

Overall Score:

58 - Very Weak

Legal Framework Score:

71 - Moderate

Actual Implementation Score:

45 - Very Weak

Category I. Civil Society, Public Information and Media

I-1. ⁵¹Civil Society Organizations

1. Are anti-corruption/good governance CSOs legally protected?

100

1a. In law, citizens have a right to form civil society organizations (CSOs) focused on anti-corruption or good governance.

YES | NO

Comments:

The freedom of association guaranteed by the constitution is generally well protected. However, the statutory framework set out in the Voluntary Social Service Organizations Act is widely considered to be unduly intrusive and inconsistent with international standards relating to freedom of association. Specifically, concerns relate to provisions regarding registration, powers of the Registrar of Voluntary Social Service Organizations relating to inspection and supervision (especially in respect to governmental control over financial and policy management), and the powers over inquiry into the internal workings of such organizations.

References:

Article 14(1)(c) of the Constitution of Sri Lanka provides for freedom of association in the form of a constitutionally protected, fundamental right. Such fundamental rights are enforceable through the Supreme Court (Article 126). Registration of civil society organizations (CSOs) is required according to Section 4 of the Voluntary Social Service Organizations (Registration and Supervision) Act No. 31 of 1980 (as amended by Act No. 8 of 1998). Many CSOs, however, are registered as companies (liability limited by guarantee) under the Companies Acts.

YES: A YES score is earned when freedom to assemble into groups promoting good governance or anti-corruption is protected by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent group is legally prohibited from organizing to promote good governance or anti-corruption. These groups may include non-violent separatist groups, political parties or religious groups.

1b. In law, anti-corruption/good governance CSOs are free to accept funding from any foreign or domestic sources.

YES | NO

Comments:

Foreign funding for civil society organizations, especially those promoting peace and a negotiated settlement to Sri Lanka's ethnic conflict, have become a political issue for some political parties, such as the strongly (Sinhala) nationalist Janatha Vimukthi Peramuna (JVP). A Select Committee of Parliament has been appointed under the chairpersonship of a JVP member to investigate the activities and funding sources of nongovernmental organizations (NGOs). The Select Committee has called for financial and operational information from NGOs and summoned civil society organization representatives for examination. It has not yet reported.

References:

Section 18(b) of the Voluntary Social Service Organizations (Registration and Supervision) Act No. 31 of 1980 (as amended by the Act No.8 of 1998) contemplates funding to civil society organizations registered under the Act from public contributions, charities, grants payable by the government or donations, local or foreign.

YES: A YES score is earned if anti-corruption/good governance CSOs face no legal or regulatory restrictions to raise or accept funds from any foreign or domestic sources. A YES score may still be earned if funds from groups with a history of violence or terrorism (within last ten years) are banned.

NO: A NO score is earned if there any formal legal or regulatory bans on foreign or domestic funding sources for CSOs focused on anti-corruption or good governance.

1c. In law, anti-corruption/good governance CSOs are required to disclose their sources of funding.

YES | NO

Comments:

Under Section 9 (read with Section 14A) of the Voluntary Social Services Organizations Act, the Registrar is responsible for overseeing allegations of fraud or misappropriation of funds committed by civil society organizations (CSOs) and which may result in the appointment of a Board of Inquiry, the replacement of the officers of the CSO and even dissolution.

References:

Depending on whether the civil society organization (CSO) is registered under the Voluntary Social Services Organizations Act 31 of 1980 (as amended by the Act No.8 of 1998) or the Companies Act, different rules of disclosure apply. In the latter case, CSOs would be required to declare audited annual accounts to the Registrar of Companies.

YES: A YES score is earned if anti-corruption/good governance CSOs are required to publicly disclose their sources of funding.

NO: A NO score is earned if no such public disclosure requirement exists.

2. Are good governance/anti-corruption CSOs able to operate freely?

67

2a. In practice, the government does not create barriers to the organization of new anti-corruption/good governance CSOs.

100 | 75 | 50 | 25 | 0

Comments:

As noted before, civil society organizations are required to be registered under the Voluntary Social Service Organizations (Registration and Supervision) Act No. 31 (as amended by the Act No.8 of 1998) or the Companies Act. The former is considered to be inconsistent with international standards on freedom of association, mainly due to the intrusive powers made available to the Registrar.

References:

Interview with Dr. Paikiasothy Saravanamuttu
Executive Director
Centre for Policy Alternatives

100: CSOs focused on promoting good governance or anti-corruption can freely organize with little to no interaction with the government, other than voluntary registration.

75:

50: CSOs focused on promoting good governance or anti-corruption must go through formal steps to form, requiring interaction with the state such as licenses or registration. Formation is possible, though there is some burden on the CSO. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Other than pro-government groups, CSOs focused on promoting good governance or anti-corruption are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

2b. In practice, anti-corruption/good governance CSOs actively engage in the political and policymaking process.

100 | 75 | 50 | 25 | 0

Comments:

Civil society organizations' (CSOs) access to and influence over decision-makers and the government are entirely dependent on the latter's openness to CSOs and their work. The current government is not considered to be open to CSO intervention in the political process.

References:

Interview with Dr. Paikiasothy Saravanamuttu
Executive Director
Centre for Policy Alternatives
Sept. 10, 2007
Colombo, Sri Lanka

100: Civil society organizations focused on anti-corruption or good governance are an essential component of the political process. CSOs provide widely valued insights and have political power. Those CSOs play a leading role in shaping public opinion on political matters.

75:

50: Anti-corruption/good governance CSOs are active, but may not be relevant to political decisions or the policymaking process. Those CSOs are willing to articulate opinions on political matters, but have little access to decision makers. They have some influence over public opinion, but considerably less than political figures.

25:

0: Anti-corruption/good governance CSOs are effectively prohibited from engaging in the political process. Those CSOs are unwilling to take positions on political issues. They are not relevant to changes in public opinion.

2c. In practice, no anti-corruption/good governance CSOs have been shut down by the government for their work on corruption-related issues during the study period.

YES | NO

References:

There have been no reports of any civil society organization being shut down for its work on corruption-related issues.

YES: A YES score is earned if there were no CSOs shut down by the government or forced to cease operations because of their work on corruption-related issues during the study period.

NO: A NO score is earned if any CSO has been effectively shut down by the government or forced to cease operations because of its work on corruption-related issues during the study period. The causal relationship between the cessation of operations and the CSO's work may not be explicit, however the burden of proof here is low. If it seems likely that the CSO was forced to cease operations due to its work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3. Are civil society activists safe when working on corruption issues?

100

3a. In practice, in the past year, no civil society activists working on corruption issues have been imprisoned.

YES | NO

References:

There have been no reports of any activists working on corruption issues being imprisoned.

YES: A YES score is earned if there were no CSO activists imprisoned because of their work covering corruption. YES is a positive score.

NO: A NO score is earned if any activist was jailed in relation to work covering corruption. The causal relationship between the official charges and the person's work may not be explicit, however the burden of proof here is low. If it seems likely that the person was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. "Imprisoned" is defined here as detention by the government lasting more than 24 hours.

3b. In practice, in the past year, no civil society activists working on corruption issues have been physically harmed.

YES | NO

References:

There have been no reports of social activists working on corruption issues being physically harmed.

YES: A YES score is earned if there were no documented cases of CSO activists covering corruption being assaulted in the specific study period. A YES score can be earned if there was an attack but it was clearly unrelated to the activist's work. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period of assault to an activist who covers corruption. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

3c. In practice, in the past year, no civil society activists working on corruption issues have been killed.

YES | NO

References:

There have been no reports of civil activists working on corruption issues being killed.

YES: A YES score is earned if there were no documented cases of CSO activists being killed because of their work covering corruption in the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases during the study period where a person was killed related to a corruption trial, scandal or investigation. The relationship between a mysterious death and an individual's history may not be clear, however the burden of proof here is low. If it is reasonable that a person was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

4. Can citizens organize into trade unions?

75

4a. In law, citizens have a right to organize into trade unions.

YES | NO

Comments:

The provision guaranteeing all citizens the freedom to form and join trade unions is a fundamental right guaranteed by the Constitution and is enforceable by the Supreme Court against violations committed by executive and administrative action. However, fundamental rights cannot be enforced against private actors. The general statutory framework governing trade unions is to be found in the Trade Unions Ordinance No. 14 of 1935 (as amended).

References:

Article 14(1)(d) of the Constitution guarantees to all the citizens the freedom to form and join trade unions.

YES: A YES score is earned when trade unions are allowed by law, regardless of political ideology, religion or objectives. Groups with a history of violence or terrorism (within last ten years) may be banned. Groups sympathetic to or related to banned groups must be allowed if they have no history of violence.

NO: A NO score is earned when any single non-violent trade union is legally prohibited by the government from organizing.

4b. In practice, citizens are able to organize into trade unions.

100 | 75 | 50 | 25 | 0

Comments:

Many trade unions are directly connected to political parties, which is a problem because the trade unions function in the interests of the political parties rather than workers.

References:

L. Compa
(2003)
Justice for All-The Struggle for Worker Rights in Sri Lanka: A Report by the Solidarity Center
Washington: American Center for International Labor Solidarity
<http://www.solidaritycenter.org/files/SriLankaFinal.pdf>.

100: Trade unions are common and are an important part to the political process and political discourse. Trade union organizers have widely understood rights. Trade unions are free from intimidation or violence.

75:

50: Trade unions exist, but are not always relevant to politics or policy debates. Barriers to organizing trade unions exist, such as intimidation at work, or retribution firings. Trade union organizers have some rights, but these may not be commonly known, or are difficult to defend.

25:

0: Trade unions are rare. Significant barriers to organization exist, including direct violence. Rights of union organizers are not widely known, or are ineffective in protecting organizers.

I-2. Media

5. Are media and free speech protected?

100

5a. In law, freedom of the media is guaranteed.

YES | NO

References:

Article 14 (1)(a) of the Constitution guarantees freedom of speech and expression, including publication, in the form of a fundamental right that is enforceable through the Supreme Court.

YES: A YES score is earned if freedom of the press is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any specific publication relating to government affairs is legally banned, or any general topic is prohibited from publication. Specific restrictions on media regarding privacy or slander are allowed, but not if these amount to legal censorship of a general topic, such as corruption or defense. A NO score is earned if non-government media is prohibited or restricted.

5b. In law, freedom of speech is guaranteed.

YES | NO

Comments:

There is a substantial body of fundamental-rights case law generated by the Supreme Court in relation to the freedom of expression.

J. Wickramaratne
(2006)
Fundamental Rights in Sri Lanka
2nd Ed.
Colombo: Stamford Lake

In general, the Supreme Court has been fairly progressive in protecting freedom of expression, although judicial activism is limited and the structure of the bill of rights, in particular the manner and form in which restrictions (both limitations and derogations) are formulated, would now seem to be outdated.

References:

Article 14(1)(a) of the Constitution guarantees freedom of speech and expression that is enforceable as a fundamental right by the Supreme Court. The exercise of this right is, however, subject to certain restrictions that maybe prescribed by law in the interests of racial and religious harmony or in relation to parliamentary privilege, contempt of court, defamation or insightment to an offense (Article 15(2)). Rights also may be restricted in the interests of national security, for the protection of the rights of others, etc. (Article 15(7)).

YES: A YES score is earned if freedom of individual speech is guaranteed in law, including to all political parties, religions, and ideologies.

NO: A NO score is earned if any individual speech is legally prohibited, regardless of topic. Specific exceptions for speech linked with a criminal act, such as a prohibition on death threats, are allowed. However, any non-specific prohibition earns a NO score.

6. Are citizens able to form print media entities?

100

6a. In practice, the government does not create barriers to form a print media entity.

100 | 75 | 50 | 25 | 0

References:

Interview with Sunanda Deshapriya
Convenor of the Free Media Movement
Member of the Editors' Guild of Sri Lanka
Journalist
Editor of the Sinhala newspaper Yukthiya" (ceased publication in 2000)
Nov. 3, 2007
Colombo, Sri Lanka

100: Print media entities can freely organize with little to no interaction with the government. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of print media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur.

25:

0: Print media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear.

6b. In law, where a print media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

There is no requirement of a print media license; therefore, the necessity of an appeal mechanism does not arise.

References:

Interview with Sunanda Deshapriya
Convenor of the Free Media Movement
Member of the Editors' Guild of Sri Lanka
Journalist
Editor of the Sinhala newspaper Yukthiya" (ceased publication in 2000)
Nov. 3, 2007
Colombo, Sri Lanka

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied print media license, including through the courts. A YES score is also earned if no print license is necessary.

NO: A NO score is earned if there is no appeal process for print media licenses.

6c. In practice, where necessary, citizens can obtain a print media license within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with Sunanda Deshapriya
Convenor of the Free Media Movement
Member of the Editors' Guild of Sri Lanka
Journalist
Editor of the Sinhala newspaper Yukthiya" (ceased publication in 2000)
Nov. 3, 2007
Colombo, Sri Lanka

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

6d. In practice, where necessary, citizens can obtain a print media license at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with Sunanda Deshapriya
Convenor of the Free Media Movement
Member of the Editors' Guild of Sri Lanka
Journalist
Editor of the Sinhala newspaper Yukthiya" (ceased publication in 2000)
Nov. 3, 2007
Colombo, Sri Lanka

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

7. Are citizens able to form broadcast (radio and TV) media entities?

44

7a. In practice, the government does not create barriers to form a broadcast (radio and TV) media entity.

100 | 75 | 50 | 25 | 0

Comments:

It is nearly impossible to obtain a broadcasting license without political patronage. There is no transparent process, and there is favoritism in the process. There is no authority in charge, and, although the Telecom Regulatory Commission issues the license, it is in fact granted by the government on patronage.

References:

Interview with Sunanda Deshapriya
Convenor of the Free Media Movement
Member of the Editors' Guild of Sri Lanka
Journalist
Editor of the Sinhala newspaper Yukthiya" (ceased publication in 2000)
Nov. 3, 2007
Colombo, Sri Lanka

100: Broadcast media entities can freely organize with little to no interaction with the government. Media groups have equal access to broadcast bandwidth through a reasonably fair distribution system. This score may still be earned if groups or individuals with a history of political violence or terrorism (within last ten years) are banned from forming media entities.

75:

50: Formation of broadcast media groups is possible, though there is some burden on the media group including overly complicated registration or licensing requirements. Some unofficial barriers, such as harassment of minority groups, may occur. Division of broadcast bandwidth is widely viewed to be somewhat unfair.

25:

0: Broadcast media groups are effectively prohibited, either by official requirements or by unofficial means, such as intimidation or fear. This score is appropriate if the division of broadcast bandwidth is widely viewed to be used as a political tool.

7b. In law, where a broadcast (radio and TV) media license is necessary, there is an appeal mechanism if a license is denied or revoked.

YES | NO

Comments:

The only recourse is via courts of law.

References:

Interview with Sunanda Deshapriya
Convenor of the Free Media Movement
Member of the Editors' Guild of Sri Lanka
Journalist
Editor of the Sinhala newspaper Yukthiya" (ceased publication in 2000)
Nov. 3, 2007
Colombo, Sri Lanka

YES: A YES score is earned if there is, in law or in accompanying regulations, a formal process to appeal a denied broadcast media license, including through the courts. A YES score is also earned if no broadcast license is necessary.

NO: A NO score is earned if there is no appeal process for broadcast media licenses.

7c. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license within a reasonable time period.

References:

Interview with Sunanda Deshapriya
 Convenor of the Free Media Movement
 Member of the Editors' Guild of Sri Lanka
 Journalist
 Editor of the Sinhala newspaper Yukthiya" (ceased publication in 2000)
 Nov. 3, 2007
 Colombo, Sri Lanka

100: Licenses are not required or licenses can be obtained within two months.

75:

50: Licensing is required and takes more than two months. Some groups may be delayed up to six months.

25:

0: Licensing takes close to or more than one year for most groups.

7d. In practice, where necessary, citizens can obtain a broadcast (radio and TV) media license at a reasonable cost.

Comments:

Although the license is granted free of charge, there is a cost to be borne unofficially in terms of garnering the patronage necessary to get the license.

References:

Interview with Sunanda Deshapriya
 Convenor of the Free Media Movement
 Member of the Editors' Guild of Sri Lanka
 Journalist
 Editor of the Sinhala newspaper Yukthiya" (ceased publication in 2000)
 Nov. 3, 2007
 Colombo, Sri Lanka

100: Licenses are not required or can be obtained at minimal cost to the organization. Licenses can be obtained on-line or through the mail.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

8. Can citizens freely use the Internet?

88

8a. In practice, the government does not prevent citizens from accessing content published online.

100 | 75 | 50 | 25 | 0

Comments:

It is no longer possible to access the Web site <http://www.tamilnet.com> via a Sri Lankan Internet Service Provider. So far, this is the only blocked site.

References:

Interview with Sunanda Deshapriya
Convenor of the Free Media Movement
Member of the Editors' Guild of Sri Lanka
Journalist
Editor of the Sinhala newspaper "Yukthiya" (ceased publication in 2000)
November 3, 2007
Colombo, Sri Lanka

100: The government does not prevent Internet users from accessing online content. While some forms of content may be illegal to download or own (such as child pornography), the government does not manipulate networks to prevent access to this information. This indicator addresses direct government intervention in the transfer of information, not indirect deterrents such as intimidation, surveillance or technical difficulties in countries with poor infrastructure.

75:

50: Internet users are prevented by the government from reaching online content in some cases. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

25:

0: Internet users are routinely prevented from accessing online content. Government restrictions are in place at all times for certain topics. Government tactics may include firewalls preventing access to networks in other countries, or manipulating search engine results to exclude politically sensitive topics.

8b. In practice, the government does not censor citizens creating content online.

100 | 75 | 50 | 25 | 0

Comments:

It is no longer possible to access the Web site <http://www.tamilnet.com>, but there is no censorship by the government of what is uploaded to the Internet.

References:

Interview with Sunanda Deshapriya
Convenor of the Free Media Movement
Member of the Editors' Guild of Sri Lanka
Journalist
Editor of the Sinhala newspaper "Yukthiya" (ceased publication in 2000)
Nov. 3, 2007
Colombo, Sri Lanka

100: The government never removes online information or disables servers due to their political content. All political speech is protected with limited exceptions, such as legitimate intellectual property restrictions; direct calls to violence; or pornography.

75:

50: In some cases, the government restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting restricted content, or indirectly through threats or intimidation against the persons posting political content.

25:

0: The government regularly restricts political speech by its citizens on the Internet. This is accomplished either directly by controlling servers hosting the restricted content, or indirectly through threats or intimidation against the persons posting political content.

9. Are the media able to report on corruption?

58

9a. In law, it is legal to report accurate news even if it damages the reputation of a public figure.

YES | NO

References:

Article 14(1)(a) of the Constitution ensures freedom of speech and expression, including publication. Restrictions are listed under Article 15(2).

YES: A YES score is earned if it is legal to report accurate information on public figures regardless of damage to their reputations. Public figures are defined broadly, including anyone in a position of responsibility in the government or civil service; any political leader; leaders of civil society groups including religious groups, trade unions, or NGOs; leaders or officers of large businesses. A YES score can still be earned if a reckless disregard for the truth (i.e. slander) is prohibited.

NO: A NO score is earned if privacy laws protect any public figures (as defined in the YES coding) from accurate information.

9b. In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

There are both political and commercial elements present, and it is very difficult to get a story damaging to certain powerful corporations published.

References:

Interview with Sunanda Deshapriya
Convenor of the Free Media Movement
Member of the Editors' Guild of Sri Lanka
Journalist
Editor of the Sinhala newspaper "Yukthiya" (ceased publication in 2000)
Nov. 3, 2007
Colombo, Sri Lanka

100: The government, its proxies, or media ownership/distribution groups make no attempt to restrict media coverage of corruption-related issues through unofficial means.

75:

50: The government, its proxies, or media ownership/distribution groups make some attempts to restrict media coverage of corruption-related issues through unofficial means, such as restricting access by disfavored media outlets, or other short-term consequences. Violent reprisals against media outlets are rare.

25:

0: The government, its proxies, or media ownership/distribution groups actively use illegal methods to restrict reporting of corruption-related issues. This may include harassment, arrests, and threats. Journalists and publishers take a personal risk to report on corruption, and media outlets who commonly report on corruption face long-term consequences or violent reprisals.

9c. In practice, there is no prior government restraint (pre-publication censoring) on publishing corruption-related stories.

100 | 75 | 50 | 25 | 0

Comments:

All stories related to the war must be preapproved by the Media Centre for National Security.

References:

Interview with Sunanda Deshapriya
Convener of the Free Media Movement
Member of the Editors' Guild of Sri Lanka
Journalist
Editor of the Sinhala newspaper "Yukthiya" (ceased publication in 2000)
Nov. 3, 2007
Colombo, Sri Lanka

100: The government never prevents publication of controversial corruption-related materials.

75:

50: The government prevents publication of controversial corruption-related material in cases where there is a strong political incentive to suppress the information. This score is appropriate if in countries where illiteracy is high, the government may allow a free print press but censor broadcast media.

25:

0: The government regularly censors material prior to publication, especially politically sensitive or damaging corruption-related material. This score is appropriate even if the government restricts only politically damaging news while allowing favorable coverage.

10. Are the media credible sources of information?

55

10a. In law, print media companies are required to disclose their ownership.

YES | NO

References:

Under Section 2 of Newspaper Ordinance No.5 of 1839 (as amended), print media companies are required to disclose their ownership.

YES: A YES score is earned if print media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain types of entities or agents from being disclosed.

10b. In law, broadcast (radio and TV) media companies are required to disclose their ownership.

YES | NO

References:

Section 28(3) of the Sri Lanka Rupavahini Corporation Act No. 6 of 1982 (as amended). ?

YES: A YES score is earned if broadcast media companies are required by law to disclose all owners of the company.

NO: A NO score is earned if there is no such requirement or if the requirement is optional, only partially applicable, or exempts certain type of entities or agents from being disclosed.

10c. In practice, journalists and editors adhere to strict, professional practices in their reporting.

100 | 75 | 50 | 25 | 0

Comments:

While some English-language newspapers attempt to adhere to professional practices, there is no such effort made in the Sinhala and Tamil print media.

References:

Interview with Sunanda Deshapriya
Convenor of the Free Media Movement
Member of the Editors' Guild of Sri Lanka
Journalist
Editor of the Sinhala newspaper Yukthiya" (ceased publication in 2000)
November 3, 2007
Colombo, Sri Lanka

100: Editors and journalists at the major media outlets abide by a strict journalistic code of conduct and are unwilling to alter their coverage of a particular issue, event or person in exchange for money, gifts, or other favors or remuneration.

75:

50: Editors and journalists at the major media outlets generally avoid altering coverage in exchange for favors but some exceptions have been noted. Not all newsrooms abide by a formal journalistic code of conduct.

25:

0: Editors and journalists are widely known to sell" favorable or unfavorable coverage in exchange for money, gifts, or other remuneration. The major media outlets do not abide by any formal journalistic code of conduct.

10d. In practice, during the most recent election, political parties or independent candidates received fair media coverage.

100 | 75 | 50 | 25 | 0

Comments:

The government and the United National Party get exposure from the media institutions controlled/favored by them, but smaller parties and independent candidates are mostly neglected.

References:

Interview with Sunanda Deshapriya
Convenor of the Free Media Movement
Member of the Editors' Guild of Sri Lanka
Journalist
Editor of the Sinhala newspaper Yukthiya" (ceased publication in 2000)
November 3, 2007
Colombo, Sri Lanka

100: All political parties and independent candidates have some access to media outlets. Individual media outlets may have biases, but on balance, the national media coverage reflects the interests of the electorate. Media groups generally act as disinterested parties in an election. In places where a government is popular with the public, opposition viewpoints can access the public via media outlets.

75:

50: Major popular media outlets have a persistent bias regarding some parties or independent candidates. Some major parties may be partially excluded from media coverage, or draw more negative coverage. Media sectors may have distinct biases, such as newspapers favoring one party, while radio favors another.

25:

0: The mass media, on balance, have clear preferences in election outcomes and coverage is driven to achieve these goals. Some major parties or independent candidates are excluded or consistently negatively portrayed by mass media. Dissenting political opinions are only found on fringe or elite media outlets, such as Web sites.

10e. In practice, political parties and candidates have equitable access to state-owned media outlets.

100 | 75 | 50 | 25 | 0

Comments:

The incumbent party and its allies are favored by the state media.

References:

Interview with Sunanda Deshapriya
Convenor of the Free Media Movement
Member of the Editors' Guild of Sri Lanka
Journalist
Editor of the Sinhala newspaper "Yukthiya" (ceased publication in 2000)
November 3, 2007
Colombo, Sri Lanka

100: The government ensures that equal access and fair treatment of election contestants is provided by all state-owned media outlets, including all electronic and print media. This obligation extends to news reports, editorial comment, and all other content. All parties and candidates are offered consistent and equivalent rates for campaign advertising on state-owned media outlets.

75:

50: The government generally ensures equal access and fair treatment of all candidates and parties by state-owned media outlets but some exceptions exist. State-owned media may occasionally discriminate against particular parties or candidates and advertising rates may be confusing or non-transparent.

25:

0: The government uses state-owned media to routinely discriminate against opposition candidates and parties. Advertising space may be denied to opposition candidates and parties or higher rates may be charged.

11. Are journalists safe when investigating corruption?

0

11a. In practice, in the past year, no journalists investigating corruption have been imprisoned.

YES | NO

Comments:

The instances in question sometimes pertain to war reporting, etc., which has been taken in under the broad definition of corruption.

References:

Interview with Sunanda Deshapriya
Convenor of the Free Media Movement
Member of the Editors' Guild of Sri Lanka
Journalist
Editor of the Sinhala newspaper "Yukthiya" (ceased publication in 2000)

November 3, 2007
Colombo, Sri Lanka

<http://www.sibernews.com/news/sri-lanka/-200703237856/>

YES: A YES score is earned if there were no journalists imprisoned related to work covering corruption during the study period. A YES score is positive.

NO: A NO score is earned if any journalist was jailed because of his/her work covering corruption during the study period. The causal relationship between the official charges and the journalist's work may not be explicit, however the burden of proof here is low. If it seems likely that the journalist was imprisoned due to his or her work, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes. Imprisoned" is defined here as detention by the government lasting more than 24 hours.

11b. In practice, in the past year, no journalists investigating corruption have been physically harmed.

YES | **NO**

Comments:

There were some instances of abduction, and a broad definition of abuse of power" is being used again.

References:

Interview with Sunanda Deshapriya
Convenor of the Free Media Movement
Member of the Editors' Guild of Sri Lanka
Journalist
Editor of the Sinhala newspaper Yukthiya" (ceased publication in 2000)
November 3, 2007
Colombo, Sri Lanka

YES: A YES score is earned if there were no documented cases of journalists being assaulted during the specific study period for their work covering corruption issues. A YES score is positive.

NO: A NO score is earned if there were any documented cases of assault to a journalist covering corruption during the study period. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

11c. In practice, in the past year, no journalists investigating corruption have been killed.

YES | **NO**

Comments:

Disappearances have also been included in the definition.

References:

Interview with Sunanda Deshapriya
Convenor of the Free Media Movement
Member of the Editors' Guild of Sri Lanka
Journalist
Editor of the Sinhala newspaper Yukthiya" (ceased publication in 2000)
November 3, 2007
Colombo, Sri Lanka

http://www.tamileelamnews.com/news/publish/tns_8860.shtml

YES: A YES score is earned if there were no documented cases of journalists being killed because of their work covering corruption-related issues during the study period. A YES score is positive.

NO: A NO score is earned if there were any documented cases where a journalist was killed in relation to his or her work covering corruption-related issues in the study period. The relationship between a mysterious death and an individual's work may not be clear, however the burden of proof here is low. If it is a reasonable guess that a person was killed in relation to

his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

64
I-3. Public Access to Information

12. Do citizens have a legal right of access to information?

0

12a. In law, citizens have a right of access to government information and basic government records.

YES | NO

Comments:

Although the Supreme Court has interpreted the fundamental right to freedom of expression as including a right to receive information held by government (citation of the case), there is no legislation establishing the right to such information. In 2003, the Centre for Policy Alternatives, the Free Media Movement and the Editors' Guild of Sri Lanka collaborated with the government of Sri Lanka in drafting a Freedom of Information Bill. This Bill received the approval of the Cabinet and of the President in early 2004 and was due to be presented to Parliament when the President dissolved Parliament in February 2004. Consequently, the Bill has never been enacted.

References:

There is no freedom of information legislation establishing a general right of citizens to access official information. Chapter XXXI of the Establishments Code of the government (which are the general rules governing the conduct of civil servants) prohibits public officials from divulging even information that is not confidential.

Establishments Code of the Democratic Socialist Republic of Sri Lanka
Volume 1
Issued by the Secretary to the Ministry of Public Administration under the authority of the Cabinet of Ministers
(1985)
Department of Government Printing, Sri Lanka

Interview with Sunanda Deshapriya
Convenor of the Free Media Movement
Member of the Editors' Guild of Sri Lanka
Journalist
Editor of the Sinhala newspaper "Yukthiya" (ceased publication in 2000)
Nov. 3, 2007
Colombo, Sri Lanka

YES: A YES score is earned if there is a formal right to access government documents, including constitutional guarantees. Exceptions can be made for national security reasons or individual privacy, but they should be limited in scope. All other government documents should be available upon a public request.

NO: A NO score is earned if there is no such right.

12b. In law, citizens have a right of appeal if access to a basic government record is denied.

YES | NO

References:

Citizens have no right of appeal if access to a basic government record is denied.

YES: A YES score is earned if there is a formal process of appeal for rejected information requests. A YES score can still be earned if the appeals process involves redress through the courts rather than administrative appeal.

NO: A NO score is earned if there is no such formal process.

12c. In law, there is an established institutional mechanism through which citizens can request government records.

YES | NO

Comments:

The Freedom of Information Bill (2004) contemplated the establishment of an Information Commission to facilitate access, to act as an appeals body, and to undertake training and development with respect to the Act's freedom of information regime. The Commission, comprised of representative persons of eminence, was to have independent constitutional standing under the 17th Amendment framework and would have been nominated for appointment by the Constitutional Council. However, this draft law has never been enacted.

References:

There is no Freedom of Information Act and, therefore, no established institutional mechanism to facilitate access to information.

YES: A YES score is earned if there is a formal government mechanism/institution through which citizens can access government records available under freedom of information laws. This mechanism could be a government office (or offices within agencies or ministries) or an electronic request system.

NO: A NO score is earned if there is no such formal mechanism or institution.

13. Is the right of access to information effective?

10

13a. In practice, citizens receive responses to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Several government and public institutions have gone online during the last few years, although many of these Web sites are more about institutional identity than as a means of accessing information. Moreover, Sri Lanka is a low-connectivity country in which only a minority of the population has access to or is in the habit of using the Internet for this purpose. In the absence of a legal right to access information, access remains largely ad hoc, informal and dependent on officials' attitude to openness.

References:

Interview with Dr. Paikiasothy Saravanamuttu
Executive Director
Centre for Policy Alternatives
Sept. 10, 2007
Colombo, Sri Lanka

Interview with Sunanda Deshapriya
Convenor of the Free Media Movement
Member of the Editors' Guild of Sri Lanka
Journalist
Editor of the Sinhala newspaper Yukthiya" (ceased publication in 2000)
Sept. 12, 2007
Colombo, Sri Lanka

Existing research material at the Legal & Constitutional Unit
Centre for Policy Alternatives
Colombo, Sri Lanka

100: Records are available on-line, or records can be obtained within two weeks. Records are uniformly available; there are no delays for politically sensitive information. Legitimate exceptions are allowed for sensitive national security-related information.

75:

50: Records take around one to two months to obtain. Some additional delays may be experienced. Politically-sensitive information may be withheld without sufficient justification.

25:

0: Records take more than four months to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records. National security exemptions may be abused to avoid disclosure of government information.

13b. In practice, citizens can use the access to information mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Paikiasothy Saravanamuttu
Executive Director
Centre for Policy Alternatives
Sept. 10, 2007
Colombo, Sri Lanka

Interview with Sunanda Deshapriya
Convenor of the Free Media Movement
Member of the Editors' Guild of Sri Lanka
Journalist
Editor of the Sinhala newspaper Yukthiya" (ceased publication in 2000)
Sept. 12, 2007
Colombo, Sri Lanka

Existing research material at the Legal & Constitutional Unit
Centre for Policy Alternatives
Colombo, Sri Lanka

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

13c. In practice, citizens can resolve appeals to access to information requests within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

There is no right-to-information legislation or other legal framework to access information, and, consequently, there is no appeals process.

References:

Interview with Dr. Paikiasothy Saravanamuttu

Executive Director
Centre for Policy Alternatives
Sept. 10, 2007
Colombo, Sri Lanka

Interview with Sunanda Deshapriya
Convenor of the Free Media Movement
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Colombo, Sri Lanka

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Colombo, Sri Lanka

100: The agency/entity acts on appeals quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: The agency/entity acts on appeals quickly but with some exceptions. Some appeals may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity does not resolve appeals in a timely fashion quickly. Appeals may be unacknowledged for many months and simple issues may take more than three months to resolve.

13d. In practice, citizens can resolve appeals to information requests at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Paikiasothy Saravanamuttu
Executive Director
Centre for Policy Alternatives
Sept. 10, 2007
Colombo, Sri Lanka

Interview with Sunanda Deshapriya
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Member of the Editors' Guild of Sri Lanka
Journalist
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Centre for Policy Alternatives
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100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge an access to information determination.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge an access to information determination.

25:

0: The prohibitive cost of utilizing the access to information appeals mechanism prevents middle class citizens from challenging access to information determinations.

13e. In practice, the government gives reasons for denying an information request.

100 | 75 | 50 | 25 | 0

Comments:

In the absence of a legal right, the government is under no obligation to give reasons and is not in the habit of offering explanations for public decisions.

References:

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Colombo, Sri Lanka

100: The government always discloses to the requestor the specific, formal reasons for denying information requests.

75:

50: The government usually discloses reasons for denying an information request to the requestor, with some exceptions. The reasons may be vague or difficult to obtain.

25:

0: The government does not regularly give reasons for denying an information request to the requestor.

Category II. Elections

II-1. ⁵⁵ Voting & Citizen Participation

14. Is there a legal framework guaranteeing the right to vote?

100

14a. In law, universal and equal adult suffrage is guaranteed to all citizens.

YES | NO

Comments:

Sri Lanka is one of Asia's oldest procedural democracies, having established universal franchise since the Donoughmore Constitution of 1931. However, both the substantive and procedural dimensions of democracy are problematic.

For a qualitative assessment, see http://www.democracy-asia.org/qa_assessmentpapers_srilanka.htm.

For information about election-related violence and malpractice, see http://www.cpalanka.org/election_monitoring.html (since 1997)

References:

Article 4(e) of the Constitution provides that the sovereignty of the people may be exercised in elections for the President of the Republic, Parliament and at referenda by qualified and registered citizens. Chapter XIV of the Constitution (Franchise and Elections) further sets out the framework for the exercise of the franchise, including franchise rights, disqualifications to be an elector, the requirements of candidates contesting public office, the system of proportional representation and the mechanisms for the administration of elections.

YES: A YES score is earned if the right to vote is guaranteed to all citizens of the country (basic age limitations are allowed). A YES score can still be earned if voting procedures are, in practice, inconvenient or unfair.

NO: A NO score is earned if suffrage is denied by law to any group of adult citizens for any reason. Citizen is defined broadly, to include all ethnicities, or anyone born in the country. A NO score is earned if homeless or impoverished people are legally prohibited from voting.

14b. In law, there is a legal framework requiring that elections be held at regular intervals.

YES | NO

Comments:

See also R. Edrisinha & S. de Alwis (2000) The Right to Vote and the Law Relating to Election Petitions Colombo: Centre for Policy Alternatives

References:

Chapter XIV of the Constitution (Franchise and Elections), Chapter XIII of the Constitution (The Referendum), Parliamentary Elections Act No. 1 of 1981 as amended, Elections (Special Provisions) Act No. 14 of 2004, Presidential Elections Act No. 15 of 1981 as amended, Provincial Councils Elections Act No. 2 of 1988 as amended, Local Authorities Elections Ordinance No. 53 of 1946 as amended. Referendum Act No. 7 of 1981

YES: A YES score is earned if there is a statutory or other framework enshrined in law that mandates elections at reasonable intervals.

NO: A NO score is earned if no such framework exists.

15. Can all citizens exercise their right to vote?

67

15a. In practice, all adult citizens can vote.

100 | 75 | 50 | 25 | 0

Comments:

The right to vote is legally and constitutionally guaranteed, and is politically well-entrenched within the electorate. However, election-related violence and malpractice can be widespread. One of the more insidious examples of this was when voters were prevented en masse from exercising their right in the presidential election of 2005: The Liberation Tigers of Tamil Eelam prevented electors of the areas under its control in the northern and eastern provinces from voting.

For more information on all elections (local government, provincial, parliamentary and presidential) since 1997, see the interim and final reports of the Centre for Monitoring Election Violence, the more recent of which are available at http://www.cpalanka.org/election_monitoring.html.

References:

Interview with Dr. Paikiasothy Saravanamuttu
Executive Director
Centre for Policy Alternatives
Sept. 10, 2007
Colombo, Sri Lanka

Interview with Sunanda Deshapriya
Convenor of the Free Media Movement
Member of the Editors' Guild of Sri Lanka
Journalist
Editor of the Sinhala newspaper "Yukthiya" (ceased publication in 2000)
Sept. 12, 2007
Colombo, Sri Lanka

Documents of the Centre for Monitoring Election Violence
Colombo, Sri Lanka
Available at http://www.cpalanka.org/election_monitoring.html

100: Voting is open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers.

75:

50: Voting is often open to all citizens regardless of race, gender, prior political affiliations, physical disability, or other traditional barriers, with some exceptions.

25:

0: Voting is not available to some demographics through some form of official or unofficial pressure. Voting may be too dangerous, expensive, or difficult for many people.

15b. In practice, ballots are secret or equivalently protected.

100 | 75 | 50 | 25 | 0

Comments:

Ballots are legally required to be equal and secret, but recurring problems have been impersonation and malpractices at polling and counting centers.

References:

Interview with Dr. Paikiasothy Saravanamuttu
Executive Director
Centre for Policy Alternatives
Sept. 10, 2007
Colombo, Sri Lanka

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Member of the Editors' Guild of Sri Lanka
Journalist
Sept. 12, 2007
Colombo, Sri Lanka

Documents of the Centre for Monitoring Election Violence
Colombo, Sri Lanka
Available at http://www.cpalanka.org/election_monitoring.html

100: Ballots are secret, or there is a functional equivalent protection, in all cases.

75:

50: Ballots are secret, or there is a functional equivalent protection, in most cases. Some exceptions to this practice have occurred. Ballots may be subject to tampering during transport or counting.

25:

0: Ballot preferences are not secret. Ballots are routinely tampered with during transport and counting.

15c. In practice, elections are held according to a regular schedule.

100 | 75 | 50 | 25 | 0

Comments:

Generally, elections are regularly held, although some local government and provincial elections have been postponed. Upon the application of civil society organizations (CSOs) and representatives, the Supreme Court has intervened in compelling the Election Commissioner to hold certain elections in the past. In the conflict affecting the northern and eastern provinces, however, the holding of elections has been more problematic. Voters in uncleared areas" [i.e., those under the control of the Liberation Tigers of Tamil Eelam (LTTE)] have been regularly deprived of their right to vote due to logistical issues, as well as security-related impediments. Both the government security forces and the LTTE have been involved in practices that hinder the right to vote.

References:

Interview with Dr. Paikiasothy Saravanamuttu
Executive Director
Centre for Policy Alternatives
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Colombo, Sri Lanka

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Editor of the Sinhala newspaper "Yukthiya" (ceased publication in 2000)
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Colombo, Sri Lanka

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Colombo, Sri Lanka
Available at http://www.cpalanka.org/election_monitoring.html

100: Elections are always held according to a regular schedule, or there is a formal democratic process for calling a new election, with deadlines for mandatory elections.

75:

50: Elections are normally held according to a regular schedule, but there have been recent exceptions. The formal process for calling a new election may be flawed or abused.

25:

0: Elections are called arbitrarily by the government. There is no functioning schedule or deadline for new elections.

16. Are citizens able to participate equally in the political process?

90

16a. In law, all citizens have a right to form political parties.

YES | NO

Comments:

Legally, the formal requirements for the formation of a political party are minimal.

References:

Article 14(1)(c) of the Constitution guarantees the freedom of association, which includes the formation of political parties. The recognition of political parties is governed by Section 7 of Parliamentary Elections Act No.1 of 1981.

YES: A YES score is earned if citizens have the right to form political parties without interference from government. A YES score may still be earned if groups or individuals with a history of violence or terrorism (within last ten years) are banned from forming political parties. Non-discriminatory minimal criteria (e.g. minimum age) are also allowed.

NO: A NO score is earned if there are any legal or regulatory restrictions or prohibitions barring any types of political parties from being formed.

16b. In law, all citizens have a right to run for political office.

YES | NO

References:

Article 14(1)(a) of the Constitution, which guarantees the freedom of speech and expression, has been repeatedly interpreted by the Supreme Court as including a broader right of political participation, including the right to vote in competitive and multiparty elections, and to stand for political office.

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) have the right under law to run for political office. A YES score may still be earned if Individuals with a history of violence, terrorism, or criminality are banned from running for office.

NO: A NO score is earned if there are any legal restrictions barring certain individuals or groups from running for political office.

16c. In practice, all citizens are able to form political parties.

100 | 75 | 50 | 25 | 0

Comments:

Generally, citizens are free to form political parties, and formal requirements are easily met. A significant legal impediment to the formation of political parties is the Sixth Amendment to the Constitution (1983), which outlaws even the peaceful advocacy of secession. Consequently, political parties which seek to establish a separate state in the territory of the republic are barred from any elected political office and their members are liable to face property forfeiture.

References:

Interview with Dr. Paikiasothy Saravanamuttu
Executive Director
Centre for Policy Alternatives
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Colombo, Sri Lanka

Interview with Sunanda Deshapriya
Convenor of the Free Media Movement
Member of the Editors' Guild of Sri Lanka
Journalist
Editor of the Sinhala newspaper Yukthiya" (ceased publication in 2000)
Sept. 12, 2007
Colombo, Sri Lanka

Existing research and material at the Legal & Constitutional Unit
Centre for Policy Alternatives
Colombo, Sri Lanka

100: While there is no guarantee of electoral success, political parties can form freely without opposition.

75:

50: Some barriers to formation are present, such as burdensome registration requirements that may not be fairly applied. Some parties' political viewpoints may draw pressure from the government, such as surveillance or intimidation. Some political parties or organizations may have extra barriers to getting on a ballot.

25:

0: Some political parties are effectively barred from forming through some manner of official or unofficial pressure. This may include threats, arrest, or violence from competing parties or other groups.

16d. In practice, all citizens can run for political office.

100 | 75 | 50 | 25 | 0

Comments:

The system of proportional representation in Sri Lanka, the territorial unit of which is a large electoral district (as opposed to the smaller constituency that was the unit of representation in earlier first past the post" electoral system), is seen in some quarters as imposing higher costs on candidates. This has not, however, dissuaded many from running for political office. Some have also argued that the relatively higher costs of elections contribute to corruption; see the third reference.

References:

Interview with Dr. Paikiasothy Saravanamuttu
Executive Director
Centre for Policy Alternatives
Sept. 10, 2007
Colombo, Sri Lanka

Interview with Sunanda Deshapriya
Convenor of the Free Media Movement
Member of the Editors' Guild of Sri Lanka
Journalist
Editor of the Sinhala newspaper Yukthiya" (ceased publication in 2000)
Sept. 12, 2007
Colombo, Sri Lanka

USAID
(2006)
Anti-Corruption Needs Assessment in Sri Lanka

See also <http://www.ard-acp.com/more.php>.

100: While there is no guarantee of electoral success, anyone can run for office under transparent and equitable guidelines. There is a formal process for access to the ballot which is fairly applied. The costs of running a campaign are reasonable and do not deter candidates from entering a race.

75:

50: Some barriers exist to getting on the ballot and bureaucratic or regulatory requirements for doing so may be unfairly applied. The costs of running a political campaign are significant and result in dissuading some candidates from running for office.

25:

0: Citizens can effectively be barred from the ballot through government abuse of official rules and/or unofficial pressure. The costs of running a campaign are extremely high and result in most average citizens being unable to run an effective campaign for office.

16e. In practice, an opposition party is represented in the legislature.

100 | 75 | 50 | 25 | 0

Comments:

Standing Order of Parliament allows private members and the opposition to introduce legislation and to participate in the committee system of Parliament. Enactment of legislation, however, depends on securing a majority in Parliament.

References:

Interview with Dr. Paikiasothy Saravanamuttu

100: The opposition party always has some influence on the proceedings of the legislature. The opposition party can introduce legislation or bring pending matters to a vote without the consent of the ruling party.

75:

50: The opposition party has influence on the proceeding of the legislature, but it is limited in scope. The opposition's ability to force votes or publicly debate certain topics may be limited.

25:

0: The opposition party has only token participation in the legislature's proceedings and cannot advance legislation or force a debate.

II-2. Election Integrity

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

100

17. In law, is there an election monitoring agency or set of election monitoring agencies/entities?

YES | NO

Comments:

Chapter XIV A of the Constitution was introduced by the Seventeenth Amendment to the Constitution in 2001 to establish (among other things) an independent Election Commission. This replaced the office of the Commissioner of Elections, which had hitherto administered elections. The new Election Commission was designed to be a more independent and powerful body. However, the entire framework has been rendered a dead-letter due to political intransigence from its inception, and the Election Commission has never been appointed. A savings clause (Section 27 of the Seventeenth Amendment Act) allows the person holding the office of Commissioner of Elections immediately prior to the enactment of the Seventeenth Amendment to continue in office and to exercise the powers of the Elections Commission until such time as the latter is appointed. It is under this provision that Dayananda Dissanayake, the Commissioner of Elections, has administered elections since 2001 and also has exercised the new powers.

References:

The Election Commission, established under Chapter XIV A of the Constitution. (See also Competent Authority (Powers and Functions) Act No.3 of 2002.)

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to ensure the integrity of the election process.

NO: A NO score is earned if no domestic agency or set of domestic agencies/entities that monitors elections. A NO score is earned if elections are only monitored by an agency informally, such as poll booth monitoring by the police, only by international observers, or only by NGOs. A NO score is earned if the domestic election agency or set of domestic agencies simply facilitates the process of voting but is not empowered to report violations or abuses.

18. Is the election monitoring agency effective?

70

18a. In law, the agency or set of agencies/entities is protected from political interference.

YES | NO

References:

Article 103(3) of the Constitution prohibits members of the Election Commission from holding any political or judicial office, or from entering into any employment with the state. Article 104(a) provides immunity from suit and finality of decisions (subject to judicial review); and Article 104(b)(2) imposes a duty on all authorities of the state to cooperate with and assist the commission in the discharge of its powers and functions.

YES: A YES score is earned only if the agency or set of agencies/entities has some formal organizational independence from the bodies contesting in the election. A YES score is still earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the election monitoring agency or set of agencies/entities is legally tied to bodies contesting the election (i.e. an executive branch agency such as the Interior Ministry, or a committee of the legislature). A NO score is automatically earned if there is no domestic election monitoring agency.

18b. In practice, agency (or set of agencies/entities) appointments are made that support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

The Seventeenth Amendment was expressly intended to depoliticize appointments and make independent the operation of key institutions, chief among them the administration of elections. That the Election Commission has never been constituted because of the refusal of the President(s) to appoint independent persons nominated by the Constitutional Council. In practice, therefore, the non-appointment of the Election Commission demonstrates the lack of cooperation and support on the part of the elected chief executive with regard to an independent Election Commission.

References:

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Executive Director
Centre for Policy Alternatives
Sept. 10, 2007
Colombo, Sri Lanka

Interview with Sunanda Deshapriya
Convener of the Free Media Movement
Member of the Editors' Guild of Sri Lanka
Journalist
Editor of the Sinhala newspaper "Yukthiya" (ceased publication in 2000)
Sept. 12, 2007
Colombo, Sri Lanka

Interview with Rohan Edrisinha
Senior Lecturer
Faculty of Law
University of Colombo
Sept. 10, 2007

Existing research and materials at the Legal & Constitutional Unit
Centre for Policy Alternatives
Colombo, Sri Lanka

100: Appointments to the agency or set of agencies/entities are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. However, individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

18c. In practice, the agency or set of agencies/entities has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Paikiasothy Saravanamuttu
Executive Director
Centre for Policy Alternatives
Sept. 10, 2007
Colombo, Sri Lanka

Interview with Sunanda Deshapriya
Convenor of the Free Media Movement
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University of Colombo
Sept. 10, 2007

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Colombo, Sri Lanka

100: The agency or set of agencies/entities has staff sufficient to fulfill its basic mandate.

75:

50: The agency or set of agencies/entities has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency or set of agencies/entities has no staff, or such a limited staff that is clearly unqualified to fulfill its mandate.

18d. In practice, the agency or set of agencies/entities makes timely, publicly available reports following an election cycle.

100 | 75 | 50 | 25 | 0

Comments:

The Commissioner of Elections publishes a report at the end of each election. During elections, his office also has operated a Web site on which election-related information is published. Between election cycles, however, the Web site is unavailable.

References:

Interview with Dr. Paikiasothy Saravanamuttu
Executive Director
Centre for Policy Alternatives
Sept. 10, 2007
Colombo, Sri Lanka

See also documents of the Centre for Monitoring Election Violence at http://www.cpalanka.org/election_monitoring.html

100: Reports are released to the public on a predictable schedule, without exceptions.

75:

50: Reports are released, but may be delayed, difficult to access, or otherwise limited.

25:

0: The agency or set of agencies/entities makes no public reports, issues reports which are effectively secret, or issues reports of no value.

18e. In practice, when necessary, the agency or set of agencies/entities imposes penalties on offenders.

100 | 75 | **50** | 25 | 0

Comments:

The Commissioner of Elections has, on occasion, sought to enforce his decisions through the courts. Apart from the annulment of results, this has occurred in relation to the exercise of his powers to issue guidelines to ensure fair and balanced coverage by some state-media institutions, and also to appoint a Competent Authority to manage the relevant programs if the guidelines are violated. This happened in the run-up to the general elections of April 2004.

For a discussion, see
A. Welikala
2005
The Right to Vote in 2004
LST State of Human Rights 2005
Colombo: Law & Society Trust

References:

Interview with Dr. Paikiasothy Saravanamuttu
Executive Director
Centre for Policy Alternatives
Sept. 10, 2007
Colombo, Sri Lanka

See also documents of the Centre for Monitoring Election Violence at http://www.cpalanka.org/election_monitoring.html

100: When rules violations are discovered, the agency or set of agencies/entities is aggressive in penalizing offenders and/or in cooperating with other agencies in penalizing offenders.

75:

50: The agency or set of agencies/entities enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency or set of agencies/entities does not effectively penalize offenders and/or cooperate with other agencies in penalizing offenders. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

19. Are elections systems transparent and effective?

67

19a. In practice, there is a clear and transparent system of voter registration.

100 | 75 | **50** | 25 | 0

Comments:

In general, voter registration happens in time for elections. However, the Commissioner of Elections has called for voting to be allowed upon the production of the National Identity Card, which has not yet been allowed.

References:

Interview with Dr. Paikiasothy Saravanamuttu
Executive Director
Centre for Policy Alternatives
Sept. 10, 2007
Colombo, Sri Lanka

See also documents of the Centre for Monitoring Election Violence at http://www.cpalanka.org/election_monitoring.html

100: There is a transparent system of voter registration that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote.

75:

50: There is a transparent voter registration system that provides voters with sufficient time to understand their rights, check the accuracy of their registration, and ensure that errors are corrected before they vote but there are some problems. Voters may have not access to registration lists with sufficient time to correct errors before voting or registration lists may at times be inaccessible.

25:

0: The system of voter registration is incomplete or does not exist. Government may routinely falsify registration lists to affect voting patterns and limit access to the polls. Double voting and ghost" voting by non-existent voters is common.

19b. In law, election results can be contested through the judicial system.

YES | NO

References:

Sections 92-111 of the Parliament Elections Act No.1 of 1981 (as amended) provides a detailed framework with regard to parliamentary election petitions. (See also Articles 130 and 144 of the Constitution with regard to the original and appellate jurisdictions of the Supreme Court and the Court of Appeal, respectively, in the matter of election petitions.) Sections 91-105 of the Presidential Elections Act No. 15 of 1981 (as amended) provide a similar framework with respect to presidential elections. (See also Article 130 of the Constitution, which provides for original jurisdiction of the Supreme Court in presidential election petitions). Sections 92 -108 of the Provincial Councils Elections Act No. 2 of 1988 (as amended) provide the framework for petitions with respect to elections to Provincial Councils. The Local Authorities Elections Ordinance (see Consolidated Act No. 598 of 1981) provides the framework for petition with respect to elections of all types of local government bodies.

YES: A YES score is earned if citizens or political parties can challenge allegedly fraudulent election results through the courts or other judicial mechanisms.

NO: A NO score is earned if there is no legal right for citizens or political parties to challenge allegedly fraudulent election results in the courts or other judicial mechanisms.

19c. In practice, election results can be effectively appealed through the judicial system.

100 | 75 | 50 | 25 | 0

References:

See R. Edrisinha & S. de Alwis
2000
The Right to Vote and the Law Relating to Election Petitions
Colombo: Centre for Policy Alternatives

Sections 92-111 of the Parliament Elections Act No.1 of 1981 (as amended) provides a detailed framework with regard to parliamentary election petitions. (See also Articles 130 and 144 of the Constitution with regard to the original and appellate jurisdictions of the Supreme Court and the Court of Appeal, respectively, in the matter of election petitions.) Sections 91-105 of the Presidential Elections Act No. 15 of 1981 (as amended) provide a similar framework with respect to presidential elections. (See also Article 130 of the Constitution, which provides for original jurisdiction of the Supreme Court in presidential election

petitions). Sections 92 -108 of the Provincial Councils Elections Act No. 2 of 1988 (as amended) provide the framework for petitions with respect to elections to Provincial Councils. The Local Authorities Elections Ordinance (see Consolidated Act No. 598 of 1981) provides the framework for petition with respect to elections of all types of local government bodies.

100: The electoral appeals mechanism takes cases from both candidates complaining of flaws in the electoral process as well as citizens bringing complaints related to denial of suffrage or registration errors. There is an expedited process for resolving such complaints to avoid delaying a timely announcement of electoral results.

75:

50: The electoral appeals mechanism takes complaints from both candidates and voters but may not always act on complaints promptly. The appeals mechanism may be abused at times by parties or candidates seeking to delay the announcement of electoral results.

25:

0: The electoral appeals mechanism rarely or never acts on complaints brought by candidates or citizens. Citizens may not be able to bring complaints related to denial of suffrage or voter registration errors.

19d. In practice, the military and security forces remain neutral during elections.

100 | 75 | **50** | 25 | 0

Comments:

The military and police have not intervened to decide the outcome of an election in Sri Lanka. But police and military officers have been used by government party candidates in election malpractices (see Centre for Monitoring Election Violence report), and allegations of political bias are common.

References:

Interview with Dr. Paikiasothy Saravanamuttu
Executive Director
Centre for Policy Alternatives
Sept. 10, 2007
Colombo, Sri Lanka

See also documents of the Centre for Monitoring Election Violence at http://www.cpalanka.org/election_monitoring.html.

100: The military, military officers, and other security forces refrain from overtly supporting or opposing political candidates or commenting on elections. The military or security forces refrain from physically interfering with political campaigns, rallies, or voting.

75:

50: The military, military officers, and security forces may be known to unofficially support or oppose particular candidates or parties. The military or security forces generally refrain from the use of force to support or oppose particular candidates or parties but there are exceptions.

25:

0: The military or other security forces are an active and explicit player in politics and overtly support or oppose particular candidates or parties. The military or security forces routinely exercise the use of force to support or oppose parties or candidates.

19e. In law, domestic and international election observers are allowed to monitor elections.

YES | NO

Comments:

The elections law does not prohibit domestic and international observers from monitoring elections. International and civil society monitoring by the European Union and local organizations have been a feature of elections for more than a decade. Local organizations include the Peoples' Action for Free and Fair Elections and the Centre for Monitoring Election Violence. The Commissioner of Elections has, in general, extended his cooperation, and has, since the general election of Dec. 5, 2001, allowed independent observers access to polling centers but not to counting centers.

References:

See documents of the Centre for Monitoring Election Violence at http://www.cpalanka.org/election_monitoring.html.

YES: A YES score is earned if domestic and international election observers are allowed to monitor the electoral process.

NO: A NO score is earned if there are any legal or regulatory prohibitions on the monitoring of the electoral process by domestic or international election observers.

19f. In practice, election observers are able to effectively monitor elections.

100 | 75 | **50** | 25 | 0

Comments:

The elections law does not prohibit domestic and international observers from monitoring elections. International and civil society monitoring by the European Union and local organizations have been a feature of elections for more than a decade. Local organizations include the Peoples' Action for Free and Fair Elections and the Centre for Monitoring Election Violence. The Commissioner of Elections has, in general, extended his cooperation, and has, since the general election of Dec. 5, 2001, allowed independent observers access to polling centers but not to counting centers.

References:

Interview with Dr. Paikiasothy Saravanamuttu
Executive Director
Centre for Policy Alternatives
Sept. 10, 2007
Colombo, Sri Lanka

Documents of the Centre for Monitoring Election Violence at http://www.cpalanka.org/election_monitoring.html.

100: Election observers have unfettered access to polling sites, counting stations, and voters themselves. The government does not interfere with the observers' activities.

75:

50: Election observers generally have access to polling sites, counting stations, and voters but encounter restrictions in certain areas. The government may impose burdensome regulatory or bureaucratic requirements on observers to discourage their involvement.

25:

0: Election observers' movements are significantly limited by the government and many polling and counting sites are restricted or barred from observers. The government imposes so many bureaucratic or regulatory burdens on the observers that their mission is rendered ineffective.

79
II-3. Political Financing

20. Are there regulations governing political financing?

0

20a. In law, there are regulations governing private contributions to political parties.

YES | NO

References:

There are no laws governing this activity in Sri Lanka.

Centre for Policy Alternatives and Transparency International
2003
National Integrity Systems
Sri Lanka Questionnaire
http://www.cpalanka.org/research_papers/TI_Questionnaire.pdf

Centre for Policy Alternatives and Transparency International
2003
National Integrity Systems Country Study Report http://www.cpalanka.org/research_papers/TI_Country_Study_Report.pdf

Centre for Policy Alternatives International IDEA
2006
Sri Lanka Country Report on political parties(based on research and dialogues with political parties)
<http://www.idea.int/parties/upload/SriLankaCountryReport.pdf>

YES: A YES score is earned if there are any formal rules (by law or regulation) controlling private contributions to political parties.

NO: A NO score is earned if there is no regulation of private contributions to political parties.

20b. In law, there are limits on individual donations to candidates and political parties.

YES | NO

References:

There are no laws governing this activity in Sri Lanka.

Centre for Policy Alternatives and Transparency International
2003
National Integrity Systems
Sri Lanka Questionnaire
http://www.cpalanka.org/research_papers/TI_Questionnaire.pdf

Centre for Policy Alternatives and Transparency International
2003
National Integrity Systems Country Study Report http://www.cpalanka.org/research_papers/TI_Country_Study_Report.pdf

Centre for Policy Alternatives International IDEA
2006
Sri Lanka Country Report on political parties(based on research and dialogues with political parties)
<http://www.idea.int/parties/upload/SriLankaCountryReport.pdf>

YES: A YES score is earned if there are any limits, regardless of size, on individual contributions to political candidates and political parties. A YES score is earned if individual contributions are prohibited.

NO: A NO score is earned if there are no limits on contributions from individuals. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20c. In law, there are limits on corporate donations to candidates and political parties.

YES | NO

References:

There are no laws governing this activity in Sri Lanka.

Centre for Policy Alternatives and Transparency International
2003
National Integrity Systems
Sri Lanka Questionnaire
http://www.cpalanka.org/research_papers/TI_Questionnaire.pdf

Centre for Policy Alternatives and Transparency International
2003
National Integrity Systems Country Study Report http://www.cpalanka.org/research_papers/TI_Country_Study_Report.pdf

Centre for Policy Alternatives International IDEA
2006
Sri Lanka Country Report on political parties(based on research and dialogues with political parties)
<http://www.idea.int/parties/upload/SriLankaCountryReport.pdf>

YES: A YES score is earned if there are any limits, regardless of size, on corporate contributions to political candidates and political parties. A YES score is earned if contributions are prohibited.

NO: A NO score is earned if there are no limits on corporate contributions to candidates or political parties. A NO score is also earned if limits are applied by the government on opposition parties/candidates in a discriminatory manner.

20d. In law, there are limits on total political party expenditures.

YES | NO

References:

There are no laws governing this activity in Sri Lanka.

Centre for Policy Alternatives and Transparency International
2003
National Integrity Systems
Sri Lanka Questionnaire
http://www.cpalanka.org/research_papers/TI_Questionnaire.pdf

Centre for Policy Alternatives and Transparency International
2003
National Integrity Systems Country Study Report http://www.cpalanka.org/research_papers/TI_Country_Study_Report.pdf

Centre for Policy Alternatives International IDEA
2006
Sri Lanka Country Report on political parties(based on research and dialogues with political parties)
<http://www.idea.int/parties/upload/SriLankaCountryReport.pdf>

YES: A YES score is earned if there are any limits, regardless of size, on political party expenditures. A YES score is earned if all party expenditures are prohibited.

NO: A NO score is earned if there are no limits on political party expenditures. A NO score is also earned if limits are applied by the government on opposition parties in a discriminatory manner.

20e. In law, there are requirements for disclosure of donations to political candidates and parties.

YES | NO

References:

There are no laws governing this activity in Sri Lanka.

Centre for Policy Alternatives and Transparency International
2003
National Integrity Systems
Sri Lanka Questionnaire
http://www.cpalanka.org/research_papers/TI_Questionnaire.pdf

Centre for Policy Alternatives and Transparency International
2003
National Integrity Systems Country Study Report http://www.cpalanka.org/research_papers/TI_Country_Study_Report.pdf

Centre for Policy Alternatives International IDEA
2006
Sri Lanka Country Report on political parties(based on research and dialogues with political parties)
<http://www.idea.int/parties/upload/SriLankaCountryReport.pdf>

YES: A YES score is earned if there are any requirements mandating the disclosure of financial contributions to political parties or candidates.

NO: A NO score is earned if there are no requirements mandating the disclosure of contributions to political parties or candidates, existing regulations do not require a donor's name or amount given, or the regulations allow for anonymous donations.

20f. In law, there are requirements for the independent auditing of the finances of political parties and candidates.

YES | NO

References:

There are no laws governing this activity in Sri Lanka.

Centre for Policy Alternatives and Transparency International
2003
National Integrity Systems
Sri Lanka Questionnaire
http://www.cpalanka.org/research_papers/TI_Questionnaire.pdf

Centre for Policy Alternatives and Transparency International
2003
National Integrity Systems Country Study Report http://www.cpalanka.org/research_papers/TI_Country_Study_Report.pdf

Centre for Policy Alternatives International IDEA
2006
Sri Lanka Country Report on political parties(based on research and dialogues with political parties)
<http://www.idea.int/parties/upload/SriLankaCountryReport.pdf>

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of candidate and party finances. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of political parties and candidates or if such requirements exist but allow for candidates or parties to self-audit.

20g. In law, there is an agency or entity that monitors the political financing process.

YES | NO

References:

There are no laws governing this activity in Sri Lanka.

Centre for Policy Alternatives and Transparency International
2003
National Integrity Systems

YES: A YES score is earned if there is a domestic agency or set of domestic agencies/entities formally assigned to monitor and enforce laws and regulations around political financing. A YES score is earned even if the agency/entity is ineffective in practice.

NO: A NO score is earned if there is no such agency or entity.

21. Are the regulations governing political financing effective?

0

21a. In practice, the limits on individual donations to candidates and political parties are effective in regulating an individual's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

References:

There are no laws governing this activity in Sri Lanka.

100: Existing limits represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign.

75:

50: Existing limits generally represent the full extent to which an individual can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which individuals can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The vast majority of individual contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21b. In practice, the limits on corporate donations to candidates and political parties are effective in regulating a company's ability to financially support a candidate or political party.

100 | 75 | 50 | 25 | 0

References:

There are no laws governing this activity in Sri Lanka.

Centre for Policy Alternatives and Transparency International
2003
National Integrity Systems
Sri Lanka Questionnaire
http://www.cpalanka.org/research_papers/TI_Questionnaire.pdf

Centre for Policy Alternatives and Transparency International
2003
National Integrity Systems Country Study Report http://www.cpalanka.org/research_papers/TI_Country_Study_Report.pdf

Centre for Policy Alternatives International IDEA
2006
Sri Lanka Country Report on political parties(based on research and dialogues with political parties)
<http://www.idea.int/parties/upload/SriLankaCountryReport.pdf>

100: Existing limits represent the full extent to which a company can directly or indirectly financially support a candidate or political party. Limits are reasonably low enough in the context of the total costs of running a campaign to be meaningful.

75:

50: Existing limits generally represent the full extent to which a company can directly or indirectly financially support a candidate or political party. However, exceptions and loopholes exist through which companies can indirectly support candidates or political parties above and beyond those formal limitations. Such loopholes could include making to donations to third-party groups that advocate on behalf of (or against) a particular candidate or party; unregulated loans to candidates or parties (rather than direct donations); or in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a campaign.

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of corporate contributions to a candidate or political party are made outside of the formal limitation system. There is no enforcement of violations. Limits are so high that they are meaningless in the context of the overall costs of running a campaign.

21c. In practice, the limits on total party expenditures are effective in regulating a political party's ability to fund campaigns or politically-related activities.

100 | 75 | 50 | 25 | 0

References:

There are no laws governing this activity in Sri Lanka.

Centre for Policy Alternatives and Transparency International
2003
National Integrity Systems
Sri Lanka Questionnaire
http://www.cpalanka.org/research_papers/TI_Questionnaire.pdf

Centre for Policy Alternatives and Transparency International
2003
National Integrity Systems Country Study Report http://www.cpalanka.org/research_papers/TI_Country_Study_Report.pdf

Centre for Policy Alternatives International IDEA
2006
Sri Lanka Country Report on political parties(based on research and dialogues with political parties)
<http://www.idea.int/parties/upload/SriLankaCountryReport.pdf>

100: Existing limits represent the full extent to which political parties are able to finance their activities. Limits are reasonably low enough in the context of the total costs of running a party to be meaningful.

75:

50: Existing limits generally represent the full extent to which a political party can finance its activities. However, exceptions and loopholes exist through which parties can generate revenue or finance their activities beyond the scope of existing regulations. Such loopholes could include taking loans that are outside of the scope of regulations covering direct donations; links to revenue-generating business activities that are beyond the scope of electoral or campaign-related regulations; or accepting in-kind support that is not explicitly regulated by laws or regulations. The limits may be too high in the context of the overall costs of running a party

25:

0: Existing limits are routinely bypassed or willfully ignored. The majority of expenditures are made outside of the formal limitation system. Limits are so high that they are meaningless in the context of the overall costs of running a party.

21d. In practice, when necessary, an agency or entity monitoring political financing independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

There are no laws governing this activity in Sri Lanka.

Centre for Policy Alternatives and Transparency International
2003
National Integrity Systems
Sri Lanka Questionnaire
http://www.cpalanka.org/research_papers/TI_Questionnaire.pdf

Centre for Policy Alternatives and Transparency International
2003
National Integrity Systems Country Study Report http://www.cpalanka.org/research_papers/TI_Country_Study_Report.pdf

Centre for Policy Alternatives International IDEA
2006
Sri Lanka Country Report on political parties(based on research and dialogues with political parties)
<http://www.idea.int/parties/upload/SriLankaCountryReport.pdf>

100: The agency or entity aggressively starts investigations into allegations of wrong doing with respect to political financing. The agency is fair in its application of this power.

75:

50: The agency or entity will start investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency or entity rarely investigates on its own, or the agency or entity is partisan in its application of this power.

21e. In practice, when necessary, an agency or entity monitoring political financing imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

References:

There are no laws governing this activity in Sri Lanka.

Centre for Policy Alternatives and Transparency International
2003
National Integrity Systems
Sri Lanka Questionnaire
http://www.cpalanka.org/research_papers/TI_Questionnaire.pdf

Centre for Policy Alternatives and Transparency International
2003
National Integrity Systems Country Study Report http://www.cpalanka.org/research_papers/TI_Country_Study_Report.pdf

Centre for Policy Alternatives International IDEA
2006
Sri Lanka Country Report on political parties(based on research and dialogues with political parties)
<http://www.idea.int/parties/upload/SriLankaCountryReport.pdf>

100: When rules violations are discovered, the agency or entity is aggressive in penalizing offenders.

75:

50: The agency or entity enforces rules, but is limited in its effectiveness. The agency or entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or entity does not effectively penalize offenders. The agency or entity may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency or entity may be partisan in its application of power.

21f. In practice, contributions to political parties and candidates are audited.

100 | 75 | 50 | 25 | 0

References:

There are no laws governing this activity in Sri Lanka.

Centre for Policy Alternatives and Transparency International
2003
National Integrity Systems
Sri Lanka Questionnaire
http://www.cpalanka.org/research_papers/TI_Questionnaire.pdf

Centre for Policy Alternatives and Transparency International
2003
National Integrity Systems Country Study Report http://www.cpalanka.org/research_papers/TI_Country_Study_Report.pdf

Centre for Policy Alternatives International IDEA
2006
Sri Lanka Country Report on political parties(based on research and dialogues with political parties)
<http://www.idea.int/parties/upload/SriLankaCountryReport.pdf>

100: Political party and candidate finances are regularly audited using generally accepted auditing practices. This includes the auditing of nominally independent financial organizations that act as financial extensions of the party.

75:

50: Political party and candidate finances (as defined) are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed contributions. Contributions to the political party or candidate may be sufficiently audited, but the auditing of nominally independent extensions of the party may not be.

25:

0: Party and candidate finances are not audited, or the audits performed have no value in tracking contributions. Audits may be performed by entities known to be partisan or biased in their practices.

22. Can citizens access records related to political financing?

0

22a. In practice, political parties and candidates disclose data relating to financial support and expenditures within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

There are no laws governing this activity in Sri Lanka.

Centre for Policy Alternatives and Transparency International
2003
National Integrity Systems
Sri Lanka Questionnaire
http://www.cpalanka.org/research_papers/TI_Questionnaire.pdf

Centre for Policy Alternatives and Transparency International
2003
National Integrity Systems Country Study Report http://www.cpalanka.org/research_papers/TI_Country_Study_Report.pdf

Centre for Policy Alternatives International IDEA
2006
Sri Lanka Country Report on political parties(based on research and dialogues with political parties)
<http://www.idea.int/parties/upload/SriLankaCountryReport.pdf>

100: Political parties and candidates disclose their sources of funding and expenditures at least every quarter.

75:

50: Political parties and candidates disclose their sources of funding and expenditures only one or two times per year. Delays may occur when sensitive political information is involved.

25:

0: Political parties and candidates never publish their sources of funding or expenditures or publish that information only rarely with more than a year in between publication. Politically sensitive information is regular withheld from public disclosure.

22b. In practice, citizens can access the financial records of political parties and candidates within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

There are no laws governing this activity in Sri Lanka.

Centre for Policy Alternatives and Transparency International
2003
National Integrity Systems
Sri Lanka Questionnaire
http://www.cpalanka.org/research_papers/TI_Questionnaire.pdf

Centre for Policy Alternatives and Transparency International
2003
National Integrity Systems Country Study Report http://www.cpalanka.org/research_papers/TI_Country_Study_Report.pdf

Centre for Policy Alternatives International IDEA
2006
Sri Lanka Country Report on political parties(based on research and dialogues with political parties)
<http://www.idea.int/parties/upload/SriLankaCountryReport.pdf>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take two to four weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. There may be persistent delays in obtaining politically sensitive records.

22c. In practice, citizens can access the financial records of political parties and candidates at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

There are no laws governing this activity in Sri Lanka.

Centre for Policy Alternatives and Transparency International
2003

National Integrity Systems

Sri Lanka Questionnaire

http://www.cpalanka.org/research_papers/TI_Questionnaire.pdf

Centre for Policy Alternatives and Transparency International
2003

National Integrity Systems Country Study Report http://www.cpalanka.org/research_papers/TI_Country_Study_Report.pdf

Centre for Policy Alternatives International IDEA

2006

Sri Lanka Country Report on political parties(based on research and dialogues with political parties)

<http://www.idea.int/parties/upload/SriLankaCountryReport.pdf>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

Category III. Government Accountability

III-1. ⁴³ Executive Accountability

23. In law, can citizens sue the government for infringement of their civil rights?

100

23. In law, can citizens sue the government for infringement of their civil rights?

YES | NO

Comments:

Fundamental rights petitions are public law actions with public law (i.e., discretionary) remedies. However, in general, fundamental-rights litigation has been robust.

References:

Under Chapter III of the Constitution by way of fundamental rights applications to the Supreme Court (Article 126), as well as under the ordinary jurisdiction of the Court of Appeal to issue discretionary writs of habeas corpus, mandamus, quo warranto and prohibition.

See also J. Wickramaratne
2006
Fundamental Rights in Sri Lanka
Colombo: Stamford Lake

YES: A YES score is earned if all citizens (citizen is defined broadly, to include all ethnicities, or anyone born in the country) can receive compensation or redress through the courts for civil rights violations committed by the government, such as failure to follow due process of law when detaining suspected criminals.

NO: A NO score is earned if any group of citizens is excluded from the right to sue the government, or no such mechanism exists.

24. Can the chief executive be held accountable for his/her actions?

50

24a. In practice, the chief executive gives reasons for his/her policy decisions.

100 | 75 | 50 | 25 | 0

Comments:

The president, who is the head of state as well as the head of government, is elected independently of Parliament and is not part of the legislature. The president is responsible to Parliament through the Cabinet of Ministers but is not answerable to it. The president may be occasionally exposed to media questioning but generally communicates with the public through managed briefings and through state-controlled media.

References:

Interview with Mr. Rohan Edrisinha
Senior Lecturer
Faculty of Law
University of Colombo
Sept. 12, 2007

Existing research and material at the Legal & Constitutional Unit
Centre for Policy Alternatives
Colombo

100: The chief executive and/or cabinet ministers give formal explanations of all policy matters. The chief executive regularly takes critical questions from journalists or an opposition party, usually at least once a month. There is no censoring of such sessions.

75:

50: The chief executive and/or cabinet ministers give explanations of policy, but not always in a timely or complete way. The chief executive occasionally takes critical questions from journalists or an opposition party, but not in a regular or formalized process. Particular issues of political sensitivity may be censored by government broadcasters.

25:

0: The chief executive and/or cabinet ministers do not give substantial justifications for policy. Public appearances by the chief executive offer no exposure to critical questions. The government and government-run media routinely censor such sessions.

24b. In law, the judiciary can review the actions of the executive.

YES | NO

References:

Actions of the president cannot be reviewed by the judiciary due to the official and personal legal immunity granted to the president by the Constitution's Article 35. Actions of the ministers and the prime minister can be reviewed by the judiciary.

YES: A YES score is earned if there is a formal process by which the judiciary can pass judgments on the legality or constitutionality of actions taken by the executive.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exemptions exist with respect to executive actions that are reviewable (a national security exemption, for example).

24c. In practice, when necessary, the judiciary reviews the actions of the executive.

100 | 75 | 50 | 25 | 0

Comments:

The independence of the chief justice has become a major controversy over the past few decades, and Parliament even attempted to impeach him in November 2003 on grounds of personal and professional misconduct. Politically sensitive cases may be dealt with leniently.

References:

Interview with Mr. Rohan Edrisinha
Senior Lecturer
Faculty of Law
University of Colombo
Sept. 12, 2007

Existing research and material at the Legal & Constitutional Unit
Centre for Policy Alternatives
Colombo

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing executive actions and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power. It does not need to rely upon the executive to initiate a constitutional or legal review.

75:

50: The judiciary will review executive actions, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review executive policy. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power. It must rely on instructions from the executive in order to initiate a legal or constitutional review.

24d. In practice, the chief executive limits the use of executive orders for establishing new regulations, policies, or government practices.

100 | 75 | 50 | 25 | 0

Comments:

Military conflict has meant that Sri Lanka has been governed under near-continuous states of emergency for the last three decades. This has meant engagement of the emergency regulation-making power of the president, which has been abused, and

attempts have been made to achieve ordinary policy and political objectives through the convenient method of emergency regulations.

References:

Interview with Mr. Rohan Edrisinha
Senior Lecturer
Faculty of Law
University of Colombo
Sept. 12, 2007

Existing research and material at the Legal & Constitutional Unit
Centre for Policy Alternatives
Colombo

R. Coomaraswamy & C. de los Reyes
Rule by Emergency: Sri Lanka's Postcolonial Constitutional Experience
International Journal of Constitutional Law
2004
Vol.2, No.2, p.272

Review of Emergency Regulations 3
1993
University of Colombo
Centre for Policy Alternatives
Colombo, Sri Lanka

Centre for the Study of Human Rights in association with the Nadesan Centre

100: The chief executive utilizes executive orders only when there is no constitutional or legal requirement for official legislative action or approval. Executive orders are limited in number and narrow in scope.

75:

50: The chief executive sometimes relies on executive orders to implement policies and regulations opposed by the legislature. Some executive orders are overly broad in scope and are designed to circumvent constitutional or legal requirements for legislative action or approval.

25:

0: The chief executive routinely abuses executive orders to render the legislature practically useless. Executive orders are the norm, not the exception, and directly contravene constitutional or legal requirements for legislative action or approval.

25. Is the executive leadership subject to criminal proceedings?

50

25a. In law, the heads of state and government can be prosecuted for crimes they commit.

YES | NO

References:

Actions of the president, who is both head of state and of government, cannot be reviewed by the judiciary or prosecuted due to the official and personal legal immunity granted to the president by the Constitution's Article 35.

YES: A YES score is earned if the heads of state and government can be investigated, charged or prosecuted for criminal allegations. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on the heads of state or government.

25b. In law, ministerial-level officials can be prosecuted for crimes they commit.

YES | NO

Comments:

Criminal prosecutions against ministerial-level officials are highly selective, politically partisan, and there is little or no public confidence in successful prosecutions against serving ministers.

References:

Unlike the president, who is granted immunity expressly by Article 35 of the Constitution, ministers can be prosecuted or sued.

YES: A YES score is earned if ministerial-level officials, or their equivalents, can all be investigated, charged or prosecuted for criminal allegations.

NO: A NO score is earned if any ministerial-level official, or equivalent official, cannot be investigated, charged or prosecuted for criminal allegations or the executive branch controls whether investigative or prosecutorial immunity can be lifted on ministerial-level officials.

26. Are there regulations governing conflicts of interest by the executive branch?

25

26a. In law, the heads of state and government are required to file a regular asset disclosure form.

YES | NO

References:

The president, who is both head of state and government, is not subject to the Declaration of Assets and Liabilities, which requires annual declarations under Law of No.1 of 1975 (as amended), but candidates for election as president are required to submit a declaration of assets and liabilities (see section 2(1)(dc)).

YES: A YES score is earned if the heads of state and government are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form need not be publicly available to score a YES. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if either the head of state or government is not required to disclose assets.

26b. In law, ministerial-level officials are required to file a regular asset disclosure form.

YES | NO

Comments:

This obligation is observed mostly in the breach.

References:

Ministerial-level officials in their capacity as members of Parliament are subject to the Declaration of Assets and Liabilities Law No.1 of 1975 (as amended) and are required to make a declaration annually.

YES: A YES score is earned if ministerial-level officials, or their equivalents, are all required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets.

NO: A NO score is earned if ministers are not required to disclose assets. A NO score is earned if some ministers must disclose assets, but other ministers are not required.

26c. In law, there are regulations governing gifts and hospitality offered to members of the executive branch.

YES | NO

Comments:

Under the Constitution, the Public Service is categorized under the Executive (Chapter IX), and the provisions of the Establishments Code would accordingly apply under this heading.

References:

With regard to local authorities, Section 2(1) and (2) of the Public Bodies (Prevention of Corruption) Act No. 584 of 1981 makes any person who corruptly gives any gift, loan, fee or reward to a public body, and any public body that corruptly takes any gift, loan, fee or reward, guilty of an offense.

Establishments Code Chapter XLVII Section 3.1: An officer or a member of his family shall not accept any presents, gifts or other benefits, other than the ordinary gifts from relatives and personal friends, whether in a direct or indirect form, in the shape of money, goods, free passage, services or unusual discounts in costs of goods or services rendered, etc.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality offered to members of the executive branch of government.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts and hospitality offered to members of the executive branch. A NO score is earned if the guidelines are overly general and do not specify what is and is not appropriate.

26d. In law, there are requirements for the independent auditing of the executive branch asset disclosure forms (defined here as ministers and heads of state and government).

YES | NO

References:

The Declaration of Assets and Liabilities Act No. 63 of 1981 makes no provision for any auditing of declarations made by officials to whom the law applies.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of executive branch asset disclosures. The auditing is performed by an impartial third-party. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of executive branch asset disclosures or if such requirements exist but allow for self-auditing.

26e. In law, there are restrictions on heads of state and government and ministers entering the private sector after leaving the government.

YES | NO

References:

There are no laws governing heads of state and government officials entering the private sector after leaving the government.

YES: A YES score is earned if there are regulations restricting the ability of heads of state/government and ministers to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues. Figurehead officials (symbolic figures without day-to-day authority) may be exempt.

NO: A NO score is earned if no such restrictions exist.

26f. In practice, the regulations restricting post-government private sector employment for heads of state and government and ministers are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no laws governing this aspect in Sri Lanka.

References:

Research material of the Legal & Constitutional Unit of the Centre for Policy Alternatives

100: The regulations restricting post-government private sector employment for heads of state/government and ministers are uniformly enforced. There are no or few cases of those officials taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, heads of state/government or ministers are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Heads of state/government or ministers routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

26g. In practice, the regulations governing gifts and hospitality offered to members of the executive branch are effective.

100 | 75 | 50 | 25 | 0

Comments:

As there are no laws, regulations or codes of practice governing this in practice, there is no effective regulation.

References:

Research at the Legal & Constitutional Unit of the Centre for Policy Alternatives

100: The regulations governing gifts and hospitality to members of the executive branch are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given. Members of the executive branch never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the executive branch are generally applied though exceptions exist. Some ministers in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the executive branch are routinely ignored and unenforced. Ministers and other members of the executive branch routinely accept significant amounts of gifts and hospitality from

outside interest groups and actors seeking to influence their decisions.

26h. In practice, executive branch asset disclosures (defined here as ministers and above) are audited.

100 | 75 | 50 | 25 | 0

Comments:

The Declaration of Assets and Liabilities Act No. 63 of 1981 makes no provision for any auditing of declarations made by officials to whom the law applies.

References:

Research at the Legal & Constitutional Unit of the Centre for Policy Alternatives

100: Executive branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Executive branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Executive branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

27. Can citizens access the asset disclosure records of the heads of state and government?

0

27a. In law, citizens can access the asset disclosure records of the heads of state and government.

YES | NO

References:

The president is not subject to the Declaration of Assets and Liabilities Law.

YES: A YES score is earned if the heads of state and government file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for either the head of state or government. A NO score is earned if the form is filed, but not available to the public.

27b. In practice, citizens can access the asset disclosure records of the heads of state and government within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The head of state and government is not required make a declaration of assets.

References:

Existing research and material at the Legal & Constitutional Unit, Centre for Policy Alternatives

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some additional delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

27c. In practice, citizens can access the asset disclosure records of the heads of state and government at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no public right of access to officials' declarations of assets and liabilities. In fact, Section 7 of the Declaration of Assets and Liabilities Act No. 63 of 1981 expressly forbids making public any aspect of such a declaration during the pendency of an inquiry into an official's alleged misconduct.

References:

Research at the Legal & Constitutional Unit of the Centre for Policy Alternatives.

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

25

28. In practice, official government functions are kept separate and distinct from the functions of the ruling political party.

100 | 75 | 50 | 25 | 0

Comments:

The separation between the bureaucracy and the political leadership is, in practice, extremely blurred, although they are meant to operate separately. The ruling party routinely and extensively uses public resources for political and partisan activities. Public administrative functions and positions, including ambassadorial appointments, advisory jobs and ministry secretaries (i.e., highest civil servant in a ministry), are increasingly becoming susceptible to nepotism and political placements.

References:

Research at the Legal & Constitutional Unit of the Centre for Policy Alternatives

Interview with Sunanda Deshapriya
Convenor of the Free Media Movement
Member of the Editors' Guild of Sri Lanka
Journalist
Editor of the Sinhala newspaper "Yukthiya" (ceased publication in 2000)
Sept. 10, 2007
Colombo, Sri Lanka

100: Clear rules are followed distinguishing state functions from party activities. Government funds are never used for party activities. The civil service is completely distinct from party bureaucracy.

75:

50: The ruling party is, in principal, separate from the state, but exceptions to this standard sometimes occur. Examples may be the use of civil servants to organize political rallies, use of government vehicles on campaign trips, or use of government funds for party purposes.

25:

0: The government bureaucracy is an extension of the ruling party. There are few boundaries between government and party activities. Government funds, equipment and personnel are regularly used to support party activities.

III-2. Legislative Accountability

29. Can members of the legislature be held accountable for their actions?

33

29a. In law, the judiciary can review laws passed by the legislature.

YES | **NO**

References:

Article 80(3) of the Constitution expressly prohibits any court or tribunal from inquiring into the validity of any act passed by the legislature.

YES: A YES score is earned if there is a formal process by which the judiciary or constitutional courts can pass judgments on the legality or constitutionality of laws passed by the legislature.

NO: A NO score is earned if no such mechanism exists. A NO score is earned if judicial review is vaguely established in law or regulation without formal procedures. A NO score is earned if general exceptions exist exempting certain legislative actions from being reviewed (a national security exemption, for example).

29b. In practice, when necessary, the judiciary reviews laws passed by the legislature.

100 | 75 | 50 | 25 | **0**

Comments:

The Constitution does not allow any law passed by Parliament to be reviewed or struck down by the courts, even if such a law is inconsistent with the Constitution.

References:

Research at the Legal & Constitutional Unit of the Centre for Policy Alternatives

100: When constitutional or legal questions or possible violations are raised, the judiciary is aggressive in reviewing laws passed and can void illegal or unconstitutional actions. The judiciary is fair and nonpartisan in its application of this power.

75:

50: The judiciary will review laws passed, but is limited in its effectiveness. The judiciary may be slow to act, unwilling to take on politically sensitive issues, or occasionally unable to enforce its judgments.

25:

0: The judiciary does not effectively review laws passed. The judiciary may make judgments but not enforce them, or may fail to pass judgments on executive abuses. The judiciary may be partisan in its application of power.

29c. In law, are members of the national legislature subject to criminal proceedings?

YES | NO

References:

There is no immunity from criminal prosecution granted by law or the Constitution to members of Parliament.

YES: A YES score is earned if all members of the legislature can, in law, be investigated and prosecuted for criminal allegations.

NO: A NO score is earned if any member of the legislature cannot, in law, be investigated and prosecuted for criminal proceedings.

30. Are there regulations governing conflicts of interest by members of the national legislature?

14

30a. In law, members of the national legislature are required to file an asset disclosure form.

YES | NO

References:

Section 2(1)(a) of the Declaration of Assets and Liabilities Law No. 1 of 1975 (as amended, see Act No. 63 of 1981) provide for the disclosure of assets.

YES: A YES score is earned if all members of the legislature are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the legislature is not required to disclose assets.

30b. In law, there are restrictions for national legislators entering the private sector after leaving the government.

YES | **NO**

References:

There are no laws governing this activity.

YES: A YES score is earned if there are regulations restricting national legislators' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

30c. In law, there are regulations governing gifts and hospitality offered to members of the national legislature.

YES | **NO**

References:

There are no laws, regulations or codes of conduct governing this area.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the legislature.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the legislature. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

30d. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national legislature.

YES | **NO**

References:

The Declaration of Assets and Liabilities Act No. 63 of 1981 does not require any auditing of declarations.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of legislative branch asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of legislative branch asset disclosures or if such requirements exist but allow for self-auditing.

30e. In practice, the regulations restricting post-government private sector employment for national legislators are effective.

100 | 75 | 50 | 25 | **0**

Comments:

There are no laws governing this activity and, consequently, no restrictions in practice.

References:

Research at the Legal & Constitutional Unit of the Centre for Policy Alternatives

100: The regulations restricting post-government private sector employment for national legislators are uniformly enforced. There are no or few cases of legislators taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, legislators are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Legislators routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

30f. In practice, the regulations governing gifts and hospitality offered to national legislators are effective.

100 | 75 | 50 | 25 | 0

Comments:

There are no laws, regulations or codes of conduct governing this activity and, consequently, no restrictions in practice.

References:

Research at the Legal & Constitutional Unit of the Centre for Policy Alternatives

100: The regulations governing gifts and hospitality to national legislators are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to legislators. Legislators never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to national legislators are generally applied though exceptions exist. Some legislators in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to national legislators are routinely ignored and unenforced. Legislators routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

30g. In practice, national legislative branch asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

Under the Declaration of Assets and Liabilities law, the legal requirement is that such declarations are submitted to the speaker (which is rarely done or enforced). There is no right of public access to either the fact of existence of such declarations or to their contents. There is no legal requirement that these declarations be audited.

References:

Research at Legal & Constitutional Unit of the Centre for Policy Alternatives

100: Legislative branch asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: Legislative branch asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: Legislative branch asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

31. Can citizens access the asset disclosure records of members of the national legislature?

0

31a. In law, citizens can access the asset disclosure records of members of the national legislature.

YES | **NO**

References:

Asset disclosure records of members of the national legislature are not accessible. Under Section 7 of the Declaration of Assets and Liabilities Act No.63 of 1981, there is a prohibition on any publication when an inquiry is taking place against an official.

YES: A YES score is earned if members of the national legislature file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national legislature. A NO score is earned if the form is filed, but not available to the public.

31b. In practice, citizens can access legislative asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

There is no right or practice of access to these documents.

References:

Research at the Legal & Constitutional Unit of the Centre for Policy Alternatives

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

31c. In practice, citizens can access legislative asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

There is no right or practice of access to these documents.

References:

Research at the Legal & Constitutional Unit of the Centre for Policy Alternatives

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

32. Can citizens access legislative processes and documents?

33

32a. In law, citizens can access records of legislative processes and documents.

YES | NO

References:

There is no general right of access to any official information, including that relating to the legislative process.

YES: A YES score is earned if there is a general legal right to access records of legislative proceedings including voting records. A YES score can still be given if there are formal rules for specific exemptions to the right to disclosure (special secret sessions related to national security).

NO: A NO score is earned if there is no general right to access documents recording legislative proceedings. A NO score is earned if there exemptions to the general right that are not clearly defined by formal rules.

32b. In practice, citizens can access records of legislative processes and documents within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Although there is no right of access to contemporaneous or real-time documentation of the legislative process, parliamentary proceedings are published in Hansard, which is published several times a year. Parliamentary committees may also publish reports, findings and (limited records of) proceedings. In general, however, there is no free and open access.

References:

Existing research at the Legal & Constitutional Unit of the Centre for Policy Alternatives (CPA)

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

32c. In practice, citizens can access records of legislative processes and documents at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

Costs and prices of official government/institutions' publications are generally very low. The problem is in the dilatory nature of government publishing rather than costs.

References:

Existing research at the Legal & Constitutional Unit of the Centre for Policy Alternatives

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

20
III-3. Judicial Accountability

33. Are judges appointed fairly?

92

33a. In law, there is a transparent procedure for selecting national-level judges.

YES | NO

Comments:

The Constitutional Council was introduced by the 17th Amendment to the Constitution in 2001 to de-politicize and make more transparent the appointments to high posts, including national-level judges. However, since 2004, the Constitutional Council has not been appointed by successive presidents, and the mechanism has now been rendered meaningless.

References:

In law, judges of the Supreme Court and Court of Appeal are appointed by the president but require approval by the Constitutional Council: Article 107(1) read with Article 41C of the Constitution (introduced by the 17th Amendment). The Judicial Service Commission, which comprises the chief justice and two other Supreme Court judges, appoints magistrates and judges of the District Courts and High Courts.

YES: A YES score is earned if there is a formal process for selecting national level justices. This process should be public in the debating and confirmation stages. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

NO: A NO score is given if there is no formal process of selection or the process is conducted without public oversight. National-level judges are defined as judges who have powers that derive from a national law or constitution; are nominated/appointed by a national governmental body (head of state/government or national legislature); and/or are elected nationally.

33b. In practice, there are certain professional criteria required for the selection of national-level judges.

100 | 75 | 50 | 25 | 0

Comments:

Generally, the professional qualifications and experience for appointment to judicial office are adhered to, although in some cases, the professional and personal conduct of judicial officers may fall below international standards.

References:

Interview with Mr. Rohan Edrisinha
Senior Lecturer
Faculty of Law
University of Colombo
Sept. 12, 2007

100: National-level judges selected have relevant professional qualifications such as formal legal training, experience as a lower court judge or a career as a litigator.

75:

50: Most national-level judges selected meet these qualifications, with some exceptions.

25:

0: National-level judges are often unqualified due to lack of training or experience.

33c. In law, there is a confirmation process for national-level judges (i.e. conducted by the legislature or an independent body).

YES | NO

Comments:

The framework for independent review of presidential appointment of judges has been rendered nugatory by the failure to constitute the Constitutional Council since 2004.

References:

Per Article 41C of the Constitution (introduced by the 17th Amendment), national-level appellate judges may not be appointed by the president unless the Constitutional Council has approved such appointments.

YES: A YES score is earned if there is a formal process establishing a review of national-level judicial nominees by an agency independent from the body appointing the judges.

NO: A NO score is earned if there is no formal review. A NO score is earned if the review is conducted by a body directed by the body appointing the judges (such as review by the head of police if judges are appointed by the executive).

34. Can members of the judiciary be held accountable for their actions?

79

34a. In law, members of the national-level judiciary are obliged to give reasons for their decisions.

YES | NO

References:

Convention of the common law of Sri Lanka obliges judges to give reasons for their decisions. The higher courts of record, i.e., those whose judgments are published, are the Court of Appeal and the Supreme Court.

YES: A YES score is earned if there is a formal and mandatory process for judges to explain their decisions.

NO: A NO score is earned if justices are not required to explain decisions. A NO score is earned if there is a general exemption from explaining some decisions (such as national security).

34b. In practice, members of the national-level judiciary give reasons for their decisions.

100 | 75 | 50 | 25 | 0

Comments:

Higher courts generally give reasoned judgments, although in some cases, the quality of the reasoning, as well as the ideological and political impartiality of judgments, may be questionable.

References:

Existing research and materials at the Legal & Constitutional Unit of the Centre for Policy Alternatives

Interview with Mr. Rohan Edrisinha
Senior Lecturer
Faculty of Law
University of Colombo
Sept. 12, 2007

100: Judges are formally required to explain their judgments in detail, establishing a body of precedent. All judges comply with these requirements.

75:

50: Judges are compelled to give substantial reasons for their decisions, but some exceptions exist. These may include special courts, such as military courts or tribunals.

25:

0: Judges commonly issue decisions without formal explanations.

34c. In law, there is a disciplinary agency (or equivalent mechanism) for the national-level judicial system.

YES | NO

References:

Judges of the Court of Appeal and Supreme Court are not subject to disciplinary control but may be impeached for misconduct by Parliament (Article 107 of the Constitution). Article 112 of the Constitution provides for the Judicial Service Commission, comprising the chief justice and two other judges of the Supreme Court, which has powers over all aspects of appointment, removal and disciplinary control of all judges and judicial officers except judges of the Supreme Court and Court of Appeal.

YES: A YES score is earned if there is a disciplinary agency (or equivalent mechanism) for the judicial system. A disciplinary agency is defined here as an agency or mechanism specifically mandated to investigate breaches of procedure, abuses of power or other failures of the judiciary.

NO: A NO score is earned if no agency or mechanism is specifically mandated to act as a disciplinary mechanism for the national-level judiciary.

34d. In law, the judicial disciplinary agency (or equivalent mechanism) is protected from political interference.

YES | NO

References:

Article 115 of the Constitution prohibits interference with the Judicial Service Commission and further makes such interference an offense.

YES: A YES score is earned if there are formal rules establishing that the judicial disciplinary agency (or equivalent mechanism) is operationally independent from political interference by the executive, legislative and judicial branches.

NO: A NO score is earned if there are no formal rules establishing the independence of the judicial disciplinary agency (or equivalent mechanism). A NO score is given if the judicial disciplinary agency or equivalent mechanism function is carried out by an inherently subordinate organization, such as an executive ministry, legislative committee, or by an internal judiciary committee or council that can only act with the approval of judges themselves.

34e. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Judicial Services Commission is generally fair and independent with regard to disciplinary matters, although there have been cases in the past in which there have been allegations of serious bias, selectivity and arbitrariness in the treatment of some judicial officers.

References:

Existing research at the Legal & Constitutional Unit of the Centre for Policy Alternatives

100: The judicial disciplinary agency (or equivalent mechanism) aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The judicial disciplinary agency (or equivalent mechanism) is fair in its application of this power.

75:

50: The judicial disciplinary agency (or equivalent mechanism) will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The judicial disciplinary agency (or equivalent mechanism), though limited in effectiveness, is still fair in its application of power.

25:

0: The judicial disciplinary agency (or equivalent mechanism) rarely investigates on its own or cooperates in other agencies' investigations, or the judicial disciplinary agency (or equivalent mechanism) is partisan in its application of this power.

34f. In practice, when necessary, the judicial disciplinary agency (or equivalent mechanism) imposes penalties on offenders.

100 | 75 | **50** | 25 | 0

References:

Existing research at the Legal & Constitutional Unit of the Centre for Policy Alternatives

100: When rules violations are discovered, the judicial disciplinary agency (or equivalent mechanism) is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The judicial disciplinary agency (or equivalent mechanism) enforces rules, but is limited in its effectiveness. The judicial disciplinary agency (or equivalent mechanism) may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The judicial disciplinary agency (or equivalent mechanism) does not effectively penalize offenders. The judicial disciplinary agency (or equivalent mechanism) may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The judicial disciplinary agency (or equivalent mechanism) may be partisan in its application of power.

35. Are there regulations governing conflicts of interest for the national-level judiciary?

25

35a. In law, members of the national-level judiciary are required to file an asset disclosure form.

YES | NO

References:

Section 2(1)(b) of the Asset Declaration and Liabilities Law No. 1 of 1975 (as amended) provides for the declaration of assets and liabilities of national-level judges.

YES: A YES score is earned if all members of the national-level judiciary are required by law to file an asset disclosure form while in office, illustrating sources of income, stock holdings, and other assets. This form does not need to be publicly available to score a YES.

NO: A NO score is earned if any member of the national-level judiciary is not required to publicly disclose assets.

35b. In law, there are regulations governing gifts and hospitality offered to members of the national-level judiciary.

YES | **NO**

References:

There are no publicly available regulations governing this area.

YES: A YES score is earned if there are formal guidelines regulating gifts and hospitality for members of the national-level judiciary.

NO: A NO score is earned if there are no guidelines or regulations with respect to gifts or hospitality offered to members of the national-level judiciary. A NO score is earned if the guidelines are general and do not specify what is and is not appropriate.

35c. In law, there are requirements for the independent auditing of the asset disclosure forms of members of the national-level judiciary.

YES | **NO**

References:

The Declaration of Assets and Liabilities Law requires such declarations but does not require independent auditing of declaration forms.

YES: A YES score is earned if there is a legal or regulatory requirement for independent auditing of national-level judiciary asset disclosures. The auditing is performed by an impartial third-party.

NO: A NO score is earned if there are no legal or regulatory requirements for the independent auditing of national-level judiciary asset disclosures or if such requirements exist but allow for self-auditing.

35d. In law, there are restrictions for national-level judges entering the private sector after leaving the government.

YES | **NO**

Comments:

There is no express prohibition of private-sector employment after retirement apart from the above.

References:

Article 110(3) of the Constitution prohibits only persons who have held office as judges of the Supreme Court or Court of Appeal from practicing as attorneys at law at any time, unless the president has given his written consent to such.

YES: A YES score is earned if there are regulations restricting national-level judges ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

35e. In practice, the regulations restricting post-government private sector employment for national-level judges are effective.

100 | **75** | 50 | 25 | 0

Comments:

Superior Court judges are not known to take up private practice or other private-sector employment that involves influencing or lobbying of government and former colleagues. Some junior judges take up private practice after retirement from the judicial service, but this has not generally resulted in undue influence.

References:

Existing research at the Legal & Constitutional Unit of the Centre for Policy Alternatives

100: The regulations restricting post-government private sector employment for national-level judges are uniformly enforced. There are no or few cases of judges taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off” period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain cases, judges are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Judges routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

35f. In practice, the regulations governing gifts and hospitality offered to members of the national-level judiciary are effective.

100 | 75 | 50 | 25 | 0

Comments:

There is no publicly available regulations governing this area.

References:

Existing research at the Legal & Constitutional Unit of the Centre for Policy Alternatives (CPA), Colombo

See also Justice ARB Amerasinghe’s treatise on Judicial Conduct Ethics and Responsibilities p100-108 (Vishva Lekha; 2002)

100: The regulations governing gifts and hospitality to members of the national-level judiciary are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to judges. Judges never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to members of the national-level judiciary are generally applied though exceptions exist. Some judges are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to members of the national-level judiciary are routinely ignored and unenforced. Judges routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

35g. In practice, national-level judiciary asset disclosures are audited.

100 | 75 | 50 | 25 | 0

Comments:

While the law requires the declaration of assets and liabilities of the national-level judiciary, there is no requirement that these are independently audited in a timely and transparent manner and for the audits to be made public. In practice, the audits of the Auditor General are delayed, not sufficiently or easily available, and parliamentary oversight is dilatory or non-existent.

References:

Existing research at the Legal & Constitutional Unit of the Centre for Policy Alternatives (CPA), Colombo

100: National-level judiciary asset disclosures are regularly audited using generally accepted auditing practices.

75:

50: National-level judiciary asset disclosures are audited, but audits are limited in some way, such as using inadequate auditing standards, or the presence of exceptions to disclosed assets.

25:

0: National-level judiciary asset disclosures are not audited, or the audits performed have no value. Audits may be performed by entities known to be partisan or biased in their practices.

36. Can citizens access the asset disclosure records of members of the national-level judiciary?

0

36a. In law, citizens can access the asset disclosure records of members of the national-level judiciary.

YES | **NO**

References:

Asset disclosure records of members of the national-level judiciary are not accessible to citizens.

YES: A YES score is earned if members of the national-level judiciary file an asset disclosure form that is, in law, accessible to the public (individuals, civil society groups or journalists).

NO: A NO score is earned if there is no asset disclosure for members of the national-level judiciary. A NO score is earned if the form is filed, but not available to the public.

36b. In practice, citizens can access judicial asset disclosure records within a reasonable time period.

100 | 75 | 50 | 25 | **0**

Comments:

There is no public access to such information.

References:

Existing research at the Legal & Constitutional Unit of the Centre for Policy Alternatives

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

36c. In practice, citizens can access judicial asset disclosure records at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

As this information is not available to the public, no question of costs arises.

References:

Existing research at the Legal & Constitutional Unit of the Centre for Policy Alternatives

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

III-4. Budget Processes

37. Can the legislature provide input to the national budget?

75

37a. In law, the legislature can amend the budget.

YES | NO

Comments:

This is one of the more significant powers of Parliament that the Constitution has established.

References:

Per Article 148 of the Constitution, Parliament has full control over public finances, and all government expenditures must either be approved by Parliament by the annual Appropriations Bill or by supplementary estimates submitted and approved during the financial year.

YES: A YES score is earned if the legislature has the power to add or remove items to the national government budget.

NO: A NO score is earned if the legislature can only approve but not change details of the budget. A NO score is earned if the legislature has no input into the budget process.

37b. In practice, significant public expenditures require legislative approval.

100 | 75 | 50 | 25 | 0

Comments:

Generally, legislative approval is required for all major government expenditures. However, there are significant issues of legislator capacity and political culture in which the deliberative and monitoring functions of Parliament fall prey to party political behavior. Thus, voting on the budget is according to party lines, and budget debates are not generally characterized by informed debate and scrutiny. With regard to the Appropriations Bill of 2008, a major controversy has arisen due to a clause that seeks to do away with the need for supplementary estimates for further allocations by conferring the authority to the Treasury to make disbursements without specific parliamentary approval. This has been challenged for constitutionality in the Supreme Court by the Jantha Vimukthi Peramuna (a political party with 39 members of Parliament) and other individuals and organizations. The Supreme Court determination has not yet been delivered.

References:

Existing research at the Legal & Constitutional Unit of the Centre for Policy Alternatives

100: All significant government expenditures (defined as any project costing more than 1% of the total national budget), must be approved by the legislature. This includes defense and secret programs, which may be debated in closed hearings.

75:

50: Most significant government expenditures (as defined) are approved by the legislature, but some exceptions to this rule exist. This may include defense programs, an executive's personal budget, or other expenses.

25:

0: The legislature does not have the power to approve or disapprove large portions of the government budget, or the legislature does not exercise this power in a meaningful way.

37c. In practice, the legislature has sufficient capacity to monitor the budget process and provide input or changes.

100 | 75 | 50 | 25 | 0

Comments:

Apart from the stages of the budgetary process in which Parliament sits as a committee of the whole House, the budgetary oversight function is performed by the Public Accounts Committee and the Committee on Public Enterprises. The problem here is that their oversight role is post facto, that is, restricted to monitoring expenditure for excess and the integrity of public enterprises. There is little or no capacity in the committee system to scrutinize, critique and amend the Appropriations Bill before passage, which offers very little challenge to the executive's requirements as set out in the bill.

References:

Existing research at the Legal & Constitutional Unit of the Centre for Policy Alternatives

100: Legislators benefit from a sufficient and qualified staff as well as adequate financial and physical resources. Lack of capacity is never a reason why legislators cannot carry out their duties effectively.

75:

50: Legislators have some staff and financial resources but are limited by a shortfall of resources to adequately perform all of their budgetary oversight functions. Legislators are occasionally overwhelmed by the volume of work to be performed.

25:

0: Legislators have little to no staff and virtually no financial resources with which to perform their budgetary oversight role. Lack of resources is a regular and systemic problem that cripples the performance of the legislature.

38. Can citizens access the national budgetary process?

38a. In practice, the national budgetary process is conducted in a transparent manner in the debating stage (i.e. before final approval).

100 | 75 | 50 | 25 | 0

Comments:

There is little public access to the budgetary process. There is a general lack of capacity among legislators to perform their oversight role, little incentive to develop specialism in this area, and voting patterns are party-political. Moreover, media coverage of parliamentary proceedings on the budget suffers from lack of capacity and specialization. For these reasons, the budget is largely the work of a select Treasury officials and politicians, and there is no public participation.

References:

Existing research at the Legal & Constitutional Unit of the Centre for Policy Alternatives

100: Budget debates are public and records of these proceedings are easily accessible. Authors of individual budget items can easily be identified. Nearly all budget negotiations are conducted in these official proceedings.

75:

50: There is a formal, transparent process for budget debate, but major budget modifications may be negotiated in separate, closed sessions. Some items, such as non-secret defense projects, may be negotiated in closed sessions. Authors of individual line items may be difficult to identify.

25:

0: Budget negotiations are effectively closed to the public. There may be a formal, transparent process, but most real discussion and debate happens in other, closed settings.

38b. In practice, citizens provide input at budget hearings.

100 | 75 | 50 | 25 | 0

Comments:

Citizens and civil society organizations have no formal or informal access to provide input either to the process of budget formulation or debate.

References:

Existing research at the Legal & Constitutional Unit of the Centre for Policy Alternatives

100: Citizens, usually acting through CSOs, can provide information or commentary to the budget debate through a formal process. This information is essential to the process of evaluating budget priorities.

75:

50: Citizens or CSOs can provide input, but this information is often not relevant to budget decisions.

25:

0: Citizens or CSOs have no formal access to provide input to the budget debate.

38c. In practice, citizens can access itemized budget allocations.

100 | 75 | 50 | 25 | 0

Comments:

The annual Appropriations Bill (Finance Act after passage) is published in the government Gazette and should be freely available to the public or interested persons. They itemize expenditure line items. But in practice, this may not provide the full picture of actual government expenditure patterns.

References:

Existing research at the Legal & Constitutional Unit of the Centre for Policy Alternatives

100: Citizens, journalists and CSOs can access itemized lists of budget allocations. This information is easily available and up to date.

75:

50: Citizens, journalists and CSOs can access itemized lists of budget allocations but this information may be difficult to access, incomplete or out of date.

25:

0: Citizens cannot access an itemized list of budget allocations, due to secrecy, prohibitive barriers or government inefficiency.

39. In law, is there a separate legislative committee which provides oversight of public funds?

100

39. In law, is there a separate legislative committee which provides oversight of public funds?

YES | NO

References:

The Committee on Public Accounts and the Committee on Public Enterprises are established by Standing Orders of Parliament (Standing Orders 125 and 126, respectively) for the oversight of public funds.

YES: A YES score is earned if there is a dedicated legislative committee (or equivalent group located in the legislature) that oversees the expenditure of public funds.

NO: A NO score is earned if no such body exists within the legislature. A NO score is earned if there is a body executing this function but it is not part of the legislature (such as a separate supreme audit institution).

40. Is the legislative committee overseeing the expenditure of public funds effective?

56

40a. In practice, department heads regularly submit reports to this committee.

100 | 75 | 50 | 25 | 0

Comments:

The Public Accounts Committee (PAC) examines public expenditures on the basis of the reports of the Auditor General and direct examination of secretaries to ministries and other officials. The Committee on Public Enterprises (COPE) monitors the financial

performance of state-owned enterprises on the basis of Auditor General's reports, performance reports of the Department of Public Enterprises and other relevant reports and evidence of institutions within its purview. Both committees have wide-ranging powers to summon officials, issue directives, compel disclosure, etc., but it is only under the present chairmanship of Wijedasa Rajapakse M.P. that COPE has shown an independent and aggressive willingness to confront bureaucratic lapses. It is unclear, however, whether the government will implement the recommendations of the COPE reports. In the case of PAC, a collective committee decision to suspend the Commissioner General of Inland Revenue during the pendency of an investigation into allegations that important files relating to a Value Added Tax fraud have disappeared, having met with resistance from the President.

References:

Existing research at the Legal & Constitutional Unit of the Centre for Policy Alternatives.

The Public Accounts Committee has not reported in the current session of Parliament and is unlikely to, <http://www.thesundayleader.lk/20071028/spotlight.htm>.

The Committee on Public Enterprises has reported twice in the current session of Parliament. Parliamentary Series Nos. 07 and 10 of the Sixth Parliament (Second Session)
First and Second Reports of the Committee on Public Enterprises (12.01.2007 and 24.08.2007)

100: Heads of ministry- or cabinet-level agencies submit regular, formal reports of expenses to a budget oversight committee.

75:

50: Agency heads submit reports to a budget oversight committee, but these reports are flawed in some way. The reports may be inconsistently delivered, or lacking important details.

25:

0: There is no budget oversight committee or equivalent, or heads of agencies do not submit meaningful reports to the agency.

40b. In practice, the committee acts in a non-partisan manner with members of opposition parties serving on the committee in an equitable fashion.

100 | 75 | 50 | 25 | 0

Comments:

By convention, the chair of both the Public Accounts Committee (PAC) and the Committee on Public Enterprises (COPE) were held until recently by Opposition members of Parliament. However, Hon. Rauff Hakeem M. P., the chairman of PAC and the leader of the Sri Lanka Muslim Congress (SLMC), joined the government in 2007 and accepted ministerial office but did not relinquish his chairmanship of PAC. He is, however, known to be independent, but PAC has suffered from infrequent and incomplete reports from the Auditor General, government departments and officials, and has been unable to report in a timely fashion. COPE, on the other hand, is chaired by a backbench member of Parliament of the ruling party, which, while a departure from convention, has been ameliorated by his demonstrable independence reflected in the two reports published this year. Opposition members are entitled to and some do play a meaningful role within these committees, but attendance and participation have been plagued by lack of interest and capacity among legislators.

References:

Existing research at the Legal & Constitutional Unit of the Centre for Policy Alternatives

100: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties in a roughly equitable distribution. All members of the committee — including opposition party members — are able to fully participate in the activities of the committee and influence the committee's work to roughly the same extent as any other member of the committee.

75:

50: The committee is comprised of legislators from both the ruling party (or parties) and opposition parties although the ruling party has a disproportionate share of committee seats. The chairperson of the committee may be overly influential and curb other members' ability to shape the committee's activities.

25:

0: The committee is dominated by legislators of the ruling party and/or the committee chairperson. Opposition legislators serving on the committee have in practice no way to influence the work of the committee.

40c. In practice, this committee is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Both the Public Accounts Committee (PAC) and the Committee on Public Enterprises (COPE) have generally been independent if, until recently, unable to make an impact. However, it remains to be seen how the government responds, both negatively and positively, to COPE's recent assertion of its role.

References:

Existing research at the Legal & Constitutional Unit of the Centre for Policy Alternatives

100: This committee operates independently of the political process, without incentive or pressure to render favorable judgments on politically sensitive issues. Investigations are rarely praised or criticized by political figures.

75:

50: This committee is usually independent but is sometimes influenced by negative or positive political incentives. This may include public praise or criticism by the government.

25:

0: This committee is commonly influenced by personal or political forces or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties that ultimately influence the committee's behavior and decision-making. Negative incentives may include threats, harassment or other abuses of power by the government.

40d. In practice, when necessary, this committee initiates independent investigations into financial irregularities.

100 | 75 | 50 | 25 | 0

Comments:

Both the Public Accounts Committee (PAC) and the Committee on Public Enterprises (COPE) are empowered to start limited investigations through summoning and hearing officials. Their main deficiency lies in a lack of power to enforce their recommendations against the executive. The recent COPE reports are examples of this.

References:

Existing research at the Legal & Constitutional Unit of the Centre for Policy Alternatives

100: When irregularities are discovered, the committee is aggressive in investigating the government.

75:

50: The committee starts investigations, but is limited in its effectiveness. The committee may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The committee does not effectively investigate financial irregularities. The committee may start investigations but not complete them, or may fail to detect offenders. The committee may be partisan in its application of power.

IV-1. Civil Service Regulations

41. Are there national regulations for the civil service encompassing, at least, the managerial and professional staff?

100

41a. In law, there are regulations requiring an impartial, independent and fairly managed civil service.

YES | NO

Comments:

The new Chapter IX of the Constitution introduced by the 17th Amendment sought to strengthen in some respects the independence of the public service by providing for the Constitutional Council to recommend appointments by the President to the Public Service Commission, which would in turn be responsible for the appointments, transfers, promotions and disciplinary control of public servants. A major weakness of this framework was the retention of the provision that all heads of departments could be appointed by the Cabinet of Ministers, which was seen as a major cause of over-politicization of the public service. In any event, the 17th Amendment framework has now become dysfunctional due to the nonconstitution of the Constitutional Council.

References:

Chapter IX of the Constitution (repealing and replacing the provisions of the previous Chapter IX)

Establishments Code (i.e., Administrative Regulations)

Financial Regulations (issued from time to time by the Treasury)

YES: A YES score is earned if there are specific formal rules establishing that the civil service carry out its duties independent of political interference.

NO: A NO score is earned if there are no formal rules establishing an independent civil service.

41b. In law, there are regulations to prevent nepotism, cronyism, and patronage within the civil service.

YES | NO

References:

Chapter XLVII of the Establishments Code, Vol. II (1999) contains some regulations dealing with such matters:

Avoidance of conflicts of interests (1.5)

Prohibition on canvassing of promotions (1.6)

Exchange of duties for pecuniary consideration (1.7)

Private use of government labor and property (1.11)

Some detail on gifts and subscriptions, including general prohibition (3.1)

Rules regarding exceptions

Pecuniary embarrassment (4)

YES: A YES score is earned if there are specific formal rules prohibiting nepotism, cronyism, and patronage in the civil service. These should include competitive recruitment and promotion procedures as well as safeguards against arbitrary disciplinary actions and dismissal.

NO: A NO score is earned if no such regulations exist.

41c. In law, there is an independent redress mechanism for the civil service.

YES | NO

Comments:

The Constitution does not provide for a complaints procedure for public officers to approach the Public Service Commission. However, during interviews with former civil service personnel, they said that the commission is the redress mechanism for civil servants.

References:

The Public Service Commission, established under Article 54 of the Constitution, is charged with the appointment, promotion, transfer, disciplinary control and dismissal of public officers. Article 59 establishes an Administrative Appeals Tribunal that has the power to vary, alter and rescind orders and decisions made by the commission.

YES: A YES score is earned if there is a mechanism to which civil servants and applicants for the civil service can take grievances regarding civil service management actions. Civil servants are able to appeal the mechanism's decisions to the judiciary.

NO: A NO score is earned if no such mechanism exists.

41d. In law, civil servants convicted of corruption are prohibited from future government employment.

YES | NO

References:

Section 7:1 of Chapter II the Establishment Code read together with Chapter XLVII of the Code

YES: A YES score is earned if there are specific rules prohibiting continued government employment following a corruption conviction.

NO: A NO score is earned if no such rules exist.

42. Is the law governing the administration and civil service effective?

42

42a. In practice, civil servants are protected from political interference.

100 | 75 | 50 | 25 | 0

References:

Interview with Mr. Shelton Wanasinghe

Former Civil Servant
Chairman of the Presidential Administrative Reforms Committee (1986-1987)
Chairman of the Salaries and Cadres Committee (1987-1989)
Director of the Centre for Policy Alternatives
Nov. 8, 2007

100: Civil servants operate independently of the political process, without incentive or pressure to render favorable treatment or policy decisions on politically sensitive issues. Civil servants rarely comment on political debates. Individual judgments are rarely praised or criticized by political figures. Civil servants can bring a case to the courts challenging politically-motivated firings.

75:

50: Civil servants are typically independent, yet are sometimes influenced in their judgments by negative or positive political or personal incentives. This may include favorable or unfavorable treatment by superiors, public criticism or praise by the government, or other forms of influence. Civil servants may bring a case to the judicial system challenging politically-motivated firings but the case may encounter delays or bureaucratic hurdles.

25:

0: Civil servants are commonly influenced by political or personal matters. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. Civil servants are unable to find a remedy in the courts for unjustified or politically-motivated firings.

42b. In practice, civil servants are appointed and evaluated according to professional criteria.

100 | 75 | 50 | 25 | 0

Comments:

The extent of professional assessment is limited to examinations.

References:

Interview with Mr. Shelton Wanasinghe
Former Civil Servant
Chairman of the Presidential Administrative Reforms Committee (1986-1987)
Chairman of the Salaries and Cadres Committee (1987-1989)
Director of the Centre for Policy Alternatives
Nov. 8, 2007

100: Appointments to the civil service and their professional evaluations are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments and professional assessments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments and professional assessments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

42c. In practice, civil service management actions (e.g. hiring, firing, promotions) are not based on nepotism, cronyism, or patronage.

100 | 75 | 50 | 25 | 0

References:

Interview with Mr. Shelton Wanasinghe

Former Civil Servant
Chairman of the Presidential Administrative Reforms Committee (1986-1987)
Chairman of the Salaries and Cadres Committee (1987-1989)
Director of the Centre for Policy Alternatives
Nov. 8, 2007

100: Nepotism (favorable treatment of family members), cronyism (favorable treatment of friends and colleagues), and patronage (favorable treatment of those who reward their superiors) are actively discouraged at all levels of the civil service. Hirings, firings, and promotions are based on merit and performance.

75:

50: Nepotism, cronyism, and patronage are discouraged, but exceptions exist. Political leaders or senior officials sometimes appoint family member or friends to favorable positions in the civil service, or lend other favorable treatment.

25:

0: Nepotism, cronyism, and patronage are commonly accepted principles in hiring, firing and promotions of civil servants.

42d. In practice, civil servants have clear job descriptions.

100 | 75 | 50 | 25 | 0

Comments:

Job descriptions within the service are extremely vague.

References:

Interview with Interview with Mr. Shelton Wanasinghe
Former Civil Servant
Chairman of the Presidential Administrative Reforms Committee (1986-1987)
Chairman of the Salaries and Cadres Committee (1987-1989)
Director of the Centre for Policy Alternatives
Nov. 8, 2007

100: Civil servants almost always have formal job descriptions establishing levels of seniority, assigned functions, and compensation. Job descriptions are a reliable means to map positions to both human capital requirements (including the position's authority and responsibilities) and base pay.

75:

50: Civil servants often have formal job descriptions, but exceptions exist. Some civil servants may not be part of the formal assignment of duties and compensations. Some job descriptions may not map clearly to pay or responsibilities in some cases.

25:

0: Civil servants do not have formal roles or job descriptions. If they do, such job descriptions have little or nothing to do with the position's responsibilities, authority, or pay.

42e. In practice, civil servant bonuses constitute only a small fraction of total pay.

100 | 75 | 50 | 25 | 0

References:

Interview with Interview with Mr. Shelton Wanasinghe
Former Civil Servant
Chairman of the Presidential Administrative Reforms Committee (1986-1987)
Chairman of the Salaries and Cadres Committee (1987-1989)
Director of the Centre for Policy Alternatives
Nov. 8, 2007

100: Civil servant bonuses constitute no more than 10% of total pay and do not represent a major element of take-home pay.

75:

50: Civil servant bonuses are generally a small percentage of total take-home pay for most civil servants though exceptions exist where some civil servants' bonuses represent a significant part of total pay.

25:

0: Most civil servants receive bonuses that represent a significant amount of total take-home pay. In some cases bonuses represent the majority of total pay to civil servants.

42f. In practice, the government publishes the number of authorized civil service positions along with the number of positions actually filled.

100 | 75 | 50 | 25 | 0

References:

Interview with Mr. Shelton Wanasinghe
Former Civil Servant
Chairman of the Presidential Administrative Reforms Committee (1986-1987)
Chairman of the Salaries and Cadres Committee (1987-1989)
Director of the Centre for Policy Alternatives
Nov. 8, 2007

100: The government publishes such a list on a regular basis.

75:

50: The government publishes such a list but it is often delayed or incomplete. There may be multiple years in between each successive publication.

25:

0: The government rarely or never publishes such a list, or when it does it is wholly incomplete.

42g. In practice, the independent redress mechanism for the civil service is effective.

100 | 75 | 50 | 25 | 0

References:

Interview with Mr. Shelton Wanasinghe
Former Civil Servant
Chairman of the Presidential Administrative Reforms Committee (1986-1987)
Chairman of the Salaries and Cadres Committee (1987-1989)
Director of the Centre for Policy Alternatives
Nov. 8, 2007

100: The independent redress mechanism for the civil service can control the timing and pace of its investigations without any input from the bodies that manage civil servants on a day-to-day basis.

75:

50: The independent civil service redress mechanism can generally decide what to investigate and when but is sometimes subject to pressure from the executive or the bodies that manage civil servants on a day-to-day basis on politically sensitive issues.

25:

0: The civil service redress mechanism must rely on approval from the executive or the bodies that manage civil servants on a day-to-day basis before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

42h. In practice, in the past year, the government has paid civil servants on time.

100 | 75 | 50 | 25 | 0

References:

Interview with Mr. Shelton Wanasinghe
Former Civil Servant
Chairman of the Presidential Administrative Reforms Committee (1986-1987)
Chairman of the Salaries and Cadres Committee (1987-1989)
Director of the Centre for Policy Alternatives
Nov. 8, 2007

100: In the past year, no civil servants have been paid late.

75:

50: In the past year, some civil servants have been paid late.

25:

0: In the past year, civil servants have frequently been denied due pay.

42i. In practice, civil servants convicted of corruption are prohibited from future government employment.

100 | 75 | 50 | 25 | 0

Comments:

This is the case to a large extent.

References:

Interview with Mr. Shelton Wanasinghe
Former Civil Servant
Chairman of the Presidential Administrative Reforms Committee (1986-1987)
Chairman of the Salaries and Cadres Committee (1987-1989)
Director of the Centre for Policy Alternatives
Nov. 8, 2007

100: A system of formal blacklists and cooling off periods is in place for civil servants convicted of corruption. All civil servants are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some civil servants may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future employment of convicted civil servants.

43. Are there regulations addressing conflicts of interest for civil servants?

43a. In law, there are requirements for civil servants to recuse themselves from policy decisions where their personal interests may be affected.

YES | NO

References:

Section 1:5 of Chapter XLVII of the Establishments Code states that an officer shall not do anything that will bring his private interest into conflict with his public duty or that compromises his office. However, it does not specifically mention recusal.

YES: A YES score is earned if there are requirements for civil servants to recuse themselves from policy decisions where their personal interests, including personal financial interests as well as those of their family and friends, are affected.

NO: A NO score exists if no such requirements exist in regulation or law.

43b. In law, there are restrictions for civil servants entering the private sector after leaving the government.

YES | NO

References:

There are no laws restricting civil servants from entering the private sector after leaving the government.

YES: A YES score is earned if there are regulations restricting civil servants' ability to take positions in the private sector after leaving government that would present a conflict of interest, including positions that directly seek to influence their former government colleagues.

NO: A NO score is earned if no such restrictions exist.

43c. In law, there are regulations governing gifts and hospitality offered to civil servants.

YES | NO

References:

Sections 2(1) and (2) of the Public Bodies (Prevention of Corruption) Act No. 13 of 1950 make any person who corruptly gives any gift, loan, fee or reward to a public body, and any public body that corruptly takes any gift, loan, fee or reward, guilty of an offense.

YES: A YES score is earned if there are formal guidelines regarding gifts and hospitality given to civil servants.

NO: A NO score is earned if there are no such guidelines or regulations.

43d. In practice, the regulations restricting post-government private sector employment for civil servants are effective.

100 | 75 | 50 | 25 | 0

Comments:

No barriers exist.

References:

Research at the Centre for Policy Alternatives

100: The regulations restricting post-government private sector employment for civil servants are uniformly enforced. There are no or few cases of civil servants taking jobs in the private sector after leaving government where they directly lobby or seek to influence their former government colleagues without an adequate cooling off" period.

75:

50: The regulations are generally enforced though some exceptions exist. In certain sectors, civil servants are known to regularly take jobs in the private sector that entail directly lobbying or seeking to influence their former government colleagues. Cooling off periods are short and sometimes ignored.

25:

0: The regulations are rarely or never enforced. Civil servants routinely take jobs in the private sector following government employment that involve direct lobbying or influencing of former government colleagues. Cooling off periods are non-existent or never enforced.

43e. In practice, the regulations governing gifts and hospitality offered to civil servants are effective.

100 | 75 | 50 | 25 | 0

References:

Interview with Mr. Shelton Wanasinghe

Former Civil Servant

Chairman of the Presidential Administrative Reforms Committee (1986-1987)

Chairman of the Salaries and Cadres Committee (1987-1989)

Director of the Centre for Policy Alternatives

Nov. 8, 2007

100: The regulations governing gifts and hospitality to civil servants are regularly enforced and sufficiently restrict the amounts of gifts and hospitality that can be given to civil servants. Civil servants never or rarely accept gifts or hospitality above what is allowed.

75:

50: The regulations governing gifts and hospitality to civil servants are generally applied though exceptions exist. Some civil servants in certain sectors are known to accept greater amounts of gifts and hospitality from outside interest groups or private sector actors than is allowed.

25:

0: The regulations governing gifts and hospitality to the civil service are routinely ignored and unenforced. Civil servants routinely accept significant amounts of gifts and hospitality from outside interest groups and actors seeking to influence their decisions.

43f. In practice, the requirements for civil service recusal from policy decisions affecting personal interests are effective.

100 | 75 | 50 | 25 | 0

References:

Interview with Mr. Shelton Wanasinghe
Former Civil Servant
Chairman of the Presidential Administrative Reforms Committee (1986-1987)
Chairman of the Salaries and Cadres Committee (1987-1989)
Director of the Centre for Policy Alternatives
Nov. 8, 2007

100: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are routinely followed by most or all civil servants.

75:

50: The requirements that civil servants recuse themselves from policy decisions where their personal interests are affected are followed by most civil servants though exceptions exist. In certain sectors, civil servants are known to routinely participate in policy decisions where their personal interests are affected.

25:

0: Most civil servants routinely ignore recusal requirements and continue to participate in policy decisions where their personal interests are affected.

44. Can citizens access the asset disclosure records of senior civil servants?

0

44a. In law, citizens can access the asset disclosure records of senior civil servants.

YES | NO

Comments:

The Declaration of Assets and Liabilities Act No. 3 of 1981 requires, among other things, certain categories of public officials to file asset declarations, but it is silent on the public accessibility of these records. Given that certain acts, such as the Companies Act No. 7 of 2007, etc., specifically mention the right of the public to access these records, it appears that the law does not envision access of these records by the public.

References:

Asset disclosure records of senior civil servants are not accessible.

YES: A YES score is earned if laws or regulations guarantee that citizens can access the asset records of senior civil servants.

NO: A NO score is earned if senior civil servants do not file an asset disclosure. A NO score is earned if senior civil servants file an asset disclosure, but it is not available to the public.

44b. In practice, citizens can access the asset disclosure records of senior civil servants within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Interview with Mr. Shelton Wanasinghe
Former Civil Servant
Chairman of the Presidential Administrative Reforms Committee (1986-1987)
Chairman of the Salaries and Cadres Committee (1987-1989)
Director of the Centre for Policy Alternatives
Nov. 8, 2007

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

44c. In practice, citizens can access the asset disclosure records of senior civil servants at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Interview with Mr. Shelton Wanasinghe
Former Civil Servant
Chairman of the Presidential Administrative Reforms Committee (1986-1987)
Chairman of the Salaries and Cadres Committee (1987-1989)
Director of the Centre for Policy Alternatives
Nov. 8, 2007

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

IV-2. Whistle-blowing Measures

45. Are employees protected from recrimination or other negative consequences when reporting corruption (i.e. whistle-blowing)?

0

45a. In law, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

References:

There is no legal provision.

YES: A YES score is earned if there are specific laws against recrimination against public sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for public-sector whistleblowers.

45b. In practice, civil servants who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

References:

Interview with Ms. Sriyanie Wijesundera
Governance and Anti-Corruption Programme
Centre for Policy Alternatives
Nov. 7, 2007

100: Public sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Public sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Public sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

45c. In law, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

YES | NO

References:

There is no legal provision.

YES: A YES score is earned if there are specific laws against recrimination against private sector whistleblowers. This may include prohibitions on termination, transfer, harassment or other consequences.

NO: A NO score is earned if there are no legal protections for private-sector whistleblowers.

45d. In practice, private sector employees who report cases of corruption, graft, abuse of power, or abuse of resources are protected from recrimination or other negative consequences.

100 | 75 | 50 | 25 | 0

References:

Interview with Ms. Sriyanie Wijesundera
Governance and Anti-Corruption Programme
Centre for Policy Alternatives
Nov. 7, 2007

100: Private sector whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers or may be due to a culture that encourages disclosure and accountability.

75:

50: Private sector whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Private sector whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

100

46. In law, is there an internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption?

YES | NO

References:

A new mechanism was recently established under the Citizen's Charter (complaints are received directly by the Office of the Secretary of the Ministry of Public Administration and Home Affairs), but it is too soon to assess its effectiveness.

Interview with Ms. Sriyanie Wijesundera
Governance and Anti-Corruption Programme
Centre for Policy Alternatives

YES: A YES score is earned if there is a mechanism, or multiple mechanisms for multiple national government agencies, through which civil servants can report cases of graft, misuse of public funds, or corruption.

NO: A NO score is earned if no such mechanism (or equivalent series of mechanisms) exists.

47. In practice, is the internal mechanism (i.e. phone hotline, e-mail address, local office) through which civil servants can report corruption effective?

25

47a. In practice, the internal reporting mechanism for public sector corruption has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Interview with Mr. Dissanayake
Governance and Anti-Corruption Programme
Centre for Policy Alternatives
Nov. 5, 2007

100: The agency/entity has staff sufficient to fulfill its basic mandate.

75:

50: The agency/entity has limited staff, a fact that hinders its ability to fulfill its basic mandate.

25:

0: The agency/entity has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

47b. In practice, the internal reporting mechanism for public sector corruption receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Currently funded by ADB and World Bank funds

References:

Interview with Ms. Sriyanie Wijesundera
Governance and Anti-Corruption Programme
Centre for Policy Alternatives
Nov. 7, 2007

100: The agency/entity has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency/entity has a regular source of funding but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

47c. In practice, the internal reporting mechanism for public sector corruption acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

According to Ms. Wijesundera, it is too early to comment on this, as the mechanism has been in existence only since early fall.

References:

Interview with Ms. Sriyanie Wijesundera
Governance and Anti-Corruption Programme
Centre for Policy Alternatives
Nov. 7, 2007

100: The agency/entity acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

47d. In practice, when necessary, the internal reporting mechanism for public sector corruption initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

No power to initiate.

References:

Interview with Ms. Sriyanie Wijesundera
Governance and Anti-Corruption Programme
Centre for Policy Alternatives
Nov. 7, 2007

100: When irregularities are discovered, the agency/entity is aggressive in investigating the government or in cooperating with other agencies' investigations.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, reluctant to cooperate with other investigative agencies, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate. The agency/entity may start investigations but not complete them, may refuse to cooperate with other investigative agencies, or may fail to detect offenders. The agency/entity may be partisan in its application of power.

42
IV-3. Procurement

48. Is the public procurement process effective?

48

48a. In law, there are regulations addressing conflicts of interest for public procurement officials.

YES | NO

References:

Guideline 1.4.3 of the Procurement Guidelines, issued by the National Procurement Agency, provides for the officer to disassociate himself from the process if such a situation arises.

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for public procurement officials. A YES score is earned if such regulations cover all civil servants, including procurement officials.

NO: A NO score is earned if no such rules exist.

48b. In law, there is mandatory professional training for public procurement officials.

YES | **NO**

References:

No provision

YES: A YES score is earned if public procurement officials receive regular mandatory training to ensure professional standards in supervising the tendering process.

NO: A NO score is earned if there is no regular required training of public procurement officials or if training is sporadic, inconsistent, unrelated to procurement processes, or voluntary.

48c. In practice, the conflicts of interest regulations for public procurement officials are enforced.

100 | **75** | 50 | 25 | 0

References:

Interview with Mr. Miyanawala
Director Administration and Policy
National Procurement Agency
Nov. 9, 2007

100: Regulations regarding conflicts of interest for procurement officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

48d. In law, there is a mechanism that monitors the assets, incomes and spending habits of public procurement officials.

YES | **NO**

References:

There is no such mechanism that monitors the assets, incomes and spending habits of public procurement officials, but they are

required to make a declaration of their assets according to the Declaration of Assets and Liabilities Act No. 1 of 1975 (as amended).

YES: A YES score is earned if there is a formal mandate to some agency to monitor the assets, incomes and spending habits of public procurement officials, such as an inspector general, or ombudsman.

NO: A NO score is earned if no such mandate exists.

48e. In law, major procurements require competitive bidding.

YES | NO

References:

Procurement Guidelines for 2006
National Procurement Agency
<http://www.npa.gov.lk/guidelines/gov.php>

YES: A YES score is earned if all major procurements (defined as those greater than 0.5% of GDP) require competitive bidding.

NO: A NO score is earned if competitive bidding is not required by law or regulation for major procurement (greater than 0.5% OF GDP).

48f. In law, strict formal requirements limit the extent of sole sourcing.

YES | NO

References:

Guideline 3.5 of the Guidelines for Procurement issued by the National Procurement Agency sets out formal requirements to limit the extent of sole sourcing.

<http://www.npa.gov.lk/guidelines/gov.php>

YES: A YES score is earned if sole sourcing is limited to specific, tightly defined conditions, such as when a supplier is the only source of a skill or technology.

NO: A NO score is earned if there are no prohibitions on sole sourcing. A NO score is earned if the prohibitions on sole sourcing are general and unspecific.

48g. In law, unsuccessful bidders can instigate an official review of procurement decisions.

YES | NO

References:

Procurement Guidelines for 2006
National Procurement Agency
<http://www.npa.gov.lk/guidelines/gov.php>

YES: A YES score is earned if there is a formal appeal process for unsuccessful bidders.

NO: A NO score is earned if no such process exists.

48h. In law, unsuccessful bidders can challenge procurement decisions in a court of law.

YES | **NO**

References:

There are no laws governing this activity.

YES: A YES score is earned if unsuccessful bidders can use the courts to appeal a procurement decision.

NO: A NO score is earned if no such process exists.

48i. In law, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

YES | **NO**

References:

There are no laws governing this area within the guidelines.

Procurement Guidelines for 2006
National Procurement Agency
<http://www.npa.gov.lk/guidelines/gov.php>

YES: A YES score is earned if there are formal procurement blacklists, preventing convicted companies from doing business with the government.

NO: A NO score is earned if no such process exists.

48j. In practice, companies guilty of major violations of procurement regulations (i.e. bribery) are prohibited from participating in future procurement bids.

100 | 75 | 50 | 25 | **0**

References:

National Integrity Systems Report
2003
Transparency International Sri Lanka

100: A system of formal blacklists and cooling off periods is in place for companies convicted of corruption. All companies are subject to this system.

75:

50: A system of formal blacklists and cooling off periods is in place, but the system has flaws. Some procurements or companies may not be affected by the system, or the prohibitions are sometimes not effective.

25:

0: There is no such system, or the system is consistently ineffective in prohibiting future hiring of blacklisted companies.

49. Can citizens access the public procurement process?

75

49a. In law, citizens can access public procurement regulations.

YES | NO

References:

Procurement Guidelines for 2006
National Procurement Agency
<http://www.npa.gov.lk/guidelines/gov.php>

YES: A YES score is earned if procurement rules are, by law, open to the public. These regulations are defined here as the rules governing the competitive procurement process.

NO: A NO score is earned if procurement rules are officially secret for any reason or if there are no procurement rules.

49b. In law, the government is required to publicly announce the results of procurement decisions.

YES | NO

References:

Guideline 8.10 of the Procurement Guidelines for 2006, issued by the National Procurement Agency, provides for the results to be publicly announced.

<http://www.npa.gov.lk/guidelines/gov.php>

YES: A YES score is earned if the government is required to publicly post or announce the results of the public procurement process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the public procurement process.

49c. In practice, citizens can access public procurement regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

<http://www.npa.gov.lk>

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

49d. In practice, citizens can access public procurement regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

<http://www.npa.gov.lk>

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line. These records are defined here as the rules governing the competitive procurement process.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

49e. In practice, major public procurements are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

Interview with Mr. Miyanawala
Director Administration and Policy
National Procurement Agency
Nov. 9, 2007

100: There is a formal process of advertising public procurements. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some major procurements may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising major public procurements or the process is superficial and ineffective.

49f. In practice, citizens can access the results of major public procurement bids.

100 | 75 | 50 | 25 | 0

References:

National Integrity Systems Report
2003
Transparency International Sri Lanka

100: Records of public procurement results are publicly available through a formal process.

75:

50: Records of public procurements are available, but there are exceptions to this practice. Some information may not be available, or some citizens may not be able to access information.

25:

0: This information is not available to the public through an official process.

IV-4. Privatization

50. Is the privatization process effective?

42

50a. In law, all businesses are eligible to compete for privatized state assets.

YES | NO

Comments:

There is no systemic exclusion of any groups. However, most privatizations are done via a means of restricted bidding (submission of tenders). Thus, in principle, not all businesses are always eligible to compete for privatized state assets.

References:

There is no legal provision guaranteeing eligibility for competing for privatized assets.

YES: A YES score is earned if all businesses are equally eligible to compete for privatized assets. A YES score is still earned if the government did not privatize any state-owned assets during the study period.

NO: A NO score is earned if any group of businesses (other than those blacklisted due to corruption charges) is excluded by law.

50b. In law, there are regulations addressing conflicts of interest for government officials involved in privatization.

YES | NO

Comments:

Does not specifically mention privatization.

References:

Section 1:5 of Chapter XLVII of the Establishments Code states that an officer shall not do anything that will bring his private interest into conflict with his public duty or that compromises his office.

YES: A YES score is earned if there are specific formal regulations defining and regulating conflicts of interest between official public duty and private interests for privatization officials. A YES score is earned if such regulations cover all civil servants, including privatization officials.

NO: A NO score is earned if there are no such formal regulations.

50c. In practice, conflicts of interest regulations for government officials involved in privatization are enforced.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Shelton Wanasinghe
Director
Centre for Policy Alternatives
Former Civil Servant
Nov. 15, 2007

100: Regulations regarding conflicts of interest for privatization officials are aggressively enforced.

75:

50: Conflict of interest regulations exist, but are flawed. Some violations may not be enforced, or some officials may be exempt from the regulations.

25:

0: Conflict of interest regulations do not exist, or are consistently ineffective.

51. Can citizens access the terms and conditions of privatization bids?

45

51a. In law, citizens can access privatization regulations.

YES | NO

References:

Citizens cannot access privatization regulations.

Centre for Policy Alternatives and Transparency International
2003
National Integrity Systems

YES: A YES score is earned if privatization rules (defined here as the rules governing the competitive privatization process) are, by law, open to the public. Even if privatization is infrequent or rare, the most recent privatization should be used as the basis for scoring this indicator.

NO: A NO score is earned if privatization rules are officially secret for any reason or if there are no privatization rules.

51b. In practice, privatizations are effectively advertised.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Shelton Wanasinghe
Director
Centre for Policy Alternatives
Former Civil Servant
Nov. 15, 2007

100: There is a formal process of advertising privatizations. This may include a government website, newspaper advertising, or other official announcements. All major procurements are advertised in this way. Sufficient time is allowed for bidders to respond to advertisements.

75:

50: There is a formal process of advertisement but it is flawed. Some privatizations may not be advertised, or the advertising process may not be effective. The time between advertisements and bidding may be too short to allow full participation.

25:

0: There is no formal process of advertising privatizations or the process is superficial and ineffective.

51c. In law, the government is required to publicly announce the results of privatization decisions.

YES | NO

References:

It is required by section 2 (2) (ii) of the Conversion of Public Corporations or Government owned Business undertakings into Public Companies Act No. 23 of 1987 to publish an order in the Gazette.

YES: A YES score is earned if the government is required to publicly post or announce the results of the privatization process. This can be done through major media outlets or on a publicly-accessible government register or log.

NO: A NO score is earned if there is no requirement for the government to publicly announce the results of the privatization process.

51d. In practice, citizens can access privatization regulations within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

According to Ms. Mendis, regulations and agreements on privatization in certain sectors (civil aviation, for example) are not made available to the public.

References:

Interview with Ms. Nishara Mendis
Lecturer
Faculty of Law
University of Colombo
Nov. 15, 2007

100: Records (defined here as the rules governing the competitive privatization process) are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

51e. In practice, citizens can access privatization regulations at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

According to Ms. Mendis, regulations and agreements on privatization in certain sectors are not made available to the public (civil aviation being one). In certain other areas, they are gazetted, which makes them available at a nominal cost.

References:

Interview with Ms. Nishara Mendis
Lecturer
Faculty of Law
University of Colombo
Nov. 15, 2007

100: Records (defined here as the rules governing the competitive privatization process) are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

100

52. In law, is there a national ombudsman, public protector or equivalent agency (or collection of agencies) covering the entire public sector?

YES | NO

References:

Parliamentary Commissioner for Administration Act No.17 of 1981 (as amended by Act No.16 of 1991 and Act No. 26 of 1994)

YES: A YES score is earned if there is a specific agency or set of agencies whose primary mandate is to investigate the actions of government on the behalf of common citizens. This agency or set of agencies should be specifically charged with seeking out and documenting abuses of power.

NO: A NO score is earned if no such agency or set of agencies exists, or that function is a secondary concern of a larger body, such as the legislature.

53. Is the national ombudsman effective?

57

53a. In law, the ombudsman is protected from political interference.

YES | NO

References:

Section 3(2) of the Parliamentary Commissioner for Administration Act No. 17 of 1981 (as amended by Act No. 16 of 1991 and Act No. 26 of 1994)

Article 41C of the Constitution as amended by the 17th Amendment provides for the recommendation of the appointment of the ombudsman by the Constitutional Council.

YES: A YES score is earned only if the agency (or set of agencies) has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

53b. In practice, the ombudsman is protected from political interference.

100 | 75 | 50 | 25 | 0

References:

Mr. Rohan Edrisinha
Director and Head of the Legal and Constitutional Unit
Centre for Policy Alternatives
Nov. 3, 2007

100: This agency (or set of agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or set of agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include public criticism or praise by the government. The ombudsman may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or set of agencies) is commonly influenced by political or personal incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The ombudsman cannot compel the government to reveal sensitive information.

53c. In practice, the head of the ombudsman agency/entity is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

Article 156(4) of the Constitution specifies the grounds on which the ombudsman can be removed. Section 3(1) of the Parliamentary Commissioner for Administration Act No. 17 of 1981 states that he shall hold office during good behavior.

References:

Mr. Rohan Edrisinha
Director and Head of the Legal and Constitutional Unit
Centre for Policy Alternatives
Nov. 3, 2007

100: The director of the ombudsman (or directors of multiple agencies) serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the ombudsman (or directors of multiple agencies) serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the ombudsman (or directors of multiple agencies) can be removed at the will of political leadership.

53d. In practice, the ombudsman agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

The Role of the Ombudsman
Centre for Policy Alternatives
1998

100: The ombudsman agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The ombudsman agency (or agencies) has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The ombudsman agency (or agencies) has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

53e. In practice, agency appointments support the independence of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:

Mr. Rohan Edrisinha
Director and Head of the Legal and Constitutional Unit
Centre for Policy Alternatives
Nov. 3, 2007

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

53f. In practice, the ombudsman agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The study notes that government funding is insufficient and calls for other sources of revenue for the ombudsman.

References:

The Role of the Ombudsman
The Centre for Policy Alternatives
1998

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

53g. In practice, the ombudsman agency (or agencies) makes publicly available reports.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman must make annual reports to Parliament, but in practice, it has been noted that it's not always consistent: While certain persons occupying the office have been sending reports regularly, others have not. Even when the reports are sent, it is not always tabled in Parliament. If the report is tabled, it becomes subsequently available to the public; otherwise it does not.

References:

Mr. Rohan Edrisinha
Director and Head of the Legal and Constitutional Unit
Centre for Policy Alternatives
Nov. 3, 2007

100: The agency (or agencies) makes regular, publicly available, substantial reports either to the legislature or directly to the public outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature and/or directly to the public that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

53h. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman has no power to initiate investigations of his own accord.

References:

The Role of the Ombudsman
Centre for Policy Alternatives
1998

100: The agency aggressively starts investigations — or participates fully with cooperating agencies' investigations — into judicial misconduct. The agency is fair in its application of this power.

75:

50: The agency will start or cooperate in investigations, but often relies on external pressure to set priorities, or has limited effectiveness when investigating. The agency, though limited in effectiveness, is still fair in its application of power.

25:

0: The agency rarely investigates on its own or cooperates in other agencies' investigations, or the agency is partisan in its application of this power.

53i. In practice, when necessary, the national ombudsman (or equivalent agency or agencies) imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The ombudsman can only mediate and make recommendations in a matter; he cannot give constructive orders. Government departments are under no obligation to abide by the ombudsman's determinations.

References:

The Role of the Ombudsman
Centre for Policy Alternatives
1998

100: When rules violations are discovered, the agency is aggressive in penalizing offenders or in cooperating with other agencies who penalize offenders.

75:

50: The agency enforces rules, but is limited in its effectiveness. The agency may be slow to act, unwilling to take on politically powerful offenders, resistant to cooperating with other agencies, or occasionally unable to enforce its judgments.

25:

0: The agency does not effectively penalize offenders. The agency may make judgments but not enforce them, does not cooperate with other agencies in enforcing penalties, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

53j. In practice, the government acts on the findings of the ombudsman agency (or agencies).

100 | 75 | 50 | 25 | 0

References:

The Role of the Ombudsman
Centre for Policy Alternatives
1998

Mr. Rohan Edrisinha
Director and Head of the Legal and Constitutional Unit
Centre for Policy Alternatives
Nov. 3, 2007

100: Ombudsman's reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, ombudsman's reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Ombudsman reports are often ignored, or given superficial attention. Ombudsman reports do not lead to policy changes.

53k. In practice, the ombudsman agency (or agencies) acts on citizen complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Lack of resources affects this very negatively.

References:

Mr. Rohan Edrisinha
Director and Head of the Legal and Constitutional Unit
Centre for Policy Alternatives
Nov. 3, 2007

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

54. Can citizens access the reports of the ombudsman?

42

54a. In law, citizens can access reports of the ombudsman(s).

YES | NO

Comments:

The ombudsmans' reports are sent to Parliament, but in practice, it has been noted that it's not always consistent: While certain persons occupying the office have been sending reports regularly, others have not. Even when the reports are sent, it is not always tabled in Parliament. If the report is tabled, it becomes subsequently available to the public; otherwise it does not.

References:

Ombudsmans' reports are not accessible by citizens.

YES: A YES score is earned if all ombudsman reports are publicly available.

NO: A NO score is earned if any ombudsman reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute the reports.

54b. In practice, citizens can access the reports of the ombudsman(s) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Mr. Rohan Edrisinha
Director and Head of the Legal and Constitutional Unit
Centre for Policy Alternatives
Nov. 3, 2007

100: Reports are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

54c. In practice, citizens can access the reports of the ombudsman(s) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Mr. Rohan Edrisinha
Director and Head of the Legal and Constitutional Unit
Centre for Policy Alternatives
Nov. 3, 2007

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Reports costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

V-2. Supreme Audit Institution

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

100

55. In law, is there a national supreme audit institution, auditor general or equivalent agency covering the entire public sector?

YES | NO

References:

Article 153 read with Article 154 of the Constitution provides for an Auditor General appointed by the President with the approval of the Constitutional Council.

YES: A YES score is earned if there is a specific agency whose primary mandate is to audit and track the movement of money through the government. This agency should be specifically charged to investigate and document the misuse of

funds. A system of agencies located in each department is equivalent.

NO: A NO score is earned if no such agency exists, or that function is a secondary concern of a larger body, such as the executive.

56. Is the supreme audit institution effective?

78

56a. In law, the supreme audit institution is protected from political interference.

YES | NO

References:

Article 153 as amended by the 17th Amendment of the Constitution specifies that there shall be an Auditor General appointed by the President with the approval of the Constitutional Council, who shall hold office during good behavior. But financially, the departments' budget is not directly under parliamentary control. It goes through the channels of the Ministry of Finance/Treasury and, as such, is subject to amendments in the context of the constraints on the Consolidated Fund. Auditing staff are under the control of the Secretary to the President, and nonaudit staff are under the control of the Ministry of Public Administration.

YES: A YES score is earned only if the agency has some formal organizational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

56b. In practice, the head of the audit agency is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

Comments:

The removal of the auditor general is by a process analogous to the removal of Supreme Court judges.

References:

Mr. M.D.A. Harold
former Deputy Auditor General
Current Chairman of Transparency International Sri Lanka
Nov. 5, 2005

100: The director of the agency serves a defined term and cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director of the agency serves a defined term, but can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director of the agency can be removed at the will of political leadership.

56c. In practice, the audit agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Mr. M.D.A. Harold
former Deputy Auditor General
Current Chairman of Transparency International Sri Lanka
Nov. 5, 2005

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

56d. In practice, audit agency appointments support the independence of the agency.

100 | 75 | 50 | 25 | 0

Comments:

Generally, the appointments are in furtherance of independence. It is a 17th Amendment body, and should the Constitution be followed, there is a strong guarantee of this. However, as the law is currently applied, the Constitutional Council is not in effect, and appointments are made by the Public Service Commission, appointed by the President.

References:

Mr. M.D.A. Harold
former Deputy Auditor General
Current Chairman of Transparency International Sri Lanka
Nov. 5, 2005

100: Appointments to the agency are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

56e. In practice, the audit agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Funded via the Contingency Fund; thus, there is no marked fluctuation in funding.

References:

Mr. M.D.A. Harold
former Deputy Auditor General
Current Chairman of Transparency International Sri Lanka
Nov. 5, 2005

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

56f. In practice, the audit agency makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

Available via Parliament and the Auditor General's Web site at <http://www.auditorgeneral.lk>.

References:

Mr. M.D.A. Harold
former Deputy Auditor General
Current Chairman of Transparency International Sri Lanka
Nov. 5, 2005

100: The agency makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency makes publicly available reports to the legislature and/or to the public directly that are sometimes delayed or incomplete.

25:

0: The agency makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

56g. In practice, the government acts on the findings of the audit agency.

100 | 75 | 50 | 25 | 0

Comments:

This is a major weakness; generally not much action is taken. Once an Audit Report is issued, the agency in question is required to report back to the department per the Finance Act No. 38 of 1971, but this rarely happens.

References:

Mr. M.D.A. Harold
former Deputy Auditor General
Current Chairman of Transparency International Sri Lanka
Nov. 5, 2005

100: Audit agency reports are taken seriously, with negative findings drawing prompt corrective action.

75:

50: In most cases, audit agency reports are acted on, though some exceptions may occur for politically sensitive issues, or particularly resistant agencies.

25:

0: Audit reports are often ignored, or given superficial attention. Audit reports do not lead to policy changes.

56h. In practice, the audit agency is able to initiate its own investigations.

100 | 75 | 50 | 25 | 0

Comments:

This is done at the discretion of the auditor general.

References:

Mr. M.D.A. Harold
former Deputy Auditor General
Current Chairman of Transparency International Sri Lanka
Nov. 5, 2005

100: The supreme audit institution can control the timing and pace of its investigations without any input from the executive or legislature.

75:

50: The supreme audit institution can generally decide what to investigate, and when, but is subject to pressure from the executive or legislature on politically sensitive issues.

25:

0: The supreme audit institution must rely on approval from the executive or legislature before initiating investigations. Politically sensitive investigations are almost impossible to move forward on.

57. Can citizens access reports of the supreme audit institution?

100

57a. In law, citizens can access reports of the audit agency.

YES | NO

References:

Under article 154(6) of the Constitution, the auditor general is required to send a report to Parliament within 10 months of the close of each financial year, and such reports are available to the public.

Additionally, the auditor general's department publishes its reports online at <http://www.auditorgeneral.lk>.

YES: A YES score is earned if all supreme auditor reports are available to the general public.

NO: A NO score is earned if any auditor reports are not publicly available. This may include reports made exclusively to the legislature or the executive, which those bodies may choose not to distribute.

57b. In practice, citizens can access audit reports within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Mr. M.D.A. Harold
former Deputy Auditor General
Current Chairman of Transparency International Sri Lanka
Nov. 5, 2005

100: Reports are available on-line, or records can be obtained within two days. Reports are uniformly available; there are no delays for politically sensitive information.

75:

50: Reports take around two weeks to obtain. Some delays may be experienced.

25:

0: Reports take more than a month to acquire. In some cases, most reports may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

57c. In practice, citizens can access the audit reports at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

Mr. M.D.A. Harold
former Deputy Auditor General
Current Chairman of Transparency International Sri Lanka
Nov. 5, 2005

100: Reports are free to all citizens, or available for the cost of photocopying. Reports can be obtained at little cost, such as by mail, or on-line.

75:

50: Reports impose a financial burden on citizens, journalists or CSOs. Retrieving reports may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving reports imposes a major financial burden on citizens. Report costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

100

58. In law, is there a national tax collection agency?

YES | NO

References:

Inland Revenue Department functions as the agency to collect tax, instituted by the Inland Revenue Act No.38 of 2000 (as amended)

<http://www.inlandrevenue.gov.lk/>

YES: A YES score is earned if there is a national agency formally mandated to collect taxes.

NO: A NO score is earned if that function is spread over several agencies, or does not exist. A NO score is earned if national government ministries can collect taxes independently.

59. Is the tax collection agency effective?

75

59a. In practice, the tax collection agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

There is a problem with the number of staff, as well as questions regarding adequate training.

References:

Interview with Dr. Shivaji Felix
Attorney-at-Law
Lecturer
University of Colombo
Nov. 3, 2007
Colombo. Sri Lanka

Tax Staff Shortages Cause Cash Flow Problems for Businesses
Financial Times
May 20. 2007

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

59b. In practice, the tax agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

The Inland Revenue Department is funded via the Consolidated Fund. The amount allocated will change depending on the estimates for each year, but the amount of political influence is negligible.

References:

Interview with Dr. Shivaji Felix
Attorney-at-Law
Lecturer
University of Colombo
Nov. 3, 2007
Colombo. Sri Lanka

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

60. In practice, are tax laws enforced uniformly and without discrimination?

75

60. In practice, are tax laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

As there are widespread reports of corruption, etc., arbitrariness and discrimination are present, given a wide definition of these terms. However, they are not systemic features and are usually ad hoc instances.

References:

Interview with Dr. Shivaji Felix
Attorney-at-Law
Lecturer
University of Colombo
Nov. 3, 2007
Colombo. Sri Lanka

<http://www.lankannewspapers.com/news/2006/3/6129.htm>

Editorial
The Island
July 15, 2002

100: Tax laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade tax law than another.

75:

50: Tax laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade tax law. Some arbitrary and discriminatory tax rules exist.

25:

0: Tax law is unequally applied. Some groups of citizens are consistently more or less likely to evade tax law than others. Tax regulations are, as a rule, written to be discriminatory and/or arbitrary.

61. In law, is there a national customs and excise agency?

100

61. In law, is there a national customs and excise agency?

YES | NO

References:

The Department of Excise is established under the Excise Ordinance No. 8 of 1912 (as amended).

The Department of Customs is established under the Customs Ordinance No. 17 of 1869 (as amended).

<http://www.customs.gov.lk>

<http://www.excise.gov.lk>

YES: A YES score is earned if there is an agency formally mandated to collect excises and inspect customs.

NO: A NO score is earned if that function is spread over several agencies, or does not exist.

62. Is the customs and excise agency effective?

75

62a. In practice, the customs and excise agency has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

Interview with Dr. Shivaji Felix
Attorney-at-Law
Lecturer
University of Colombo
Nov. 3, 2007
Colombo. Sri Lanka

100: The agency has staff sufficient to fulfill its basic mandate.

75:

50: The agency has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

62b. In practice, the customs and excise agency receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

As with the Inland Revenue Department, this is funded via the Consolidated Fund.

References:

Interview with Dr. Shivaji Felix
Attorney-at-Law
Lecturer
University of Colombo
Nov. 3, 2007
Colombo. Sri Lanka

100: The agency has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

75

63. In practice, are customs and excise laws enforced uniformly and without discrimination?

100 | 75 | 50 | 25 | 0

Comments:

Instances of arbitrariness and discrimination are ad hoc and not systemic, however.

References:

Interview with Dr. Shivaji Felix
Attorney-at-Law
Lecturer
University of Colombo
Nov. 3, 2007
Colombo. Sri Lanka

<http://www.lankannewspapers.com/news/2006/3/6129>

<http://www.lankannewspapers.com/news/2005/10/4105> (which reports on a massive racket involving major vehicle importers accused of clearing about 1,000 vehicles without paying taxes")

100: Customs and excise laws (which may be economically unfair as written) are enforced consistently for all citizens. No general group of citizens is more or less likely to evade customs than another.

75:

50: Customs and excise laws are generally enforced consistently, but some exceptions exist. For example, some groups may occasionally evade customs requirements.

25:

0: Customs and excise laws are unequally applied. Some groups of citizens are consistently more or less likely to evade customs and excise laws than others.

V-4. State-Owned Enterprises

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

100

64. In law, is there an agency or equivalent mechanism overseeing state-owned companies?

YES | NO

References:

The Committee on Public Enterprises is the committee instituted by Standing Order 126 of the Parliament to oversee state-owned companies.

YES: A YES score is earned if there is an agency or equivalent mechanism tasked with overseeing the conduct and performance of state-owned companies on behalf of the public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if this function does not exist.

65. Is the agency or equivalent mechanism overseeing state-owned companies effective?

20

65a. In law, the agency or equivalent mechanism overseeing state-owned companies is protected from political interference.

YES | NO

References:

No legal provision exists. Given the nature of the composition of the Committee on Public Enterprises, there is a lot of political influence.

YES: A YES score is earned only if the agency or equivalent mechanism has some formal operational independence from the government. A YES score is earned even if the entity is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency or equivalent mechanism is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department.

65b. In practice, the agency or equivalent mechanism overseeing state-owned companies has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

References:

National Integrity Systems Report
2003 Questionnaire
Transparency International Sri Lanka

100: The agency or equivalent mechanism has staff sufficient to fulfill its basic mandate.

75:

50: The agency or equivalent mechanism has limited staff that hinders its ability to fulfill its basic mandate.

25:

0: The agency or equivalent mechanism has no staff, or a limited staff that is clearly unqualified to fulfill its mandate.

65c. In practice, the agency or equivalent mechanism overseeing state-owned companies receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

There is no funding provision for parliamentary committees. However, they are provided with staff and resources to fulfill their mandate.

References:

Research available at the Centre for Policy Alternatives

100: The the agency or equivalent mechanism has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The the agency or equivalent mechanism has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: Funding source is unreliable. Funding may be removed arbitrarily or as retaliation for agency functions.

65d. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies independently initiates investigations.

100 | 75 | 50 | 25 | 0

References:

National Integrity Systems Report
2003
Transparency International Sri Lanka

100: When irregularities are discovered, the agency or equivalent mechanism is aggressive in investigating and/or in cooperating with other investigative bodies.

75:

50: The agency or equivalent mechanism starts investigations, but is limited in its effectiveness or in its cooperation with other investigative agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively investigate financial irregularities or cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

65e. In practice, when necessary, the agency or equivalent mechanism overseeing state-owned companies imposes penalties on offenders.

100 | 75 | 50 | 25 | 0

Comments:

The enforcement/disciplinary action stemming from a Committee on Public Enterprises report is inherently political – that is, the executive must investigate specific recommendations and take appropriate action.

References:

The Standing Orders establishing the Committee on Public Enterprises does not specify powers of penalization.

100: When rules violations are discovered, the agency or equivalent mechanism is aggressive in penalizing offenders and/or in cooperating with other agencies that impose penalties.

75:

50: The agency or equivalent mechanism enforces rules, but is limited in its effectiveness or reluctant to cooperate with other agencies. The agency may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency or equivalent mechanism does not effectively penalize offenders or refuses to cooperate with other agencies that enforce penalties. The agency may make judgments but not enforce them, or may fail to make reasonable judgments against offenders. The agency may be partisan in its application of power.

66. Can citizens access the financial records of state-owned companies?

85

66a. In law, citizens can access the financial records of state-owned companies.

YES | NO

References:

Citizens have access to the financial records of the state-owned companies.

<http://www.auditorgeneral.lk>

YES: A YES score is earned if the financial information of all state-owned companies is required by law to be public. State-owned companies are defined as companies owned in whole or in part by the government.

NO: A NO score is earned if any category of state-owned company is exempt from this rule, or no such rules exist.

66b. In practice, the financial records of state-owned companies are regularly updated.

100 | 75 | 50 | 25 | 0

Comments:

The financial records of state-owned companies are governed by the Companies Act No. 7 of 2007 and do not have a separate legal regime.

References:

Mr. M.D.A. Harold
former Deputy Auditor General
Current Chairman of Transparency International Sri Lanka
Nov. 5, 2005

100: State-owned companies always disclose financial data, which is generally accurate and up to date.

75:

50: State-owned companies disclose financial data, but it is flawed. Some companies may misstate financial data, or file the information behind schedule.

25:

0: Financial data is not available, or is consistently superficial or otherwise of no value.

66c. In practice, the financial records of state-owned companies are audited according to international accounting standards.

100 | 75 | 50 | 25 | 0

Comments:

They are audited according to Sri Lankan auditing standards, which are in conformity with International Standards. This, too, is a requirement under the Companies Act No. 7 of 2007.

References:

Mr. M.D.A. Harold
former Deputy Auditor General
Current Chairman of Transparency International Sri Lanka
Nov. 5, 2005

100: Financial records of all state-owned companies are regularly audited by a trained third party auditor using accepted international standards.

75:

50: Financial records of state-owned companies are regularly audited, but exceptions may exist. Some companies may use flawed or deceptive accounting procedures, or some companies may be exempted from this requirement.

25:

0: State-owned companies are not audited, or the audits have no functional value. The auditors may collude with the companies in providing misleading or false information to the public.

66d. In practice, citizens can access the financial records of state-owned companies within a reasonable time period.

Comments:
Available from the Registrar of Companies

References:
Mr. M.D.A. Harold
former Deputy Auditor General
Current Chairman of Transparency International Sri Lanka
Nov. 5, 2005

100: Records are available on-line, or records can be obtained within two days. Records are uniformly available; there are no delays for politically sensitive information.

75:

50: Records take around two weeks to obtain. Some delays may be experienced.

25:

0: Records take more than a month to acquire. In some cases, most records may be available sooner, but there may be persistent delays in obtaining politically sensitive records.

66e. In practice, citizens can access the financial records of state-owned companies at a reasonable cost.

Comments:
Available from the Registrar of Companies

References:
Mr. M.D.A. Harold
former Deputy Auditor General
Current Chairman of Transparency International Sri Lanka
Nov. 5, 2005

100: Records are free to all citizens, or available for the cost of photocopying. Records can be obtained at little cost, such as by mail, or on-line.

75:

50: Records impose a financial burden on citizens, journalists or CSOs. Retrieving records may require a visit to a specific office, such as a regional or national capital.

25:

0: Retrieving records imposes a major financial burden on citizens. Records costs are prohibitive to most citizens, journalists, or CSOs trying to access this information.

67a. In law, anyone may apply for a business license.

YES | NO

References:

Any person may apply for a business license under Section 2 of the Business Names Registration Act No. 7 of 1987.

YES: A YES score is earned if no particular group or category of citizens is excluded from applying for a business license, when required. A YES score is also earned if basic business licenses are not required.

NO: A NO score is earned if any group of citizens are categorically excluded from applying for a business license, when required

67b. In law, a complaint mechanism exists if a business license request is denied.

YES | NO

References:

Under Section 25 of the Business Registration Act No. 7 of 1987, an appeal can be forwarded to the District Court if a business license request is denied or revoked.

YES: A YES score is earned if there is a formal process for appealing a rejected license.

NO: A NO score is earned if no such mechanism exists.

67c. In practice, citizens can obtain any necessary business license (i.e. for a small import business) within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

World Bank

Doing Business

<http://www.doingbusiness.org/ExploreTopics/StartingBusiness/Details.aspx?economyid=174>

100: Licenses are not required, or licenses can be obtained within roughly one week.

75:

50: Licensing is required and takes around one month. Some groups may be delayed up to a three months

25:

0: Licensing takes more than three months for most groups. Some groups may wait six months to one year to get necessary licenses.

67d. In practice, citizens can obtain any necessary business license (i.e. for a small import business) at a reasonable cost.

100 | 75 | 50 | 25 | 0

References:

World Bank

Doing Business

<http://www.doingbusiness.org/ExploreTopics/StartingBusiness/Details.aspx?economyid=174>

100: Licenses are not required, or licenses are free. Licenses can be obtained at little cost to the organization, such as by mail, or on-line.

75:

50: Licenses are required, and impose a financial burden on the organization. Licenses may require a visit to a specific office, such as a regional or national capital.

25:

0: Licenses are required, and impose a major financial burden on the organization. Licensing costs are prohibitive to the organization.

68. Are there transparent business regulatory requirements for basic health, environmental, and safety standards?

100

68a. In law, basic business regulatory requirements for meeting public health standards are transparent and publicly available.

YES | NO

References:

Factories Ordinance 1960 Part II

BOI regulations Section 7

Laws available at <http://www.lawnet.lk>

YES: A YES score is earned if basic regulatory requirements for meeting public health standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68b. In law, basic business regulatory requirements for meeting public environmental standards are transparent and publicly available.

YES | NO

References:

Available at <http://www.cea.lk>

YES: A YES score is earned if basic regulatory requirements for meeting public environmental standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

68c. In law, basic business regulatory requirements for meeting public safety standards are transparent and publicly available.

YES | NO

Comments:

Board of Investment (BOI) regulations are not generally applicable; they are applicable only to those companies established under the BOI regime.

References:

Factories Ordinance 1960 Part III

Board of Investment Regulations
Section 6

Laws available at <http://www.lawnet.lk>

YES: A YES score is earned if basic regulatory requirements for meeting public safety standards are publicly accessible and transparent.

NO: A NO score is earned if such requirements are not made public or are otherwise not transparent.

69. Does government effectively enforce basic health, environmental, and safety standards on businesses?

83

69a. In practice, business inspections by government officials to ensure public health standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Research on Sri Lankan labor laws and standards conducted by the Legal and Constitutional Unit of the Centre for Policy Alternatives, 2006

100: Business inspections by the government to ensure that public health standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public health standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public health standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69b. In practice, business inspections by government officials to ensure public environmental standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Interview with legal officer of the Central Environmental Authority on Nov. 14, 2007

100: Business inspections by the government to ensure that public environmental standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public environmental standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public environmental standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

69c. In practice, business inspections by government officials to ensure public safety standards are being met are carried out in a uniform and even-handed manner.

100 | 75 | 50 | 25 | 0

References:

Research is available at the Centre for Policy Alternatives.

Sri Lanka labor statistics are available at <http://www.statistics.gov.lk>.

100: Business inspections by the government to ensure that public safety standards are being met are designed and carried out in such a way as to ensure comprehensive compliance by all businesses with transparent regulatory requirements.

75:

50: Business inspections by the government to ensure public safety standards are met are generally carried out in an even-handed way though exceptions exist. Bribes are occasionally paid to extract favorable treatment or expedited processing.

25:

0: Business inspections to ensure that public safety standards are met are routinely carried out by government officials in an ad hoc, arbitrary fashion designed to extract extra payments from businesses in exchange for favorable treatment.

VI-1. Anti-Corruption Law

70

70. Is there legislation criminalizing corruption?

78

70a. In law, attempted corruption is illegal.

YES | NO

References:

Section 25(1) of the Bribery Act No. 8 of 1973 (as amended) sets out that any person who attempts to commit an offense under this act will be guilty of an offense.

YES: A YES score is earned if corruption laws include attempted acts.

NO: A NO score is earned if this is not illegal.

70b. In law, extortion is illegal.

YES | NO

References:

Sections 14-24 of Bribery Act No. 8 of 1973 (as amended) include extortion as a part of each offense.

YES: A YES score is earned if corruption laws include extortion. Extortion is defined as demanding favorable treatment (such as a bribe) to withhold a punishment.

NO: A NO score is earned if this is not illegal.

70c. In law, offering a bribe (i.e. active corruption) is illegal.

YES | NO

References:

Offering a bribe is illegal under Sections 14-24 of Bribery Act No. 8 of 1973 (as amended).

YES: A YES score is earned if offering a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70d. In law, receiving a bribe (i.e. passive corruption) is illegal.

YES | NO

References:

Receiving a bribe is an offense under Sections 14-24 of Bribery Act No. 8 of 1973 (as amended).

YES: A YES score is earned if receiving a bribe is illegal.

NO: A NO score is earned if this is not illegal.

70e. In law, bribing a foreign official is illegal.

YES | NO

References:

There are no laws governing this activity.

YES: A YES score is earned if bribing a foreign official is illegal.

NO: A NO score is earned if this is not illegal.

70f. In law, using public resources for private gain is illegal.

YES | NO

References:

Misappropriation of public resources is illegal under Section 5(1) of the Offenses Against Public Property Act No. 12 of 1982 (as amended) .

YES: A YES score is earned if using public resources for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70g. In law, using confidential state information for private gain is illegal.

YES | NO

Comments:

Although the act does not specifically mention private gain, it makes it an offense to communicate confidential information to unauthorized persons, and this can be used to penalize those using state information for private gain in given circumstances.

References:

Official Secrets Act No. 50 of 1981, Section 7

YES: A YES score is earned if using confidential state information for private gain is illegal.

NO: A NO score is earned if this is not illegal.

70h. In law, money laundering is illegal.

YES | NO

References:

Section 3(1) of the the Prevention of Money Laundering Act No.5 of 2006

YES: A YES score is earned if money laundering is illegal. Money laundering is defined as concealing the origin of funds to hide wrongdoing or avoid confiscation.

NO: A NO score is earned if this is not illegal.

70i. In law, conspiracy to commit a crime (i.e. organized crime) is illegal.

YES | NO

References:

Conspiracy to commit a crime is illegal under Section 113A of the Penal Code.

YES: A YES score is earned if organized crime is illegal.

NO: A NO score is earned if this is not illegal.

VI-2. Anti-Corruption Agency

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

100

71. In law, is there an agency (or group of agencies) with a legal mandate to address corruption?

YES | NO

References:

The Bribery Commission was set up under the Bribery Commission Act No. 19 of 1994.

<http://www.ciaboc.gov.lk>

YES: A YES score is earned if an agency is specifically mandated to address corruption. A YES score is earned if there are several agencies or entities with specific roles in fighting corruption, including special prosecutorial entities.

NO: A NO score is earned if no agency (or group of agencies/entities) is specifically mandated to prevent or prosecute corruption.

72. Is the anti-corruption agency effective?

75

72a. In law, the anti-corruption agency (or agencies) is protected from political interference.

YES | NO

References:

Part 1 Section 2a(1) of the Bribery Act No.8 of 1973 requires that the chairman and members be appointed by the president, with the recommendation of the Constitutional Council, which is an independent body.

YES: A YES score is earned only if the agency (or agencies) has some formal organizational or operational independence from the government. A YES score is earned even if the agency/agencies is legally separate but in practice staffed by partisans.

NO: A NO score is earned if the agency (or agencies) is a subordinate part of any government ministry or agency, such as the Department of Interior or the Justice Department, in such a way that limits its operational independence.

72b. In practice, the anti-corruption agency (or agencies) is protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

The best guarantee of protection is the 17th Amendment to the Constitution, which requires the formation of a Constitutional Council that has broad political representation; the Bribery Commission is a scheduled agency under the amendment. However, the 17th Amendment has fallen into disuse, with the president now making the appointments to the scheduled bodies.

References:

Mr. Dissanayake
Governance and Anti-Corruption Programme
Centre for Policy Alternatives
Nov. 5, 2007

100: This agency (or agencies) operates independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Investigations can operate without hindrance from the government, including access to politically sensitive information. .

75:

50: This agency (or agencies) is typically independent, yet is sometimes influenced in its work by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government, political appointments, or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: This agency (or agencies) is commonly influenced by political or personal incentives. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power. The agency (or agencies) cannot compel the government to reveal sensitive information.

72c. In practice, the head of the anti-corruption agency (or agencies) is protected from removal without relevant justification.

100 | 75 | 50 | 25 | 0

References:

Interview with Mr. Dissanayake
Governance and Anti-Corruption Programme
Centre for Policy Alternatives
Nov. 5, 2007

100: The director(s) cannot be removed without a significant justification through a formal process, such as impeachment for abuse of power.

75:

50: The director(s) can in some cases be removed through a combination of official or unofficial pressure.

25:

0: The director(s) can be removed at the will of political leadership.

72d. In practice, appointments to the anti-corruption agency (or agencies) are based on professional criteria.

100 | 75 | 50 | 25 | 0

References:

Mr. Dissanayake
Governance and Anti-Corruption Programme
Centre for Policy Alternatives
Nov. 5, 2007

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest arising from personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

72e. In practice, the anti-corruption agency (or agencies) has a professional, full-time staff.

100 | 75 | 50 | 25 | 0

Comments:

The investigative division is staffed by police personnel, and there is room for influence.

References:

Mr. Dissanayake
Governance and Anti-Corruption Programme
Centre for Policy Alternatives
Nov. 5, 2007

100: The agency (or agencies) has staff sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited staff, or staff without necessary qualifications to fulfill its basic mandate.

25:

0: The agency (or agencies) has no staff, or a limited staff, that is clearly unqualified to fulfill its mandate.

72f. In practice, the anti-corruption agency (or agencies) receives regular funding.

100 | 75 | 50 | 25 | 0

Comments:

Funded through the Consolidated Fund

References:

Interview with Mr. Dissanayake
Governance and Anti-Corruption Programme
Centre for Policy Alternatives
Nov. 5, 2007

100: The agency (or agencies) has a predictable source of funding that is fairly consistent from year to year. Political considerations are not a major factor in determining agency funding.

75:

50: The agency (or agencies) has a regular source of funding, but may be pressured by cuts, or threats of cuts to the agency budget. Political considerations have an effect on agency funding.

25:

0: The agency's funding sources are unreliable. Funding may be removed arbitrarily or as retaliation for agency actions.

72g. In practice, the anti-corruption agency (or agencies) makes regular public reports.

100 | 75 | 50 | 25 | 0

Comments:

There is an annual report, and statistics are available from the Bribery Commission, but there is no process of regular reporting.

References:

Mr. Dissanayake
Governance and Anti-Corruption Programme
Centre for Policy Alternatives
Nov. 5, 2007

100: The agency (or agencies) makes regular, publicly available, substantial reports to the legislature and/or to the public directly outlining the full scope of its work.

75:

50: The agency (or agencies) makes publicly available reports to the legislature that are sometimes delayed or incomplete.

25:

0: The agency (or agencies) makes no reports of its activities, or makes reports that are consistently out of date, unavailable to the public, or insubstantial.

72h. In practice, the anti-corruption agency (or agencies) has sufficient powers to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

Mr. Dissanayake
Governance and Anti-Corruption Programme
Centre for Policy Alternatives
Nov. 5, 2007

100: The agency (or agencies) has powers to gather information, including politically sensitive information. The agency (or agencies) can question suspects, order arrests and bring suspects to trial (or rely on related agencies or law enforcement authorities to perform such functions).

75:

50: The agency (or agencies) has most of the powers needed to carry out its mandate with some exceptions.

25:

0: The agency (or agencies) lacks significant powers which limit its effectiveness.

72i. In practice, when necessary, the anti-corruption agency (or agencies) independently initiates investigations.

100 | 75 | 50 | 25 | 0

Comments:

The Bribery Commission has consistently taken the stand that it does not have the power to commence investigations ex mero motu and has insisted on complains being made as a precondition to investigations. However, the commission is generally responsive when questions of ongoing or impending corruption are brought before it.

References:

Mr. Dissanayake
Governance and Anti-Corruption Programme
Centre for Policy Alternatives
Nov. 5, 2007

100: When irregularities are discovered, the agency (or agencies) is aggressive in investigating the government or in cooperating with other investigative agencies.

75:

50: The agency (or agencies) starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency (or agencies) may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency (or agencies) does not effectively investigate or does not cooperate with other investigative agencies. The agency (or agencies) may start investigations but not complete them, or may fail to detect offenders. The agency (or agencies) may be partisan in its application of power.

73. Can citizens access the anti-corruption agency?

50

73a. In practice, the anti-corruption agency (or agencies) acts on complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

Although the length of time taken to complete investigations varies on the nature of the case, it must be noted that the commission has not completed many cases since its inception. The commission acts quite quickly in cases of anticipated or ongoing corruption.

References:

Mr. Dissanayake
Governance and Anti-Corruption Programme
Centre for Policy Alternatives
Nov. 5, 2007

100: The agency (or agencies) acts on complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency (or agencies) acts on complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency (or agencies) cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take more than three months to resolve. Serious abuses are not investigated with any urgency.

73b. In practice, citizens can complain to the anti-corruption agency (or agencies) without fear of recrimination.

100 | 75 | 50 | 25 | 0

Comments:

A perfect score cannot be given because of the absence of a law to protect whistle blowers, but in practice, the identity of complainants are kept strictly confidential.

References:

Mr. Dissanayake
Governance and Anti-Corruption Programme
Centre for Policy Alternatives
Nov. 5, 2007

100: Whistleblowers can report abuses of power without fear of negative consequences. This may be due to robust mechanisms to protect the identity of whistleblowers, or may be due to a culture that encourages disclosure and accountability.

75:

50: Whistleblowers are sometimes able to come forward without negative consequences, but in other cases, whistleblowers are punished for disclosing, either through official or unofficial means.

25:

0: Whistleblowers often face substantial negative consequences, such as losing a job, relocating to a less prominent position, or some form of harassment.

75
VI-3. Rule of Law

74. Is there an appeals mechanism for challenging criminal judgments?

58

74a. In law, there is a general right of appeal.

YES | NO

References:

Article 128 of the Constitution and Section 23 of the Judicature Act No. 2 of 1978 (as amended) provides for the right of appeal.

YES: A YES score is earned if there is a formal process of appeal for challenging criminal judgments.

NO: A NO score is earned if there is no such process.

74b. In practice, appeals are resolved within a reasonable time period.

100 | 75 | 50 | 25 | 0

Comments:

The delay depends greatly on the nature of the case. In civil appeals, the preparation of the briefs takes a considerable amount of time. Generally it takes around six to seven years to dispose of an appeal.

References:

Justice Ranjit Dheeraratne
Retired Supreme Court Justice
Oct. 29, 2007
Kalutara, Sri Lanka

100: Appeals are acted upon quickly. While some backlog is expected and inevitable, appeals are acknowledged promptly and cases move steadily towards resolution.

75:

50: Appeals are generally acted upon quickly but with some exceptions. Some appeals may not be acknowledged, and simple cases may take years to resolve.

25:

0: Most appeals are not resolved in a timely fashion. Appeals may go unacknowledged for months or years and simple cases may never be resolved.

74c. In practice, citizens can use the appeals mechanism at a reasonable cost.

100 | 75 | 50 | 25 | 0

Comments:

In civil appeals, the cost of lawyers is very high. There is an additional cost imposed on outstation appellants, as the Court of Appeal and Supreme Court sit only in Colombo.

References:

Interview with Justice Ranjit Dheeraratne, Retired Supreme Court Justice, conducted in Kalutara on 29 October 2007

100: In most cases, the appeals mechanism is an affordable option to middle class citizens seeking to challenge criminal judgments.

75:

50: In some cases, the appeals mechanism is not an affordable option to middle class citizens seeking to challenge criminal judgments.

25:

0: The prohibitive cost of utilizing the appeals mechanism prevents middle class citizens from challenging criminal judgments.

75. In practice, do judgments in the criminal system follow written law?

100

75. In practice, do judgments in the criminal system follow written law?

100 | 75 | 50 | 25 | 0

References:

Justice Ranjit Dheeraratne
Retired Supreme Court Justice
Oct. 29, 2007
Kalutara, Sri Lanka

100: Judgments in the criminal system are made according to established legal code and conduct. There are no exceptional cases in which individuals are treated by a separate process. Political interference, bribery, cronyism or other flaws are rarely factors in judicial outcomes.

75:

50: Judgments in the criminal system usually follow the protocols of written law. There are sometimes exceptions when political concerns, corruption or other flaws in the system decide outcomes.

25:

0: Judgments in the criminal system are often decided by factors other than written law. Bribery and corruption in the criminal judicial process are common elements affecting decisions.

76. In practice, are judicial decisions enforced by the state?

100

76. In practice, are judicial decisions enforced by the state?

100 | 75 | 50 | 25 | 0

Comments:

In law, it is not possible to get a writ against the attorney general in cases involving a judgment against the State. However, the attorney general has, in practice at all times, acted to get judgments against the state enforced.

References:

Justice Ranjit Dheeraratne
Retired Supreme Court Justice
Oct. 29, 2007
Kalutara, Sri Lanka

100: Judicial decisions are enforced quickly regardless of what is being decided or who is appearing before the court. Failure to comply brings penalties enforced by the state.

75:

50: Judicial decisions are generally enforced by the state, with some exceptions. Certain areas of law may be ignored, or certain parties appearing before the courts may evade or delay enforcement.

25:

0: Judicial decisions are often ignored. The state lacks the will or capacity to consistently enforce these decisions.

77. Is the judiciary able to act independently?

56

77a. In law, the independence of the judiciary is guaranteed.

YES | NO

References:

Articles 107, 108 and 111C of the Constitution ensure the independence of the judiciary.

YES: A YES score is earned if there are formal rules establishing that the judiciary is independent from political interference by the executive and legislative branches. Independence include financial issues (drafting, allocation, and managing the budget of the courts).

NO: A NO score is earned if there are no formal rules establishing an independent judiciary.

77b. In practice, national-level judges are protected from political interference.

100 | 75 | 50 | 25 | 0

Comments:

Although there are significant concerns in this area, it must be noted that they are specific to certain individual members of the judiciary and not systemic to the judiciary as a whole.

References:

Research conducted by the Centre for Policy Alternatives

Research by the Law and Society Trust

<http://72.14.235.104/search?q=cache:a6np8Vj-QUAJ:www.lawandsocietytrust.org/PDF/ALRC-LST%2520Written%2520Statement%2520-%2520Serious%2520concerns%2520affecting%2520Sri%2520Lanka%27s%2520Judiciary.pdf+IBA+Sri+Lanka+independence&hl=en&ct=clnk&cd=2&a>

International Bar Association Report 2001 Sri Lanka : Failing to Protect the Rule of Law and the Independence of the Judiciary

100: National level judges operate independently of the political process, without incentive or pressure to render favorable judgments in politically sensitive cases. Judges never comment on political debates. Individual judgments are rarely praised or criticized by political figures.

75:

50: National level judges are typically independent, yet are sometimes influenced in their judgments by negative or positive political incentives. This may include favorable or unfavorable treatment by the government or public criticism. Some judges may be demoted or relocated in retaliation for unfavorable decisions.

25:

0: National level judges are commonly influenced by politics and personal biases or incentives. This may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include demotion, pay cuts, relocation, threats or harassment.

77c. In law, there is a transparent and objective system for distributing cases to national-level judges.

YES | NO

References:

There is no transparent and objective system for distributing cases for national-level judges.

YES: A YES score is earned if there is an objective system that is transparent to the public that equitably or randomly assigns cases to individual judges. The executive branch does not control this process.

NO: A NO score is earned if the case assignment system is non-transparent or subjective where judges themselves have influence over which cases they adjudicate. A NO score is also earned if the executive branch controls this process.

77d. In law, national-level judges are protected from removal without relevant justification.

YES | NO

References:

Article 107(2) of the Constitution sets out the grounds for removal of the judges of the Supreme Court and the Court of Appeal.

Article 111(2)(b) of the Constitution provides for the removal of the high court judges with the recommendation of the Judicial Service Commission.

YES: A YES score is earned if there are specific, formal rules for removal of a justice. Removal must be related to abuse of power or other offenses related to job performance.

NO: A NO score is earned if justices can be removed without justification, or for purely political reasons. A NO score is earned if the removal process is not transparent, or not based on written rules.

78. Are judges safe when adjudicating corruption cases?

100

78a. In practice, in the last year, no judges have been physically harmed because of adjudicating corruption cases.

YES | NO

References:

No reports to the effect

YES: A YES score is earned if there were no documented cases of judges being assaulted because of their involvement in a corruption case during the specific study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases of assault to a judge related to his/her participation in a corruption trial. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

78b. In practice, in the last year, no judges have been killed because of adjudicating corruption cases.

YES | NO

References:

No documented cases

YES: A YES score is earned if there were no documented cases of judges being killed related to their involvement in a corruption case during the study period. YES is a positive score.

NO: A NO score is earned if there were any documented cases where a judge was killed because of his/her participation in a corruption trial. The relationship between a mysterious death and a judge's involvement in a case may not be clear, however the burden of proof here is low. If it is a reasonable assumption that a judge was killed in relation to his or her work on corruption issues, then the indicator is scored as a NO. Corruption is defined broadly to include any abuses of power, not just the passing of bribes.

79. Do citizens have equal access to the justice system?

71

79a. In practice, judicial decisions are not affected by racial or ethnic bias.

References:

Justice Ranjit Dheeraratne
Retired Supreme Court Justice
Oct. 29, 2007
Kalutara, Sri Lanka

100: Judicial decisions are not affected by racial or ethnic bias.

75:

50: Judicial decisions are generally not affected by racial or ethnic bias, with some exceptions. Some groups may be occasionally discriminated against, or some groups may occasionally receive favorable treatment.

25:

0: Judicial decisions are regularly distorted by racial or ethnic bias. Some groups consistently receive favorable or unfavorable treatment by the courts.

79b. In practice, women have full access to the judicial system.

Comments:

In law, there are no barriers, and most of the barriers arise out of socioeconomic and cultural influences. There is no evidence of systemic gender bias in the outcome of cases.

References:

Ms. Malathie Weerasooriya
Assistant Representative
UNFPA Sri Lanka
Nov. 4, 2007
Colombo, Sri Lanka

100: Women enjoy full and equal status in the eyes of the courts. There are no exceptions or practices in which women are treated differently by the judicial system. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

75:

50: Women generally have use of the judicial system, with some exceptions. In some cases, women may be limited in their access to courts, or gender biases may affect court outcomes. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

25:

0: Women generally have less access to the courts than men. Court decisions are commonly distorted by gender bias. Women may have to go through intermediaries to interact with the court, or are unable to present evidence. For this indicator, discrimination against women should reflect specific biases that confront women in the justice system as opposed to difficulties resulting from broader socio-economic disadvantages or discrimination against women.

79c. In law, the state provides legal counsel for defendants in criminal cases who cannot afford it.

YES | NO

Comments:

The Legal Aid Law establishes a Legal Aid Commission to render legal assistance to 'deserving persons'. The ICCPR Act establishes a right for persons charged of a criminal offense to have legal assistance assigned to him where the interests of justice so requires, and without any payment by him, where he does not have sufficient means to pay for such assistance.

References:

Section 3, Legal Aid Law No. 27 of 1978, as amended by Act No. 112 of 1981; section 4 (1) (c) of the International Covenant on Civil and Political Rights (ICCPR) Act No. 56 of 2007

YES: A YES score is earned if the government is required by law to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

NO: A NO score is earned if there is no legal requirement for the government to provide impoverished defendants with legal counsel to defend themselves against criminal charges.

79d. In practice, the state provides adequate legal counsel for defendants in criminal cases who cannot afford it.

100 | 75 | 50 | 25 | 0

Comments:

Most counsel thus appointed are young and inexperienced.

References:

Justice Ranjit Dheeraratne
Retired Supreme Court Justice
Oct. 29, 2007
Kalutara, Sri Lanka

100: State-provided legal aid is basic, but well-trained and effective in representing the rights of impoverished defendants.

75:

50: State-provided legal aid is available, but flawed. Legal aid may be unavailable to some impoverished defendants. Legal aid/public defenders may be sometimes unable or unwilling to competently represent all defendants.

25:

0: State-provided legal aid is unavailable to most impoverished defendants. State legal aid/public defenders may be consistently incompetent or unwilling to fairly represent all defendants.

79e. In practice, citizens earning the median yearly income can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

Justice Ranjit Dheeraratne
Retired Supreme Court Justice
Oct. 29, 2007
Kalutara, Sri Lanka

100: In most cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to middle class citizens seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents middle class citizens from filing suits.

79f. In practice, a typical small retail business can afford to bring a legal suit.

100 | 75 | 50 | 25 | 0

References:

Justice Ranjit Dheeraratne
Retired Supreme Court Justice
Oct. 29, 2007
Kalutara, Sri Lanka

100: In most cases, the legal system is an affordable option to a small retail business seeking to redress a grievance.

75:

50: In some cases, the legal system is an affordable option to a small retail business seeking to redress a grievance. In other cases, the cost is prohibitive.

25:

0: The cost of engaging the legal system prevents small businesses from filing suits.

79g. In practice, all citizens have access to a court of law, regardless of geographic location.

100 | 75 | 50 | 25 | 0

Comments:

The Supreme Court and the Court of Appeal (criminal appeals) sit only in Colombo, so there can be additional costs in protracted cases involving appeals. Under Article 126, moreover, fundamental rights jurisdiction vests exclusively in the Supreme Court and petitioners have to come to Colombo from wherever they reside and wherever the violation took place. However, the High Court of the Provinces (Special Provisions) Amendment Act No. 54 of 2006 has vested some aspects of civil appeals in the Provincial High Courts. The objective was to relieve the Court of Appeal case load, but the efficacy of the judgments have been in serious question among practitioners. In another, critical consideration, with the escalation of armed conflict in the North and East of the island, access to justice of people resident in the Northern Province and some parts of the Eastern Province is highly problematic. In two districts (Mullaitivu and Killinochchi) and some parts of the Mannar district in the North, which are under the control of the rebel Liberation Tigers of Tamil Eelam (LTTE), citizens do not have access to official courts of the State. The LTTE have set up their own courts in those areas.

References:

Justice Ranjit Dheeraratne
Retired Supreme Court Justice
Oct. 29, 2007
Kalutara, Sri Lanka

100: Courtrooms are always accessible to citizens at low cost, either through rural courthouses or through a system of traveling magistrates.

75:

50: Courts are available to most citizens. Some citizens may be unable to reach a courtroom at low cost due to location.

25:

0: Courts are unavailable to some regions without significant travel on the part of citizens.

VI-4. Law Enforcement

80. Is the law enforcement agency (i.e. the police) effective?

25

80a. In practice, appointments to the law enforcement agency (or agencies) are made according to professional criteria.

100 | 75 | 50 | 25 | 0

References:

Mr. Rohan Edrisinha
Director and Head of the Legal and Constitutional Unit
Centre for Policy Alternatives
Nov. 9, 2007

100: Appointments to the agency (or agencies) are made based on professional qualifications. Individuals appointed are free of conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed usually do not have clear political party affiliations.

75:

50: Appointments are usually based on professional qualifications. Individuals appointed may have clear party loyalties, however.

25:

0: Appointments are often based on political considerations. Individuals appointed often have conflicts of interest due to personal loyalties, family connections or other biases. Individuals appointed often have clear party loyalties.

80b. In practice, the law enforcement agency (or agencies) has a budget sufficient to carry out its mandate.

100 | 75 | 50 | 25 | 0

References:

Mr. Rohan Edrisinha
Director and Head of the Legal and Constitutional Unit
Centre for Policy Alternatives
Nov. 9, 2007

100: The agency (or agencies) has a budget sufficient to fulfill its basic mandate.

75:

50: The agency (or agencies) has limited budget, generally considered somewhat insufficient to fulfill its basic mandate.

25:

0: The agency (or agencies) has no budget or an obviously insufficient budget that hinders the agency's ability to fulfill its mandate.

80c. In practice, the law enforcement agency is protected from political interference.

100 | 75 | 50 | 25 | 0

References:

Mr. Rohan Edrisinha
Director and Head of the Legal and Constitutional Unit
Centre for Policy Alternatives
Nov. 9, 2007

100: The agency (or agencies) operates independently of the political process and has operational independence from the government. All laws can be enforced regardless of the status of suspects or the sensitivity of the investigation.

75:

50: The agency (or agencies) is typically independent, yet is sometimes influenced in its investigations or enforcement actions by negative or positive political incentives. This may include favorable or unfavorable public criticism by the government or other forms of influence. The agency (or agencies) may not be provided with some information needed to carry out its investigations.

25:

0: The investigative and enforcement work of the agency (or agencies) is commonly influenced by political actors or the government. These may include conflicting family relationships, professional partnerships, or other personal loyalties. Negative incentives may include threats, harassment or other abuses of power by the government.

81. Can law enforcement officials be held accountable for their actions?

67

81a. In law, there is an independent mechanism for citizens to complain about police action.

YES | NO

References:

Citizens can complain to the National Police Commission, instituted by the 17th Amendment to the Constitution.

YES: A YES score is earned if there is a formal process or mechanism by which citizens can complain about police actions. A YES score is earned if a broader mechanism such as the national ombudsman, human rights commission, or anti-corruption agency has jurisdiction over the police.

NO: A NO score is earned if there is no such mechanism

81b. In practice, the independent law enforcement complaint reporting mechanism responds to citizen's complaints within a reasonable time period.

100 | 75 | 50 | 25 | 0

References:

Mr. Rohan Edrisinha
Director and Head of the Legal and Constitutional Unit
Centre for Policy Alternatives
Nov. 9, 2007

100: The agency/entity responds to complaints quickly. While some backlog is expected and inevitable, complaints are acknowledged promptly and investigations into serious abuses move steadily towards resolution. Citizens with simple issues can expect a resolution within a month.

75:

50: The agency/entity responds to complaints quickly, with some exceptions. Some complaints may not be acknowledged, and simple issues may take more than two months to resolve.

25:

0: The agency/entity cannot resolve complaints quickly. Complaints may be unacknowledged for more than a month, and simple issues may take three to six months to resolve. Serious abuses are not investigated with any urgency.

81c. In law, there is an agency/entity to investigate and prosecute corruption committed by law enforcement officials.

YES | NO

References:

The Bribery Commission, instituted by the Bribery Commission Act No. 19 of 1994, investigates and prosecutes corruption committed by law enforcement officials.

<http://www.ciaboc.gov.lk>

YES: A YES score is earned if there is an agency/entity specifically mandated to investigate corruption-related activity within law enforcement. This agency/entity may be internal to the police department (provided it has a degree of independence, such as an internal affairs unit) or part of a broader national mechanism such as the national ombudsman, human rights commission, or anti-corruption agency.

NO: A NO score is earned if no such agency/entity exists.

81d. In practice, when necessary, the agency/entity independently initiates investigations into allegations of corruption by law enforcement officials.

100 | 75 | 50 | 25 | 0

Comments:

The Bribery Commission has consistently disavowed the power to initiate corruption ex mero motu.

References:

Mr. Dissanayake
Governance and Anti-Corruption Programme
Centre for Policy Alternatives
Nov. 7, 2007

100: When irregularities are discovered, the agency/entity is aggressive in investigating government law enforcement officials or in cooperating with other investigative agencies.

75:

50: The agency/entity starts investigations, but is limited in its effectiveness or is reluctant to cooperate with other investigative agencies. The agency/entity may be slow to act, unwilling to take on politically powerful offenders, or occasionally unable to enforce its judgments.

25:

0: The agency/entity does not effectively investigate or does not cooperate with other investigative agencies. The agency may start investigations but not complete them, or may fail to detect offenders. The agency may be partisan in its application of power.

81e. In law, law enforcement officials are not immune from criminal proceedings.

YES | NO

References:

No provision grants immunity.

YES: A YES score is earned if law enforcement officers are fully accountable for their actions under the law and can be investigated and prosecuted for their actions.

NO: A NO score is earned if law enforcement enjoys any special protection from criminal investigation or prosecution.

81f. In practice, law enforcement officials are not immune from criminal proceedings.

100 | 75 | 50 | 25 | 0

References:

Mr. Rohan Edrisinha
Director and Head of the Legal and Constitutional Unit
Centre for Policy Alternatives

100: Law enforcement officers are subject to criminal investigation for official misconduct. No crimes are exempt from prosecution.

75:

50: Law enforcement is generally subject to criminal investigation but exceptions may exist where criminal actions are overlooked by the police or prosecutors. Some crimes may be exempt from prosecution, such as actions taken in the line of duty.

25:

0: Law enforcement enjoys a general protection from most criminal investigation. This may be due to a formal immunity or an informal understanding that the law enforcement community protects itself.