ROLE
Politico Administrative Structure	Legislature	<b>Moderate</b>	<b>Weak</b>	<b>Weak</b>
	Executive	(some provisions but key gaps exist)	(minimal provisions / processes)	(Minimal provisions / Processes)
	Judiciary			
	Public Sector			
Prosecution & Enforcement	Law Enforcement Agencies	<b>Weak</b> (Minimal provisions / Processes)	<b>Weak</b> (Minimal provisions / Processes)	<b>Weak</b> (Minimal provisions / Processes)
	Complaint Mechanisms			
	Anti-Corruption Commission			
Oversight Institutions	Election Commission	<b>Moderate</b> (some provisions but key gaps exist)	<b>Moderate</b> (some provisions but key gaps exist)	<b>Weak</b> (Minimal provisions / Processes)
	Auditor General			
Non State Actors	Political Parties	<b>Weak</b>	<b>Weak</b>	<b>Weak</b>
	Media	(Minimal provisions / Processes)	(Minimal provisions / Processes)	(Minimal provisions / Processes)
	Civil Society			
	Business			

An overall analysis of the national integrity system reveals that in most pillars key laws and regulation to ensure integrity already exists and that the main issue is the implementation or enforcement of these laws. The practice of the law is further hampered by the strict implementation of one particular law – the 18<sup>th</sup> amendment – which has gone on to severely affect the independence and accountability of almost all of the pillars. Added to this is the absence of key legislature such as the right to information, and whistleblower and witness protection, which has given way to an environment of apathy and secrecy where the values of transparency, integrity and accountability is devalued and ignored.

Given such a context it is imperative that all relevant stakeholders come together at this juncture to uphold the traditions Sri Lanka was built upon and restore the country's governance system. Strengthening the governance system is not only a core requirement for reconciliation and democracy but a must for sustainable peace in the country.

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1 Ibid.





## ABOUT TISL

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

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

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

