

GOVERNANCE AND PUBLIC MANAGEMENT IN SRI LANKA

THE CONTEXT

1. Sri Lanka has a strong executive presidential system with a unicameral Parliament, elected on proportional representation. Two major parties dominate the political landscape. At the 2010 parliamentary elections the ruling party secured a large majority. With smaller parties joining in the coalition, the ruling Party's strength is more than two thirds of parliamentary seats. The Executive President is directly elected once every six years, and constitutionally wields wide powers including the power of appointment of;

- all Secretaries of Ministries,
- members of the higher judiciary,
- Governors of the nine provinces,
- Members of the 7 independent Commissions¹
- the Auditor General,
- the Attorney General,
- the Inspector General of Police & the Heads of the three Armed forces

2. The 2010 Constitutional amendment (18th amendment) removed the limits on the presidential term to two (06 years each). The incumbent President is also the head of the ruling party resulting in centralized concentration of power without sufficient degree of checks and balances being provided by other two organs of government – judiciary and Parliament. The President holds the portfolios of Finance and Defense. He is the Head of the Executive, with a large number of Cabinet Ministers. The Cabinet appoints Heads of Departments and individual Ministers appoint the Boards of statutory authorities in terms of the respective law. The centralization of power has also resulted in the emphasis shifting from the institution to the individual.

3. Four significant governance related milestones in the constitutional history of the country continue to effect the governance system.

- The 1972 Constitution significantly increased the direct control of the Cabinet over the bureaucracy by placing the Cabinet above the Public Service Commission which until then was the appointing and disciplinary authority of the public service. This was not changed in the present (1978) Constitution, and as a result, bureaucratic control and accountability is to the political central executive. Over time short term political considerations gradually assumed priority over national and long term interests in bureaucratic decision making. Political appendage rather than public service is the dominant perception.
- The 1978 constitution introduced the all powerful executive presidency directly elected once in six years. He is the Head of the Cabinet and appoints and dissolves the Cabinet at his pleasure. This has resulted in the accountability of the Cabinet shifting from Parliament to the President. The proportional representation system introduced in 1978 led to the formation of coalition governments. Although this encouraged positively consociational politics² enhancing at the centre, the influences of ethnic and ideological minorities, it resulted deal making in coalition building affecting accountability and transparency imperatives.

¹ Election Commission, Public Service Commission, National Police Commission, Human Rights Commission, Bribery and Corruption Commission, Finance Commission, and the Delimitation Commission

² A form of government involving guaranteed group representation, and is often suggested for managing conflict in deeply divided societies. It is often viewed as synonymous with power-sharing.

- The 1978 Constitution granted the power to the President to appoint directly the Secretaries of Ministries, who perform the role of the Chief Executive Officer (CEO) in decision making and Chief Accounting Officer (CAO) in Public Financial Management. Each time the Cabinet is dissolved, these appointments are also automatically rescinded vesting the discretion in President either to reappoint or make fresh appointments. This blurred the division between the political head (the Minister) and the bureaucratic head (the Secretary) in central Ministries. This situation has been further aggravated as Heads of Departments are also appointed by the Cabinet of Ministers. Many appointments from outside the public service have been made to key Ministries which has brought in much needed management and strategic expertise to the public sector but at the cost of accountability, independence, and continuation of policy that comes with secured tenure of office.
- In 1987, a Constitutional amendment (13th amendment) set up nine elected bodies in the form of Provincial Councils (PCs) for the nine provinces with devolved powers. The devolution arrangement is contained in three lists; (1) Provincial Council List; (2) Reserved List; and (3) Concurrent List. However, there is no clear demarcation of powers and functions between the centre and the provinces resulting in centralized concentration of power on the one hand and ad hoc initiation of policy on the other due to the complex nature of the governance arrangements. The local government is a devolved subject and local government bodies function under the PCs.

SPECIFIC THEMATIC ISSUES

Public Service and Bureaucracy and Institutional setting.

4. Public Service at central level is staffed by officers belonging to 13 All Island Services transferable across Departments. As the appointments are not to the institution but to one of the Services, reporting and accountability lines are blurred. Majority of officials are general administrators lacking specific skills. Until recently even many of the senior positions in the Provincial Council system were filled by the officers of the central government Services on deputation. This further blurred reporting lines and reduced accountability. However, with the formulation of province specific recruitment and promotions schemes, there are more direct recruitments to the provincial public service.

5. Regulation of cadre of all levels of Government is by the Department of Management Services (DMS) of the Ministry of Finance. The Salaries and Cadres Commission, set up by Presidential decree formulates and review pay scales. Promotions are mostly based on seniority without a strategic link between performance and pay. This is a negative incentive impacting accountability from a performance perspective. The pay scales and incentive mechanism have failed to attract and retain professionally qualified and high performing individuals in the public sector.

6. Central government services are offered by a network of district and divisional secretaries and community level officers. These officers and institutions operate in parallel to the provincial systems, most times resulting in excess public sector cadres, additional layers of bureaucracy, and certain degree of duplication due to lack of coordination. The high ratio of public officials to the population continues to burden the Government.

7. The Constitution provides for eight independent Commissions which were not functioning for almost 18 months (except the Finance Commission) until reconstituted in the early part of 2011. The Public Service Commission (PSC) is responsible for appointment and disciplinary control of officials (except Heads of Departments and Statutory Authorities).

PCs have their own Provincial Public Service Commissions, appointed by the Governor the head of the provincial executive. The reconstitution of the PSC would have a catalytic effect in improving independence and accountability within the rank and file.

National Policy Coordination

8. The national policy on all subjects is decided by central government which has a Planning Service and Ministries dedicated for policy planning and implementation. Centralized power in the President, disproportionately high number of Ministries, absence of an effective policy formulation, coordination, and implementation mechanism, and the PCs having their own policy formulation and implementation cells, has resulted in ad hoc policy formulation.

9. With the adaptation of the political manifesto of the incumbent President and his governing party as the government's long term policy document (Mahinda Chintana) uniformity and conformity is gradually emerging. As the PCs are also controlled by the government's party the centre - province friction is reduced. There is space to involve local government bodies in the policy formulation process for better responsive policies at local level.

10. The system lacks a formal mechanism to coordinate and harmonize inter-sectoral issues (e.g. gender, environment). The policy formulation process needs to be more transparent and inclusive. The absence of security of tenure for Secretaries and Heads of Department, and the transferability of senior civil servants in managerial positions has affected continuity of policy and building of institutional memory and experience.

Public Financial Management

11. Public Financial Management (PFM) is centralized, with the Ministry of Finance playing the key role. PFM guidelines are comprehensive and are contained in a manual of Financial Regulations (FRs). Violating FRs can expose an official to disciplinary proceedings. The PCs have their own manuals, but largely based on the Centre's FRs. The last major reform of FRs was initiated as part of the ADB funded Financial Management Reforms Program, (subsequently converted to a project) in 2008/9. FRs, having their roots in the country's colonial past, are critiqued for being outdated and slowing down processes, although they have managed to maintain financial discipline.

12. At macro level, the government is still faced with a debt burden and high governmental expenditure. In preceding years, supplementary budgets were sought on many occasions. Many avoidable expenditures are unchecked due to the weakened opposition and shortcomings within the PFM accountability framework. The Fiscal Management (Responsibility) Act of 2003 pressures the Government to maintain the budget deficit under 5% through prudent PFM. This Act further requires the publication of an Annual Fiscal Strategy Statement and Mid Year Fiscal Position report enhancing transparency.

13. The government has publicly discouraged privatizations, instead opting for a strategy of increasing the efficiency of public enterprises. This has not addressed mismanagement of public enterprises and continuous provision of budget support to loss making state owned enterprises.

14. In 2009 Sri Lanka Public Sector Accounting Standards were issued by the Institute of Chartered Accountants of Sri Lanka, based on the standards of the International Federation of Accountants, introducing accruals based accounting. Although many Statutory Boards

and Local Authorities have adopted it has not permeated fully into the provincial and central government's PFM system.

Tax Administration

15. Due to the cumbersome and bureaucratic nature of the tax administration, a presidential Commission on taxation, following extensive public consultations, made its recommendations at the end of last year. Although the report is not published as yet, steps have been taken to implement what is believed to be its key recommendations. These include simplification of tax structure, removal of regressive taxes, introducing a uniform interpretation mechanism to reduce arbitrariness and corruption, and providing for an autonomous appeal process. During the period of 12 months ending in June 2011, twenty one finance statutes have been enacted. These changes and the introduction of IT based automated tax filing systems (introduced under ADB's FMRP), will result in better tax collection. In the past attempts at creating a unified Revenue Authority combining the three major revenue earning Departments; Customs, Inland Revenue, and Excise have failed. The institutional mechanism is not strong enough to ensure certainty and continuity of fiscal policy.

16. Project finances are effectively used. Funds earmarked for projects are generally used for that project. GoSL allows the funders to conduct real time monitoring of disbursements and agrees to use of their procurement guidelines. Funding made available for provincial projects, by law, are specifically used for the identified project of the relevant province. Allocation and disbursement of project funds is carried out in a transparent manner.

Devolution and PFM

17. Devolution introduced by the 13th amendment has generated its own set of PFM issues. PCs have a defined number of sources of tax revenue. In 2009, the provincial revenue as share of the total government revenue was 3.36%³ indicating insufficiency in provincial revenue. The central government continues to provide budget support to the PCs, and through the PCs to the local authorities. Except the Western Provincial Council, other PCs have not fully harnessed their revenue sources. This is due to weak institutional and legal framework at provincial level, lack of resources in terms of qualified cadre, transport, and new technology, and the absence of a mechanism to transfer to the province, revenue collected by Central government but from provincial sources. Centre - Province fiscal transfer mechanism is complex. Budgetary requirements of the province are made through the Finance Commission, which based on predetermined criteria, recommends the amount that each province should receive. Most times there is a mismatch between amounts recommended and amounts received.

18. The comprehensive nature of FRs, has resulted in a rule based PFM system. However, a decision of the Supreme Court (SC) in September 2008 holding illegal an alienation of government land, introduced the public trust doctrine. The SC pronounced that all actions and decisions of public officials should stand the test of public trust in addition to complying with FRs and other applicable regulations and guidelines.

Accountability and Judiciary

19. The Courts have played an active role in accountability. On many instances even the Appropriation Bill was challenged on the grounds of lack of transparency, absence of comprehensive parliamentary accountability, and arbitrariness in certain revenue related

³ Finance Commission – Annual Report 2009 (p 59)

decisions and the Courts have intervened. In addition many of the governmental decisions on procurement and other matters are regularly challenged, quite successfully, for violations of due process, guidelines and regulations, and arbitrariness.

20. The capacity in the in the judicial sector needs improvement. Many of the judicial decisions demonstrate independence and contract enforcement is reasonably effective. In the absence of major reforms in the past, judicial processes are inordinately delayed, lengthy, and costly.

Procurement, anti corruption, and accountability

21. Although Sri Lanka's ranking in the Corruption Perception Index of Transparency International has marginally increased, the overall ranking is low.

22. The institutional arrangement for anti corruption and accountability consist of Permanent Commission to Investigate Allegation of Bribery and Corruption (CIABAC), the Auditor General (AG), Parliamentary Committees on Public Enterprises (COPE), and Public Accounts (COPA).

23. CIABAC was created in 1994 to be an independent Commission to investigate bribery and corruption. The Commission was constituted in the first half of 2011 after almost 18 months. There is a serious backlog of cases and a dearth of officers and capacity to handle the backlog. The Commission operates a 24 hour hotline and is assisted by the Attorney General's Department in prosecution of complex cases. The Commission investigates only after receiving a complaint and does not initiate investigations. The mandate of the Commission is supported by the Declaration of Assets and Liabilities Law of 1975 which requires every person holding public office to make declaration of their assets annually. This legislation is not enforced fully and even the few declarations filed are not audited and reviewed. The legal framework relating to bribery and corruption is fairly comprehensive, but there is gap in the implementation due to variety of reasons including, absence of witness protection, resources, lack of capacity and political will. Sri Lanka signed the UN Convention Against Corruption (UNCAC) and is part of the ADB-OECD anti corruption initiative demonstrating globally a commitment to deal with bribery and corruption. A gap analysis between UNCAC provisions and the Sri Lankan legal framework is being carried out.

24. The Auditor General is a constitutionally created independent office. AG audits all state entities and his report is made public after presenting it to Parliament. The two Parliamentary oversight Committees (COPE and COPA) after considering the report of the AG calls on defaulting institutions and officers to answer to the House the anomalies highlighted by the AG. Increasingly, due to centralisation of power and large numbers of Members of Parliament (including many who crossed over from the opposition) holding myriad of positions in the government in the forms of Cabinet Ministers, Deputy Ministers, and Senior Ministers, the independence and deterrent effect of the oversight Committees have lessened. This fact is confirmed by the high number of audit queries that go unanswered. On the other hand, an audit query that is not satisfactorily explained can give rise to disciplinary action against a public official (by the Public Service Commission - PSC). The World Bank is supporting a project that is enhancing the capacity and institutional strength of the office of AG.

Procurement

25. Public procurements are carried out in terms of Procurement Guidelines of the Government of Sri Lanka. These guidelines are comprehensive and were formulated by the National Procurement Agency (NPA), which was initially setup as an independent

procurement regulator. However, consequent to a Presidential directive in 2008, the NPA was merged with the Department of Public Finance of the Ministry of Finance. Sri Lanka does not have a parliamentary law regulating public procurement. NPA guidelines have been recognized by Courts as a set of standards that must be followed in public procurement. However, the power of the Cabinet to amend the guidelines or enter into contracts outside the guidelines (provided they are categorized as projects of national importance), is not curtailed. To accommodate project financing from non traditional sources where the project proponent is linked to the source of funds, new guidelines have been drafted allowing evaluation and accepting of unsolicited proposals.

26. The NPA guidelines are substantially harmonized with the procurement guidelines of the World Bank (WB), ADB, and JICA. Sri Lankan government has consistently agreed to adopt the guidelines of the funder for procurements in projects that are funded by multilateral agencies such as the ADB and WB, and allow real time monitoring.

Corruption, corporate governance, and private sector

27. The private sector is not covered by the bribery and corruption laws, and nor are they subject to a standard procurement guidelines. However, in 2007 the Institute of Chartered Accountants of Sri Lanka (ICASL), Securities Exchange Commission (SEC), and the Stock Exchange as a joint initiative drafted standards on corporate governance which now have been incorporated as mandatory compliance regulations of the SEC's listing rules. The changes brought about by the New Companies Act (2007) has also significantly enhanced corporate governance and protection of minority share holders. The Banking institutions are subject to a mandatory Code of Corporate Governance issued by the Central Bank, developed after a comprehensive consultation process.