

# Sri Lanka

## Response of Sri Lanka

Collection of Information Prior to the Eighth Intersessional Meeting of the Open-Ended Intergovernmental Working Group on Prevention Established by the Conference of States Parties to the UN Convention against Corruption

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In response to the Secretariat's request for information contained in Note Verbale CU 2017/96/DTA/CEB, Sri Lanka is pleased to provide the following response.

### Information requested from States parties in relation to integrity in criminal justice institutions (arts. 7, 8 and 11)

#### ***The Sri Lankan judicial system***

- *The Sri Lankan judicial system has the Supreme Court at the apex, followed by the Court of Appeal, Provincial High Court, District Courts, Magistrates' Court and Primary Courts respectively. (The Primary Court currently functions as part of the Magistrate Court) Additionally, there are numerous tribunals such as the labour tribunals, Arbitration, University Appeal Boards, tax tribunals etc. The Supreme Court exercises the final appellate jurisdiction, writ jurisdiction, supervisory jurisdiction and original jurisdiction on Fundamental Rights Applications whilst the Court of Appeal exercises the appellate jurisdiction and writ jurisdiction. The High Court exercises both appellate and original criminal jurisdictions whereas the Magistrate Court exercises original jurisdiction for minor criminal offences. The District Court exercise original civil jurisdiction.*

#### ***Independence and integrity of the Judiciary***

- *The Sri Lankan constitutional and legal framework to ensure the independence and integrity of the judiciary are provided for under the Constitution and the Judicial Service commission.*

- *The enactment of the 19<sup>th</sup> Amendment to the Constitution, with effect from 15<sup>th</sup> May 2015 which, amongst several other progressive reforms, introduced a number of constitutional safeguards to uphold the independence of the judiciary and the bar.*
- *The most significant among these provisions are: Safeguards to the process of appointment of senior judges*
- *Prior to the 19<sup>th</sup> Amendment to the Constitution, the President had the authority to appoint the Chief Justice and other judges of the superior courts on the observations of the Parliamentary Council. With the enactment of the 19<sup>th</sup> Amendment, the following safeguards have been introduced to the appointment process:*
- *The Chief Justice, the President of the Court of Appeal and every other judge of the Supreme Court and of the Court of Appeal are appointed by the President only upon the approval of the said appointments by the Constitutional Council. ( The Constitutional Council consists of 10 members, i.e., the Prime Minister, the Speaker, the Leader of the Opposition, a Member of Parliament nominated by the President, 2 Members of Parliament and 3 civil society members (reflecting the pluralistic nature of the Sri Lankan society) nominated by the Prime Minister and the Leader of the Opposition, and a Member of Parliament nominated by other political parties/groups represented in Parliament which the Prime Minister and the Leader of the Opposition do not represent. The Council is headed by the Speaker)*
- *In the discharge of its functions relating to the appointment of judges to the Supreme Court and the Court of Appeal, the Constitutional Council is required to obtain the views of the Chief Justice.*

#### **Appointment of the members of the Judicial Services Commission (JSC)**

- *Judicial Service Commission controls the appointment, promotion and disciplinary control of Judicial officers.*
- *The infusion of independence to the JSC is important because, under the Constitution, the Judicial Services Commission is vested with authority over the appointment, transfer, dismissal and disciplinary control of judicial officers in the lower courts.*
- *The 19<sup>th</sup> Amendment clearly stipulates the composition of the Judicial Services Commission, i.e. that it shall comprise the Chief Justice and the two most senior judges of the Supreme Court appointed by the President subject to the approval by the Constitutional Council.*
- *The Chief Justice is required to be the Chairman of JSC.*
- *The President is required to obtain the approval of the Council to remove any member of the JSC for cause assigned. Under the previous constitutional provisions, the President had the sole discretion to appoint any 2 judges of the Supreme Court to*

*function as members of the JSC alongside the Chief Justice (also appointed by him) who was to be the Chairman of the Commission.*

- *The President on the recommendation of the JSC and the Attorney General appoints judges of the High Court.*

***In addition to the safeguards introduced through the 19<sup>th</sup> Amendment, provisions contained in Chapter XV of the Constitution have continuously sought to uphold the independence of the judiciary by stipulating the following:***

- *The tenure of the office of the judges of the Supreme Court and the Court of Appeal are guaranteed under the Constitution.*
- *Judges of the Supreme Court and the Court of appeal hold office during good behavior and cannot be removed except by an Order of Parliament made after an address of Parliament supported by a majority of the total number of Members of Parliament has been presented to the President for removal on the ground of proved misbehavior or incapacity.*
- *The salaries and the pension of the Judges of the Supreme Court and Court of Appeal are paid from the Consolidated Fund and cannot be reduced after they are appointed. The same rule applies with regard to the salaries of members of the JSC.*
- *Interference with the judiciary is a punishable offence. Judges are also vested with a degree of immunity from suit for acts performed in their judicial capacity. In addition to these, Sri Lankan courts have varying powers to deal with persons for Contempt of Court to prevent unwarranted attacks on the authority of the judiciary and to ensure the sanctity of its orders.*
- *Interference with the decisions and the members of the JSC is a punishable offence, and immunity has been constitutionally granted to members of the JSC for acts done in good faith in the performance of their duties.*

#### ***Training programs for judicial officers***

- *The Judicial Service Commission through the Judges Institute conducts training programs for Judges with a view to strengthen the integrity and prevent opportunities for corruption. Although there is no written Code of Conduct for Judicial Officers, Sri Lankan Judges have been enlightened on judicial ethics they bound by. In fact, even in other seminars conducted by other organizations for judicial officers this position has been referred to.*

#### ***Prosecutors***

- *Prosecutors of the Attorney General's Department, the Commission to Investigate Allegations of Bribery or Corruption (only relating to bribery, corruption, assets and asset declaration related offenses) and in minor offenses Sri Lanka police and other*

*government departments respectively carry out prosecutions. The members of the prosecution services are public officers and the Establishment Code, the rules governing the public service are applicable to the prosecutors too.*

- *In terms of the 19<sup>th</sup> Amendment, the appointment of the Attorney General (who is considered as the Leader of the Bar) is by the President subject to the approval of the Constitutional Council. Prior to 19<sup>th</sup> Amendment the President had the authority to appoint the Attorney General on the observations of the Parliamentary Council.*
- *The Attorney General is the custodian of the Rule of law and of the public interest in Sri Lanka. The functions of the Attorney General have always been performed by no other factor or consideration than upholding the public interest and the Rule of law.*
- *Coupled with the pressures on judicial independence there has been a move to have the Attorney General Department under the purview of the Ministry of Justice for establishment purposes and accordingly the Attorney General Department is presently under the purview of the Ministry of Justice.*
- *The Attorney General is also the leader of the Bar-not only of the Official Bar as one would think but the entire Bar. It thus follows that the Attorney General ensures the protection of judicial independence which is indispensable to the proper functioning of the Bar.*
- *The appointment and removal processes of the Attorney General under the current law confirm the independence of the office of the Attorney General of Sri Lanka. The appointment of the Attorney General falls within the purview of the 19<sup>th</sup> Amendment to the Constitution. The President has to obtain the approval of the Constitutional Council to appoint the Attorney General. The removal of the Attorney General has to be done under the terms of the Removal of Officers (Procedure) Act No 5 of 2002. Accordingly the Attorney General good behaviour (as opposed to at pleasure) and can be removed only by Parliament on specific grounds after inquiry.*
- *The Officers of the Attorney General's Department are public officers and the Establishment Code, the rules governing the Public Service are applicable to them. In terms of the Constitution the appointment, promotion, disciplinary control and dismissal of the Officers of the Attorney Generals Department are by the Public Service Commission. Additionally the rules of conduct and etiquette governing all Attorneys law are regulated by the Supreme Court under rules formulated in terms of Article 136 of the Constitution govern the Officers of the Attorney Generals Department.*

#### **Declaration of Assets and Liabilities**

- *Under section 3 of the Declaration of Assets and Liabilities Law No 1 of 1975, all Members of Parliament, **Judges**, all Public Officers of Government Departments and*

*Local Authorities, Chairman and Staff of Public Corporations are required to declare Assets and Liabilities within three months of his appointment to the public office and thereafter annually.*

- *Failure to make such a declaration is liable for prosecution.*
- *Non-submission of the declaration is a ground for disciplinary control under Chapter 29 of the Establishment Code too. Section 29 of Chapter XLVIII of the Establishments Code deals with the procedure that is required to be followed in respect of 'offences disclosed in an Audit Report', regarding public officers.*

#### **Transparency of Court Room Process**

- *The Sri Lankan courts are open and public.*

<p><b>Information requested from States parties in relation to education in schools and universities on anti-corruption (art. 13, para. 1 (c))</b></p>
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- *Although many laws have been imposed locally and internationally against corruption, the Commission to Investigate Allegations of Bribery or Corruption- Sri Lanka has identified that the mere law enforcement would not sufficient to combat corruption.*
- *Accordingly, a three year plan under the concept of "Seven Steps to Zero Tolerance" was introduced on 09<sup>th</sup> December 2015 to march towards a bribery and corruption free culture. Therefore, the necessary arrangements are being taken by the Commission to Investigate Allegations of Bribery or Corruption- Sri Lanka to implement the main divisions of the plan; i.e. the "law enforcement" and "prevention" to establish zero opportunity for bribery and corruption.*
- *The necessity of establishing an attitude and behavioral change in the society to impede opportunities for bribery and corruption has been identified under the "prevention" of the above plan.*
- *One of the Seven Steps to Zero Tolerance can be identified as the "**Change and Build – Educate the next generation**". Educating future generation to foster values of honesty and integrity in children and young persons has been identified as a requirement to generate a society against bribery and corruption.*

- *Having identified the necessity of maintaining a strong collaboration with the Ministry of Education Under the stage of “Change and Build – Educate the next generation” of the three year plan, the Commission to Investigate Allegations of Bribery or Corruption- Sri Lanka has taken initiatives from 05.01.2016 accordingly.*
- *A discussion in this regard was held on 18.02.2016 between Director General of Commission to Investigate Allegations of Bribery or Corruption and Hon. Minister of Education at the Ministry of Education to educate children to lineup against bribery and corruption. Subsequently, several round of discussions were held between officials of the Bribery Commission and the Ministry of Education.*
- *During the discussion, several suggestions were tabled and ultimately came up with the proposal of long term and short term programmes to be implemented in schools.*

***Short-term proposals:***

1. *Introducing programmes under 03 categories based on age limits of the children.*
2. *Grade 01 to 05 – raising awareness in the children through paintings, posters and cartoons*
3. *Grade 06 to 09 – conducting general knowledge competitions and introducing bribery and corruption as in the school curriculum*
4. *Grade 10 to 13 – raising awareness in the children through interact societies and art and posters competitions*

***Long-term Proposals:***

1. *Introducing bribery and corruption as school subject upon discussion with National Institute of Education*
2. *Naming the month of October of each year as Anti – Corruption Month of each school*
3. *Creating facebook page against bribery or corruption and facilitate to post comments and raise awareness*
4. *Conducting seminars by the Commission in all schools to raise awareness among the children*

5. *Educating children and general public through television programmes (as a joint effort of the Commission and the Ministry of Education)*
6. *Raising awareness in students and communities through paintings and slogans depicted on school walls*
7. *Broadcasting a short video via "Nenasa" programme to raise awareness in school children*
8. *Creating Integrity Clubs in schools to raise awareness in school children and school community*
9. *Conducting annual art and poster competitions between children*
10. *Creating hand-books and manuals for the usage of teachers and students*

***Following steps have been already launched in year 2016***

- *CIABOC has already taken measures and initiated discussions with the National Institute of Education (NIE) to incorporate education related to fighting bribery and corruption into the school curriculum.*
- *CIABOC and the Ministry of Education have commenced several long term and short-term projects to educate the next generation.*
- *Month of October declared as the anti-corruption month in all schools,*
- *Conducted creative competitions in 7 segments, includes art, poem, song, Drama script, essays, slogan and cartoons*
- *Drafted teacher's hand-books and manuals for the usage of teachers and students*
- *Created manual for Integrity clubs*
- *Established Integrity clubs in schools.*
- *Introduced regulations to curb corruption in the school administration.*
- *Included anti-corruption measures & concepts into to the related school's subjects, Eg Civic etc....*
- *Commission to Investigate Allegations of Bribery or Corruption- Sri Lanka (CIABOC) conducted several awareness campaigns for school teachers, principals higher officers of the Ministry of Education*
- *Currently, CIABOC has submitted a cabinet paper to create a Prevention Unit, sub division named Education will be created under prevention unit.*

- *Furthermore, Commission to Investigate Allegations of Bribery or Corruption- Sri Lanka (CIABOC) conducts regular public awareness campaigns at different levels in different geographies.*