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Editor: Eng. D.D.S.Jayawardena

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Editor:Eng. D.D.S.Jayawardena

275/75, Prof. StanleyWijesunderaMw.
Off Bauddhaloka Mw.Colombo07
Telephone – 2580268, 2501721
E- Mail – opa@sltnet.lk
opasrilanka@gmail.com.
Web – site: www.opasrilanka.org

CONTENTS

International Relations.

Immediately after independence Sri Lanka followed a strong pro –Western foreign policy, side lining the soviet bloc. The Soviet Union in turn prevented Sri Lanka becoming a member of the United Nations. During this period we were heavily dependent on Britain and the other Western powers. The British also had their air bases in Trincomalee and Katunayaka. During the time of the UNP government of Dudley Senanayake, RGSenanayake went to China and signed the famous Rubber – Rice pact, which annoyed the US, but started the process of normalizing relations between Sri Lanka and communist countries. The pact was more beneficial to Sri Lanka, because we were able to sell rubber to China at a price 40% more than the market value, and were also assured a steady supply of rice, which was in short supply in the world market.

In 1956 the situation changed with the SLFP coming into power, with Sri Lanka establishing diplomatic relations with the Soviet Union and China, after which we followed a Non-aligned policy, later holding the Non-aligned summit in Colombo. Mrs. Bandaranaike had very cordial relationship with Nehru , Shasthri, and Indira Gandhi and this was put to good use in establishing the Sirima – Shasthri pact and solving the Kachchativu issue on terms favourable to Sri Lanka. However the position changed in 1977, when JRJ came to power, the UNP started to follow a strong pro- Western policy. Also some remarks he had made during the election campaign on Indira Gandhi, annoyed her and when she came to power she took revenge by directly supporting the LTTE financially and militarily and training their cadres in India. After 1977 the relationship between India, our closest neighbour and the regional power and Sri Lanka has been topsy-turvy. The policy followed by India clearly destabilised Sri Lanka. Both the Central and regional governments openly gave financial assistance to the LTTE. Most parties in Tamil Nadu have always had anti- Sri Lankan demonstrations. Especially when they are in the opposition these parties use the anti-Sri Lankan issue, for vote catching.

It took many more years, with the assassination of Rajiv Gandhi, for India to soft paddle its stand on LTTE and take a neutral stand on the Sri Lankan problem. Since then the two countries have maintained good relations and it is believed that India helped Sri Lanka during the civil war. But more recently India was the only SAARC country to side with the US and vote against Sri Lanka at the UN Human Rights Council in Geneva.

More recently the harassment of Sri Lankans in Chennai and several cities in Tamil Nadu , the fishermen's issues , the TESO conference organized by Karunanidhi, Jayalalitha sending several teams back with out any apparent reason,and Sri Lanka's close relationship with China, have affected the relationship between the two countries.The Indian government which is in coalition with the DMK, would not wish to displease Tamil Nadu politicians. However the problem is, Sri Lanka cannot afford to fall out in relations with India, however much unfriendly India is.

Sri Lanka's relationship with the West is also not all that cordial after the Western countries took stands against us on human rights issues, although in fact some of these Western countries are HR violators themselves. At the recent Non Aligned Conference in Iran, the President called on the international community to respect sovereignty , accord equal treatment to all and called on non-interference of internal affairs of states. However it is not in the best interest of Sri Lanka to ignore the West completely. It was only the other day that Japan's special envoy to Sri

Lanka , Yashushi Akashi stated that ,if requested, he would assist to improve relations with the West. The improvement of the relations with the West hinges to a large extent, on the response of the government regarding the implementation of the Geneva resolution.

In developing a foreign policy, it is of utmost importance to take in to account the long term interests of the country. Dr. Jayantha Dhanapala summed this up; " With our dependence on the West for trade, aid, investment and tourism, and our geo-political vulnerability vis-à-vis India, preventive diplomacy, and not provocative diplomacy, is needed."

Sri Lanka continues with the non-aligned policy, which was strengthened during the time Mr. Kadiragamar was Foreign Minister, and now maintains excellent relationship with China, Russia , Pakistan, Bangladesh, Japan, South Korea, Malaysia and Iran. Sri Lanka's relations with the Muslim world has also been very good. .

Recently there also appears to be some changes in policy that are taking place in the Ministry of Externel Affairs. Prof. Rajiva Wijesinghe and Dr.Dayan Jayatilaka , both of whom played key roles in Sri Lanka's victory at the previous Geneva session were notable omissions from the recently concluded session of UNHRC in Geneva. No reasons were attributed. Tamara Kunanayagam, who was praised for her contribution at the recent session was transferred without any apparent reason, to another station. Dayan Jayatilaka has also been side lined. They are non-career diplomats.

Talking about diplomats ,there have been many politically appointed non-career diplomats representing the country , who have made very little contribution, particularly against the pro-LTTE campaign abroad. This was also evident from the recently held workshop for diplomats, the main intension of which was to revamp Sri Lanka's diplomatic offensive against the pro LTTE Diaspora worldwide.

This does not mean that all non-career diplomats are failures. In the past there had been quite a few diplomats outside the foreign service who have done yeomen service to the country. Shirley Amarasinghe and Neville Kanakaratne have been outstanding diplomats.

At the workshop the President also stressed the need to realise the importance of strengthening further ties with the Asian region, thus shifting the focus from Europe. He said even the West now engages more with Asia due to its economic emergence.

Further it was reported in the press that Sri Lanka is to establish diplomatic relations with 15 African and 13 Latin American countries. Whether Sri Lanka can afford the enormous cost and whether it would be cost effective will be another question.

Sri Lanka is heavily in debt, and badly dependent on the West, particularly the IMF and the World Bank. Considering the long term interests of the country,we have to establish preventive diplomacy as suggested by Dr. Dhanapala, without surrendering our independence and sovereignty, all the while maintaining a balancing act with India and China on the one hand and with the US and Russia/China on the other. This by no means will be an easy task, but one which requires diplomatic skills of the highest order. ■

RECONCILIATION

A B Sosa *

The report of the "Lessons Learnt and Reconciliation Commission" is being analysed, discussed, argued and commented on by several organisations, associations and individuals both formally and informally. In my view, the objective of the commission was to make a study of the incidents that occurred, the reasons for such incidents and the resultant consequences. Having made an in depth study the Commission was called upon to lay down their inferences with a view to preventing a recurrence of such occurrences.

The other objective of the commission was to recommend measures to be adopted in bringing about reconciliation between the ethnic groups which lived in harmony and cordiality over a fairly long period. With a view to alleviating the fractured relationships action needs to be taken both in the mid term and short term. Proposed long term courses of action will only prolong the agony.As the term implies"Reconciliation - is to make friendly again after an estrangement"

The estrangement did not occur overnight. On the contrary it built up from small beginnings and assumed horrendous proportions. Given these circumstances, it is unrealistic to assume that this "coming together' can be expected to be rapidly accelerated as hostilities have ceased and one warring faction vanquished. There is no doubt that the affected parties are desirous of mutual respect and cordiality. It cannot be assumed that this could be achieved by a "top down" methodology.Hence, the *casus belli* must be considered and a methodology evolved on a basis of "can be done", "could be done" and "should be done".

The LLRC commission in its report has clearly identified the prevailing situation and made its recommendations. Rather than preparing a total package action could be initiated so that the adversely affected persons will have the immediate satisfaction of seeing positive steps being initiated. Hence, reconciliation will not be a distant dream on the horizon but an ongoing process.With this in view I suggest the commencement of expeditious implementation of the following proposals which are in the report.

Official Language Policy. This policy is clearly laid down in legislation but sadly not implemented due some practical constraints and a lethargic bureaucracy. The lament is that there is an inadequacy of public servants competent to work in Tamil. The already employed public servants being called upon to acquire proficiency to work effectively in Tamil is mere lip service. A far more dynamic course of action would be to recruit unemployed graduates and teach them Tamil in a "total immersion" concept. Considering their I Q level they should be able to acquire adequate proficiency within a year.[Graduates sent for specialist training to Russia, China or Japan undergo an initial course of language training on successful completion of which they commence their training for which they were sent.]The initial appointment of these persons would be as translators attached to all public service and police stations in the North and East. Some would be attached to offices in the South where there is a substantial Tamil presence.

Information re Those in custody. Tamil persons in the North and East have convinced themselves, that, those taken into custody are presently held at secret locations. This often is an illusion in that some would have been taken into custody by the LTTE for operational duties and

* ***psc.VSV*** **,Air Vice Marshal retired**

sadly killed in action. Some others would have migrated either legally or illegally and obtained citizenship in those host countries rather like the ozzie citizen who was deported from Sri Lanka recently. Once and for all to allay this fear or apprehension the government should publish the nominal roll of all those in custody and their locations.

Land Alienation. When high security zones were declared and established persons living there were displaced and dispossed. These zones have shrunk from their earlier area. However, there is virtually no possibility of the unfortunate persons ever getting their land returned if this land is within the new High Security zone.. To cite one example, the Palaly and Batticoloa airfields are approx. two miles long.Prior to the outbreak of hostilities there were a large number of "middle class"houses in close proximity and parallel to these airfields. There was also a fairly extensive area under paddy and other cultivation.These cultivations attract hordes of birds. Until fairly recently only propeller driven aircraft used these airfields. Now medium range jet propelled aircraft use these airfields and in fact the intensity of use will steadily increase. Thus, with such a serious flying hazard there is no way for the displaced persons to return to their original abodes. In these circumstances, it must be clearly explained to them and almost immediate provision made to resettle them elsewhere taking into cognizance the value of the property that was acquired. In fact in all fairness, they should be over compensated for their loss of livelihood and disruption of lifestyle.

Disarm all illegal armed groups. Fairly often these illegal armed groups commit atrocious crimes. The blame is unfairly attributed to the Police or Military If these illicit groups are "eliminated" legitimate law enforcement will be enhanced and the reputation of the troops/police better understood.

Disengage Armed Services. At present there is a very conspicuous presence of military personnel particularly in the North.Boards proclaiming the presence of Brigades and Battalions are very conspicuous.Military personnel carrying weapons and driving around in vehicles is a common sight.This presence is an irritant to the civilian population. They will not have any objection to the Police presence being increased.Whilst not advocating a comprehensive withdrawal of the military, to win the hearts of the people it is better that they should be confined to the high security zones. In the event of their having to move into other areas ,it should be done only during a state of emergency.

Orphanages and Children's Homes. There are a substantial number of little kids who had been orphaned due to the attrition of war. The government cannot handle this task.Monetary and other assistance should be given and expatriates/INGOs invited to succor these children of war.

I reiterate that the proposals made could be implemented without much of an effort. The political and other aspects could be in the "medium term". The population who are by and large not involved in the "nittygritties" of governance will be satisfied that the process of reconciliation has commenced along with of course the infra structure development.■

GDP Per Capita in the Central Bank Report : What is it?

A D V de S Indraratna*

The 2011 Annual Report of the Bank was launched a few weeks ago, and the per capita GDP of the year at market prices of US$ 2836 was one of its highlights.

Since the launch of the Report, however, there has been much controversy about this per capita GDP figure, some even questioning its veracity, and blaming the Bank, while the Bank is stoutly defending it.

This confusion seems to have arisen because there has been no attempt to explain how this figure is computed and by whom, what it is about and what it really signifies.

The purpose of the present note is to give a clarification in regard to these. Let me start by defining what **Gross Domestic Product (GDP) of 2011 of Sri Lanka** is.

The 2011 GDP of Sri Lanka is the total net value (value added) of all goods and services produced in the country within the year of 2011. That is the summation or the total of net values of goods or services produced by all sectors of the economy, each of which comprising many enterprises.

Data on GDP are compiled by the National Accounts Division of the Department of Census and Statistics and not the Central Bank (at least since 2003). Firstly, the GDP is computed at current factor costs (or factor prices – prices paid for factors of production which make up the good or service). Total Indirect taxes less subsidies are then added to arrive at the GDP at current market prices. This is the figure of Rs.6,543 billion given as the GDP at current market prices for the year 2011, in **Table 1** in the Statistical Appendix. This figure is also reproduced among the Key Economic Indicators, under output, at the beginning of Part 1, of the Annual Report of 2011. This total GDP at market prices of Rs.6543 billion is divided by the 2011 mid-year population, again compiled by the Department of Census and Statistics (in its Demography

* President, SLEA / Past President, OPA

Division), to get at the per capita GDP at market prices. **The resulting figure of Rs. 313,511 as the Per Capita GDP at market prices of Sri Lanka for 2011, is the figure used by the Central Bank in its Annual Repor**t. If there is any doubt about its accuracy or veracity, it should be addressed to the Department of Census and Statistics , and the Bank should not be held responsible as if it were a figure "cooked" or manipulated by it.

For inter country comparison, however, we need the per capita GDP in a world or international currency . The US Dollar is used for this purpose . Accordingly, the Central Bank converts the Per Capita GDP of 313, 511 in Rupees to dollar terms, by dividing it with the 2011 mid year exchange rate of Rs. 110.57 to the Dollar, and arrives at the figure of US $ 2836. The use of the mid year, and not the end of the year, exchange rate is the bone of contention , in the present debate. For, if the end of the year exchange rate of Rs.113.90 to the Dollar has been used the Per Capita GDP (US $) at market prices would be US$ 2753, 5.87 % less. The GDP accumulates over the whole year, and therefore, the use of the mid-year exchange rate is more consistent and appropriate, and the Bank is not to blame for using it.

However, this does not mean that the per capita GDP (US$) figure, as converted, is accurate and reflects the true or real position. The truth or accuracy of this depends upon the accuracy of the exchange rate by which the Rupee figure is converted. An overvalued Rupee makes the dollar value larger, and an under valued Rupee makes it smaller, than what its real value should be.

It has been generally accepted that the Sri Lanka Rupee has been overvalued for quite some years, and this has adversely impacted on the international competitiveness of exports. Exporters have been blaming the Central Bank for intervening in the forex market to keep the Rupee stable, without allowing it to depreciate along with import demand exceeding export supply or to find its trade-determined, market value. The Interventionist policy of the Central Bank has also been reducing the official foreign reserves. To arrest this situation at least somewhat, the Ministry of Finance devalued the Rupee by 3 % in November 2011, going against the stance or policy of the Central Bank. The Rupee began to depreciate significantly since February ,2012, with the Central Bank abandoning its policy of intervention, and today is around 15 % lower than what it was at the end of 2010.

Given this scenario, one can rightly question the legitimacy or acceptability of this Dollar per capita GDP at market prices of 2836 (US$), given in the Bank Report, as truly reflecting the dollar value of the Per capita GDP at Market Prices.

Be that as it may, this Per Capita GDP of US$ 2836 is an 18 % increase over the previous year of 2010, and is a doubling of the per capita GDP or income of 2006, five years earlier. This is why the Central Bank Governor highlighted it in his speech of the launch of the Report.

However, if we accept the fact that the Rupee was overvalued in the last five years, the per capita GDP (US$) figures in those years, as well as the comparison between them would be different. And if a realistic (depreciated) Rupee had been used as it were the case, for the conversion in 2011, the Dollar figure would have been smaller and the rate of increase between 2010 and 2011, in all likelihood, less than 18 %, referred to above.

In any case, it may be noted that these figures are all in money terms and not in real terms. The growth of an economy is determined by the increase in the GDP in real terms or at constant prices (that is the actual increase in the volume of goods and services). This is obtained by discounting the value at market prices by the GDP deflator which is nothing but the percentage change in the prices of the composite of all goods and services produced within the economy in the given year relatively to the base year. It is this per capita GDP in real terms which would indicate the rise in the standard of living or quality of life of a people (provided that there is no increase in the inequality of income distribution, or that the development is inclusive, in the meanwhile.)The per capita GDP at market prices, on the other hand, is a poor indicator of this. The per capita GDP (US$) at market prices or in money terms, discussed here, can be more appropriately used for inter-country or global comparison, even though it is still subject to certain limitations. ■

Policy Options to deal with the looming Balance of Payments Crisis

R.M.B Senanayake*

Governments have multiple objectives in managing the economy. They want high economic growth and don't like to allow the growth rate to decline. They also want high employment to be preserved. They also want price stability or low inflation which economists consider as 3% or so. They also want to preserve balance in the Balance of Payments so that the Gross Official Reserves will be maintained at an adequate level. To achieve the latter objective they want to attract foreign capital inflows to offset any deficit in the current account of the Balance of Payments. But can a government achieve all these objectives at the same time. Economists say no. Economists say the number of policy instruments to achieve all these objectives is not available and Tinbergen (1956) taught that for economic policy to work there ***needs to be at least as many policy instruments as there are policy goals***. So a government has to choose between the different objectives- sacrificing one to achieve another which economists refer to as a 'trade-off." There are several such trade-offs like growth versus inflation; growth versus Balance of Payments imbalance and Higher Wages versus Employment.

Trade-offs in achieving multiple objectives

This trade-off between high growth and balance in the Balance of Payments is evident from the statistics. A year or two of high growth have been followed by larger current account deficits and if foreign capital inflows have not been sufficient to fund them and instead the Foreign Reserves have had to be run down. In the year 2006 we had a growth rate of 7.7% with a deficit in the current account of $ 1499 million. Growth declined to 6.8% in 2007 with a current account deficit of $ 1402 million. In 2008 growth fell to 6.0% with a current account deficit of $ 3486 million. This was not sustainable and growth fell steeply to 3.5% in 2009 with a correction in the current account balance which fell to $214million. But in 2010 growth resumed to 8% and in 2011 to 8.3%. It is clear that our growth rate is volatile and that there is a trade-off between our present growth pattern and current account deficits. The only way to avoid a Balance of Payments crisis apart from reducing growth is to attract more foreign capital inflows. This depends on a host of factors like the Ease of Dong business, stable government policies etc. But the interest rate is also a factor with high interest rates attracting

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* Formerly of the Ceylon Civil Service

foreign capital inflows particularly if there is an exchange rate risk. The Eat Asian NICs opted for export driven growth rather than domestic **expansion because of this vary trade off.**

Balance of Payments Imbalance

The country is today facing a Balance of Payments problem. The Gross Official Reserve is not sufficient to keep imports at the same level as in 2011 and also pay off the foreign debt which is maturing this year. There is a trade-off between high growth and balance in the Balance of Payments. Can the economy now operate at the higher level of GDP growth of 2010 and 2011 without worsening the current account deficit in the Balance of Payments? The Government answer is a firm no and it has therefore decided to reduce its growth target to 7.2% instead of the 8.3% last year. What does this mean? It means the Aggregate Demand in the economy must be reduced by reducing government expenditure. But the Government prefers direct controls on imports and has clamped down on vehicle imports. It has reduced the fuel subsidies on petroleum and electricity. No harm in that for we do not have the roads to use these vehicles without causing huge traffic jams. Nor can we afford to import the consequential increase in the demand for petroleum. The import of vehicles cost $ 1.9 billion last year. Perhaps we can reduce it by half with the removal of duty concessions. There is no rationale to give duty free vehicles to public officers who are paid salaries for their employment. But there are other imports which are essential for maintaining economic growth like oil, intermediate goods like building materials, machinery & equipment and the high imports required for the garment export industry.

Growth through domestic fiscal expansion

But our growth is driven by the Government infrastructure investment program and this type of growth has to face the trade off, of growth versus external stability. When the main source of rising Aggregate Demand is a high level government spending, part of it goes to fund imports and another part to expand the incomes of the domestic consumers who then spend on imported consumption goods. In 2011 the Government reduced tariffs on the import of vehicles and $ 1.9 billion worth of vehicles were imported. The previous year they amounted only to $862 million. Gold imports went up six times to $604 million and Petroleum imports rose 58% to

$4.8 billion. Foreign Capital inflows were $ 2 billion but inadequate to fund the current account deficit in the Balance of Payments. Our consumers have a high propensity to import goods and services. As their incomes increase, so too does their demand for imports. The trade-off is worsened by the lack of international competitiveness of many of our exports compared to other competing countries. The problem of lack of international competitiveness was made worse by holding down the Rupee without allowing it to depreciate in the face of higher inflation differentials and depreciation in our competitor countries like India which depreciated by 15-20%. But d the Rupee was allowed to float in February this year. It has since depreciated by 15-18% and should provide some relief to our export industries provided workers wages do not go up again.

What will be the Balance of Payments situation for 2012?

The Central Bank recently gave its projections for 2012. Exports grew by 22% in 2011. But in the first two months the growth was 2.2% and the Central Bank projection for the year is 11.1%, which is half the growth rate in 2011.Exports are estimated at $ 11.7 billion. Imports are projected at $20.9 billion. So the projected Trade Deficit is $ 9.2 billion. Earnings from Tourism are projected at $1.2 billion although in 2011 they were $850 million- seems too optimistic given the conditions in the Euro zone. Foreign Direct Investment is projected at $2 billion although in 2011 it was $1 billion. Worker Remittances are projected at $6.5 billion although in 2011 they were $ 5.1 billion. Again this figure seems too optimistic. According to the projection there will be only a small current account deficit of $0.2 billion. Foreign capital inflows to the government are projected at $ 2.1 billion.

Public Investment is projected at 6.6% of GDP which is an increase of 0.6% over 2011 figure. So the authorities want to carry on business as usual. But funding a balance of payment imbalance is a temporary solution. The Adjustment must be made in the Savings-Investment gap or the Budget gap. Total Investment is expected to be 30% of GDP but our national savings was only 22.1% of GDP. Any significant increase is unlikely. So foreign capital must be at least 6% of the GDP to square external accounts. If inflation this year is 6-7% as projected by the Central Bank and if GDP growth is 7.2% then the projected GDP in money terms is Rs 7524 billion and public investment will be Rs 496 billion. But this requires foreign capital inflows of 7-8% of the GDP or Rs 500 billion or in dollar terms of 3.8 billion. So this Investment

is sustainable if and only if the projected foreign capital inflows to the government and FDI are realized.

But we have to consider the dynamics of the situation. The Terms of Trade (export prices divided by import prices) worsened by 9.3% in 2011. If they continue to worsen with world import prices for food and oil and fertilizers going up while the prices for our exports of Tea and garments (foreign currency prices) then the terms of trade are likely to worsen again this year which will affect all the projected figures of the Central Bank. Imports could then go up higher and the current account deficit in the balance of payments will be close to 7% of the GDP, reflecting the Savings Investment gap of 8%. Our ability to tide over the balance of payments deficit will depend on the terms of trade and the inflows of foreign capital as projected by the Central Bank. Much will depend also on the strength of the exchange rate. If it falls then imports will be restricted and exports and import substitutes promoted.

But with the present growth strategy problems in the balance of payments will not just go away. They will be there in the next year or more and they will be funded not resolved only through continuing high levels of foreign capital inflows. The Current account Deficit shows that there is a deficit in savings and Investment plus a Deficit in the Government Budget. Any corrective measures must reduce this macro-economic imbalance. This means Aggregate Demand in Consumption and Investment must be reduced. So the Central Bank has tightened credit to the private sector and limited credit growth to 18%.But orthodox economists would suggest raising the interest rate instead, whilst at the same time seeking to increase aggregate supply through improvements in efficiency and the stock of available resources. Higher interest rates will also induce foreign capital inflows.

So to get back to the multiple objectives we find that there is no policy instrument to further economic growth. Fiscal policy meaning government spending, taxation and borrowing is normally assigned to maintaining internal balance which means price stability or low inflation around 3% or so. Contractionary fiscal policy meaning lower government spending even on investment and lower budget deficits are required to reduce Aggregate Demand for expansion in Aggregate Demand leads to higher imports and a larger trade deficit. But this will also reduce economic growth which is driven by government investment as in the present regime which is carrying out a massive infrastructure investment program building roads, harbors, airports etc.

Contractionary monetary policy is necessary to keep the domestic interest rate higher than the world interest rate to attract foreign capital. And

Exchange rate devaluations are required to restrict imports, even though exports expand, are necessary to shrink the trade deficit. So exchange rate policy is assigned to the trade balance or the current account, and monetary policy is assigned to maintain the foreign exchange reserves or the capital account surplus through attracting foreign capital inflows. In all these policy measures economic growth has to be sacrificed. However, recent experience also suggests that financial stability is not sustainable without social improvement, and that poverty reduction and enhanced equity are not sustainable without financial stability. Today, the IMF seems to recognize these interconnected policy imperatives.

If we don't get the $ 4 billion of foreign capital inflows we will need to go to the IMF once again to get funds under the Extended IMF Facility. In this situation common to open economies (where international trade occupies an important place like our own) the real economy goals of employment and growth tend to get sacrificed to the financial goals of deflation and correction in the balance of payments which generally are more immediate and more pressing. ■

Development of urban areas in Sri Lanka: the role of the UDA

LT Kiringoda*

What is an urban area?

"An **urban area** is characterized by higher population density and vast human features in comparison to areas surrounding it. Urban areas may be cities, towns or conurbations, but the term is not commonly extended to rural settlements such as villages and hamlets. Urban areas are created and further developed by the process of urbanization." (Source: Wikipedia)

This definition, though helpful in understanding what is urban or what an urban area is in general, cannot be applied to all geographical locations with higher population densities surrounded by villages and hamlets. This is due to different countries adopting different yard sticks to describe urban areas.

Table1: Country specific description of urban areas

Country	Minimum population	Minimum population density/ km²
Australia	1000	200
Canada	1000	400
China	-	1500
India	5000	400
Japan	-	4000
New Zealand	1000	-
United Kingdom	1500	-
United States of America	50000	-
Sweden	200	

(Source: Wikipedia)

There is no standard yard stick in Sri Lanka for describing urban areas. Yet the current three tired structure of local governance helps identifying the urban areas by the status of the administrative councils which govern local areas. Municipal and Urban Council areas are considered as urban and Pradeshiya Sabha areas rural. This classification also leads to confusion due to Pradeshiya Sabha being created by combining Town Council areas, which were considered as urban, with surrounding Village Council areas, which were rural.

A brief history

In ancient Sri Lanka planning and development of a local area was based on the extent of land that could be cultivated with water available in the adjacent tank. It was regulated by convention. This practice continued until European invasions. Fortified towns constructed during Portuguese and Dutch periods marked a new era of urban development in the coastal belt which hitherto was in a state of abandonment. This was due to Kings having their Kingdoms in the interior of the country and they were not very much interested in governing such sparsely inhabited areas

First formal recognition of urban areas took place during the British period when legislation for

* Chartered Architect / Chartered Town Planner, President OPA 2011/2012

governance of urban areas was introduced. They were Municipal Council, Urban Council and Town Council Ordinances. With the creation of Pradeshiya Sabha, Town Council Ordinance ceased to exist. All these legislation provided powers to provide and maintain thoroughfares, amenities and public health. Legislative powers for planning and control of development in the area of jurisdiction of each council were provided by Housing & Town Improvement Ordinance. To provide such powers for planning and development of regions and villages Town & Country Planning Ordinance was enacted.

Founding of the UDA

After the change of government in 1977 the national economic policy was changed from controlled to liberalized market and the approach to development planning in all development sectors was also changed from regulatory to promotional. Power generation, investment promotion, housing, tourism, agriculture, industries, ports and air ports and cultural sites were given high priority in economic development. Existing institutional frameworks were reviewed and they were either restructured or new institutions were established by statutes. The Departments for Highways, Agriculture and Housing sectors and the controlling bodies for ports and airports and Mahaweli Development were replaced by semi-autonomous Development Authorities for same sectors and subjects and GCEC (present BOI) and CCF were established newly for investment promotion and conservation of archaeological remains for promoting tourism respectively.

At this time preparation of a Master Plan for Colombo with technical assistance of the UNDP was in progress and the studies connected therewith indicated limitations of existing institutions to act beyond controlling developments in urban areas and towards attracting investments for urban development. Hence the UNDP project recommended creation of an institution with powers for attracting private sector investments through fiscal policy interventions in urban development planning. That paved way for establishment of the UDA under provisions of the UDA Law No. 41 of 1978. This legislation is almost identical to the Urban Redevelopment Authority Act of Singapore, in regard to objectives, powers and functions.

Objectives, powers and functions

The statutory objectives of the UDA, as defined in the preamble to the UDA Law No. 41 of 1978, are

a) Promotion of integrated planning;
b) Implementation of economic, social and physical development;

in areas declared as urban development areas under the same law.

Section 8 of the statute defines the powers and functions of the UDA and a broad summary of it indicates that the UDA has powers to do the following in areas declared under its law.

i To carry out integrated planning and physical development;
ii To formulate and implement development plans including capital development plans and capital improvement programmes;
iii To acquire and hold any movable or immovable property or dispose such property acquired or held;
iv To undertake the execution and to enter into contract with any person for the execution of development projects and schemes approved by the government and to undertake completion of any development projects and schemes in default by any person failing to complete such projects or schemes;
v To carry out building, engineering and other operations and undertake any work in connection with infrastructure development;
vi To formulate and execute housing schemes, to cause clearance of slum and shanty areas and to undertake development of such areas;

Evolution of the UDA

Since incorporation by statute in 1978, the UDA has gone through several stages of evolution due to many reasons.

Stage-1: project based development

Along with preparation of the Master Plan for City of Colombo, several projects were implemented or commenced implementation during 1978-1985. They were,

a) Development of Law Courts at Hulftsdorp;
b) Construction of Parliament at Battaramulla;
c) Construction of St. John's Fish Market in Pettah and Colombo Central Super Market;
d) Construction of Liberty Plaza, Unity Plaza and Ocean Lanka Towers;
e) Implementation of Peliyagoda Integrated Urban Development Project for relocation of warehouses from Colombo;
f) Development of Industrial estates at Homagama and Ratmalana for relocation of industries from Colombo;
g) Development of residential townships at Mattegoda, Ranpokunagama, and Raddoluwa;
h) Construction of Sethsiripaya and Isurupaya.

During this period all Municipal and Urban Council areas in the country and 1-km wide coastal belt were declared as urban development areas under Section 3 of the UDA law. The purpose of declaration of 1-km wide coastal belt under the UDA Law was to promote tourism in the coastal zone while protecting the highly sensitive coastal environment from hotels which were considered as an urban activity due to their high resident population densities.

Planning Committees were established in the Local Authorities which administered the newly declared areas and powers of the UDA for enforcement of development plans were delegated to Mayors/Chairpersons/Commissioners/Secretaries of those Local Authorities. In order to develop rapidly the human resource required for promoting integrated planning in

the newly declared areas, a 9-month PG Diploma Course in Urban Development was started at University of Moratuwa and the diploma holders were appointed to the local authorities as Planning Officers of the UDA for assisting the Local Authorities in decision making on applications for development.

Stage-2: regulation based development control and promotion

Having considered the enormity of the task of preparation of development plans for newly declared areas, the limitations of a Planning Officer to handle this task individually when it required a team effort and the need for promotion of integrated planning in those areas rapidly, the regulations of City of Colombo Development Plan 1985, were published in the Government Gazette (Extraordinary) No. 821/19 of 1st June 1986 as UDA Planning & Building Regulations 1986 under provisions of Section 21 of the UDA Law, giving these regulations national status and as a measure for facilitating decision making by the newly established local planning committees.

During this period the number of Local Authority Areas declared under the UDA Law had gone past 100-mark and Provincial Councils also started functioning under 13th Amendment to the constitution of Sri Lanka. Under the 13th Amendment all local governments, were subjected to be under the authority of Provincial Councils. Owing to Provincial Councils demanding accelerated preparation of development plans, provincial sub-offices of the UDA were established.

Stage-3: plan based development

Promotion of plan based development was still not happening as expected and in early 1990s. ADB funded Urban Sector Development Project was launched under the aegis of the Ministry of Housing & Construction. The UDA was appointed as the project implementing agency.

17-towns in the country were selected for the project and the focus was development of urban infrastructure. Improvement of arterial roads and drainage, construction of new bridges, construction of bus terminals etc. were identified as key projects. To facilitate preparation of financial and economic feasibility reports and reports on environment impacts of these projects, zoning plans for those towns were hurriedly prepared taking into consideration the existing state of development.

In 1998 the project was expanded to cover 51-towns and was renamed as Urban Development & Low Income Housing Project. Implementation of the expanded project was under the Ministry of Urban Development, Housing & Construction. It should be noted here that this Ministry created another land mark in the history of urban development in Sri Lanka due to the government recognising urban development as a Cabinet Ministerial portfolio.

Stage-4: preparation of regional plans

With the view of exploiting the vast potential of Trincomalee District for economic development, a regional structure plan was envisaged and for the UDA to embark on preparation of the plan, the entire area of Trincomalee District was declared under the UDA Law in 1991. The Regional Development Plan for Trincomalee District came into force upon publication of notice on same in the Government Gazette (Extraordinary) No. 1534/8 of 29th

January 2008. In 1996 the UDA embarked on preparation of a Structure Plan for Colombo Metropolitan Region with urban development in focus.

With the government accepting in principle in 1997, the need for establishing a new town named Ruhunupura at Hambantota for serving the needs arising out of implementation of Hambantota Harbour, Hambantota Airport, Diversion of Uma Oya to Lunugamvehera, Oil Refinery at Hambantota, Extension of Southern Highway from Matara to Kataragama and beyond, Extension of Railway from Matara to Kataragama, and Financial, trade and economic hub at Hambantota, a 113,000 Ha area was declared under the UDA Law covering Hambantota, Suriyawewa, Ambalantota and Lunugamvehera Local Authority areas, either partly or wholly, and the same concept is now being followed up under the banner "Development Plan for Greater Hambantota".

The government that came into power in 2001, initiated action on revising the CMRSP for capital investment planning and the project produced "Western Province Mega polis Development Plan". It is yet to be brought into legal framework but some identified projects are now being considered for implementation. Creation of an ultra-modern city centre adjacent to Galle Face is one such project.

Stage 5: Business promotion based on development plans

Currently the UDA is going through a period of transformation towards increasing capacity to invest in development of real estate and infrastructure for attracting private sector investments in mega projects through Public Private Partnerships. Already two such projects have been promoted in Slave Island area and construction works same will commence in the latter part of 2012.

Powers delegated to the UDA by other statutes and statutory authorities

In 1992 an amnesty was granted for those who had amassed wealth without declaring income and money invested in buildings up to the value of Rs. 5.0 million were exempted from taxes. The UDA was delegated with the authority to certify the construction of the building by the person seeking amnesty and the expenditure incurred in construction.

Subsequent to "1992 Earth Summit" in Rio de Janeiro, the Government ratified the well-known "Agenda 21" of the UNEP. This resulted in introduction of several policy instruments to environment sector for achieving the goal of sustainable development. Assessment of environment impacts was made mandatory for prescribed projects. The UDA was delegated with the authority for Project Approving under provisions of National Environment Act.

Integration of national development policies into urban development planning

Apart from the directives to prepare regional development plans, the UDA had always made arrangements and efforts to integrate national policies, whether directed or not, into development planning. Establishment of Provincial sub-Offices of the UDA after enactment of the 13th Amendment to the Constitution of Sri Lanka can be cited as the first such instance.

The amendment of Town & Country Planning Ordinance in 2000 made it compulsory for the UDA to seek clearance from the National Physical Planning Department (successor to Town & Country Planning Department) prior to declaration of areas under the UDA Law. Beside this the UDA relies on the National Physical Plan prepared by the NPPD in prioritising the local areas in

programming for preparation of urban development plans. National strategies for Disaster Risk Reduction are also now incorporated into urban development plans

Currently the UDA is awaiting the directives from the government regarding the spatial policy for the development of local areas liberated from the clutches of LTTE and for preparation of development plans for new economic regions identified in the National Physical Plan for national economic development.

Future perspectives

The UDA was established based on the statutory framework of the URA of Singapore, which was established for making profits from urban development. However, Sri Lanka is facing challenges several times larger than those of Singapore which is city state. For Sri Lanka to profit from sustainable urban development, the UDA must think beyond the local authority frameworks and formulate and implement projects which are outside the statutory mandates and beyond financial and technical capacities of Municipal and Urban Councils and Pradeshiya Sabha. Raising Rs. 10.0 billion through debentures to finance construction of 65000 houses to resettle the families living in underserved settlements in Colombo and construction of Sethsiripaya Stage II with Rs. 2.8 billion obtained from capital market are few examples of the commitment of the UDA towards creation of livable urban areas for all urban dwellers in the country. ■

Keeping the Right to Information Alive

Mario Gomez*

Introduction

Much of Sri Lanka's decision making processes are shrouded in secrecy. Crucial decisions that impact on public life are made behind closed doors and public officers are reluctant to share information on these decisions or the basis for these decisions. Information that should be in the public domain is seldom released and the public sector is covered in an ethos of secrecy.

This culture of secrecy is compounded by the state of the media in the country. The media has a major role to play in creating a culture of transparency and in exposing corruption. Yet the media as it stands today is unable to perform this role effectively. Major media institutions are state owned and their coverage of events is partial to the ruling regime. Some parts of the independent media engage in investigative reporting and provide alternative views. Yet this is not as effective as it should be. In recent years independent media institutions that have dared to confront the government been subjected to threats, intimidation and in a few cases their staff have even been assassinated.

Transparent governance deals with government decisions about which the public has a right to know. Public decisions and decision making processes should be in the public domain and be easily accessible to the public. The public have a right to know about national, regional and local budgets; development strategies and national action plans; agreements with multilateral institutions; plans for infrastructure development; the expenditure of government Ministers, departments and other institutions; and about other decisions that impact on the public.

In a few areas which pertain to national security, the prosecution of crimes, personal privacy or related matters, the public interest may be advanced by confidentiality and secrecy and in which case, it may be justified to withhold such information from the public. However, as a general rule, public decisions should be accessible to the public and only in those few rare cases should information be withheld.

The public also have a right to know about private sector decisions that impact on the general public. The private sector should be encouraged to communicate openly and transparently with all its stakeholders, including the wider community, on key decisions that impact on the public interest. Similarly professional associations and regulatory bodies should also make their decisions transparent since many of those decisions have an impact on the public.

Transparency is a key aspect of democratic governance. Secrecy generates suspicion while openness generates trust, promotes credibility and enhances public confidence. In spite of the

public rhetoric over the years there have been few concrete steps that governments have taken to promote transparency in governance and create a culture of openness.

*LL.B. LL.M. Ph.D. Member of the Law Commission of Sri Lanka and Visiting Lecturer, University of Colombo.

The Right to Information

One of the first countries to adopt a right to information regime was Sweden in 1766. The right is found in both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. In 1989 approximately 11 countries had right to information regimes. Since then approximately 80 other countries have adopted right to information laws. [1] The 2003 United Nations Convention on Corruption, recent jurisprudence from domestic and regional courts, and comments from UN human rights bodies have added to the momentum.[2]

A right to information law gives a person a right to demand information from a public body (and in some cases from a private body) without having to say why the information is being sought. Such a right can enhance the transparency of public decision making and decrease the level of arbitrary and ad hoc decision making. It may deepen democracy by facilitating citizen participation in decisions at local, regional and central government levels. A right to information may also help reduce corruption and prevent the abuse of public power. Public power must be used in the public benefit and a right to information regime gives the public the right to monitor the use of public power and resources. Beyond that, a right to information regime has an intrinsic dimension in that these regimes enable citizens to 'just know' about public decisions irrespective of whether they achieve a particular outcome or not.[3]

Around 2001 the Law Commission of Sri Lanka presented a rudimentary draft law on the freedom of information to the government. Civil society and the media then took up the issue and presented a more detailed draft law. After a concerted campaign by civil society and the media the draft law was approved by the Cabinet in 2003. As a result of tensions between the then President and Prime Minister, Parliament was dissolved in 2004 before the law could be passed.

The Law Commission subsequently took up the issue and presented a revised draft (based largely on the civil society draft law) to the state around April 2006. However, no action was taken to present and debate the draft law in Parliament.

In May 2011 opposition Member of Parliament, Karu Jayasuriya, presented a Right to Information Bill as a Private Member's bill. Mr Jayasuriya's bill was based largely on the 2006 draft of the Law Commission (fine tuned by the Legal Draftsman's Department), which in turn was based on the work of several organizations over the past ten years. Mr Jayasuriya's motion was defeated in Parliament with the government promising that it would present its own version within six months. Although it is over a year, the government has yet to present a draft law. One of the recommendations of the Lessons Learnt and Reconciliation Commission was to enact a right to information law.

[1] See www.right2info.org and www.humanrightsinitiative.org.
[2] See the Human Rights Committee, General Comment No. 34 on Article 19: Freedoms of opinion and expression, CCPR/C/GC/34, 21st July 2011. The ICCPR was binding on 167 countries as of January 2012.
[3] Mario Gomez, 'The Right to Information in Emerging and Existing Democracies', (Draft Article).

The Draft Law

The draft law presented before Parliament in May 2011 sought to establish a right of the public to access official information.[4] It also sought to entrench in law a right to receive reasons for decisions that affect any person.

The preamble recognised that there was a need to foster a culture of transparency and accountability within public authorities, and ensuring a citizen's effective access to information will 'enable them to more fully exercise and protect all their rights'.

According to the draft law every citizen will have a right to access official information in the possession, custody or control of a public authority. Information in the possession of private bodies or higher educational institutions was not covered by the draft law.

A public authority was defined to include Ministries of Government, departments, public corporations, local authorities, companies in which the state was a shareholder, any department, other authority or institution established by a Provincial Council, and any body or office established under the Constitution other than the Parliament and the Cabinet of Ministers.[5] In terms of the draft law the provisions of the freedom of information law were to prevail over any other law.

The Process

Under the draft law a request for information could be made orally or by way of a written request. The Information Officer in the public authority concerned must decide within 14 day if the information would be disclosed or not. Where information is not disclosed the grounds must be specified. The Freedoms of Information Commission has the discretion to decided if fees are payable and prescribe the requisite fee. An appeal could be made against a refusal to disclose information and a further appeal could be made to the Freedom of Information Commission. There was no provision in the law for 'urgent request' requests, where life or liberty was a matter of concern.

Exemptions

Requests for information will be denied in cases where it is necessary to:

protect personal privacy;
protect the territorial integrity and national security of the state;
protect the relations of the state with any other state;
protect the life and safety of individuals;
preserve confidentiality of certain information;
prevent serious prejudice to the economy of Sri Lanka by premature disclosure;

[4] 'Freedom of Information Bill' (Private Member's Bill), Supplement to the Government Gazette, Part II of 13th May 2011 (issued on 16th May 2011), Government Publications Bureau.
[5] The courts are an institution established by the Constitution and on a plain reading the law should apply to the courts as well.

protect trade secrets or avoid harm to commercial interests;
protect medical secrets or records of any individual;
retain confidentiality on the basis of a fiduciary relationship;
prevent grave prejudice to the prevention or detection of crime or the apprehension or prosecution of offenders;
retain confidentiality with regard to certain information in relation to law enforcement or national security;
retain the confidentiality of information supplied in confidence by a third party and that party objects to the disclosure;
avoid being in contempt of court or breaching the privileges of Parliament;
retain confidentiality with regard to information relating to an examination (including the results of any qualifying examination) conducted by the Department of Examinations or a higher educational institute about which information is required to be kept confidential.[6]

Where information is over 10 years old the exemptions will not apply except in specific circumstances. The Freedom of Information Commission to be set up under the law was to be given the power to order disclosure of information where in its opinion public interest in disclosure outweighs any of the interests protected by the above exemptions. Under the draft law public authorities are required to maintain records in a manner consistent with their operational requirements, duly catalogued and indexed. Records are required to be maintained for ten years.

Freedom of Information Commission

The draft law envisaged a Freedom of Information Commission consisting of three members appointed by the President on the recommendation of the Constitutional Council. The Freedom of Information Commission was to supervise the implementation of the law, provide guidelines on fees and when information could be released without fees, guidelines on how information on projects should be released, and engage in the training of public officials. Every public authority is required to appoint at least one Information Officer who will deal with requests for information.

Where a request for official information has been refused by an Information Officer, the draft provides that such person may appeal to the Freedom of Information Commission.

Proactive Disclosure

The draft law also envisaged a concept of 'proactive disclosure'. The draft law casts responsibilities on Ministers and public authorities to make official information freely and readily available to the public. Every two years, every Minister must publish a report containing information giving details of the functions, activities and duties of the Ministry and of all public authorities under the Ministry, and the norms and procedures followed, in the decision making

[6] See section 4 for a full list of the exemptions.

process of the Ministry. Additionally the Minster has a duty to inform the public about any projects that are to be undertaken by the Ministry.

These provisions are an attempt to ensure that official information is available to citizens as and when decisions are made by public bodies. It entrenches further the doctrine of the Public Trust according to which governments hold power in trust for the people and must always act in the interests and on behalf of the people.

Immunity from Legal Action

In order to ensure that the information officers will be free to act impartially the bill confers on them immunity from legal action for granting access to any information. The draft law provides that, notwithstanding any legal or other obligation to which a person may be subjected to by virtue of being employed in a public authority, the disclosure of information permitted to be released under the law should not make such person liable to any punishment. This is particularly important given that some provisions of the Establishments Code, which regulate the terms of employment of public officers, explicitly discourage public officers from sharing information with the public.

Supreme Court Jurisprudence on the Right to Information

In the '*Galle Face Case'* the Supreme Court interpreted the constitutional right to free speech, expression and publication as including within its ambit a right to information.[7] In this case a public interest organization, the Environmental Foundation Limited (EFL), challenged the purported lease of a 14 acre seaside promenade in Colombo, the 'Galle Face Green', to a private company. The Supreme Court observed:

> *This is an application filed in the public interest. … the Petitioner, being a well recognized entity working for the preservation of the environment is entitled to act in the public interest …. In several cases the Petitioner has assisted this Court in important matters with regard to the preservation of the environment. In this instance too the Petitioner has acted in the public interest and exposed acts on the part of the UDA that are clearly ultra vires.*

Although there is no explicit right to information in the Sri Lankan Constitution, the Supreme Court held that the right to freedom of speech, expression and publication contained in Article 14 of the Constitution included by implication a right to information. The Urban Development Authority (UDA), in refusing to provide information about the purported lease of 'Galle Face' to the petitioner, had violated the petitioner's right to information.

[7] *Environmental Foundation v UDA*, (The 'Galle Face' Case), Supreme Court Minutes of 28 November 2005.

The UDA's action was also in violation of the constitutional right to equal protection of the law since its 'bare denial of access to official information' in the absence of specific reasons was an arbitrary exercise of power. The Court noted:

> *… I am of the view that the 'freedom of speech and expression including publication' guaranteed by Article 14(1)(a), to be meaningful and effective should carry within its scope an implicit* ***right of a person to secure relevant information from a public authority in respect of a matter that should be in the public domain.*** *It should necessarily be so where the public interest in the matter outweigh the confidentiality that attach to affairs of State and official communications. (Emphasis added)*

In at least two previous cases too, the Supreme Court has echoed this reasoning and upheld the right of access to official information.[8]

The 2000 Draft Constitution included the right to information as an aspect of the freedom of speech and expression.

> *Every person is entitled to the freedom of speech and expression including publication and this right shall include the freedom to express opinions and to seek, receive and impart information and ideas either orally, in writing, in printing, in the form of art or through any other medium.*[9]

Some countries have a separate right to information as a part of the Bill of Rights. For example Section 32 of the South African Constitution states:

(1) Everyone has the right of access to –

  (a) any information held by the state; and

  (b) any information that is held by another person and that is required for the exercise or protection of any rights.

(2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

The Supreme Court's Jurisprudence on the use of 'Public Power'

Transparent governance requires that public power be exercised openly, rationally and in good faith. All public transactions, involving the expenditure of public funds must be conducted in a transparent way and according to clear and publicly available criteria. This requires clear and

[8] See *Fernando* v. *Sri Lanka Broadcasting Corporation* (1983) 2 Sri L.R. 311 and *Heather Mundy* v. *Central Environmental Authority and Others* SC Appeal 58/03, SCM 20th January 2004.

[9] Article 16(1) of the Draft Constitution of 2000

elaborate systems of governance and independent and credible institutions to ensure compliance with these norms.

The Sri Lankan Supreme Court, in a period of about 10 years developed an imaginative jurisprudence that set standards of conduct with regard to the exercise of public power by public officials. This jurisprudence was developed from about 1990 to 2000. Three high profile cases in the last few years have strengthened this jurisprudence. The jurisprudence was developed through a series of fundamental rights cases filed over this period, largely in those cases alleging a violation of the equality and equal protection of law guarantees in Article 12 of the Constitution. While dealing with allegations of fundamental rights the Supreme Court at the same time developed a broader set of standards that public officials should observe when they wield public power.

Two key ideas shaped this jurisprudence: the idea of a public trust and the notion of fairness. According to the Supreme Court public power is vested in public officials to be used in trust only for the purposes for which it is conferred. It cannot be used for any extraneous or ulterior purpose and if it is so used, would then amount to an abuse or misuse of public power. Concurrently public power must be exercised fairly which in the view of the Court means a range of different things.

It is possible to distil from the Supreme Court's jurisprudence over this period a set of principles that should guide and structure the exercise of public power in this country. It is possible to transform this jurisprudence into an enforceable standard for which sanctions would attach if those standards were breached. If an Ethics and Integrity Commission is established, then it would be possible for such a Commission to draw inspiration from the jurisprudence of the Supreme Court.

Private Actors

Some legal regimes cover private actors, others do not. The draft law presented in Parliament in May 2011 did not apply to private actors. It however, did seek to apply to private companies in which the state was a shareholder. There are at least three types of private actors that are relevant:

A. Any private actor performing a public function, whether it is a function previously performed by the state, or other function of a public nature.

B. Where information from a private actor is required to exercise or protect other rights. For example, in the case of a private factory producing toxic waste, information on how such waste is being managed should be in the public domain.

C. Regulators supervising public utilities and other regulatory bodies such as associations of doctors, accountants, and lawyers that supervise the conduct of its members.

Parliament and the Courts

Some legal regimes are comprehensive and extend the right to information held by national and provincial legislatures and the courts. The draft law specifically excluded Parliament. There is little to suggest that the functions that legislatures and courts perform should exclude them from the ambit of a right to information regime. Both institutions perform public functions and greater transparency on the part of both these institutions is likely to enhance public confidence in their work. International standards suggest that both these institutions should be covered by right to information regimes.

The Parliamentary Oversight System

The Executive Presidency has marginalized the legislature and made it of limited relevance in the country's scheme of constitutional government. The system of government is so heavily weighted in favour of the President that today Parliament plays only a marginal role both in a *de facto* and *de jure* sense.

There is however, still some space for reviving the vibrancy of the Parliamentary oversight system even in the context of strong Executive Presidency. A strong Parliamentary oversight system could potentially play an important role in enhancing transparency, ensuring that public power is not abused and in delivering accountability.

The Committee on Public Enterprises (COPE) and the Public Accounts Committee (PAC) set up under Standing Orders 125 and 126, are important ways in which Parliament plays its role as the controller of public finance. Parliament has control over public finance and in theory the executive is prohibited from using public funds unless such expenditure has been approved by Parliament. According to the Constitution it is Parliament's role to approve the allocation of funds for projects and services and to supervise and scrutinize the expenditure of such public funds.

COPE and PAC are both member multi-party committees who between themselves share the burden of scrutinizing public finance. Both are key mechanisms for ensuring that public funds are used for a public purpose and are not mismanaged or embezzled. They have wide powers that enable them to summon any person to appear before them and to request to see any documents or record.

The COPE is a 31 member multi-party Parliamentary committee that oversees the functioning of government corporations, boards, authorities, state owned banks and state owned companies and scrutinizes their budgets, accounts, financial procedures and management practices. The 31 member PAC on the other hand, scrutinizes the work of government departments and local authorities. COPE and the PAC in combination enable the legislature to keep track of public expenditure and ensure that public funds are used for a public purpose.

The effective functioning of these two bodies is important if Parliament is to exercise its role as the controller of public finance. Regrettably though the Parliamentary oversight committees have functioned in a deeply politicized way and have seldom performed their role in an

independent and credible manner. Where they do operate independently their findings are rarely followed through.

Parliamentary Questions

The other important way in which the legislature exercises control over the exercise of executive powers is by way of questions, directed at government Ministers.

According to Standing Orders the first 45 minutes of every Parliamentary session are reserved for questions that members may want to ask of government Ministers with regard to the institutions that come within their purview. Questions are presented in advance and the Minister concerned has an opportunity to obtain the relevant information from his or her officials. Where a Member of Parliament is not satisfied by the Minister's response he or she could direct additional questions.

Currently 'question time' in Parliament has descended into a charade. Government Ministers are seldom present to answer questions from the Opposition and most questions are fielded by the Government Whip who is often ill equipped to answer supplementary questions.

Conclusion

The enactment of a Freedom of Information law can potentially enhance the levels of accountability and transparency within the public sector. It can also reduce the levels of bribery and corruption and ensure that public power is used for the public benefit. However, such formal access by itself will not ensure accountability or transparency. Unless citizens, civil society groups and the media are vigilant and make constant and effective use of the right to access official information, the law will have little impact.

Ideally the Constitution should be amended to secure a right to access information that should be in the public domain. This must be supported by a Right to Information law. The law should be drafted in consultation with the media and civil society and should establish the right of the public to:

a. Access official information
b. Access information from private bodies that perform a public function or whose decisions impact on the public.
c. Access information from professional associations and regulatory bodies.
d. Access the reasons for a decision where such a decision affects a member of the public.
e. Access information 'urgently' where the life or liberty of an individual is at issue.

Provided that information may be withheld where there is a public interest in preserving the confidentiality of such information (such as national security, the prosecution of crimes or personal privacy).

The law should contain in detail:

a. The types of information that could be accessed.
b. The institutions and bodies to which requests could be made.
c. The procedures for ensuring that all public bodies designate an information officer to which requests should be forwarded.
d. The process for accessing information which should be simple, cheap and widely accessible in all parts of the country and to all social groups.
e. The process for filing an appeal where the initial request for information is refused.
f. Processes for ensuring that public institutions proactively disclose information at least once in every two years.
g. Processes for ensuring that information is stored and retrieved easily.

The Establishments Code should be amended and provisions that may prevent public sector employees from disclosing information should be deleted.

Close to 80 countries, from all major geographical regions, have adopted right to information laws in the past twenty years. Sri Lanka stands as a prominent exception. Despite the rhetoric of public actors over the past several years and despite substantial work by the Law Commission, civil society and the media over the past ten years, Sri Lanka is still some distance away from enacting a right to information regime. Yet, this should not prevent civil society from advocating in a principled way for more transparent and accountable processes of governance. ■

Principles for Constitutional Reform

*Tudor Munasinghe**

The Constitution at Independence – The Soulbury Constitution

Our Constitution at Independence in 1948 – the Soulbury Constitution - provided for the independence of the Public Service and the Judiciary and safeguards for minorities. The Constitution provided for appeals to an outside independent body, the Privy Council in UK. This Constitution worked well for many years with accountability of the Executive to Parliament with an impartial Public Service and an independent Judiciary.

The 1972 Republican Constitution

But politicians do not like accountability and checks and balances and we had the Republican Constitution of 1972 which abandoned all that was good in the first Constitution, brought the Public Service under the Cabinet of Ministers and removed safeguards for minorities. The argument advanced was that politicians should have control over the public service to implement their programme. The reality was that as an independent Public Service will not allow political interference and the politicians wanted control over the Public Service. Politicization of the Public Service started with this and the rot set in.

The 1978 Constitution

Eventually the people got fed up and in the 1977 General Election gave a massive 5/6th majority to the then opposition the United National Party. The outcome of this was the enactment of the 1978 Constitution which introduced the Executive Presidential System. One would have expected that the salutary features of the original Soulbury Constitution would be incorporated into this Constitution. But unfortunately this was not to be. An Executive Presidency with enormous powers even overriding the other branches of government, without accountability, and with blanket immunities was introduced. A proportional representation system and a preferential voting system for elections to the Legislature were introduced. Separation of powers was not clearly stated. Appointments, transfers and discipline of Heads of Departments continued to be under the Cabinet of Ministers. With this and the power to appoint Secretaries to Ministries being under the Executive President politicization of the Public Service including the Police continued unabated and the trend became more vicious with even the Electoral Process being interfered with. Corruption became rampant. The Public Service including the Police was controlled by politicians. Public Servants and Police Officers were rendered helpless. They were subjected to disciplinary action and transfers etc. at the whims and fancies of

politicians. There were reported cases of politicians occupying the OIC's chair at Police Stations and ordering the release of arrested persons.

*C Eng., General Secretary /OPA

The 17th Amendment to the Constitution

It is in this background that the 17th Amendment to the Constitution was enacted with the objective of de-politicising the Public Service and key Government Institutions and making the Executive Presidency accountable in regard to key appointments to the Independent Commissions and Judiciary . The OPA played a role in the drafting of this and the Amendment was passed in Parliament by a vote of 210-For, 1 -Abstention, and 13 Members absent at voting time.

The first Constitutional Council and Independent Commissions – except for the Elections Commission which was not set up for dubious reasons - worked quite well. The Public Service and the Police were once again able to work impartially without political interference. Unfortunately politicians have subsequently sabotaged this excellent piece of Good Governance legislation citing some alleged deficiencies.

One deficiency cited was the difficulty in reaching consensus in nominating a member to the Constitutional Council by the parties in Parliament other than that of the Prime Minister and the Leader of the Opposition. This was however resolved with facilitation by the OPA but the Executive President failed to make the appointments. This could have been easily resolved by the Speaker summoning a meeting of those eligible to participate and selecting a nominee by a majority vote.

Another deficiency is the provision that appointments, promotion, transfer, and disciplinary control of Heads of Departments shall vest in the Cabinet of Ministers brought from the 1972 Constitution, and retained in the 1978 Constitution and the 17th Amendment. This has led to rampant corruption as Heads of Departments are dependent on politicians for their very existence. This should be brought under the Public Service Commission.

There is of course a major deficiency in the 17th Amendment. ie the failure of the drafters to set a target period for appointment by the Executive President. The relevant Clause says that the Executive President shall appoint "forthwith" on receipt of the nominations. A lesson for future drafters of a Constitution is that such a provision is insufficient and the Constitution must be made foolproof.

The deficiencies in the 17th Amendment to the Constitution was addressed by the Select Committee chaired by Mr. D.E.W.Gunasekera in the last Parliament which came up with constructive suggestions for amendment.

The 18th Amendment to the Constitution

The 18th Amendment to the Constitution was introduced as an urgent Bill in the "National Interest" and passed by Parliament in 2010. The two thirds majority required to pass the Bill was obtained by getting Opposition Parliamentarians to defect by offering various inducements.

The 18th Amendment reversed all the provisions for good governance and checks and balances in the 17th Amendment. In the 17th Amendment key appointments required the concurrence of the Constitutional Council. The Constitutional Council has now been replaced by a Parliamentary Council consisting of politicians weighted in favour of the Executive. The Independent Commissions under the 17th Amendment were appointed on nomination by the Constitutional Council. These Commissions under the 18th Amendment are appointed by the Executive President after seeking the advice – not concurrence- of the Parliamentary Council and the President is not obliged to even follow such advice. This applies to the members of the Higher Judiciary as well. Thus all the Institutions are brought under the control of the Executive President.

The 18th Amendment also repeals the limit of two terms imposed on the Executive President in the 1978 Constitution.

At the time the 18th Amendment was proposed the OPA expressed its objections that the proposed Constitutional Amendment was as not in the interest of Good Governance or in the National Interest. However it is most unfortunate that several opposition Parliamentarians crossed over and lent their support to pass it.

Today key appointments including to the higher Judiciary are made effectively unilaterally by the Executive President as the Parliamentary Council he is expected to consult is weighted in favour of the Executive and in any case its advice has no effect on the Executive President's decisions. This does not augur well particularly for the Independence of the Judiciary.

The LLRC Report

The Lessons Learnt and Reconciliation Commission set up by the Government received evidence from organizations and individuals and carried out a broad exercise of public hearings in various parts of the country. The LLRC Report contains many recommendations that would promote good governance and reconciliation. The LLRC which consisted of many eminent persons had time to examine and deliberate on the issues that they took up for their consideration and therefore they can be considered as adequately studied proposals that would address many of the issues that have been highlighted in its Report.

The UN Human Rights Council Resolution against Sri Lanka in Geneva called for the full implementation of the LLRC Recommendations. Civil Society in Sri Lanka has also called for this. Even some Ministers of the Government have called for this.

Under all this pressure the Government has now come up with an Action Plan for Implementation. Unfortunately there are several deficiencies in the Action Plan. For instance, regarding the LLRC Recommendation calling for the setting up Independent Commissions it states that Independent Commissions have been set up presumably referring to those set up

under the 18th Amendment. These cannot be called independent by any stretch of imagination. Regarding the call for the enactment of a Right to Information Act it states "Cabinet to decide the suitable time frame for drafting legislation". There is already necessary legislation drafted by the Legal Draftsman's Department. All that is needed is Cabinet approval and tabling in Parliament.

International Conventions

There are several International Conventions which the Sri Lanka Government has signed where the necessary enabling legislation have not been enacted.

The main items are the UN Covenant on Civil & Political Rights, The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the UN Convention on Rights of the Child. These are conventions that would enhance democracy and individual rights and Sri Lanka has agreed to them.

When these are mentioned our Politicians cry that they affect our Sovereignty. The writer feels that the implementation of these will not affect our sovereignty but on the other hand would enhance our democratic rights.

The OPA and Constitutional Principles for Good Governance

The OPA has adopted the following 14 Principles, **"The OPA Principles"** that the OPA feels should be considered in any Constitutional Reform in the long term interest of the country. These were adopted by the Executive Council of the OPA on 17th June 2010.

THE OPA PRINCIPLES FOR CONSTITUTIONAL REFORMS

1. The Constitution must ensure a clear separation of powers between the Legislature, Executive and the Judiciary.

2. The Constitution must ensure the complete independence of the Judiciary.

3. The Executive must be fully accountable to Parliament and Judiciary.

4. The Constitution must ensure the depoliticisation of the Public Service and other important government Institutions as provided in the 17th Amendment to the Constitution.

5. Recruitment to the public service must be based solely on suitability, and promotion must be on merit.

6. All Legislation must be submitted for judicial review.

7. The Electoral system must be based on a combination of Electorate-based first past the post and District-based proportional representation. The preferential vote must be abolished.

8. There must be strong all Party Parliamentary Oversight Committees to monitor the Executive.

9. The Anti corruption legislation must be strengthened to enable the anti-corruption agencies to function effectively.

10. The Citizens' Right to information must be recognized and there must be a Right to Information Act.

11. The independence of the media must be safeguarded.

12 Provide for meaningful devolution within a Unitary State.

13. Provision must be made for strong constitutional safeguards to ensure equal rights for all citizens.

14. The Constitution must set fixed terms for the Executive Presidency and for the Legislature.

In addition to the above the 18th Amendment to the Constitution must be repealed and the 17th Amendment fully implemented if necessary with modifications in line with the recommendations of the D.E.W. Gunasekera Committee in the last Parliament.

There is much talk of the need to attract Foreign Direct Investment for economic development. Good Governance is a sine qua non for economic development as investors will not come to a country where the Public Service and Police are politicized and where there are doubts about the Independence of the Judiciary. It is unfortunate that our politicians do not have the intellect to realize this. ■

OPA PROPOSALS FOR ELECTORAL REFORM

The following Electoral Reform Proposals were submitted recently by the OPA, to the Select Committee of Parliament which was chaired by Mr. Dinesh Gunawardena.

1.0 General Principles

The OPA Proposals for Electoral Reform are based on the following general principles:

- Only eligible voters should be permitted to vote at elections;
- Every eligible voter should be able to vote ensuring secrecy and freedom of choice;
- Only ballots of registered voters should be counted;
- All contesting political parties and candidates should enjoy equal public facilities;
- All contesting political parties and candidates should have equal access to the print and electronic media;
- Election laws should be implemented impartially;
- Elections must be free from intimidation, bribery, violence or coercion;
- The result of an election should not be permitted to be distorted by money-power, thuggery, or state-power;
- There should be a closer linkage between the voter and his elected representative at electorate level;

2.0 The Establishment of the Elections Commission

It was the OPA which took the original lead role in drafting the 17th Amendment to the Constitution which provided for the setting up of an independent Elections Commission charged with responsibility for conducting free and fair elections and referenda. Election Monitors -both international and local- have called for the setting up of this Commission in their reports after every election. The establishment of the Elections Commission is of crucial importance for the conduct of free and fair elections. So are the National Police Commission and the Public Service Commission. These organizations gave self respect and independence to public servants thus encouraging them to carry out their election related duties in a non-partisan manner.

There is also the need to strengthen the Elections Commission with quasi-judicial powers to ensure compliance with the directions or orders given by the Commission during an election.

3.0 Parliamentary Elections

The present preferential voting system has resulted in confrontational electioneering even within a party. Candidates require large amounts of money for District wide canvassing eventually leading to corruption. There is no linkage between the voter and his representative at electoral level.

The OPA suggests the election of representatives on the single electorate system on the basis of first-past-the-post in each electorate and the election of additional representative on the basis of proportional representation based on a district-wise list presented by registered political parties.

A ratio of 75% on first-past-the-post system at electoral level and 25% on the proportional representation system district-wise is suggested.

4.0 Provincial Councils and Local Authorities Elections

The OPA suggests amendment of the Provincial Council Election Act No. 2 of 1988 and the Local Authorities Election Ordinance No. 53 of 1946, introducing the first-past-the-post and proportional representation system with the election of representatives based on wards in Local Authorities.

5.0 Quality of Representatives

The OPA suggests the introduction of legislation to make it mandatory for political parties to nominate at least 30% of candidates from amongst those with professional qualifications. Thus the party in government will have a pool of expertise available to assist them in implementing their policies for the development of the country.

6.0 Voter identification, voting and postal voting

The OPA suggests that legal provision be made for the mandatory identification of voters at the polling booth by the National Identity Card or other acceptable identification document.

Regarding voting and counting, the OPA suggests the gradual introduction of Electronic Voting Machines which is practiced in many countries and presently being implemented in parts of India and is to be introduced eventually to the whole of India.

Postal voting at the voters work place as at present is unsatisfactory as it can lead to certain intimidatory influences. Postal voting should take place at a common booth away from the voter's work place.

7.0 Migrant Workers

Migrant workers make a major contribution to the economy of the country and the OPA considers it extremely unfair that they are not able to participate in the electoral process of their country. The OPA suggests that legal provision be made for our migrant worker citizens to exercise their franchise from the country of their employment with suitable logistical and security arrangements for voting.

8.0 Polling booths and the area surrounding on the day of polling

A fair amount of election related violence takes place in and around polling booth areas on the day of polling.

The OPA suggests legislation to prevent congregation of party supporters near polling booths. The OPA also suggests that laws relating to canvassing, soliciting of votes, intimidating etc. on the day of the poll be strictly enforced.

9.0 Posters, Flags, Cut-Outs etc.

The OPA suggests total banning of display of posters, cut outs etc. except at designated boards provided by the local authority of the area.

10.0Election Expenses

The OPA suggests legal provisions for limiting election expenditure by political parties and candidates.

The OPA also suggests legal provisions for registered political parties to file audited accounts with the Elections Commission.

Within 60 days after an election candidates should be required to submit to the Elections Commission a declaration of accounts.

11.0Declaration of Assets and Liabilities by Candidates

The present legal provisions for declaration of assets and liabilities appear to be inadequate.

The OPA suggests legal provisions for the Candidates to file a declaration of assets and liabilities with their nomination papers. Failure to do so shall result in the nomination being rejected.

Within 60 days of an election the elected representatives should be required to file with the Speaker of Parliament a declaration of assets and liabilities of themselves and their close relatives. Failure to do so shall result in their election being annulled. The declaration shall be updated annually and copies should be made available to any citizen of the country on request and payment of a fee.

12.0Election Monitors

Monitoring of elections by independent monitors is today recognized as a method of ensuring free and fair elections.

Presently only foreign monitors are permitted to enter polling booths and counting stations. OPA suggests that accredited local monitors representing recognized Monitoring Agencies too should be afforded the same facility as foreign monitors.

13.0Education of Students and Public Servants

The OPA suggests that basic education on the Rule of Law and representative democracy be included in the curriculum of schools perhaps at Grade 10 level.

In the case of public servants the syllabi of the first efficiency bar examination should include a test of their knowledge of the Rule of Law and representative democracy.

14.0Code of Conduct for Candidates at elections

The OPA suggests that all candidates at an election be required to comply with an agreed Code of Conduct.

15.0Parliamentary Elections to be held under an independent caretaker government

A major obstacle to a free and fair election has been the misuse of state resources and administrative machinery by the incumbent government during an election.

The OPA suggests that within one week of the dissolution of Parliament and the announcement of an election the Constitutional Council should be empowered to select a seven member non-partisan caretaker government to administer the country till after the election and swearing in of a new government. ■

OPA Proposals for Code of Conduct for Members of Parliament

The Code of Conduct for Members of Parliament was prepared by the OPA and sent to Political Parties during the Presidency of Archt. VNC Gunasekera in 2003.These proposals were re-submitted recently to the Parliamentary Committee chaired by Mr. DEW Gunasekera.

1.1 PUBLIC DUTY

1.1.1 By virtue of the oath, or affirmation, taken by all Members when they are elected to Parliament, Members have a duty to uphold the Constitution of the Democratic Socialist Republic of Sri Lanka at all times.

1.1.2 Members have a duty to uphold the wording & intent of the law to act on all occasions in accordance with the public trust placed in them.

1.1.3 Members, while they have a duty to their constituents, they also have a duty at all times to act in the interest of the Nation as a whole.

1.1.4 Members, both in their private and public life should display exemplary behaviour and honourable conduct.

1.2 PERSONAL CONDUCT

Members shall observe the following principles of personal conduct which are applicable to all holders of public office:-

1.2.1 SELFLESSNESS

Members should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.

1.2.2 The Members shall not employ or appoint Family Members or Friends to any position in Institutions under their purview.

1.2.2 **INTEGRITY**

Members shall act with integrity at all times. They should not place themselves under any financial or other obligations to any individual or organization that could influence them in the performance of their official duties.

1.2.3 **OBJECTIVITY**

Merit shall be the sole criteria in conduct of public business, including making appointments, awarding contracts, or recommending individuals for rewards or benefits.

1.2.4 **ACCOUNTABILITY**

Members shall at all times bear in mind that they are accountable for their decisions, actions and conduct to the public and must submit themselves to whatever scrutiny is appropriate to their office.

1.2.5 **TRANSPARENCY**

Members shall be as open as possible about all the decisions and actions that they take. They should have reasons for their decisions and restrict information only when the national security interest clearly demands.

1.2.6 **CONFLICT OF INTEREST**

Members have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that ensures and protects the public interest.

1.2.7 **LEADERSHIP**

Members should promote and support these principles by leadership and example.

1.3 PUBLIC TRUST AND CONFIDENCE IN THE INTEGRITY OF PARLIAMENT

Members have a duty at all times conduct themselves in a manner which will tend to maintain and enhance public trust and confidence in the dignity of Parliament and shall never undertake any action which would bring Parliament, or its Members into disrepute.

The acceptance or consent to accept by a Member of a bribe or inducement including any fee, compensation or rewards to influence his or her conduct as a Member is unlawful and unacceptable.

1.4 LAW AND ORDER

Interference with public officials in the performance of their duties is an offence punishable under the law. Members of Parliament like other citizens of the country are subject to the laws of the land and any breach of this provision by them shall be dealt with accordingly by the law enforcement officers and by Parliament. Members have a special duty to demonstrate by example that they at all times uphold the law.

1.5 DECLARATION OF ASSETS AND LIABILITIES

Members shall act in accordance with the law and declare their assets, liabilities and interest of themselves and their family before taking office and annually thereafter. Parliament shall ensure that this law is strictly complied with and the Public shall have such information freely available according to Law.

2.0 ACTION REQUIRED BY GOVERNMENT

2.1 Enact legislation to set up a Parliamentary Ethics/Disciplinary Committee with quasi-judicial powers to summon Members, officials & General Public and examine records to investigate any breach of the Code of Conduct and recommend suitable disciplinary action for enforcement by Parliament.

2.2 The Ethics/Disciplinary Committee shall be drawn from Members of Parliament whose Chairman shall be drawn from the Opposition Party in Parliament and shall consist of not less than **four other Members** all of unblemished integrity.

3.0 RULES FOR DISPOSITION OF COMPLAINTS BY THE ETHICS/DISCIPLINARY COMMITTEE

3.1 **RULE- 1- COMPLAINTS**:

Complaints alleging a violation of the "Standards of Ethical/Disciplinary Conduct for Parliamentarians" made by any person shall:

3.1.1 Be submitted in writing supported by affidavit on a standard Complaint Form approved and issued by the Ethics/Disciplinary Committee, and be gazetted for public knowledge and use.

3.1.2 Be sent to the Speaker's Office in an envelope marked "Confidential-Ethics/Disciplinary Committee," under registered cover, and

3.1.3 State fully the facts surrounding the acts or omissions complained of and the nature and extent of the violations alleged.

3.2 **RULE- 2- PROCESSING OF COMPLAINT**:

The following procedures shall apply to all complaints received at the Speaker's Office:

3.2.1 The Secretary General to the Parliament shall maintain a record of all complaints received. The record shall indicate the source of the complaint, the date received, and the date that the complaint was referred to the Ethics/Disciplinary Committee**.**

3.2.2 The complaint shall be forwarded, to the Chairman of the Ethics/Disciplinary Committee within seven days of receipt.

3.2.3 Upon receipt of the written complaint, the Chairman of the Ethics/Disciplinary Committee shall:

i. Forward a copy of the complaint to the Member against whom the complaint has been made together with notification to him that he has thirty (30) days to respond in writing, and

ii. Forward copies of the complaint to all members of the Ethics/Disciplinary Committee, and

iii. Inform the Speaker of the nature and scope of the complaint.

3.2.4 Within thirty (30) days period, the Chairman of the Ethics/Disciplinary Committee shall:

i. Circulate copies of the written response of the Member concerned to all members of the Ethics/Disciplinary Committee or, if no response was received, communicate this information to the Committee.

ii. Determine, in consultation with members of the Ethics/Disciplinary Committee, whether additional investigation is necessary.

iii. Coordinate the work of the Ethics/Disciplinary Committee in gathering such additional information as the Committee may deem necessary to its investigation.

iv. The Ethics/Disciplinary Committee shall appoint a Panel of Three to investigate and report to if it deemed necessary.

v. The panel of Investigators be drawn from a register of competent persons who have had previous experience in investigation procedures. (Details to be worked our later)

vi. The Panel of Investigators will have the right to summon the accused in person to appear before them and to produce any documents deemed necessary.

vii. The Panel of Investigators will have the power to summon any person to appear before them and to produce any document required for the inquiry and which is in his custody.

viii. The Panel of Investigators will have to be provided with resources to complete its task within the assigned period.

ix. Upon completion of their investigation, but not later than sixty (60) days following the commission issued to them the Panel of Investigators shall submit their report on the findings to the Ethics/Disciplinary Committee.

x. The Ethics/Disciplinary Committee shall consider the findings of the Panel of Investigators and upon such findings shall:

a. Dismiss the complaint and exonerate the member concerned, **OR**

b. Impose one of the following penalties which shall be included in the Committee's biennial report to the Parliament:

b.1 The Committee may reprimand the member with or without the requirement that an apology be made to the aggrieved party.

b.2 The Committee may require that the member take certain remedial actions, failing which a further penalty may be imposed.

b.3 The Committee may suspend the membership of the Member in Parliament for a period not to exceed one (1) year.

b.4 The Committee may revoke the privileges of the Member for a period not exceeding one year.

b.5 If the matter is of a very severe nature then the findings of the Committee shall be reported to the relevant Authorities to deal with under the Law.

x. If the Panel of Investigators cannot complete their work on a complaint within sixty (60) days, they shall notify the Ethics/Disciplinary Committee and request an additional thirty days extension. The Ethics/Disciplinary Committee may in its discretion grant such extension for reasons stated. The Ethics/Disciplinary Committee shall then notify the Speaker who may grant one (1) additional thirty (30) days extension. If the extension is granted by the Speaker the Committee shall notify complainant and the member of the extension.

The Ethics/Disciplinary Committee shall adopt its own rules to govern these hearings but shall observe the Rules of natural justice.

3.3 **RULE- 3- ETHICS/DISCIPLINARY COMMITTEE CONDUCT OF BUSINESS**:

3.3.1 The Ethics/Disciplinary Committee shall conduct its business, whenever possible, by telephone, teleconference, mail, FAX, and E-mail or by meeting at an appropriate place.

3.3.2 All notices required by these rules to be given to the member shall be by registered post.

3.3.3 Within thirty (30) days following the Committee's final determination of a complaint, the Chairman of the Ethics/Disciplinary Committee shall forward the following to the Speaker:

i. The original written complaint.

ii. All correspondence between the Committee, the complainant, and the accused.

iii. All documents relating to the Committee's investigation of the complaint.

iv. A written report of the Committee's final determination.

3.3.4 All documents relative to Ethics/Disciplinary complaints shall be sealed and held at the Parliament office in strict confidence, except that:

Appropriate officers, members, or employees of Parliament, may be given such information regarding a disciplinary proceeding as is necessary and proper for the effective execution of any penalty imposed. ■

OPA Recommendations to increase Foreign Direct Investment (FDI) in Sri Lanka*

The Organisation of Professional Association, whilst congratulating the Government of Sri Lanka (GOSL) for its unprecedented dynamism in defeating terrorism and restoring peace in Sri Lanka (SL) recognizes GOSL's determined drive to win the economic development 'war'. The Organization of Professional Associations (OPA) would like to support the endeavours of the Government.

Foreign direct investment (FDI) provides a major source of capital which brings with it up-to-date technology. It would be difficult to generate this capital through domestic savings, and even if it were not, it would still be difficult to import the necessary technology from abroad, since the transfer of technology to firms with no previous experience of using it is difficult, risky, and expensive. GOSL has recognized the key role of the FDI in economic development, not only as an addition to its own domestic capital but also as an important source of technology and other global trade practices. In order to attract the required amount of FDI, GOSL has bought about a number of changes in its economic policies and has put in its practice a liberal FDI with a view to attracting more FDI inflows into its economy.

FDI flows to Sri Lanka

SL was able to attract only US$ 0.581 billion worth of FDI in 2009 having obtained US$ 0.827 billion in 2008- CBSL Report 2009. Foreign Direct Investment to Sri Lanka during 2010 had fallen by 14 percent to US$ 516 million, as against the US$ 581 million in the year 2009. 2011 the country registered a record $ 1.06 billion and 2012 target is US$1.75 bl. In comparison, other Asian countries had attracted very much more FDI in 2009 and 2010 in addition to high savings (Annex 1); these countries appear to have certain attributes for attracting FDI that SL does not possess.

Investment Gap

Alleviation of poverty, double digit economic growth, doubling of per capita incomes by 2016 as envisaged by GOSL needs investments in the range of 35-40% of GDP. However, domestic savings have been about 14-18% of GDP in recent years. Thus, there is an investment gap of about 17-22% of GDP to be filled It is estimated that that to achieve double-digit growth, foreign investment has to be increased to around 30 per cent of GDP.

Sri Lanka's domestic market, unlike in the case of India and China, is small. Thus, Sri

**** This article is based on a letter forwarded to the GOSL in October 2011 on a study on Foreign Direct Investments (FDI) by a special sub-committee the National Issues Committee of OPA .Members of sub-***

committee: Mr RMB Korale(Chairman) Mr U H Palihakkara – President OPA, Mr Lloyd Yapa – (Main contributor), Mr Anton Fernando, Prof M T A Furkhan, Mr Raja Collure, Prof H N C Fonseka, AVM Brendon Sosa, AVM Duncan Dissanayake.

Lanka needs to look at foreign markets However, domestic investors do not possess the required capital, technologies, skills, management expertise and marketing access to the rest of the world. Furthermore, investors are mostly SMEs which cannot achieve economies of scale to reduce unit costs or undertake innovation and strategies to improve competitiveness to make higher earnings. Thus, there is no alternative other than attracting Foreign Direct Investments (FDI) to achieve the above objectives**.**

RECOMMENDATIONS

The purpose of the following recommendations is for SL to acquire the required attributes for attracting FDIs . Most of the recommendations are uncontroversial and can be implemented fast .

It is important to offer incentives matching those of competitor countries (and prevent sudden changes in policy/incentives) and to improve productivity and competitiveness to boost the bottom lines of firms, especially through innovation and increasing the size of land holdings to attract investments to improve their economic/commercial viability. Equally important is to undertake the promotion of FDI inflows from reputed/ 'flagship' multi- national companies with vigour and without ideological and other reservations (like China)

i. Tax Holidays

Countries which cannot be described as "stable socially, politically and macro economically sound" and do not have the other attributes that foreign investors look e.g. tax holidays and tax exemptions on imports and export potential foreign investors will face constraints in attracting FDIs. Successive governments of Sri Lanka since independence has given recognition to these underlying factors. However, GOSL budget 2011 proposed to do away with most tax holidays, (although in the latest legislation a five year tax holiday to all investors is considered) and reduced taxes which originally amounted to 64.7% and improved access to credit, foreign exchange and inputs . It is doubtful that SL will be able to compete for FDI in countries such as India, Pakistan, Indonesia, Philippines and even Singapore (which offers generous tax holidays for pioneer industries) unless competing or attractive incentives are offered.

ii.Disincentives Remove disincentives such as promoting import substitution for a small domestic market , multiplicity of taxes, long delays in tax refunds, cumbersome procedures and documentation (both of which have been already dealt with to a considerable extent in the 2011 budget), complex laws, the low work ethic, especially among most trade union members by adequately motivating them while rationalizing the

multiplicity of complex labour laws(2010/11 Global Competitiveness Index -GCI- rank for labour market efficiency SL is 104 out of 139 countries), reducing public holidays, improving productivity and maintaining realistic parity rates e.g. overvaluation of the rupee will make exports uncompetitive.The Ease of Doing Business Report of the World Bank 2010 ranks SL at 102 out of 183 countries;

iii. Long Delays in obtaining approvals: BOI approval for FDI is simple . But long delays are experienced in getting environmental, coast conservation, building approvals and other permits from a plethora of government and provincial agencies. BOI has to be made an effective one stop shop. Perhaps it is due to these reasons the latest Ease of doing Business Report of the World Bank states that it takes 1318 days to enforce a contract in SL vs. 150 days in Singapore.

An Electronic Data Interchange at the Customs has been proposed since the nineteen eighties to simplify procedures and documentation; it has not attained fruition.. However, the Budget 2011 has made a number of proposals for the simplification of procedures and documentation including 'e-governance'

is considered the anathema

iv. Labour Laws

The labour laws are complex with numerous statutes and court orders to interpret in case of a dispute with workers; expensive lawyers have to be engaged for such purposes. The Termination of Employment Act is considered the is considered the anathema of labour laws. Under this Law, even if a firm is running at a loss it cannot terminate the services of excess employees without the prior consent of the Commissioner of the Labour. It is time consuming .The compensation formula which is 2-4 months' wages for every year of service in addition to payment of EPF, ETF and gratuity, (whereas in most other countries it is 2 weeks' wages for each year of termination), is heavily weighted against the employer; worse still, appeals against Labour Tribunal orders regarding the amount of compensation are effectively shut out by the laws. It unfavourably affects the employees too, as businesses are cautious in increasing salaries of workers fearing high compensation for retrenchment and even preventing new employment.

If a company fails to pay EPF and ETF, the amount due can be recovered from the directors who are personally liable. (These amounts are recovered by filing a certificate in the Magistrates courts and the amount due is recovered as a fine.)

v Pay Orders

Some banks and even the Department of Inland Revenue requests persons who pay stamp duty on a 'pay order' to come again to obtain a receipt. A pay order being " guaranteed" by the issuing bank ,should be accepted immediately and a receipt issued. People are harassed by the existing procedure as they have to go several times to the banks/ Dept. of Inland Revenue.

vi. **Companies Act No. 7 of 2007**

The Act does not appear to a make a distinction between private and public companies. Private companies are very often family companies. The Act now permits even one shareholder to from a Private Company. However the Act requires that after incorporation of a company, public notice has to be given by publishing a notice of incorporation in English, Sinhala & Tamil in the newspapers and in the government Gazette. This requirement was not there in the Companies Act No. 17/ 1982 and should be repealed in respect of private Companies. All the Companies approved by the BOI and Private Companies and investors should not be required to go though the expense of giving public notice of private companies.

When a share certificate is lost, the share holder in required d to Publish a notice in the newspapers in all three languages.. In the case of fixed deposits, if the certificate is lost the deposit holder will have to give an affidavit and a letter of indemnity indemnifying the bank or financial institution. Procedures for such instances should be made simple

vii) **Law's Delays**
Our legal system is slow and as a result cases are not disposed of for years. Therefore, there is a need, at least in the cases where a company is a party to give priority and fix a time limit for the disposal of commercial cases.

viii)**) The Law Relating to Cheques**
Though the Debt Recovery (Special Provisions) Act of No. 2 of 1990 provided for prosecution of offenders who issue "dud cheques" for goods and services provided the police are reluctant or sometimes refuse to entertain complaints in respect of bounced cheques resulting in hardships to the payees..

ix) **Low Conviction Rate in SL**
Due to the poor law and order situation prevailing, many wrongdoers and criminals are not convicted .cf District Attorneys in the USA respond to various crime problems through the efficient processing of criminal cases

x)P**hysical and social infrastructure** Sri Lanka's physical infrastructure is poor. It is important to improve transport and communications, , as well as raising science, technological (according to the GCI- for 2010/11, SL's technological readiness ranks 84 out of 139 countries (the GCI rank for higher education is-62) and English skills by spending more on education/training- now only approximately 2% of SL national income is budgeted for education as against. 4.3% in other lower middle income countries according to the World Bank.

The quality of power supplies is also poor; there are power cuts even in Colombo; in the Jaela Industrial Estate it is reported that power is not available on 2 days a month, although normally informed in advance. The cost of a unit for an industrialist in SL is very high; (break bulk rate per unit with own transformer is about SL Rs.9.30 - Dec.2010 vs. about SL Rs 7.17 in Malaysia; in India it is higher being about SL Rs.11.3 -); our energy tariff has now gone up by 8%.
There are break- downs in the supply of water as well even in Colombo. There are no set arrangements to remove waste and garbage generated by industries.

The infrastructure development programmes being undertaken do not seem to be prioritized on the basis of costs and benefits and of improvement of productivity.

Social infrastructure like education particularly in science, technology, IT and English sought after by investors also has been neglected; its quality and opportunities for it being poor, about 10, 000 students leave SL for education abroad; most of them never return after qualifying; technological and management skills scarce.

The capital budget in recent years (about 6% of GDP) is inadequate for a bigger and better physical and social infrastructure development programme.

xi) International Relations Improve international relations with all countries particularly the developed countries in the Wes**t** which constitute the main markets for our exports and the main sources of FDI and those with international organizations by appointing professional diplomats and implementing international conventions.

xiii)Poor Public Service GCI rank for SL institutions 70. The Judiciary, the Police Department and the Election Commission need to be in place to serve the people and investors better. It is It is important to raise the efficiency of the Public Service and to improve the law and order situation by infusing professional management by recruiting/promoting on merit without politicization, and improving governance.
xiv) Macro economic (budgetary and monetary) discipline Macro economic (budgetary and monetary) discipline is weak and it is imperative to slash budget deficits and resort to curtailing borrowing and printing of money in order to control inflation, (which professionals believe is under-stated), abate and reduce costs of production inputs including wages which are not low; interest rates should be at a higher point than inflation to encourage savings, which in East Asia could be high as 35-40 % of GDP. (According to the GCI, SL's rank in respect of macro economic environment is 124 out of 139 countries)

xv)Reduce/ eliminate endemic bribery, corruption, waste and ostentation to save funds for development. Part of the solution lies in reforming election laws to cut down on proportional representation and make Members of Parliament and other representatives of the people to represent constituencies (and wards) instead of districts to reduce election expenses. Appointing an independent/powerful Bribery Commission with its own prosecution staff is also important. Introduction of a Right to Information Law and Public Interest Litigation will also help improving governance immensely

Continuation of improving communal harmony in the short term is crucial through dialogue to reduce the fear on the part of investors of ethnic tensions flaring up again and prevent inimical action in international fore by the Tamil diaspora.

xvi)Improve governance Improve governance through constitutional reforms to ensure the independence of the public service, including the police and the judiciary with

accountability and other legislative changes on the basis of UN conventions on democratic/human rights.

BENEFITS

The benefits of implementation of these recommendations will pave the way for a significant improvement (long term economic, social and political) of the stability sought after by reputed investors/FDI; improved productivity (reduction of unit costs of production), competitiveness (differentiation of products and services to satisfy higher paying customers due to technological and strategic innovation to avoid imitation by competitors). Higher foreign exchange earnings through effective FDIs will gradually eliminate the trade deficit. All these will help to induce a sense of wellbeing and credibility/confidence in the future among the people and attract investors, (including those in the diaspora), whose basic objective is to increase the 'bottom line'/ profit margins over a longer term.

The net result of increased investments is proliferation of employment opportunities that will increase the real incomes (adjusted to the lower inflation levels expected) of the people and alleviate poverty (which now stands at 41.6%- US$ 2 per day per person, (mostly in rural areas)- CBSL Report 2009) and malnutrition; this is a move away from the present tripod of tea, garments and foreign remittances based on manual labour into knowledge intensive and competitive industries and services catering to rich global markets.

CONCLUSION

The OPA feels that the implementation of these recommendations/strategies accompanied by public consultation/ creation of awareness as well as continuous monitoring will help the government to achieve its economic objectives successfully by 2016 . ■

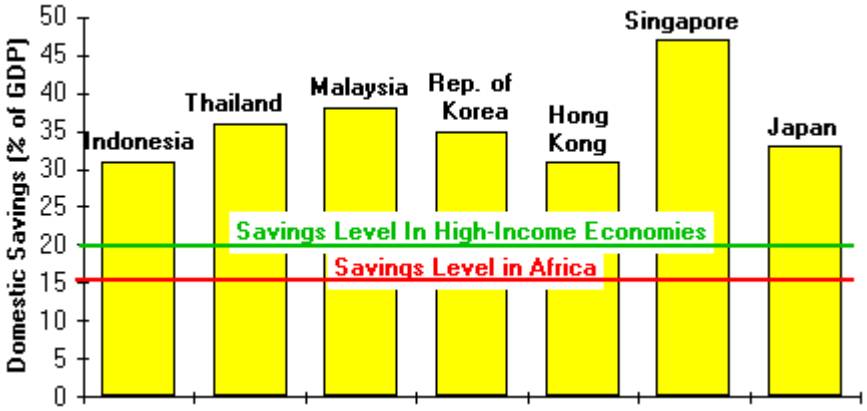
ANNEX 1

FDI Flows to some Asian Countries- US$ billions

Country	**2009**	**2010**
China	95.0	101.0
Hong Kong China	48.4	62.6
India	34.6	23.7
Indonesia	4.9	12.8
Malaysia	1.4	7.0
Singapore	16.8	37.4
Thailand	5.9	6.8

Source: UNCTAD Global Investment Trends Monitor, January 2011

Savings in East Asia:



Note: Data are for 1993. Levels for Africa (Sub-Saharan) and high-income countries (World Bank classification) are weighted averages.

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