



National Integrity Systems

Transparency International

Country Study Report

Sri Lanka 2003

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This report is an assessment of anti-corruption systems in Sri Lanka as they stood in December 2003.

Since the writing of this report, parliamentary elections were held on the 2nd April 2004. The United National Party (UNF) was defeated and the UPFA (United People's Freedom Alliance) formed a minority government.

Prior to these elections, upon dissolution of parliament on 7th February 2004, all matters in-progress in parliament lapsed.

Negotiations continue to (a) restart the Peace Talks, which stalled in April 2003, and (b) obtain a majority for the government in Parliament.

Six of the seven functioning Provincial Councils are scheduled to hold elections on 10th July 2004.

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Abbreviations

| | |
|---------|---|
| ADB | Asia Development Bank |
| ARC | Administrative Reforms Committee |
| BOI | Board of Investment |
| CC | Constitutional Council |
| CIABOC | Commission to Investigate Allegations of Bribery or Corruption |
| COPA | Committee for Public Accounts (also known as PAC) |
| COPE | Committee for Public Enterprises (standing parliamentary committee) |
| DIG | Deputy Inspector General of Police |
| FIA | Freedom of Information Act |
| GoSL | Government of Sri Lanka |
| HRC | Human Rights Commission |
| IPO | Initial Public Offering |
| JBIC | Japan Bank for International Cooperation |
| JSC | Judicial Services Commission |
| MOU | Memorandum of Understanding |
| LMD | Lanka Monthly Digest (business journal) |
| LTTE | Liberation Tigers of Tamil Eelam |
| MOFP | Ministry of Finance and Planning |
| MP | Member of Parliament |
| NGO | Non-Governmental Organisation |
| n.d. | No date |
| NPC | National Police Commission |
| PA | People's Alliance (coalition of political parties) |
| PAC | Public Accounts Committee (also known as COPA) |
| PAFFREL | People's Action for Free and Fair Elections |
| PERC | Public Enterprise Reforms Commission |
| PM | Prime Minister |
| PSC | Public Service Commission |
| SCM | Supreme Court Minutes |
| SCFR | Supreme Court Fundamental Rights |
| SIHRN | Secretariat for Immediate Humanitarian and Rehabilitation Needs |
| SLFP | Sri Lanka Freedom Party (political party) |
| SLR | Sri Lanka Law Report |
| UNF | United National Party (coalition of political parties) |
| UNP | United National Party (political party) |

Sri Lanka

Executive Summary

There is a widespread public perception that corruption is rife in Sri Lanka. Yet neither politicians nor the public service are designing and implementing systems to combat corruption. In the eyes of Sri Lanka's international financiers, the drain of corruption scarcely rates a mention, while citizens' lobbying power to place national integrity on the reform agenda of politicians is equally weak.

Of course, there are the platitudes uttered about transparency and accountability. The Prime Minister extolled them in his speech at the June 2003 Tokyo Donors' Conference, but such ideals do not have the underpinning infrastructure to achieve change. The primary 'check and counter-check' institutions like the Auditor General's Department, COPA/COPE and CIABOC are severely hampered. For example, stemming from the various anomalies of the public administration sector, many government departments and public institutions have a record of rendering their yearly accounts to the Auditor General many years later. Consequently, this affects the timeliness of the Auditor General's audit commentaries and has a direct impact on the workings of COPA/COPE, whose meetings anyway suffer from a low attendance record by parliamentarians. CIABOC continues to be hampered, and has achieved very little. Indeed, today it is at a standstill due to its not being 'duly constituted'. A glimmer of hope comes in the shape of the government's proposed computerisation and administrative reform, but unfortunately without a focus on corruption it is infant fare to sharp-shooting corruption dealers.

In Sri Lanka, the three types of corruption that thrive are:

- Nepotism and cronyism in terms of political appointments.
- Big-ticket corruption, particularly in the tender process and when establishing business operations (especially by foreign investors).
- Small-value bribery transactions of high frequency, which act as the scheduling mechanism to speed public service delivery.

Propelling this corruption has been a history of the usual low salaries of government employees (which plague developing countries) and greed (which recognises no national boundaries) in a milieu where for 30 years the constitutionally sanctioned right to make 'top to bottom' political appointments to the public service has progressively eroded the delivery effectiveness and efficiency of government entities. Furthermore, commission structures and enticements afforded by privatisation, liberalisation and the secrecy of war procurements have consistently evaded the reach of the CIABOC. Additionally, the size of the basic unit of representation (since the 1978 constitution) makes for very costly electioneering which frequently can mortgage the integrity of politicians as a consequence of the financial backing and influential vote-banks they require and receive to conduct their campaigns. Today, like in many other countries, politics appears as a serious business and profession, rarely driven by the appeal of civic consciousness.

Furthermore, corruption is set to heighten given Sri Lanka's:

- Latest influx of funding for public works programme (e.g. US\$4.5 billion pledged at Tokyo in response to the government's 'Regaining Sri Lanka' proposal and associated with the peace initiative) to reconstruct and develop the war-torn areas and the south.
- Privatisation, where what remains is the 'big ticket' state-owned enterprises like the public utilities, banks and plantation lands.
- Continued liberalisation programme spiced with tax holidays, quotas and duty waivers that require various government approvals.

- Chronic administrative weaknesses in the public service.

Thus the multi-pronged reform agenda proposed to redress the lacunae of the prevailing systems should:

- Address freedom of information, paving the way for public interest litigation via enactment of a Freedom of Information Act accompanied by Whistleblower Protection. This will, for example, dispel the confidentiality that surrounds the Assets and Liabilities Declarations of high-ranking public officials like politicians.
- Improve the effectiveness of oversight and accountability bodies – including the Auditor General’s Department, COPA, COPE, and CIABOC – and ensure the PSC and NPC exercise their authority with impartiality and reverse the history of incompetent/manipulated political appointees to the public administration and other arms of government.
- Ensure accountability of politicians - requiring disclosure of political party funding, public declarations of income/expenditure by politicians, consider reforms to the electoral system and restore by-elections. These are all lacking in the current system.
- Strengthen the tender process to guard against its susceptibility to abuse – tighten the public procurement guidelines and open the evaluations and decisions to public scrutiny.
- Monitor unusual financial movements to enable detection of corruption patterns. This is particularly important given the proposals to open the country’s capital account. Indeed, the Central Bank scarcely monitors the trading account for such transaction patterns.
- Promote public awareness of corruption and enlist the public’s participation in anti-corruption initiatives.

This anti-corruption reform agenda, if fragmented or inappropriately framed, is the haven of the corrupt. Thus the call is for the establishment of an independent authority against corruption charged with the responsibility of orchestrating the game plan to substantially and proactively reduce corruption in Sri Lanka.

Immediate measures are required to circumvent the politicians, the public administration hierarchy, and the privileged business community who benefit from the weakness of the present system. Additionally, due to the projected surge in public infrastructure projects, research is urgently required to design how the public procurement process can be tightened to withstand corruption.

It is expected that whilst peace initiatives consume the nation’s focus the path assigned to anti-corruption will be low. However, it is imperative the nation has a vision of what it needs to do to reduce corruption, which is why the reform agenda is proposed.

Furthermore, the pressure must be sustained, and thus it is heartening that some newspapers consistently investigate and report on corruption allegations and that a campaign is emerging, led by a few local NGOs, to bring corruption to the attention of politicians and senior bureaucrats. Indeed, these initiatives may have helped bring about an embryonic change in our political culture, as the UNP in August declared that, having tried and failed to agree a common code of ethics amongst the major political parties, it will formulate and introduce its own code of ethics due to the ‘non-implementation of stern action against politicians involved in corruption, murders and several nefarious activities’ (*Sunday Observer*, 2003). But as some opposition parties pointed out, we need more than a code of ethics to turn the tide, which is what the proposed reform agenda has begun to express.

Country Overview

Sri Lanka, an island located in the Indian Ocean and populated by over 19 million people, is operating under its third constitution (since independence from the British in 1947), and recent peace negotiations¹ considering a fourth constitution based upon a federal structure. Currently, the public debt repayment structure outstrips the government's revenue streams.

Ethnic conflict between the Tamil community and the Sri Lankan state has resulted in a war fought predominately in the North and Eastern reaches of the country, which has massively affected the people, businesses and infrastructure (roads, rail, hospitals, schools, etc) in those areas. Counter-attacks hitting strategic locations (e.g. international airport, Central Bank, oil tanks, etc.) have over the passage of time undermined business confidence, debilitated the tourism sector and escalated international transport insurance premiums, affecting not just the profitability of the export sector but also the cost of living due to Sri Lanka's high import dependency for essential items (e.g. rice, flour, fuel).

Sri Lanka's ethnic composition based on the 2001 Census of Population and Housing², comprises four main communities – 81.9% Sinhalese, 9.4% Tamils, 8.4% Moors and Malays (the last two popularly referred to as Muslims) and 0.3% others. The four major religions of Buddhism (77%), Christianity (6%), Hinduism (8%) and Islam (9%) are actively practiced by its people.

In 1956, the Sinhala language was made the official language, which triggered the early days of ethnic tension. In 1972, the second constitution reflecting the nationalistic mood of the nation abandoned the British monarch as head of state and proclaimed a republic with a unicameral legislature. Enormous powers and privileges were vested in the cabinet of ministers – constitutionally, by granting politicians exclusive right of appointment to the public service, and through nationalisation and establishment of state-owned enterprises. Additionally, the 1972 constitutions gave 'Buddhism the foremost place' and made Sinhala the official language.

The next constitution of 1978 introduced an elected Executive Presidential system vested with enormous powers whilst continuing with the unicameral system of parliament and local government. The electoral system was changed from the first past the post system to one based on proportional representation. Additionally, by-elections were done away with. The size of the electorates also dramatically increased with the shift from 160 individual constituencies to 22 Electoral districts, thus massively increasing a parliamentary candidate's cost of electioneering.

In a bid to address the causes fanning the war, in November 1987 provincial devolution was promulgated under the 13th Amendment to the constitution. Two years later, the 16th Amendment introduced Sinhala and Tamil as the official languages, with English serving as the link language.

Administratively, however, much of the government service continues to be centrally driven – viz. the Treasury, Police, Military, Judiciary, Railways, etc. The private sector is similarly centralised, as are the 51 political parties, and the various media channels - newspapers, TV or radio - operate primarily on a national rather than provincial basis. Essentially, devolution to the nine provinces³ has not been effective and at best is an implementation layer following the directives of the national government.

On 3rd October 2001 the 17th Amendment to the constitution was enacted establishing the Constitutional Council (CC) and seven Commissions⁴ in an endeavour to reduce political control and achieve impartiality in the operational conduct of public entities. As at August 2003, the statuses of five⁵ of these Commissions as required by the 17th Amendment were:

| Commission Name | Status |
|--|---|
| The Election Commission | Non-existent. Commissioners recommended by CC but appointment by President outstanding. |
| The Public Service Commission | Functioning from mid 2002 |
| The National Police Commission | Functioning from mid 2002 |
| The Human Rights Commission of Sri Lanka | Functioning |
| The Permanent Commission to Investigate Allegations of Bribery or Corruption | Crippled – the commissioner to replace the commissioner who died in February 2003, whilst recommended by the CC, is yet to be appointed by the President. |

Economically, after the initial entry into a financially comfortable independence, the mid-1960s saw Ceylon (as it was known then) pursue an economic model of import substitution⁶ and therefore rationing, which invited corruption on a small scale so as to increase one's ration. Import of essential non-substitutable commodities and the purchase of foreign equipment to set up and run the publicly owned enterprises would undoubtedly have earned its share of commissions that lined private pockets. However, opulent lifestyles well above the thresholds of government salary scales were not as obvious as today and it is amazing that the government does very little, if anything, about it. Whilst questioning the Sri Lankan Airways-Emirates renewal terms, Minister of Lands, Hon. Rajitha Senaratne said: "I am disappointed to be part of a cabinet that is accused of corruption and abuse of power. *The Sunday Leader*, which exposed corruption in Chandrika's government, is forced to expose activities of our government today. The professionals I meet are alarmed at this trend. Professionals are accusing us of being the most corrupt government. I don't agree with that view. I believe Chandrika's government was the most corrupt but our credibility is also seriously questioned. That is because they never expected Ranil Wickremesinghe's government to face such allegations and do nothing about it." (*The Sunday Leader*, 2003f).

In 1977, a change of government occurred when the UNP won on a ticket of liberalisation of the economy and began to sell public enterprises (like Steel, Timber, and Sugar Corporations) and lease various state-owned assets (e.g. plantation lands for 99 years). Additionally, the Board of Investment⁷ (BOI) was established to attract foreign investors to set up operations in Sri Lanka. Such liberalisation of the economy in the context of a weak and poorly paid public service soon saw corruption take hold as importers and exporters bribed officials to reduce their taxes and ignore illegal activities. Investors prospecting for big stakes also willingly paid bribes to secure tax holidays/waive customs duties and speed up the establishment of their Sri Lankan operations. Additionally, responding to the needs of a liberalised economy, the government speeded up its infrastructure development programmes where commission kickbacks and inventory re-direction to private markets became commonplace.

Corruption had taken root in the company of high public capital expenditure programmes and the emergence of privatisation and liberalisation of the economy. In 1988, existing legislation was amended⁸ requiring senior government officers, including the judiciary and all members of parliament, to declare their assets and liabilities each year. However, to date such yearly declarations are dormant records until a corruption complaint is received. Indeed, many times the declarations are delivered late or not sent in at all. As journalist Handunnetti states: "With 189 members including 46 ministers and 143 parliamentarians, yet to declare their assets and liabilities to the relevant authorities, the daunting statistics alone tell the story: that ambitious codes of ethics of lofty pronouncements cannot render our people's representatives to act with transparency" (*The Sunday Leader*, 2003e).

Electoral violence in disconcerting proportions was also evident to such an extent that the Election Commissioner in 1989, for the first time, invited an International Observer Group to monitor the elections in the hope that it would ensure free and fair elections. This practice of monitoring has continued but vote rigging and violence have scarcely abated.

By 1994, corruption was a pivotal election issue, which under the newly elected PA government translated into the enactment of the 1994 Bribery Act and the establishment of the CIABOC. However, few complaints have been lodged with an even lesser record of prosecutions and a rarity of convictions. Additionally, CIABOC's internal administration has been crisis-ridden and plagued by political manipulation.

Although the PA highlighted corruption as an issue in the election campaign of 1994, corruption nevertheless continued with them in government. Due to the war waged in the North and Eastern provinces necessitating through Emergency Regulations secrecy on the grounds of security, military procurements provided major opportunities for corruption. What is evident is that many politicians and government officials manifested lifestyles (plush hotels, cars and fast asset accumulation) both in Sri Lanka and overseas suggestive of an expenditure pattern beyond their official incomes.

In the meantime, 30 years of sustained political appointments to the public service have taken their toll in grossly bureaucratic workflow practices which easily attract speed money (to get things done quickly) and hush money (to ignore illegalities) from a public that is frequently compelled to use the government's services (e.g. customs, police, hospitals, schools).

The latest (UNF) government, elected in December 2001, has inherited a public debt repayment portfolio that outstrips its revenue streams, and is continuing with what some call the IMF/World Bank directive of liberalisation of the economy and privatisation of public assets, which accords harmoniously with the government's manifesto of the 'private sector being the engine of growth'. Additionally, the government is very focused on peace negotiations. Thus, the nation is in the process of moving from a destruction-based economy⁹ to a reconstruction-based economy¹⁰.

The Tokyo Donors' Conference of June 2003 pledged US\$4.5 billion towards such economic goals. However, in the absence of a determined anti-corruption will, there is every likelihood of maladministration and a culture of tolerating corruption to flourish in the context of liberalisation, privatisation, and reconstruction.

Corruption Profile

In Sri Lanka, the three virulent types of corruption are:

Nepotism and Cronyism

This is most acute in terms of political appointments to government institutions, including state-owned enterprises.

Until late 2001 cabinet ministers were vested with authority for all appointments, transfers, promotions, and disciplinary actions in the public service. The corruption stems from the practice of ignoring the requirements of the job in favour of family members and voters to whom a politician owes favours or to whom jobs have been promised upon election to office. In a bid to reduce this abuse, the 17th amendment to the constitution was introduced in late 2001 and made operative a year later when such powers were transferred to the Public Service Commission. However, this is yet to show significant results.

“Big-Ticket” Corruption

This applies particularly in the tender process and when establishing business operations (especially by foreign investors). These are high-value transactions of low frequency. Political appointees or associates of decision-making politicians usually negotiate the commissions and terms of payment, according to persistent rumours and media allegations.

Additionally, the tender process is plagued by corruption in the implementation of the project – particularly where large amounts of building materials are ‘driven in and out’ without being utilised on the project. Whilst this amounts to stealing, many ‘palms are oiled’ along the way to enable such passage.

Small Value Corruption

Here the transaction is of low value but of high frequency.

This type of corruption thrives in Sri Lanka due to the gross weakness of the public sector where money needs to change hands just to get things done – e.g. in courts to get cases listed or not. Comparatively, the economically developed countries do not suffer this kind of corruption and thus their populace does not directly experience the corrosive effect of corruption. It would appear that this is because those countries have public administration systems that deliver service in a timely and effective manner. Of course, their salary structures are better, and that too contributes to lowering corruption.

Low Salaries and Greed

Like in many other developing countries, the causes of corruption span low salaries and, at the other extreme, like in all countries, greed to support lavish standards of living. This latter category of corruption involves payments usually in overseas currencies¹¹ and is exercised by a small group of people trading big-ticket items, pertaining to tenders and big business operations in Sri Lanka. The earlier-mentioned corruption, however, trades in local currency and erodes the very fabric of society because so many are touched directly by the corrosive effect of the demand and/or supply side of corruption.

If those are the reasons people demand and willingly accept bribes, the supply side is spurred on by a need to overcome the inefficiency of the public administration sector. Of course, corruption is additionally fed by the need to ignore illegalities, pay lower taxes and win tenders. The latter category is emerging as big business in a climate of substantial funding for infrastructure projects, accompanied by a public service, which Bradman Weerakoon, Secretary to the Prime Minister, described as “known to be corrupt, inefficient and bureaucratic”¹².

Political Monopoly and Administrative Weaknesses

Nepotism and 'cronyism' were given *carte blanche* in the 1972 constitution (and later continued in the 1978 constitution) by vesting ministers with the power to appoint, transfer, promote, and discipline employees in the public administration sector. Given this space for abuse, politicians filled the ranks of the public service with their voters to the point that today Sri Lanka reportedly has the largest ratio in Asia¹³ of public servants to national population. Thirty years of weak human resources policies and implementation have eroded the quality of public service workflow processes, and the public service has grown into a grossly ineffective and inefficient monopoly which daily subsidises its low salaries by 'palms being oiled' just to get things done quickly or to suppress violations.

This is, in effect, a 'trapped' state. Low salaries breed low service and delays, which in turn warrants the low salaries. To expedite service, bribes are paid - thus acting as an employee's disincentive to improve service and timeliness. Public perceptions suggest Sri Lankans intuitively understand and tolerate corruption, having recognised that the government cannot afford to improve government salary scales.

Furthermore, merely improving salaries will not improve productivity. Rather the workflow processes have to be redesigned and the mentality of public administrators needs to change to service their clients' needs. Up to now Sri Lanka has not provided the priority, will or money to invest in such administrative development. Its primary focus continues to be on physical capital works development programmes, as evidenced by the assessment of needs prepared for the June 2003 Tokyo Donors' Conference.

At the senior end of the public administration spectrum, where ministers continue to be vested with appointment powers, both the current and previous governments have shown that they ignore essential criteria when appointments are made - for example:

- The previous government appointed the Director-General of the National Gem and Jewellery Authority despite his lacking the stipulated basic qualification of eight years' senior managerial experience. The Supreme Court heard the matter in 1999. The government responded by promoting him to Chairman! Last year, the Auditor General declared "major deficiencies ... that no reliance can be placed on the financial position of the Commission"¹⁴.
- Earlier this year, the present government appointed to the top-ranking post in the Prison Department a young magistrate who had neither the age nor legally required qualifications to hold this job (*The Island*, 2003a). Furthermore, there are allegations pertaining to his tenure as magistrate.¹⁵

Bribery Commission Thwarted

After Sri Lanka had gone through 17 years of UNP rule (1977 to 1994) and economic growth, the allegations of bribery and corruption were so rampant that in the opinion of independent researcher, Sunil Ponnampereuma (2002) the 1994 election saw corruption as a 'pivotal issue' which later translated into the enactment of the Bribery (Amendment) Act, No. 20 of 1994 and the establishment of the CIABOC. Until then, the Bribery Act of 1954, including its 1958 amendment, imposed special requirements to investigate politicians and judges. A few cases of bribery against politicians have been lodged with CIABOC.

For example, in one case prosecution was not pursued despite a minister investing public welfare funds in PanAsia Bank shares at a price which subsequently collapsed dramatically. The deal was considered to be a management decision incapable of withstanding legal prosecution on the grounds of corruption arising from a book loss sustained by the government¹⁶.

Ironically, this minister crossed the floor in the next parliamentary election and has since been appointed to the same welfare ministry despite the mammoth loss his share-trading cost the public. In the meanwhile, the broker who negotiated the PanAsia Bank share deal is under fraud investigations, including the inquiry into the collapse of Pramuka Bank where public funds were deposited, allegedly seduced by very attractive commissions paid to public officials who authorised the deposits away from the traditional deposits at the

state banks (*Sunday Times*, 2003a). This begs the question: is there a connection between these cases or is this mere coincidence? Lacking proactive investigative powers, CIABOC cannot even begin to consider such options.

Indeed, despite CIABOC's nine years of existence, no major cases of bribery have resulted in conviction. CIABOC argues that this is the case due to its inability to initiate investigations in the absence of a formally written complaint. Additionally, CIABOC itself has been plagued by its own internal management issues with political pressure for the commissioners to resign, natural deaths of commissioners (who, constitutionally, are required to be retirees), delays in re-appointments of commissioners, controversial transfers of its Director Generals and shortfall of its investigative (seconded police) officers.

Given Sri Lanka's experience of corruption, there is incentive neither for people to lodge complaints nor to position for raids (where the CIABOC is advised beforehand so that CIABOC officers are positioned to catch the corruption while it is taking place) when responding to the demand for extortion payments. Thus, they rather pay the bribe or ignore it when someone else is known to be involved. Whistleblower protection is also absent.

Furthermore, for big-ticket items the price may be murder. As reported in LMD: "To date, no one has been convicted of conspiring to murder and committing the murder of Rohana Kumara, the editor of the Sinhala tabloid *Satana* on 7 September 1999. It is thought the motive behind his killing to be the production of an audio cassette titled 'Commissana', in Sinhala, on the much publicised 'Channel Nine affair'. The Channel Nine Affair centred around allegations of the payment of a commission to the President's then Media Advisor for the grant of a license to operate a private television and radio station. 'Commissana' was introduced to the public before the original Channel Nine tape was broadcast. It sought to incriminate the Media Advisor in negotiations with the promoters of Channel Nine on the terms of his commission for facilitating the issue of a license. Rohana Kumara's killer has not been found. Neither is the public any wiser about the affair, and the alleged transfer of funds to PA party coffers by a Sri Lankan tycoon at about the same time." (Perera, 2003).

Security and Secrecy

Over the past 20 years, a war-based economy amply fed the corruption coffers especially since the Official Secrets Act, Emergency Regulations and to a lesser extent the Prevention of Terrorism Act legitimised keeping military and associated expenditure details away from the public's gaze and frequently outside the Auditor General's purview. Incidentally, prosecution has never resulted despite the affluent lifestyles displayed by public officials who are required each year to declare their assets and liabilities.

Military procurement deals, rigged by massive commissions and often for low-quality products, are frequently flashed across the newspapers. Indeed in early 2001, the main opposition party called for a parliamentary probe after the Minister for Justice candidly admitted that there was corruption at the "highest levels of administration" in the government's multi-million dollar purchases of arms (*The Hindu*, 2001). However, various legislative enactments (like Emergency Regulations) ensure that the national need for security keeps such allegations away from investigation. Allegations have been made against the Army Commander himself (Harrison, 2001), and he responded by directing the CIABOC and Ministry of Defence to conduct a full investigation.

State Ownership of Enterprises

Often ministers manipulate, particularly via their political appointees, state-owned enterprises, resulting in the enterprises not achieving optimal performance.

For example, the state-owned banks (Peoples Bank and Bank of Ceylon) have been giving huge loans which today are bad debts devoid of collateral and backed by inadequate personal guarantees. In one instance, an interest accrual of SLRs15 million was written off to a client 'described as a close confidante and political ally' of a national political leader.

The UNP in opposition highlighted other instances in which this individual was allegedly accorded preferential treatment by "circumventing due process".¹⁷ (*The Island*, 2001).

There is the prospect of these banks being up for sale/privatization due to their bad operating performance arising from their portfolio of bad and doubtful debtors etc. Underpinning such options would also be the political question of whether the government in power favours 'market liberalisation' or 'state ownership'.

Privatisation

This is a haven for institutionalised corruption, which may be accompanied by payments to politicians and high-ranking public administrators to secure the purchase of publicly owned assets. Given Sri Lanka's 'cash-hungry public coffer where debt repayment outstrips revenue'¹⁸, the incentive is high to sell non-profitable assets or to heavily discount 'cash upfront' sales.

Furthermore, in the absence of published policy guidelines for positioning publicly owned assets for disposal, at the policymaking level the manner of disposal (e.g. Initial Public Offering of shares, sale/lease, select/open tender, dressing up of asset and market timing) could be disadvantageously marketed to reach its optimal price. Of course, the issue is compounded by questions as to whether these are matters of mismanagement or corruption or a hybrid thereof.

An example of such questionable positioning is Sevanagala Industries. In June 2002, Sevanagala Sugar Industries Ltd was sold on the 'cash upfront' sale basis for SLRs550 million (*Daily Mirror*, 2002). In line with tender specifications, the 'cash upfront' highest bidder won the sale, but questions need to be asked as to whether the terms of sale were appropriate because the highest bidder offered SLRs220 million more, but in staggered instalment payments over a fairly short period.

Heading the list of corruption allegations is the sale of AirLanka¹⁹, carried out by the Public Enterprise Reforms Commission (PERC). The sale was hastily carried out, and shrouded in secrecy. Upon questioning by COPE, the Chairman and Director-General of PERC advised that the negotiations were progressing whereas later investigations revealed that the deal was already done by the time COPE's enquiries took place (Transparency International Bangladesh, n.d.).

Infrastructure Development

Informal discussions for this study with current day public works contractors evoke references to the Accelerated Mahaweli Scheme (an irrigation and resettlement project compressed from a 30-year to a five-year duration)²⁰ as the era that heralded brazen corruption in Sri Lanka. They speak of the standard tricks of the trade, as in many other developing countries, where building materials (e.g. cement which is extensively used in dam construction) were diverted to private pockets/markets, in addition to the handsome commission payments made to ministers and high-ranking public officials. As many of the tenders were won by foreign firms, much of the 'decision-level' corruption payments were honoured overseas in stable foreign currencies (accepting large sums of bribery money in local currency is unwise for not only is it open to local inflation but recipients usually want to invest such proceeds in overseas assets outside the glare of investigation, if investigation should ever result). Furthermore, in a country where the practice of maintenance is neglected, asset longevity is reduced, thus necessitating a higher (infrastructure) asset-replacement programme, which in turn feeds the corruption coffers.

Legal Absences and Loopholes

There is no legal requirement for political parties and candidates to declare any of their sources of funding and expenditures. Thus those who fund or carry vote banks of influence go undetected whilst politicians are obliged to favour these backers with business and employment positions once they are elected to office. In turn, as this business flows, the politicians and high-ranking officials receive their commissions and kickbacks, frequently paid overseas and outside the competence of Sri Lankan investigative bodies (these

disclosures were made known during various interviews). Whilst written evidence is lacking, dramatic rises in asset accumulation and the opulent lifestyles of some public officials confirm the credibility of what many business people mentioned as standard business practices.

Another anomaly is the convenience afforded by the issuance of 'certificates of deposit' which require absolutely no identification of who is depositing or withdrawing funds. Currently, SLRs40 million was found in a bank vault belonging to the previous Deputy Minister of Defence (*The Sunday Leader*, 2002a). These certificates of deposit, he explained to investigators, were being kept for a friend, whose name he was not obliged to disclose to the authorities. In this connection the police secured a warrant to open the said bank vault. Given the law pertaining to the declaration of assets and liabilities by public officials, it is fair to assume that investigations will seek to ascertain whether the Deputy Minister had declared these monies in his yearly declaration of assets and liabilities within the category of 'held on behalf of others'.

The National Integrity System

Executive

The constitution of 1978 introduced an elected Executive Presidential system where the President is the Head of State, Head of the Executive and of the Government, and Commander-in-Chief of the Armed Forces²¹. The Executive Presidency is a hybrid derivative of the French and Westminster systems, and almost devoid of checks and balances.

Whilst holding office, the President is immune from any form of prosecution in either his/her public or private capacity²². The term of office is six years²³ and a President can serve for a maximum of two elected terms²⁴. The President is not allowed to hold any other office or place of profit whatsoever²⁵. The President can, however, be impeached by parliament on various grounds, including bribery,²⁶ in the event of a resolution gaining two-thirds of the votes of the whole parliament²⁷ or by half of the votes of the whole parliament along with a Supreme Court inquiry and report²⁸. Since the introduction of the Presidential system, Sri Lanka has had four Presidents of whom one (Mr Premadasa) was assassinated in 1993.

The current President (Mrs Chandrika Bandaranaike-Kumaratunga) held many ministerial portfolios whilst the government and President belonged to the same party (1994 to 2001). Press reports carry numerous allegations of corruption involving the President. However, the as yet untested legal question is whether those ministerial actions are immune to prosecution due to the immunity granted to the President whilst holding office. Two allegations against the current President which focus on this issue were:

(a). The awarding of the tender to Alstom Ltd for train sets where the train gauge did not match the track gauge (*The Sunday Leader*, 2001), thus risking heat buckling when climbing upcountry. Currently, the Auditor General rarely conducts 'project audits'; much less does the Department have the skill set to focus on tender-specification manipulations. Furthermore, the Director General of CIABOC in general commented²⁹ that investigating tender contracts is a highly specialised investigative skill that the CIABOC lacked.

(b). The other controversial newspaper allegation concerns the expenditure of the Sri Lanka Rubber Corporation (state-owned enterprise) where SLRs900 million is alleged to have been released for a building that was not constructed. At the time, the Rubber Corporation fell within a ministry under the Prime Minister's purview. However the ex-Prime Minister (Mr Ratnasiri Wickremanayake) reportedly advised police investigators that the funds were released on the recommendation of the President acting in her capacity as Minister of Finance (*The Sunday Leader*, 2002b).

Whilst neither the then Prime Minister nor the President has sued the newspaper for defamation, the question that remains is whether the President in her capacity as Minister of Finance can be prosecuted. At this juncture, no court proceedings have been instituted.

Legislature

Whilst the 1948 constitution was based on a bi-cameral parliament (Senate and House of Representatives), with the British monarch as sovereign head, it was the 1972 constitution that introduced the Democratic Socialist Republic of Sri Lanka to a unicameral parliamentary system, which under the 1978 constitution became a Presidential System with an Executive Presidential Government.

The legislature comprises 225 members, of whom 196 are elected members and 29 are nominated members. These elections are called parliamentary elections, and members are elected on a system of proportional representation where the term of parliament is six

years³⁰. In the event of an elected member of parliament vacating his seat, (e.g. death,) no by-election is held. Rather, the next candidate with the highest number of individual preference votes on the party district list is appointed to parliament.

The constitution permits a variety of cabinet, deputy and non-cabinet rank ministerial appointments. The current government comprises 32 cabinet ministers, eight deputy ministers and 27 non-cabinet rank ministers. The majority of these ministers are elected representatives of parliament with a few being 'national list'³¹ members. All these ministers have full parliamentary voting rights; however, it is only the cabinet ministers who have cabinet voting rights. This very large number of ministers (67 in total) has reduced the public administration into a fragmented array of 59 ministries.

It should be noted that the constitution is totally remiss on how cohabitation is to function when the President and government (majority party/coalition in parliament) belong to two different parties as at present following the December 2001 General Election. The anomaly that arises is that the President is the head of government and cabinet but all its ministers do not belong to the party of the President. Rather all the ministers (and therefore portfolios) belong to the party of the Prime Minister (who thus is effectively the head of the cabinet and government³²). Of course, the President could have declined the appointment of the choice of ministers from the winning party of the Prime Minister (who in the opinion of the President commands the confidence of Parliament), but then this begs the question: what was the parliamentary election about? So whilst the pragmatic solution was adopted – that is, the President appointed the Prime Minister's nomination, Sri Lanka is still trapped because the question remains unanswered as to how cohabitation is to function. In the meantime while the Prime Minister may look like he has effective parliamentary power, the President is vested with the power to dissolve parliament and call elections any time after one year of the government holding office, and thereby unseat the party in government³³. In November 2003, the President began to exercise such powers and took over 3 strategic ministerial portfolios (Defence, Interior and Media).

All members of parliament gain a small budget allocation for their electoral district. However, it is only MPs of ministerial rank that have the decision-making power when awarding public tenders and (until 2001) granting public service appointments, promotions etc. These latter two privileges are fertile ground for corruption due to the weaknesses in the public tender guidelines and the human resources policies as practised in the public administration system.

All members of parliament are required every year to complete a Declaration of Assets and Liabilities under Law No. 1, 1975 as amended (1988), and to submit it to the Speaker of the House. However, as K. M de Silva in his article 'Corruption in Sri Lanka: The National Legislature' states: "The confidentiality attached to these declarations is self-defeating. It is only if these are open to scrutiny by the public that there would be any sort of realistic check on legislators and officials. Procedures should be devised whereby petitions from individuals or from public interest groups can be sent to the courts calling for the initiation of investigations of legislators whose assets either do not tally with their known sources of income or where the assets declared are only part of those they actually control, either on their own or through relatives or others." (2002). To add to this, Sri Lanka has no provisions restricting post-ministerial employment.

Political Parties

All political parties need to be registered with the Commissioner of Elections. To register, the Parliamentary Elections (Amendment) Act, No 29, of 1988, essentially calls upon the secretary of a political party to furnish the Commissioner with a copy of the party's constitution along with a list of its office bearers (Section 7 (4)).

There are 51 political parties registered and recognised by the Commissioner of Elections. However, two parties – UNP and SLFP, along with their coalition partners - dominate the political scene. From the public purse, each party receives 50 cents per voter at the next election, based upon the number of votes that party won in the previous election.

Sri Lanka has no laws that require political parties or political candidates running for election to declare to the public their sources of funding or their campaign expenditures. Neither do they even have a practice of declaring their finances to their own membership. The private sector is probably the major funder of the major parties but no clear pattern has emerged for it seems to shift its support; besides there is also the usual practice of multiple party funding even within a particular election.

Since the 1978 constitution, the electoral map was changed from 160 single constituencies to 22 Electoral Districts, resulting in campaign costs escalating and thus making significant outside financial backing almost a necessity for politicians. In other words, politicians owe many favours, which is why gaining ministerial rank is so important for it provides the 'opportunity to pass jobs on to their backers' who helped them win elections. In the past 30 years, no Sri Lankan politician has been convicted of corruption despite the plethora of corruption allegations in newspapers.

Electoral Commission

Citizens of Sri Lanka over the age of 18 are eligible to vote. However, Sri Lankans living overseas have no right of absentee voting. Based on the 2001 census, the voter strength is approaching 12 million although over 1 million of them are employed overseas.

The Commissioner of Elections is constitutionally required to maintain the electoral register and conduct four types of elections plus referenda:

- Presidential elections – tenure of office is six years.
- Parliamentary elections – tenure of office is six years.
- Provincial elections - tenure of office is five years.
- Local Government elections - tenure of office is four years.

Due to mounting election violence, since 1989 the Commissioner of Elections has invited International Observer Groups to monitor the parliamentary elections in a bid to promote free and fair elections. This intervention arose as a consequence of the work of local monitoring groups who highlighted violence and malpractice, demanding the need for independent commissions³⁴.

The 17th Amendment provides for an independent Election Commission. However, the President is yet to appoint the commissioners as nominated by the Constitutional Council. This delay has resulted in the Election Commissioner (appointed under the old system) filing a Fundamental Rights petition against the President and others for obstructing his retirement. The Supreme Court ruled against him due to a 'constitutional aberration' (*BBC News*, 2003)

Supreme Audit Institution

The Auditor General's Department, which functions at the national level, audits all government entities, whether at the national, provincial or local tiers of government. During the past year the Auditor General has managed to reduce a major part of its audit backlog, which for a large part was the consequence of the non-rendition of accounts by the institutions to be audited. Incentive payments to audit staff also helped to reduce the backlog.

However, the bottleneck continues with the Committee of Public Accounts (COPA) and Committee of Public Enterprises (COPE) to which the Auditor General's parliamentary report is referred for investigation and remedial action. This is due to the infrequency of COPA/COPE meetings (expected to be monthly), the low attendance rate of its parliamentary members and the low skill quotient of technical staff at the parliamentary secretariat who provide the technical support to these committees. Indeed, disciplinary action and systemic remedies are rarely instituted. In this regard, the antiquity of the

reports (frequently over three years old) addressed by COPE/COPA scarcely helps, which explains why parliamentary debate on audit issues is very infrequent.

As Asanga Welikala of the Centre for Policy Alternatives states, "COPA reviews the audit reports of ministries and departments, particularly excesses in programmes, and reports its findings with recommendations to Parliament. The Ministry of Finance and Planning (MOFP) monitors this activity through the Department of Public Finance. COPA reviews of audit reports, despite being a good mechanism, are not very useful because of the long delays in submitting and reviewing the audit reports, the infrequent meetings, narrow focus on excess expenditure, and the lack of follow-up action by the relevant ministries and the MOFP". Furthermore, "Contrary to best practice, the hearings of the parliamentary oversight committees, such as the Committee on Public Accounts (COPA) and the Committee on Public Enterprises (COPE), are held *in camera*, and are not open to media or public. The government is not required to respond to the recommendations of these committees within any stipulated period of time. This leaves the accountability loop open." (2003).

In earlier administrations, COPA and COPE deviated from tradition and appointed MPs from the ruling party to chair both these bodies (Wijesekera, 2002). The current government in power has reverted to the tradition of COPA and COPE being chaired by opposition MPs. The weakness continues, however, as COPA and COPE remain the fora for parliamentary intervention to remedy work-process deficiencies and take disciplinary action against corrupt individuals. The World Bank Country Director for Sri Lanka, Mr Peter Harrold, was more hopeful of anti-corruption initiatives being achieved through parliamentary scrutiny rather than a direct anti-corruption campaign by the government.

Besides the usual problem of unfilled posts (the approved audit strength is 1,318, of which 328 are unfilled, including 87 audit superintendent posts), the skill set quotient is low, particularly for auditing of computer systems. Furthermore, the Auditor General's focus is on compliance audits, the occasional value-for-money audit (16 done), but there is an absence of system-based audits where an organisation's effectiveness and its system of operation is audited. Equally absent are project audits and surprise audits.

Legislation is absent to empower the Auditor General to audit partially-owned government entities. Notable amongst these are SriLankan Airways and Sri Lanka Telecom, along with the privately managed, publicly owned plantation companies. Weliamuna (2002), in his assessment of Public Audit, astutely points out that "consolidated accounts of the state are neither audited nor tabled in parliament. Only individual financial statements of government agencies' appropriation accounts are audited and submitted to parliament."

Further, controversy may present itself with SIHRN since it is a creation of the peace negotiations and headed by both the LTTE and the GoSL, and thus outside the ambit of the Auditor General's audit purview unless parliament directs otherwise. Since the stalemate in peace negotiations, it appears that SIHRN will be replaced by some other instrumentality, which may fall totally under, or indeed, outside the jurisdiction of the GoSL. However, questions remain as to the audit of SIHRN which was the principal agent identifying the North and Eastern province requirements that were reflected in the projects earmarked for the June 2003 Tokyo Donors' Conference.

Currently, under the direction of the External Resources Department, the Auditor General's Department is negotiating with the World Bank to fund a capacity-building project for the Auditor General's Department. It should be noted that the Auditor General's department itself is not audited by any external entity.

The Auditor General is appointed by the President by Warrant under his hand after a recommendation for appointment is made to the Constitutional Council by the President and the Constitutional Council approves such recommendation. [Article 153 (1) read with Article 41C as per Section 18 of the 17th Amendment]. The office of Auditor General becomes vacant in the following ways: a) upon his death, b) on his resignation in writing addressed to the President, c) on his attaining the age of sixty years, d) on his removal by the President on account of ill health or physical or mental infirmity, e) on his removal by the President upon an address of Parliament [Article 153 (3) read with Article 41C].

Judiciary

The highest court is the Supreme Court followed by the Court of Appeal, High Court (Provincial High Courts and the Commercial High Court in Colombo), District Courts (civil matters) and Magistrates Courts (criminal matters). The Judicial Services Commission (JSC), which is headed by the Chief Justice and two Supreme Court Judges, administers the judicial system and manages the human resources capability of registry staff, in addition to the appointment, dismissal and disciplinary control of judges who do not belong to the two highest courts.

The Chief Justice and the Judges of the Supreme Court, and the President and the Judges of the Court of Appeal are appointed by the President by Warrant under his hand after a recommendation for appointment is made to the Constitutional Council by the President and the Constitutional Council approves such recommendation. In doing so the Constitutional Council may obtain the views of the Chief Justice and the Attorney general [Article 107 (1) read with Article 41C as per Section 10 of the 17th Amendment]

The procedure for removal of Judges of the Supreme Court and the Court of Appeal including the Chief Justice and the President of the Court of Appeal is as follows:

- Every such Judge holds office during good behaviour.
- They may be removed before retirement by an order made by the President after an address of Parliament has been presented to the President.
- Such address of Parliament which must be supported by a majority of Members of Parliament, may only be presented on the ground of proved misbehaviour or incapacity.
- A notice of resolution for the presentation of such an address of Parliament should be handed to the Speaker, who may only entertain it if the notice is supported by not less than one third of the Members of Parliament.
- The notice must also contain full particulars of the alleged misbehaviour or incapacity.
- If the notice is a valid one, then the Speaker must appoint a Select Committee of Parliament of not less than seven members to investigate the allegations and report to Parliament its findings.
- The Judge against whom the allegations are directed is entitled to make a written statement of defence as well as to appear in person or by representative to present his oral defence.
- After consideration of the findings of the Select Committee, Parliament may pass the Resolution to present the address of Parliament to the President for the removal of a Judge.

[Article 107 (2), (3) and Standing Order 78A of Parliament]

Judges of the High Court are appointed by the President by Warrant under his hand on the recommendation of the Judicial Services Commission, which must consult the Attorney General in making its recommendation [Article 111 (2) (a) as per Section 12 of the 17th Amendment]

High Court Judges are removable and are subject to disciplinary control of the President who must act on the recommendations of the Judicial Services Commission. [Article 111 (2) (b) as per Section 12 of the 17th Amendment]

The Judicial Services Commission sets the rules of procedure for the discharge of its powers referred to above

The judiciary is run at the national level and is headed by the Chief Justice who himself is a controversial figure. His appointment saw three separate Fundamental Rights petitions (Jayasekera, Ivan, Abeynayake) against him but the Supreme Court held that it had no powers to remove the Chief Justice – only Parliament had that power (*The Sri Lankan*

Monitor, 2001). Additionally, in 2001 the opposition tabled a parliamentary motion for his removal. But this lapsed due to the dissolution of parliament and the new government (then opposition) initiated parliamentary action late in 2003 but this once again lapsed when the President prorogued parliament in early November 2003.

The judiciary, in a household opinion survey commissioned by Transparency International, was rated amongst the top-ranking corrupt institutions (*The Island*, 2002b). The Chief Justice, when interviewed, discounted this, however, stating that the corruption related not to his judges (as evidenced by no allegations lodged at the CIABOC against judges) but to minor staff, the police and lawyers. However, there is minimal record of the aggregate number of outstanding cases, particularly concerning the longevity of cases' journey through the courts and there has been no serious empirical research, assessment and identification of problems as to why so many court cases take decades to reach judgment. Popular opinion holds that upon payment to the correct sources a case can be quickened (at least listed) or more often slowed, since it is easy for just one party to be absent and thus the case is deferred.

Importantly, the secretariat of the JSC is confined to implementing the policy directives of the three judges on the board of the JSC. Currently, there is a major World Bank funded project, inspiringly titled Legal and Judicial Reform. However, the appalling case flow delays, well known in Sri Lanka, form no part of the reform considerations. The project is focused on commercial law, training of judges and reconstructing of courthouses in the once war-affected areas. A ray of hope appeared, however, in the *Daily News* of June 18 2003, which stated that a parliamentary select committee "is expected to study under its purview the Courts system, the judiciary, the Court staff, the Bar, the Police and the Prisons, and make its recommendations for reforms" (*Daily News*, 2003b).

The Ministry of Justice is responsible for the physical structures of the courts, all matters pertaining to the Legal Draftsman's and Attorney General's Departments as well as the human resources capability of minor court staff (e.g. cleaners, drivers, stenographers). The minor court staff themselves belong to the Ministry of Public Administration and can be transferred to other government departments.

Civil Service

The Public Administration employs close to 1 million people when adding the employees at the partially privatised/sold public corporations (e.g. AirLanka, Sri Lanka Telecom) to those directly employed at the national, eight provincial councils, and local government levels. The latter comprises 18 municipal councils, 37 Urban Councils and 256 Pradeshiya Sabhas.

The 59 national government ministries, which cascade into a plethora of departments, semi-government instrumentalities and public institutions (e.g. universities, Sri Lanka Foundation), translate to a highly fragmented civil service that is plagued today by ineffectiveness and inefficiency, which makes it highly susceptible to corruption given its low salary structures.

Recognising these problems, the previous government established the Administrative Reform Unit under the Presidential Secretariat and complemented it with the National Administration Reform Council. Results show little reform and the new government, under the Prime Minister's office, has set up an Administrative Reforms Committee to install a client-focused service mentality that caters to public need.

However, perusal of their initial framework (Administrative Reforms Action Plan, 2002) uncovers no mention of addressing corruption! At best, interviews with Heads of Department (e.g. Customs) reveal the penchant for computerisation in order to reduce the person-to-person contact and thereby obviate the opportunities for corruption. A leading Sri Lankan business journal published its readership survey findings where Customs & Excise (52%) were rated as the most susceptible to corruption ahead of the police (26%), politicians (20%) and the courts (2%) – (*Lanka Monthly Digest*, 2003).

In 1972 the constitution vested the right of appointment, transfer, promotion and disciplinary control of public officers in the Cabinet of Ministers. After 30 years, this has

produced a public service that is overstaffed, employing 909,660 staff, comprising 329,297 in the state sector, 308,375 in the provincial public sector and 271,988 in the semi-government sector (Central Bank, 2003).

It was only under the 17th Amendment³⁵ to the 1978 constitution that the Public Service Commission (PSC) was vested with the powers of appointment, transfer, disciplinary control and dismissal of public officers. The ministerial power of appointments etc. was retained for the top echelons of the public service, namely the Secretaries of Ministries and Heads of Department. Appointments to the latter require the Cabinet to exercise their power after ascertaining the views of the PSC. In 2002 the Public Service Commission (PSC) was appointed by the President on the recommendation of the Constitutional Council "to ensure an impartial and permanent public service not subjected to political interference" (Vandergert, 2003). The PSC is yet to make its mark, for the old habit of political appointments has not died and is still to be addressed by the PSC.

Currently, the PSC has formally queried³⁶ the choice of the person appointed by Cabinet for the post of Director General of Prisons, as he does not meet the prerequisite criteria (age and legal qualification) for appointment. A Fundamental Rights petition has also been filed (*Daily Mirror*, 2003c).

Importantly, the PSC is not vested with policy-making powers relating to public officers as these continue to be vested in the Cabinet of Ministers. Cadres of the provincial public service fall under the purview of the Provincial Public Service Commission.

All government employees are required every year to complete a Declaration of Assets and Liabilities under Law No. 1 of 1975 and submit it to the Head of Department or higher official (e.g. Secretary of Ministry or Minister). However, echoing K. M de Silva's comment on confidentiality, the declarations are merely filed without any (even sampled) verification of facts contained therein. The operating principle surrounding these declarations is that they come into existence only upon the official lodging of a complaint (e.g. bribery, corruption, fraud).

Sri Lanka has no provisions restricting post-public administration employment.

Police and Prosecutors

The provisions of the 13th Amendment to the Constitution relating to provincial government jurisdiction over law and order and police, have never been implemented. It is a national level institution headed by the Inspector General of Police (IGP) who commands a police strength of 65,000 personnel, which includes the reserves. The Inspector General of Police is appointed by the President by Warrant under his hand after a recommendation for appointment is made to the Constitutional Council by the President and the Constitutional Council approves such recommendation. [Article 153 (1) read with Article 41C]. The Inspector General of Police may not be removed except under the provisions of the Constitution or any other law, i.e., under the provisions of the Police Ordinance by the Minister in charge of the Police Department [Article 41C].

In mid-2002, "the DIG (Deputy Inspector General of Police) Kotakadeniya articulated what is already known to the public. Some police officers are on the payroll of bootleggers. Private bus operators are oiling the palms of corrupt traffic policemen and their superiors so that they can wreak havoc on highways with impunity. Underworld kingpins are enjoying police patronage." The report went on to state that "the expensive lifestyles that some police officers have adopted after joining the department, which are obviously beyond their means, also question their integrity" (*The Island*, 2002a). Yet, no formal investigations were instituted. Rather the Inspector General of Police of the time castigated Kotakadeniya for speaking out of line.

By December 2002, a household perception survey commissioned by Transparency International rated the police as the most corrupt public institution (Nayana, 2002). This jolted the police, *among other aspects* like the appointment of a new IGP (due to the death of the previous IGP) and they responded with a Counter Corruption Programme, which on paper includes:

- Reducing the discretionary power of the policeman on the beat by using technology (e.g. radio contact) to keep him connected to base where his supervisor knows of, and can control, his interactions with the public.
- Benchmarking deliverables so that the public knows the timeframes within which service will be provided. This is particularly relevant to insurance reports, loudspeaker permits, and police reports for purposes of employment.
- Conducting raids to monitor the quality of policing – particularly in the corrupt areas of illegal drug and liquor dealers, brothels, prohibited articles, driving offences, etc.
- Reprimanding officers with a ‘bad corruption reputation’ by restricting their rank and interaction with the public.
- Extending the reward structure beyond promotion and cash gifts. Nurturing a culture where commendation, appointment to responsible positions/special inquiries, etc. is valued in recognition of integrity and efficiency.
- Granting rewards in two instalments: half at the time of arrest and recovery of goods, and the other half after the court case terminates in conviction. This timing was designed to counter the tendency for investigations frequently not to be conducted properly, resulting in court conviction failures.
- Creating an Ombudsman’s office to handle public complaints.

In the meanwhile, since the latter part of 2002, the National Police Commission (NPC) has been appointed and is functioning with the objective of restoring impartiality to the design of personnel policy and its implementation amongst the police. It is too early to detect the effect of these remedies – particularly whether it can withstand political interference when it comes to promotion, transfers, etc of police personnel.

The Fraud Bureau operates with the Police and covers those aspects not covered by the Bribery Commission – for example, where the fraud allegation does not involve a government employee.

The public prosecutor, who is the Attorney General, and his department also fall under the national tier of government. The Attorney General is appointed by the President by Warrant under his hand after a recommendation for appointment is made to the Constitutional Council by the President and the Constitutional Council approves such recommendation. [Article 153 (1) read with Article 41C].

The Attorney General may not be removed except under the provisions of the Constitution or any other law [Article 41C]

The other important arm is the Legal Draftsman’s Department, which is responsible for drafting the laws and statutes of the country. Due to bad drafting of laws, which undoubtedly suffers from the interference of politicians, many loopholes exist for corruption to flourish. As already mentioned, an example was the concentration of powers in ministers to exclusively appoint personnel to the public administration sector. Another example is the lack of timeframes within which the President must make Commission appointments as recommended by the Constitutional Council. Certainly, CIABOC and the Electoral Commission are currently crippled due to the lack of such timeframes.

Public Procurement

Public Procurement is the “big-ticket” item where corruption flourishes and will continue to do so as we move from the armament deals (which investment required national secrecy measures and was therefore rationalised as beyond the purview of the Auditor General) to reconstruction of major capital works as peace becomes a reality.

Public procurement guidelines issued by the Ministry of Finance have been in existence since 1995. The focus of these guidelines is that government procurements are required to be made public (e.g. advertised in the leading newspapers) and accompanied by

specifications (which sometimes may require nominal payment to obtain the detailed specifications) and timeframes. The guidelines also specify the tender approval components (e.g. tender specification, advertisement, public opening of received tenders, evaluation by technical evaluation committee) and the financial benchmarks that determine who oversees the tender and the level of authority (e.g. Department Head, Ministry Secretary, Minister, cabinet tender board) required to approve the tender.

Whilst tenders, once received, are opened in public, the guidelines are remiss in that thereafter the process is shrouded in opacity, meaning that the decisions arrived at in the technical tender evaluation and the tender-awarding process are not accessible to the public. Whilst there may be cogent arguments for having these processes held *in camera* (to minimise outside interference, a view suggested by JBIC), there is little rationale, short of protecting unjust decisions, for not having the documentation of criteria and evaluation accessible, questioned and if required litigated upon, after the tenders have been awarded. Current practice also suggests that rarely is the 'award of tender' advertised/announced in the newspapers, which is a standard requirement specified in the public procedure guidelines.

Additionally, privatisation (sale of public assets) and BOI approval for foreign investment is fertile ground for corruption. An example was the sale of AirLanka referred to earlier.

Ombudsman

Under Act No. 17 of 1981 and Act No. 26 of 1994, the Ombudsman (known as the Parliamentary Commissioner for Administration) investigates complaints against Government Departments, Statutory Boards, Corporations, Government Authorities and other Local Government Institutions. Infringement of fundamental rights, general public maladministration, failure to afford access to public information and acts of administrative abuses, negligence and omissions are the subject matters of most complaints.

Complaints against appointments, promotions or transfers do not fall within the Ombudsman's domain; neither do corruption-type allegations. It was the 1994 Act that enabled a person to send a petition (redress of personal grievance, or petitions submitted by groups of persons for the redress of collective grievances) directly to the Ombudsman, whereas previously it had to be sent to parliament and reached the Ombudsman via the Committee on Public Petitions.

The Ombudsman is appointed by the President³⁷ and holds office during good behaviour. The Ombudsman's office is capital city centric and serves the outstations with its presence as its caseload demands. This group is headed by the Ombudsman, currently a retired Judge, and is staffed by 23 personnel of whom the only investigator is the Commissioner, the others being administrative and junior staff. Their volume of activity is about 5,000 cases per year, and Parliament is provided with a yearly report on the activities of the Ombudsman's Office. Usually, the commissioner is able to negotiate a settlement amongst the aggrieved parties. Given that the Ombudsman is the sole investigator, it appears Sri Lanka has had only one Ombudsman with proficient tri-lingual skills – in particular including Tamil. In other instances, the Ombudsman has had bi-lingual proficiency of Sinhala and English.

Allegations received by the police and the education department (particularly concerning child admission to the leading schools in the city or outstation) against their own personnel have been so rampant that in the course of 2003 both these institutions have set up their own Ombudsman offices to handle public complaints.

There appears to be no sharing of information between the national Ombudsman's Office and the departmental Ombudsman's offices or for that matter the PSC and NPC. However, a record of the allegation would be placed on the particular government employee's file as the Ombudsman keeps the employee's Head of Department aware of proceedings by way of sending copies of the relevant paperwork. This way, the PSC and NPC are aware of proceedings when an individual file is accessed for matters of promotion, transfer, disciplinary action etc.

Investigative/Watchdog Agencies

CIABOC was established under the Bribery (Amendment) Act, No. 20, of 1994 and the mission of CIABOC is stated as "to spearhead the fight against bribery and corruption through the execution of programmes of prevention, investigation and prosecution in a just and fair manner, without fear or favour, within the framework of the rule of law". Section 3 of Commission to Investigate Allegations of Bribery or Corruption Act, 5 No. 19 of 1994, states: "The Commission shall, subject to the other provisions of this Act, investigate allegations, contained in communications made to it under section 4 and where any such investigation discloses the commission of any offence by any person under the Bribery Act or the Declaration of Assets and Liabilities Law, No. 1 of 1975, direct the institution of proceedings against such person for such offence in the appropriate court." Section 4 states that "an allegation of bribery or corruption may be made against a person (whether or not such person is holding on the date on which the communication is received by the Commission the office or employment by virtue of holding which he is alleged to have committed the act constituting bribery or corruption) by a communication to the Commission, or a person may by a communication to the Commission draw the attention of the Commission to any recent acquisitions of wealth or property or to any recent financial or business dealings or to any recent expenditures by a person (whether or not such person is holding any office or employment on the date on which such communication is received by the Commission), which acquisitions, dealings or expenditures are to the knowledge of the person making such communication not commensurate with the known sources of wealth or income of such person." Thus for example, if a public official has unexplainable wealth the law presumes that he/she has gained it from corrupt means.

CIABOC has close to 200 working staff comprising three commissioners, 16 legal officers and around 80 each of investigative staff and clerical staff. In January 2003, Dr Kingsley Wickremasuriya (Commissioner) said that "there were a total of 2,052 cases from which only 1,253 were real cases. There were 554 and 245 cases where the identity was either pseudonymous or anonymous." (*Daily News*, 2003a). Currently, there are reportedly around 150 cases journeying through the court system and the Director General advises that over 1,000 allegations are awaiting decisions by the commission (once duly reconstituted) as to whether investigations, raids, etc are warranted.

This situation arises because for the second time CIABOC is bereft of one of its Commissioners (constitutionally required to be retirees) due to natural death. The Constitutional Council has recommended a replacement Commissioner but the President, in the absence of constitutional timeframes, is yet to make the appointment. All investigations, raids and prosecutions need to be approved by the Commission. And whilst a Commissioner can act on behalf of the Commission when duly constituted, the Commission is duly constituted only when it has all three Commissioners. Consequently, lacking the reappointment of a Commissioner, all such work is at a standstill.

In the meanwhile, Commissioner Dr Wickremasuriya is under special parliamentary investigation for allegedly leaking confidential information to the President (*Daily News*, 2003b). The question is whether the commissioner has violated the secrecy clauses in the Commission to Investigate Allegations of Bribery or Corruption Act by disclosing information to the President regarding the investigations pertaining to Minister S.B. Dissanayake (*Daily Mirror*, 2003).

Overall CIABOC has a miniscule record of allegations for investigation and an even poorer total of convictions for bribery and corruption. The highest financial allegation is for SLRs 2 million against the ex-chairman of the BOI (*Daily News*, 2001). Indictments have been filed and the court case is continuing (*Daily Mirror*, 2003b)³⁸.

On a different score, the Director General of CIABOC is well aware that his investigative and legal staffs are poorly skilled to pursue the more complex public capital project corruption allegations. CIABOC needs a campaign backed by the political will of the Prime

Minister to cultivate a culture of officially complaining against corruption. Furthermore, the CIABOC needs to be strengthened so that their skill sets (both legal and investigative) are enhanced and not dependant upon secondment from the Attorney-General's office and the Police. Additionally, the CIABOC should be vested with proactive powers (ex mere motu) plus right of investigating and prosecuting judicial officers for corruption (e.g. fixing of cases).

Commissioners too need to be appointed from the ranks of non-retirees and there should be provision in the constitution, which requires the President to make appointments within prescribed timeframes. Also, contingencies need to be available so that the CIABOC functions undeterred when it operates below the full strength of its three commissioners. For example, a healthy solution would be a constitutional provision similar to that enjoyed by the Election Commission which states 'the Commission shall have power to act notwithstanding any vacancy in the membership of the Commission, and no act or proceeding or decision of the Commission shall be invalid or be deemed to be invalid by reason only of such vacancy or any defect in the appointment of a member' (Article 104(3) of the Seventeenth Amendment).

Media

Whilst there is little by way of provincial-based news coverage and ownership, there are a few privately-owned media houses serving the whole nation with early editions of newspapers, destined for the provinces, sometimes carrying segments of provincial news.

The newspaper ownership spans five companies covering eight Sinhala, four Tamil and nine English-language newspapers. There are five radio broadcasters and seven TV station owners.

Of the five large newspaper companies, one is a nationalised asset whose newspapers carry the bulk of the government notifications and advertising. Another, the Upali newspaper group, is owned by the family of the President's uncle (mother's brother) whilst the current Prime Minister's uncle owns the Wijeya group of newspaper publishers and the Prime Minister's brother owns the Telshan Radio and TV network.

The government controls two of the TV stations (Sri Lanka Rupavahini Corporation and ITN), and is the radio owner of the Sri Lanka Broadcasting Corporation. Overall, the government-owned media has the broadest coverage, including TV and radio transmission capacities. Consequently, significant advertising revenue, both from the government and private sector, is earned due to the extensive coverage afforded by the government's media channels. Given the historical era of nationalisation it was mid-1980s before media (particularly radio and TV) began to be privately owned.

Due to the revolt in the South (JVP insurgency) and the North and East (war since 1980s) press censorship has been heavily invoked under the powers of Emergency Regulations and the Prevention of Terrorism Act. Since the Ceasefire Agreement of February 2002 and an end to Emergency Rule, press censorship has declined significantly and civil society's call for a Freedom of Information Act is currently being negotiated with the Prime Minister's Office.

With so many of Sri Lanka's regulatory agencies seriously hampered (e.g. CIABOC, COPA, COPE, and the Auditor General's Dept, including the backlogs in the judicial system) the print media is one, if not the only, medium that is actively engaged in pursuing corruption matters. *The Island* (owned by the Upali Group) and *Sunday Leader* have invested heavily in investigative journalism with the *Sunday Leader* well recognised for following the corruption trails. Its editor Lasantha Wickrematunga won Transparency International's Integrity Award in 2000. There is of course a remarkable dearth of investigative journalism pertaining to corruption, initiated from the government-owned media houses.

Various journalists have been at the sharp end of threats and attacks when investigative journalism has probed the corruption arena. Besides Kumara who lost his life on the "Commissana" affair (referred to above) there was also Srilal Priyantha who was murdered

allegedly 'in response to Priyantha's published investigations into corruption within the Sri Lankan armed forces (Asia: Country Report 1999).

In the second half of 2003, following *The Sunday Leader's* articles accusing Fisheries Minister, Mr Mahinda Wijeskera, of corruption, the editor of the newspaper, Mr Lasantha Wicrematunga was threatened and "the paper quoted Wijeskera as saying that very soon I'll put him in a room and have him shot or he will be stabbed" (Reporters sans frontiers – Sri Lanka, 2003). Around the same time, journalist Poddala Jayanta of the *Silumina* newspaper received death threats "which appear to be linked to an article written... by Jayantha exposing corruption in the state banking sector ..." (International Freedom of Expression of Exchange, 2003).

From a different perspective, the Sri Lanka Monitor wrote 'Victor Ivan (at the forefront of the Free Media Movement and editor of the Sinhala-language *Ravaya* daily which exposed corruption) says that the Attorney General (AG) is prosecuting him indiscriminately for criminal defamation, harassing and violating his freedom of expression, (1998).

Largely at their own initiative, the Sinhala newspaper '*Ravaya*' and the English newspaper '*The Sunday Leader*' have led the campaign on reporting corruption. However, there is very little if any follow up by the rest of the media or government authorities.

Civil Society

Whilst everybody talks about corruption, which prevails from the top to the very bottom, civil society appears to have taken it for granted as a common feature of every day life. It is only in very recent times that a little pressure has been brought to bear on the government to place anti-corruption efforts on the reform agenda. Consumer or citizens' lobby groups with powers of influence are a rarity in Sri Lanka. Neither does the international community by way of lenders or the diplomatic community meaningfully urge the government to address the corruption that is eroding both the social fabric and business ethic of the island's people. The focus is on peace negotiations, its dividend and maybe the prevailing ethos is that corruption is functional to development!

A glimmer of hope may however be appearing, for a Freedom of Information Act is under negotiation between civil society groups (led by the Free Media Movement) and the Prime Minister's Office. To lend itself to detect corruption, the proposed FIA needs to apply also to private entities so that the collaborative evidence is available and equality of the law is practised.

Civil society under the banner of Transparency International Sri Lanka has since August 2003 begun to canvass support for a Whistleblower Protection Act, an independent audit statute and a much strengthened anti-bribery commission.

Regional and Local Government

In November 1987, in a bid to address the underpinnings of what threw Sri Lanka into a civil war, an intervening provincial layer of government, comprising nine provinces, was introduced under the 13th amendment. The allocation of subjects and contexts is specified in the constitution with List I (40 subject areas) specifying what is exclusively under the provinces, List II (16 subject areas) specifying what is exclusively at the national level, and List III (36 subject areas) specifying what is concurrently shared between the provincial and national layer.

Whilst the 13th Amendment devolved many subject areas to provincial government (comprising a Chief Minister and a Board of four Ministers, all elected, plus a Governor appointed by the President), many experts convincingly argue that meaningful devolution has effectively not taken place because the nation continues to be governed at the national level.

For example, the major revenue-raising powers sit at the national level, thus making the provinces essentially dependent on the national Treasury. Equally, international guarantees for government debt effectively need to be guaranteed by the national level of government. Thus, comparatively, provinces have a reduced revenue and expenditure pattern. Consequently, corruption in financial terms is less, but it is just as active within the conduct of its small terrain. Additionally, many of those working at the provincial level are secondments from the national level of Public Administration, which consequently means a similar ethos prevails between both tiers of government.

The local government, a tier of government which has existed since independence, is a little bit more independent, particularly with regard to its staffing. Its revenue-raising powers are usually quite small except for the municipal councils, the largest of the local government tiers. There are three scales of local governments – viz. municipal councils, then the smaller Urban Councils and the smallest type, Pradeshiya Sabhas. The numbers of these entities are 18, 37 and 256 respectively, and the elected term of office is four years.

The newspapers, essentially the source of abundant corruption allegations, focus on the national tier of government in matters of corruption. However, there is little to suggest that the corruption pattern is different in the provincial and local government layer – beyond recognising that the amounts in question could be much smaller than at the national level. Indeed, any serious politician at the provincial and local government levels frequently aspires to the national level of politics.

Anti-corruption Activities

Encouraging minute but significant changes are occurring not at the level of government or donor agencies, but within civil society in the shape of journalists, academics and NGOs working actively against corruption. Exposing the state of affairs to the public's attention is gradually generating a civic voice that, it is hoped, will fuel the Prime Minister's will to drive a national anti-corruption campaign, as was done in Singapore and Hong Kong.

Since the Ceasefire Agreement and consequent easing of press censorship, the newspapers, like *The Sunday Leader*, the *Ravaya* and *The Island*, have taken the lead in investigating and giving wide publicity to numerous allegations of serious corruption, particularly pertaining to politicians, the military and high-ranking public officials. Unfortunately, few of these allegations have been lodged with the CIABOC, which is legally required to have official complaints lodged in order to initiate investigations.

Sri Lanka conducted two conferences in 1999 (one sponsored by Asia Foundation and the other by Ford Foundation) on 'Corruption in Sri Lanka and South Asia' and on 'Governance and Corruption in South Asia', resulting in a publication titled 'Corruption in South Asia - India, Pakistan and Sri Lanka' (De Silva, et al., 2002).

Last year, Transparency International commissioned a survey to gauge household opinion on experiences of corruption. These results, which clearly named the most corrupt government organisations - the Police, Judiciary, Education etc, - were given wide publicity by the press. The police reacted questioning why they, and not customs or, more importantly, politicians, were rated as the most corrupt. This reaction was healthy. Those identified as corrupt were naming each other and public attention was focused on the need to reduce corruption. In the meanwhile, the police responded with a counter-corruption campaign to clean up its own house.

In June 2003, with the build-up to the Tokyo Donors' Conference, a leading Sri Lankan business journal *Lanka Monthly Digest*, ran a cover story on bribery and corruption and conducted a readership survey. Here, customs - followed by politicians - were rated as the most corrupt, and every respondent surveyed answered in the affirmative that 'bribery and corruption is rampant in Sri Lanka' (*Lanka Monthly Digest*, 2003).

Importantly, the interviews conducted for this study revealed that many leading officials did not consider that corruption was a serious issue within their own institution. For example:

- The Chief Justice considered the judiciary corrupt only at the level of junior staff, the police and lawyers. He attempts to prove his point with the fact that no allegations have been made against judges at the CIABOC.
- The Controller of Customs realises that maybe about 30% of his customs officers are corrupt. He feels very little can be done about it for the assets and liabilities declarations are of no help, particularly given their 'detection reward scheme'. His endeavour is to introduce computerisation so as to reduce person-to-person contact, which is the interface where corruption occurs.
- The LTTE reckoned that their discipline and reprimand capability would withstand corruption. Concerning Sri Lanka's alleged record of corruption in tenders and the ramifications for the reconstruction of the North and Eastern provinces, the LTTE (interviewed in April 2003) contended that those were matters to be handled by the World Bank (as trustee of donor funds) and SIHRN (semi-government instrumentality, jointly headed by the GoSL and LTTE and proposing the projects).

Better yet was the justification given by the Chairman of the BOI to *LMD*: "(W)e have to prioritise what we want to do. The government has only so much space and time within which to do its work, and this government - in terms of the 'Regaining Sri Lanka' initiative and so on - wants to get the economy back on track." (Abayasinghe, 2003). In short, the end justifies the means.

Anti-corruption is thus too sensitive a nerve for politicians to touch. Certainly, there is big money and power stakes to wield in Sri Lanka based on the projected influx of capital works programmes (e.g. US\$4.5 billion pledged at Tokyo in June 2003).

Interviews with the Asian Development Bank (ADB) and Japan Bank for International Cooperation (JBIC), the largest-value lenders to Sri Lanka, revealed no new anti-corruption initiatives on their part. There is a prospect, however, that a project may result as a consequence of the World Bank Country Financial Accountability Assessment Study. The objective of that study was to provide "recommendations for the institutional framework and organisational capacity for enhancing the effectiveness of the State's financial management of public resources".

Other government initiatives like Administrative Reform, computerisation and the introduction of a Freedom of Information Act may help reduce corruption. Whilst these initiatives are not being propelled by an anti-corruption objective, their results - if effective and efficient - will certainly contribute towards reducing corruption, particularly 'speed money'.

It is also hoped that taking away the politician's right to appoint, promote, transfer and take disciplinary action against employees (below the rank of Head of Department or equivalent) of the public service, including police, will reduce the nepotism and cronyism that has over 30 years eroded the quality of service provided to the public. As stated by Mr Elmore Perera, "much will depend on the impartiality and the extent that the PSC and NPC can withstand political interference" (PSC seminar, 5 June 2003).

Discussion of Key Issues

The NIS

Overall, the differences between the formal and practical situation in most of the NIS pillars are negligible. Anti-corruption initiatives have not ranked in the priorities of the government for nearly a decade – 1994 was a watershed, for it saw the government respond with the establishment of CIABOC and its associated statute, but in practice little has changed. The NIS pillars are extremely weak from an anti-corruption perspective.

Of particular consternation is that corruption allegation by public administrators is prohibited by the Establishment Code, the Official Secrets Act, Sri Lanka Press Council Law, the Monetary Law Act and by various laws pertaining to the state-owned banks. For example, the Establishment Code (Chapter XLII - code of conduct which applies to all public officers) states that “no information, even when confined to statements of facts, should be given where its publication may embarrass the government as a whole or any government department or officer”. Further, section 6.1.4 and section 7 prohibit public officers from taking up issues in public or voicing their complaints through media (Transparency International Sri Lanka, 2003).

Thus, corruption allegations abound in the Executive, the Legislature, political parties/candidates, Judiciary, Civil Service, Police, Public Procurement and Regional & Local Government. The agencies responsible for detecting corruption, like the Auditor General, CIABOC and Ombudsman, are fragmented and weak institutions which are understaffed, inadequately skilled to perform their duties and rarely work together – the exception being maybe CIABOC and the Fraud Bureau since both their investigative staff are police personnel. The election process is known to be marred by malpractice and has its fair share of violence. Election petition cases where instituted, slowly make their way through the judicial system where corruption is better described as the scheduling mechanism for case-flow management.

As mentioned previously, a disconcerting feature is the continued vested authority the ministers have in appointing officers of the rank of Head of Department and above, including Ministry Secretaries. This makes the public service very susceptible to nepotism and cronyism, particularly political, and reduces the public service to following the dictates of the Minister, as the top echelon public servant’s tenure of office continues to be totally dependent upon the relevant Minister’s goodwill. Some redress is available to aggrieved senior public servants under the Fundamental Rights petition to the Supreme Court but the process takes a long time to deliver justice.

Concerning matters of corruption amongst the NIS pillars, interviews demonstrated that it was indeed a rare Head of Department that recognised corruption as a problem in the delivery of the department’s service. If a Head did recognise the problem, he or she felt helpless to do anything about it or deferred responsibility to a higher level. The only two notable exceptions were the:

- Immigration Office, particularly with regards to the issue of passports, which is vital in a country where over 1 million of its workers are employed overseas. Since last year, this department has been seriously addressing corruption and is showing signs of successfully turning around what was a corrupt passport-issuing process. This has been possible because amongst other things the new Controller is focused on clearing the department of tainted employees, rotating and transferring staff, streamlining work-flow processes, providing staff training, and giving staff more discretionary authority, getting rid of touts outside the complex and maintaining a high frequency of random checks by the Controller himself.

- The Police Service, which it would seem, was jolted into action by the results of the Transparency International survey, as noted above. The latter revealed the public perception of the Police as the most corrupt public institution. It is too early to evaluate the success of implementation. Certainly, the principle of reducing the discretionary power of policemen on the beat is commendable. They are using technology to keep the policemen in contact with their home base and using raids to check on the effectiveness of their own policing.

The *LMD* (2003) readership survey that declared customs and politicians to be the most corrupt has so far seen neither respond to the survey revelations. As mentioned earlier, the interview with the head of customs revealed that they are planning to lower their corruption exposure by investing in computerisation for the lodgement of documents. The Treasury is also requiring its tax collection arms (Customs, Excise, and Inland Revenue) to fall under the umbrella of the new Revenue Authority, which is designing co-ordination and data-sharing systems.

Politicians, it would seem, continue to enjoy a heyday in Sri Lanka's economic revival that is taking place as the peace negotiations progress. However, no one seems to be invoking the corruption investigation mechanisms at CIABOC, despite the lavish lifestyles the politicians exhibit and the almost daily allegations of corruption that appear in the newspapers. CIABOC cannot act without a formal complaint and the newspapers do not lodge allegations with CIABOC. This avoidance probably stems from press freedom not to divulge their sources of information plus, to a lesser extent, CIABOC's poor record of convictions, CIABOC's history of internal problems, and lack of whistleblower protection.

A minor accountability trend is emerging with the establishment of departmental ombudsmen. The police have just instituted their own Ombudsmen and so has the education department. The latter is known for its rampant corruption regarding gaining entry to leading government schools, both in the city and outstations.

While it is too early to comment on either of the Ombudsmen initiatives, in principle it is likely that the education Ombudsmen will be confronted with the anomalies of national versus provincial control. This is a hazy area where the province has power of implementation and the national level has policy-making powers. The education ombudsman's office has been created at the national tier of governance.

Dovetailing of NIS pillars is non-existent and is scarcely helped by the 67 ministers and their ministries, which keep the public service fragmented. This fragmentation, however, has attracted the focus of government, and it is commendably within the mandate of the Administrative Reforms Committee for them to solve.

Lastly, two assessments need mention at the international level. They are:

- 'Least cost' tender procedures are not being applied for procurements obtained under the emerging trend of 'lines of credit' offered by countries (e.g. India, Austria). These are conditional procurements where the purchase must be sourced from the country providing the line of credit. Yet, despite the conditionality and the nomenclature of the loans, the funds have to be repaid and thus the government should ensure that optimal pricing for quality is achieved. Therefore, it seems sensible for Sri Lanka to apply its regular guidelines/processes to ensure optimal pricing is secured for the product or service procured, albeit sourced from the specified country. It is also worth noting that grants follow the current practice afforded to 'lines of credit procurement' – that is 'source country bias without tender process'. However, the difference is that procurements under grants do not require repayment and thus not following tender procedures is justifiable. In comparison, 'lines of credit' require repayment and thus should be subject to tender procedures.
- With the large capital works tender project, the likelihood is that only international bidders will be eligible to apply, as the local consortiums are unlikely to meet the prerequisite qualifications. This means that corruption that is part and parcel of the tenders will be honoured overseas outside the domain of Sri Lanka. This therefore calls upon the police and CIABOC to strengthen

contact with their international counterparts if such corruption is to be detected.

Effectiveness of Government and Donor Activities

Sri Lanka could be entering an era of heightened corruption as a consequence of:

- Chronic administrative weaknesses.
- Privatisation of the 'big ticket' public assets.
- Infrastructure development projects.
- Pursuit of foreign investment.

Platitudes about standards of transparency and accountability were extolled by the Prime Minister in his speech at the June 2003 Tokyo Donors' Conference, but the underpinning infrastructure is inadequate to achieve them. Neither the Sri Lankan government nor its donor agencies have an anti-corruption strategy for Sri Lanka. Worse still, despite mounting 'legally unproven' corruption, there has been and is no authority with an overall mandate for reducing corruption.

Sri Lanka has at best a fragmented approach to corruption. It has a few anti-corruption measures and mechanisms, like the CIABOC, Police Fraud Bureau, and the Declaration of Assets and Liabilities. However, corruption convictions are almost non-existent.

A shred of hope may lie with administrative reforms, if adequately funded, skills-resourced and interlinked with anti-corruption goals as part of the reforms. However, it is extremely unlikely that these administrative reforms will be ready to accompany the (usually corruption-plagued) public capital works programme – mostly awarded by tender.

An interview with Mr Peter Harrold, Country Director of the World Bank, in the week prior to the Tokyo Donors' Conference suggested that funds may be made available for administrative reform. However concern must be expressed, as the ARC reform agenda has neither an anti-corruption focus nor any inter-ministry reform, which is another place where workflow processes are most susceptible.

In the meantime, faced with crippling national debt repayment, the government is selling its big-ticket assets like public utilities, ushering in a new climate for corruption. Besides the usual corruption risk associated with selling public assets, there will be an on-going corruption risk arising from the need to regulate the utilities sector, since failed privatisation in that sector comes with a high entry cost for a government to re-acquire its public utilities. Thus, it is imperative that regulation is effective in servicing community needs and that it is capable of withstanding corruption within the context of private ownership.

The Treasury is currently pursuing a model for designing an integrated framework for regulation. However, so far, sector-based regulation has been flawed in Sri Lanka. For example, the Telecommunications Regulatory Commission has been unable to get the telephone companies to publish a consolidated telephone directory or provide a consolidated telephone enquiries facility. The Bus Transport Authority has been generally unable to get private bus operators to issue tickets!

It is too early to comment on the effectiveness of the Treasury-led initiative to set up an umbrella Revenue Authority. However, the principle of sharing information amongst Inland Revenue, Customs and Excise is commendable.

Overall, lacking an authority with a mandate to reduce corruption, consideration is not being given to address the ramifications emanating from:

- The bank practice of issuing a certificate of deposit that requires no identification of depositor or withdrawer.
- The legal absence of requiring political parties and candidates to declare their expenditure and sources of funding (financial and otherwise).

- The promises made by politicians to those who fund their election campaigns.
- The absence of a Freedom of Information Act.

With the latest pledge of massive donor funds, civil society has been alerted that the corruption 'gravy train is gearing into speed'. Thus, much will depend on whether they will win the ear of government and the international community to place anti-corruption efforts on the government's agenda. So far, the prospects are not encouraging.

Priorities and Recommendations

Combating corruption needs to be addressed from various dimensions – e.g. individual cases, systemic principles, ethical, punitive, financial, social imperatives, etc. Corruption needs to be prevented, detected and remedied. No government seems to have been willing or able to achieve this, its rhetoric notwithstanding. There has never been an overarching authority charged with the responsibility of devising a coherent anti-corruption strategy in Sri Lanka.

This begs the question: what are the points of leverage and intervention that will result in a substantial reduction in corruption? The recommendations proposed are:

Access to public information which calls for the enactment of a Freedom of Information Act (FIA) and whistleblower protection legislation

The provision of information to the general public will enable concerned civic groups to monitor the performance of public activity and initiate CIABOC action where corruption is suspected/evidenced. It also opens the avenue for civic lobby groups to institute public interest litigation.

It is imperative that the public service and private business are required by the Freedom of Information Act to construct storage, indexing and retrieving mechanisms so that information, when sought, is made available within the prescribed timeframes set out in the Act. Otherwise this will be the practical loophole that will disable the application of the FIA.

Reform of the public administration sector

Public administrative reform is a major exercise which many previous governments have attempted but with little success. Indeed, the government needs to realise that the necessary re-engineering of the work-flow process requires professional expertise and is not just a matter of directing Heads of Departments to gain a 'client focus in the delivery of their service'. Thus it is imperative that the administrative reforms be funded and skilled so that the desired change in attitudes and processes is achieved. Short of this, corruption in the public service is expected to thrive.

Strengthen the Auditor General's department; intervention by COPA/COPE; audit the Auditor General's Department

The Auditor General has already initiated proposals for gaining the funding and resources to strengthen the skill-set of his staff. The Auditor General is aware of the need to increase the number of value-based audits and that his office needs to launch 'system-based' and 'project-based' audits in order to improve the management afforded to Sri Lanka's public assets and liabilities.

An external auditor should audit the Auditor General's Department itself. In particular, it should be subject to system-based audits, which will identify work-practice improvements. Such audit findings would beneficially add to the Auditor General's lobbying power in his bid to improve the Department's performance. A reputable Sri Lankan private audit firm could perform such an external audit.

CIABOC needs to establish credibility through demonstrating effectiveness in high-value corruption cases

So far the powers of severe reprimand have never been exercised in the context of serious corruption. With Sri Lanka moving further into the era of high-value corruption, it desperately needs a major corruption conviction, and publicity thereof, if any significant inroads are to be made into the psyche of politicians, the business community and government service to desist from corruption. CIABOC winning a corruption conviction will also serve to boost the morale of the CIABOC staff and encourage public confidence in reporting corruption to CIABOC.

The numerous corruption allegations in the newspapers certainly suggest that the potential exists but the question is whether such a goal will receive political backing to strengthen the CIABOC to investigate major corruption.

Legislation requiring compulsory disclosure of elections and political party/candidate funding

The deficiency in the law must be rectified and, like many other countries, Sri Lanka should have a law requiring political parties and political candidates to disclose audited financial statements of their sources and amounts of funding, including their political expenditure outlays. This should be lodged yearly with the Commissioner of Elections and, if unduly delayed (e.g. over 2 years), should result in deregistration of the party/candidate.

Require income and expenditure disclosure

All elected politicians (at national, provincial and local government) must annually publicly declare their income and expenditure positions. If, upon investigation, a politician's financial position cannot be legitimately justified, he or she should be charged for failure to meet the disclosure standards of public office and forfeit the unexplained income or reimburse the expenditure, as the case may be. Additionally, if corruption is proven, the candidate should lose his/her political candidature and, as normal, be penalised in accordance with the anti-corruption laws.

Consider the potential for corruption arising from the structure and processes of the electoral system

As part of the ongoing debate on electoral reform, the potential for corruption in relation to the size of the basic unit of electoral representation needs to be considered.

Today, the parliamentary electorates are massive, very costly for funding election campaigns, and thus result in politicians frequently mortgaging their integrity to their financial and influential 'vote bank' backers.

Refinement of the tender process, including requiring disclosure of commissions and consultancy fees; opening the decision process to public scrutiny

Currently, the decision process is opaque after the tender bids are opened – meaning that neither the decisions arrived at in the technical tender evaluation nor the tender-awarding process is accessible to the public. Whilst there may be cogent arguments for holding these processes *in camera* (to minimise outside interference), there is little rationale, short of protecting unjust decisions, for not having the documentation of criteria, evaluation etc. accessible, questioned and if required litigated upon after the decisions have been taken. The FIA is intended for such purposes.

Additionally, research is urgently required to ascertain how the public procurement process can be better designed to resist corruption. Commissioning a study of the Auditor General's reports and the basis of court cases in this regard could provide a healthy start to discovering the loopholes which need rectification in the public procurement system.

Legislating that the Central Bank monitor all high-value financial transactions

The loophole presented by the anonymity of 'certificates of deposit' must be overcome. Many countries require their financial institutions to electronically report high-value unusual transactions. Of course, this implies that the Central Bank must build within itself a capability to detect unfavourable incipient trends suggesting corruption or money laundering. Furthermore, once such transactions are detected, speedy intervention must be possible in order to apprehend the specific offender and, if required, systemically rectify the loophole.

The monitoring will acquire particular importance if the country's capital account is opened – meaning that Central Bank approval will no longer be required for foreign exchange transactions of a capital nature. Currently, this non-approval only applies to currency conversions of a trading nature.

Media campaign

To nurture a national ethos of integrity alongside meaningful punitive measures, including surcharge powers to recover losses incurred, it is necessary that the existence and operation of such measures be well publicised. In this regard, Singapore and Hong Kong's multi-pronged anti-corruption drive suggests that such publicity was an important element in their campaign to stamp out corruption.

Overall Priorities and Recommendation

What all the above recommendations spell out is the need for an independent anti-corruption authority vested with the responsibility to:

- Design mutually supportive systems aimed at combating corruption.
- Liaise with the relevant government entities to have anti-corruption mechanisms incorporated into their workflow processes.
- Monitor systems to gauge their corruption profiles.
- Proactively investigate and prosecute corruption offenders – particularly high-risk suspects like politicians, customs officials, police, etc.
- Design and provide whistleblower protection.
- Ensure that remedial action (particularly at the systems level) is taken when performance deviates from agreed upon benchmarks.
- Recover losses from offenders (surcharge powers).
- Design and sustain anti-corruption awareness campaigns.

This authority needs to be headed by a local person and a non-retiree. This is a demanding job calling for courage, initiative, creativity and negotiation to get a nation's ethos working from a foundation of integrity and service ethos. Immediate redress is required to circumvent the politicians, the hierarchy of the public administration and privileged business community who benefit from the weakness of the present system. That is the harrowing reality.

It is expected that whilst 'peace initiatives' consume the nation's focus, the path assigned to anti-corruption reform will be low. This is why civil society anti-corruption organisations should be strengthened so that the focus on peace does not detract from crucial anti-corruption reform, which paradoxically would otherwise thrive under the 'peace dividend'.

Endnotes

¹ Pertaining to a 20 year war in the North and East of the country where the historical tensions built up from moving from communal to territorial majority elections (whilst a British colony), the legacy of the Sinhala Only Act of 1956, progressive state-aided colonisation where the ethnic demographics of population mix is alleged to have been deliberately manipulated in certain areas, etc.

² Conducted in most parts of the country except some of the war-torn areas.

³ The Indo-Lanka Accord (1987) merged the North and Eastern provinces.

⁴ 17th Amendment established the CC and four Commissions, viz, Elections, Police, Public Service, Judicial Services. Of this the PSC and JSC were reformulations of extant bodies. CIABOC and HRC are statutory bodies, regarding which the 17th Amendment merely laid out a different appointments and removal procedure. The same was done for the Auditor General etc.

⁵ Whilst provision is made in the constitution for the other two commissions (Finance Commission and Delimitations Commission) the supporting legislation has not reached parliamentary approval.

⁶ Known also as the 'self-sufficiency' economic model.

⁷ Has had various names and is today known as the BOI.

⁸ The amendment was to the Declaration of Assets and Liabilities Law No. 1 of 1975

⁹ Destruction-based economy, where income and expenditure is primarily based on the means of destruction – weaponry and associated military requirements (e.g. engineering, housing, medical, etc.)

¹⁰ Reconstruction-based economy, where income and expenditure is primarily based on reconstructing that which was destroyed – roads, offices, dams, factories, hospitals, schools, etc.

¹¹ Where it is out of reach, and where the local currency is weak – afflicted by inflation and onerous currency conversion conditions.

¹² Stated by Mr Bradman Weerakoon – keynote speaker, at the PSC seminar on 5 June 2003 held at the Sri Lanka Foundation Institute. The author attended this seminar.

¹³ Stated by Mr Bradman Weerakoon – keynote speaker, at the PSC seminar on 5 June 2003 held at the Sri Lanka Foundation Institute. Also refer Mathes (*The Island*, 2003b).

¹⁴ *The Sunday Leader* of 18 May 2003, reports that the Prime Minister has sought the resignation of the Chairman of the National Gem and Jewellery Authority (*The Sunday Leader*, 2003c).

¹⁵ Learnt in the course of separate discussions with an MP and a lawyer.

¹⁶ Learnt during discussion with ex-CIABOC staff.

¹⁷ Indeed, 'the UNP points out that it is a legal requirement for collateral to be obtained when granting a loan. It asks whether this procedure was followed ... and if so, why does the bank not exercise authority to claim it now that he has defaulted payment of interest on the loan?' (*The Island*, 2001).

¹⁸ ... the outstanding public debt surpassed the gross domestic production of the economy, which debt service payments exceeded the total revenue collection of government. (Source: Central Bank of Sri Lanka 2002 Annual Report, page 167).

¹⁹ "in a statement issued under the signature of [UNP] General Secretary Gamini Athukorale, the party has said it will pursue every avenue available to disentangle this web of corruption and expose and bring to justice all parties who benefited from and aided and abetted this corrupt transaction. ... On 5 April 1998 the Sri Lanka government, through a sudden press release, announced that AirLanka would be embarking upon a US\$550 million Airbus re-fleeting programme. As part of this exercise, it was also stated that a one-sided agreement on concession terms had been signed, making Emirates the manager and strategic partner of Sri Lanka's flag carrier, AirLanka. Through this device the PA government successfully bypassed all established government procurement and tender procedures and moved swiftly to purchase Airbus airplanes and related equipment which is ultimately expected to cost around US\$700 million. Having studied the agreements, the UNP is now convinced that the so-

called AirLanka restructuring had only one objective, namely obtaining illegal commissions from what is the largest single procurement made by the Sri Lanka government in the last decade. What is even more scandalous about this transaction is that the avarice for these commissions was so great that the deal was structured so that the PA administration literally 'gave away' our national asset and flag carrier, AirLanka, along with valuable international route rights to Emirates in order to achieve this unholy objective." (*Sunday Leader*, 1998)

²⁰ Described as being 'for a cost of another three projects and not much benefits versus the cost to the population' (*Sunday Times*, 2003b)

²¹ Article 30 (1) of the Constitution of Sri Lanka.

²² Article 35 (1) of the Constitution of Sri Lanka.

²³ Article 30 (2) of the Constitution of Sri Lanka.

²⁴ Article 31 (2) of the Constitution of Sri Lanka.

²⁵ Article 32 (1) of the Constitution of Sri Lanka.

²⁶ Article 38 (2) (iii) of the Constitution of Sri Lanka.

²⁷ Article 38 (2) (b) (i) of the Constitution of Sri Lanka.

²⁸ Article 38 (2) (c) of the Constitution of Sri Lanka.

²⁹ This comment was made during the author's interview with the Director General.

³⁰ Article 62 (2) of the Constitution of Sri Lanka.

³¹ Each party has their 'National List' of nominated members who do not contest elections.

³² Article 43 (3) of the Constitution of Sri Lanka.

³³ Article 70 (1) (1) of the Constitution of Sri Lanka.

³⁴ Refer to reports issued by the Centre for Monitoring Election Violence (CMEV) accessible at www.cpalanka.org

³⁵ 17th Amendment to the constitution was certified on 3 October 2001.

³⁶ Learnt in the course of discussion with the Secretary to the PSC.

³⁷ Article 156 (2) of the Constitution of Sri Lanka.

³⁸ As journalist Ramanayaka (*Daily News*, 2001) reports, "(He) was indicted with soliciting US\$1 million and accepting SLRs2 million rupees while holding office as the Director General and the Chairman of the BOI in order to promote the application of Gold Coin Flour Milling Ltd, in the place of the already accepted Galle Flour Milling Pvt. Ltd for the purpose of setting up a flour-milling project in Galle between May 6 and September 30, 1999."

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